









# THE IRISH JUSTICE OF THE PEACE:

A Treatise  
ON THE POWERS AND DUTIES OF JUSTICES OF  
THE PEACE IN IRELAND,  
AND  
CERTAIN MATTERS CONNECTED THEREWITH.

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## PREFACE.

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I shall feel very grateful to readers who will bring to my attention such errors or omissions as they may detect.

JAMES O'CONNOR.

40, MOREHAMPTON ROAD, DUBLIN,

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# TABLE OF CONTENTS.

	PAGE
TABLE OF STATUTES, . . . . .	ix
TABLE OF CASES, . . . . .	lxi
ADDENDA ET CORRIGENDA, . . . . .	cv

## PART I.

CHAP.		
I.	JURISDICTION AND APPOINTMENT OF JUSTICES OF THE PEACE,	1
II.	CRIMINAL JURISDICTION OF JUSTICES AT QUARTER SESSIONS, .	9
III.	PRELIMINARY INVESTIGATION OF INDICTABLE OFFENCES, .	12
IV.	SURETIES OF THE PEACE AND GOOD BEHAVIOUR, . .	33
V.	SUMMARY CASES WITHIN PETTY SESSIONS ACT, . . .	40
VI.	SUMMARY CASES NOT WITHIN PETTY SESSIONS ACT, . .	76
VII.	CONVICTIONS, . . . . .	82
VIII.	LICENSING JURISDICTION AT QUARTER SESSIONS, . . .	110
IX.	LICENSING JURISDICTION AT PETTY SESSIONS, . . .	119
X.	APPEAL TO QUARTER SESSIONS, . . . . .	130
XI.	MISCELLANEOUS DUTIES OF JUSTICES OUT OF SESSIONS, .	144
XII.	CIVIL JURISDICTION, . . . . .	155
XIII.	PROCEEDINGS BY LANDLORD AGAINST TENANT, . . .	186
XIV.	RATING AND VALUATION, . . . . .	194
XV.	JURISDICTION OUSTED BY QUESTION OF TITLE, . . .	206
XVI.	DISQUALIFICATION OF JUSTICES BY INTEREST OR BIAS, .	215
XVII.	CERTIORARI, . . . . .	223
XVIII.	CASE STATED, . . . . .	235
XIX.	MANDAMUS, . . . . .	246
XX.	HABEAS CORPUS, . . . . .	251
XXI.	WRIT OF PROHIBITION, . . . . .	254
XXII.	CRIMINAL CAPACITY, . . . . .	255
XXIII.	EVIDENCE, . . . . .	258
XXIV.	MASTER AND SERVANT, . . . . .	292
XXV.	FUGITIVE OFFENDERS, . . . . .	301
XXVI.	DUBLIN METROPOLITAN POLICE DISTRICT, . . . .	305
XXVII.	LIABILITY OF JUSTICES, . . . . .	322
XXVIII.	CLERK OF PETTY SESSIONS, . . . . .	329
XXIX.	STATUTES, STATUTORY REGULATIONS, AND BYE-LAWS, .	334

## PART II.

	PAGE
INTRODUCTORY (HINTS TO JUSTICES), . . . . .	345
CATALOGUE OF SUMMARY OFFENCES (IN ALPHABETICAL ORDER), .	351-858

## PART III.

INTRODUCTORY (PUNISHMENT), . . . . .	861
CATALOGUE OF INDICTABLE OFFENCES (IN ALPHABETICAL ORDER),	870-935

## PART IV.

APPENDIX OF STATUTES, . . . . .	941-1283
INDEX, . . . . .	1285-1394



# TABLE OF STATUTES.

Where the section is given verbatim in the text, the number of the page appears in heavy type.

					PAGE
1 Ed. 3, st. 2, c. 16,	(Keepers of the Peace),	..	..	..	1
34 Ed. 3, c. 1,	(Justices of the Peace),	..	..	..	1, 33
36 Ed. 3, c. 12,	(Sessions of the Peace),	..	..	..	1
27 Hy. 6, c. 5,	(Prohibition of Fairs on Sundays, etc.),	..	..	..	793
33 Hen. 8, c. 9,	(Unlawful Games),	..	..	..	495, n. <sup>1</sup>
43 Eliz., c. 2,	(Poor Relief Act, 1601), s. 4,	..	..	..	323
21 Jac. I., c. 7,	(Repression of Drunkenness), s. 3,	..	..	..	95
12 Car. 2, c. 18,	(Navigation), s. 4,	..	..	..	296
29 Car. 2, c. 7,	(Sunday Observance Act, 1677), s. 6,	..	..	793, n. <sup>1</sup>	795
1 W. & M., sess. 2, c. 2,	(Bill of Rights),	..	..	..	31
7 Wm. 3, c. 9 (Ir.),	(Profane Swearing), ss. 1, 3, 5,	..	..	..	795
7 Wm. 3, c. 13 (Ir.),	(Sheriffs), s. 3,	..	..	..	6, 780
7 Wm. 3, c. 17 (Ir.),	(Sunday Observance (Ir.) Act, 1695)—				
	s. 1,	..	..	..	791
	s. 2,	..	..	..	792
	s. 3,	..	..	..	792
	s. 4,	..	..	..	793
	s. 7,	..	..	..	793, 794 n. <sup>3</sup> , 795
10 Wm. 3, c. 8 (Ir.),	(Game)—				
	s. 6,	..	..	..	489
	s. 7,	..	..	..	494
2 Anne, c. 15 (Ir.),	(Buying and Selling of Cattle), s. 12,	..	..	..	161
6 Anne, c. 17 (Ir.),	(Lotteries and Gaming Tables), s. 1,	..	..	..	502
2 Geo. 1, c. 17 (Ir.),	(Master and Servant)—				
	s. 2,	..	..	..	608
	ss. 3-5,	..	..	..	609
	s. 6,	..	..	..	610
4 Geo. 1, c. 5 (Ir.),	(Landlord and Tenant), s. 1,	..	..	..	929
12 Geo. 1, c. 3 (Ir.),	(Marriages), s. 1, ..	..	..	..	914
3 Geo. 2, c. 4 (Ir.),	(Perjury, etc.), s. 2,	..	..	..	920
13 Geo. 2, c. 8 (Ir.),	(Gaming and Lotteries), s. 2,	..	..	..	496 n. <sup>1</sup>
19 Geo. 2, c. 21,	(Profane Oaths Act, 1745), s. 1,	..	..	..	795
25 Geo. 2, c. 8 (Ir.),	(Master and Servant)—				
	s. 2,	..	..	..	609
	ss. 3, 4,	..	..	..	614
	s. 7,	..	..	..	613
	s. 13,	..	..	..	614 n. <sup>1</sup> , 608 n. <sup>2</sup>
31 Geo. 2, c. 32,	(Licences to deal in Plate), s. 6,	..	..	..	512, 656
11 Geo. 3, c. 6 (Ir.),	(Burning Bricks in Dublin),	..	..	..	389
15 & 16 Geo. 3, c. 21 (Ir.),	(Whiteboy (Ir.) Act, 1776)—				
	s. 2,	..	..	..	866, 933, 934
	ss. 3, 4, 5,	..	..	..	934
	s. 6,	..	..	..	150, 934
	s. 22,	..	..	..	934
	s. 24,	..	..	..	15, 934
	s. 28,	..	..	..	934
21 Geo. 3, c. 14, s. 60,	(Lotteries (Ir.) Act, 1780),	..	..	..	502 n. <sup>2</sup>
21 & 22 Geo. 3, c. 11 (Ir.),	(Habeas Corpus (Ir.) Act, 1781), s. 4,	..	..	..	691
23 & 24 Geo. 3, c. 20 (Ir.),	(Riotous Outrages, etc.), ss. 1, 7, 8,	..	..	..	930

## TABLE OF STATUTES.

		PAGE
26 Geo. 3, c. 24 (Ir.),	(Forcible Entry, etc.)—	
	s. 64, .. .. .	900
	s. 74, .. .. .	150
c. 38,	(Imprisonment of Debtors), s. 8,	110
c. 43 (Ir.),	(Pawnbrokers (Ir.) Act, 1786)—	
	ss. 1-8, .. .. .	660
	s. 4, .. .. .	660n. <sup>2</sup> , 661
	ss. 5-7, .. .. .	657, 660 n. <sup>2</sup>
	s. 8, .. .. .	653, 660 n. <sup>2</sup> , 653 n. <sup>1</sup> , 661
	ss. 9, 10, .. .. .	660
	ss. 11, 12, .. .. .	653, 662
	s. 13, .. .. .	146, 663
	s. 14, .. .. .	654, 659 n. <sup>2</sup>
	s. 15, .. .. .	654, 655
	s. 16, .. .. .	656
	s. 18, .. .. .	654, 655
	s. 21, .. .. .	111, 656
	ss. 22, 23, .. .. .	657, 659
	s. 24, .. .. .	657
	s. 25, .. .. .	658
	ss. 27, 28, .. .. .	658, 659
	s. 30, .. .. .	657, 658
	ss. 31, 32, 33, 35-37, .. .. .	658
	s. 38, .. .. .	654
	ss. 39, 40, .. .. .	655
c. 57,	(East India Company Act, 1786), s. 2,	118
27 Geo. 3, c. 15 (Ir.),	(Riot (Ir.) Act)—	
	ss. 2, 3, .. .. .	930
	s. 4, .. .. .	854
	s. 6, .. .. .	916
	ss. 8, 9, 10, .. .. .	933
	s. 12, .. .. .	930, n. <sup>1</sup>
27 Geo. 3, c. 35 (Ir.),	(Game)—	
	s. 3, .. .. .	494
	s. 4, .. .. .	484, 486, 489, 494
	ss. 10, 11, .. .. .	483
	s. 12, .. .. .	484, n. <sup>2</sup>
	s. 13, .. .. .	484, n. <sup>3</sup>
	s. 19, .. .. .	483, 488
	s. 20, .. .. .	77, 482, 483
	s. 23, .. .. .	483, 494
28 Geo. 3, c. 45 (Ir.),	(Dublin Police), s. 79,	655, n. <sup>1</sup>
c. 49 (Ir.),	(Pawnbrokers)—	
	s. 1, .. .. .	654, 654 n. <sup>4</sup> , 656, 656n. <sup>1</sup>
	ss. 2, 3, .. .. .	654
	s. 4, .. .. .	661
	ss. 5, 6, .. .. .	655
	s. 7, .. .. .	923
	s. 8, .. .. .	656
	s. 9, .. .. .	659
	s. 10, .. .. .	659, 659 n. <sup>1</sup>
	ss. 11, 12, .. .. .	659
	s. 14, .. .. .	658 n. <sup>1</sup> , 659
	s. 15, 16, 17, .. .. .	659
	s. 18, .. .. .	658n. <sup>2</sup> , 659
	s. 19, .. .. .	653, 654, 654 n. <sup>1</sup>
	s. 20, .. .. .	661
29 Geo. 3, c. 30 (Ir.),	(Waste on Commons), ss. 1, 4,	408
31 Geo. 3, c. 17 (Ir.),	(Murder and Rescue), s. 10,	929
c. 34 (Ir.),	(Apothecaries), s. 22,	395
c. 38 (Ir.),	(Commons), s. 1, .. .. .	408
33 Geo. 3, c. 45 (Ir.),	(Treason (Ir.) Act, 1793), .. .. .	14 n. <sup>2</sup>
37 Geo. 3, c. 21 (Ir.),	(Game), s. 2, .. .. .	488
c. 40 (Ir.),	(Seducing Soldiers), s. 1, .. .. .	917
39 & 40 Geo. 3, c. 99,	(Pawnbrokers)—	
	s. 6(1), .. .. .	657
	ss. 12-14, .. .. .	653
	s. 16, .. .. .	657
	s. 20, .. .. .	659
40 Geo. 3, c. 96 (Ir.),	(Perpetuation of Certain Statutes), ss. 4, 5, .. .. .	933
42 Geo. 3, c. 119,	(Gaming Act, 1802), s. 2, .. .. .	503, 504
43 Geo. 3, c. 86,	(Unlawful Combinations (Ir.) Act, 1803), s. 12, .. .. .	222



PAGE

44 Geo. 3, c. xxii,	(Dublin Peace Preservation), s. 2, ..	655
46 Geo. 3, c. 148,	(Penalties under Lottery Laws), s. 59, ..	502
47 Geo. 3, sess. 2, c. 15,	(Plate Assay (Ir.) Act, 1807), s. 3, ..	512
48 Geo. 3, c. 140,	(Dublin Police Magistrates Act, 1808)—	
	ss. 14, 15, ..	307
	s. 29, ..	313 n. <sup>1</sup>
	s. 50, ..	655
	s. 51, ..	653, 663
	ss. 52, 53, ..	318
	s. 66, ..	654, 654 n. <sup>6</sup>
	s. 70, ..	655, 661
	s. 131, ..	309
49 Geo. 3, c. 126,	(Sale of Offices Act, 1809), ss. 3, 4, ..	926
50 Geo. 3, c. 102,	(Unlawful Oaths (Ir.) Act, 1810)—	
	ss. 1, 2, ..	916
	s. 5, ..	287
	s. 8, ..	15
	s. 10, ..	916
52 Geo. 3, c. 134,	(Butter Trade (Ir.) Act, 1812)—	
	ss. 2, 12, 14, 15, 16, 19, ..	391
	ss. 21-23, ..	391, 392
52 Geo. 3, c. 156,	(Prisoners of War (Escape) Act, 1812), s. 1, ..	890
54 Geo. 3, c. 159,	(Harbours Act, 1814)—	
	s. 11, ..	521
	ss. 12, 13, ..	522
	s. 14, ..	213, 522, 522
	ss. 26, 28, ..	522
55 Geo. 3, c. 19,	(Intoxicating Liquors (Ir.) Act, 1815)—	
	s. 64, ..	613
	ss. 65, 67, ..	614
55 Geo. 3, c. 194,	(Apothecaries Act, 1815), s. 20, ..	106
56 Geo. 3, c. 87,	(Grand Jury (Ir.) Act, 1816), s. 3, ..	287
57 Geo. 3, c. 56,	(Recognizances (Ir.) Act, 1817), ..	941
57 Geo. 3, c. 108,	(Tolls (Ir.) Act, 1817), ss. 1, 2, 4, 5, 6, ..	435
58 Geo. 3, c. 57,	(Licensed Grocers (Ir.) Act, 1818), s. 2, ..	553
60 Geo. 3 & 1 Geo. 4,	(Unlawful Drilling Act, 1820)—	
c. 1,	s. 1, ..	888
	s. 2, ..	148
	s. 7, ..	888
1 & 2 Geo. 4, c. 88,	(Rescue Act, 1821), s. 1, ..	929
3 Geo. 4, c. vi,	(Bread Act (London), 1822), s. 16, ..	60 n. <sup>1</sup>
4 Geo. 4, c. 34,	(Masters and Servants), s. 3, ..	94
c. 60,	(Lotteries Act, 1823), s. 41, ..	84, 503
c. 87,	(Unlawful Oaths (Ir.) Act, 1823)—	
	s. 1, ..	779, 932
	ss. 2, 3, ..	779, 932
	ss. 4, 6-8, ..	779
5 Geo. 4, c. 83,	(Vagrancy Act, 1824), s. 4, ..	527, 531, 536, 549,
		759, 831
c. 102,	(Dublin Justices Act, 1824)—	
	s. 9, ..	3
	s. 13, ..	318
	ss. 16-18, ..	313, 318
	s. 19, ..	318
	s. 22, ..	661
	ss. 25, 26, ..	308
	s. 30, ..	310
6 Geo. 4, c. 81,	(Excise Licences Act, 1825)—	
	s. 10, ..	569
	s. 21, ..	546
	s. 25, ..	552
	s. 26, ..	294, 295, 543, 568
	s. 28, ..	556
c. 16,	(Chelsea & Kilmainham Hospitals Act, 1826), s. 38, ..	922
7 Geo. 4, c. 74,	(Prisons (Ir.) Act, 1826)—	
	s. 4, ..	690
	s. 109, ..	691
7 & 8 Geo. 4, c. 30,	(Malicious Injuries to Property (England)), s. 24, ..	605 n. <sup>1</sup>
7 & 8 Geo. 4, c. 53,	(Excise Management Act, 1827)—	
	s. 1, ..	79 n. <sup>1</sup>
	s. 3, ..	837 n. <sup>1</sup>

## TABLE OF STATUTES.

		PAGE
7 & 8 Geo. 4, c. 53,	(Excise Management Act, 1827)—	
	s. 4, .. .. .	145
	s. 20, .. .. .	120 n. <sup>1</sup> , 546, 571
	s. 22, .. .. .	539
	s. 33, .. .. .	546
	s. 65, .. .. .	79, 837 n. <sup>1</sup>
	s. 67, .. .. .	76 n. <sup>3</sup>
	s. 68, .. .. .	222
	ss. 71, 74, 78, .. .. .	79
	s. 79, .. .. .	78
	s. 82, .. .. .	139, 140
	ss. 83-84, .. .. .	139, 140, 141
c. 61,	(Butter Trade (Ir.) Act, 1827), s. 3, ..	392
9 Geo. 4, c. 31,	(Offences against the Person), ss. 27, 28,	58
c. 54,	(Criminal Law (Ir.) Act, 1828), ..	942
	s. 1, .. .. .	13 n. <sup>4</sup>
	s. 15, .. .. .	865, 914, 925
	s. 16, .. .. .	885
	ss. 26, 27, .. .. .	16, 43
c. 55,	(Larceny Act (Ir.), 1828), s. 72, ..	109
c. 69,	(Night Poaching Act, 1828)—	
	s. 1, .. .. .	92, 485, 923
	s. 2, .. .. .	485, 923
	s. 3, .. .. .	485
	s. 4, .. .. .	77, 482, 485, 923
	s. 6, .. .. .	485
	s. 9, .. .. .	10, 485, 923
	s. 12, .. .. .	923
10 Geo. 4, c. 41,	(Butter Trade (Ir.) Act, 1829), s. 1, ..	391
c. 56,	(Friendly Societies), s. 27, ..	162
11 Geo. 4 & 1 Wm. 4,	(Beerhouse Act, 1830)—	
c. 64,	s. 2, .. .. .	111
	s. 13, .. .. .	555
1 & 2 Wm. 4, c. 17,	(Custos Rotulorum (Ir.) Act, 1831), s. 3,	7
c. 32,	(Game Act, 1831)—	
	s. 2, .. .. .	491
	s. 4, .. .. .	489
	s. 8, .. .. .	491 n. <sup>3</sup>
	s. 17, .. .. .	491, 491
	ss. 18, 21, 22, .. .. .	492
	s. 23, .. .. .	66, 103
	s. 24, .. .. .	487
	s. 25, .. .. .	492
	s. 26, .. .. .	491
	ss. 27, 28, .. .. .	492
	s. 30, .. .. .	103
c. 37,	(Truck Act, 1831)—	
	ss. 1, 2, 4, 5, .. .. .	819
	s. 8, .. .. .	819 n. <sup>1</sup>
	s. 9, .. .. .	819, 820, 823, 933
	s. 10, .. .. .	824
	ss. 23, 24, .. .. .	821
	s. 25, .. .. .	819
	s. 27, .. .. .	818 n. <sup>1</sup>
c. 44	(Tumultuous Risings (Ir.) Act, 1831)—	
	ss. 2, 3, .. .. .	934
	ss. 2-6, .. .. .	866
	s. 5, .. .. .	929
c. 55,	(Illicit Distillation (Ir.) Act, 1831)—	
	ss. 10-12, .. .. .	543
	ss. 13-14, .. .. .	544
	s. 17, .. .. .	145, 544
	ss. 18-21, .. .. .	544
	s. 19, .. .. .	148
	ss. 22, 23, .. .. .	544
	ss. 23, 24, .. .. .	545
	s. 25, .. .. .	148, 545
	ss. 27-32, .. .. .	545
	s. 30, .. .. .	148
	ss. 39, 40, .. .. .	543, 545
2 & 3 Wm. 4, c. 53,	(Army Prize Money Act, 1832), s. 49,	922
3 & 4 Wm. 4, c. 15,	(Dramatic Copyright Act, 1833), s. 2,	66



		PAGE
3 & 4 Wm. 4, c. 68,	(Licensing (Ir.) Act, 1833)—	
	s. 2, .. .. .	110, 114, 219
	s. 3, .. .. .	110, 219
	s. 4, .. .. .	110, 114-116, 219
	s. 5, .. .. .	110, 219, 571 n. <sup>1</sup>
	ss. 10, .. .. .	546
	s. 11, .. .. .	582 n. <sup>2</sup>
	s. 12, .. .. .	546
	s. 13, .. .. .	110, 111
	s. 15, .. .. .	538 n. <sup>1</sup> , 546 n. <sup>2</sup>
	ss. 17-18, .. .. .	538 n. <sup>1</sup>
	s. 19, .. .. .	546 n. <sup>2</sup>
	s. 21, .. .. .	151, 566
	s. 24, .. .. .	578 n. <sup>1</sup>
c. 91,	(Jurors (Ir.) Act, 1833)—	
	s. 48, .. .. .	890
c. 102,	(Roman Catholic Marriages, Ireland), s. 1, ..	914 n. <sup>1</sup>
4 & 5 Wm. 4, c. 51,	(Excise Management Act, 1834), ..	942
	s. 6, .. .. .	546
	s. 19, .. .. .	79
	s. 20, .. .. .	80
	s. 23, .. .. .	139-141
c. 85,	(Beerhouse Act, 1834)—	
	s. 7, .. .. .	538
	s. 17, .. .. .	92
5 & 6 Wm. 4, c. 39,	(Excise Act, 1835)—	
	s. 4, .. .. .	546
	s. 7, .. .. .	117, 576
c. 50,	(Highway Act, 1835)—	
	s. 65, .. .. .	108
	s. 70, .. .. .	298, 600 n. <sup>1</sup>
	s. 72, .. .. .	89
	s. 78, .. .. .	103
c. 62,	(Statutory Declarations Act, 1835)—	
	s. 12, .. .. .	658, 659
	s. 13, .. .. .	916
	s. 21, .. .. .	921
c. 63	(Weights and Measures)—	
	s. 21, .. .. .	837
	s. 28, .. .. .	837, 838
c. 65,	(Lectures Copyright Act, 1835), s. 5, ..	411 n. <sup>3</sup>
c. 76,	(Municipal Corporations (E.) Act, 1835)—	
	s. 28, .. .. .	597
	s. 81, .. .. .	95
6 & 7 Wm. 4, c. 13,	(Constabulary (Ir.) Act, 1836)—	
	ss. 5, 7, .. .. .	3
	ss. 19, 20, 21, 25, .. .. .	676
	ss. 31-33, .. .. .	3
c. 29,	(Dublin Police Act, 1836)—	
	s. 6, .. .. .	313
	s. 7, .. .. .	318
	s. 9, .. .. .	313
	s. 32, .. .. .	307
	s. 41, .. .. .	310
c. 32,	s. 4, .. .. .	162
c. 38,	(Licensing (Ir.) Act, 1836)—	
	s. 2, .. .. .	111
	s. 6, .. .. .	425 n. <sup>1</sup> , 546 n. <sup>2</sup>
	s. 8, .. .. .	546, 549, 932
	s. 9, .. .. .	537, 932
	ss. 10, 11, .. .. .	538 n. <sup>1</sup>
	s. 12, .. .. .	148, 425, 517, 546 n. <sup>2</sup>
	s. 23, .. .. .	578 n. <sup>1</sup>
c. 116,	(Grand Jury Act, 1836)—	
	s. 58, .. .. .	168
	s. 105, .. .. .	29 n. <sup>2</sup>
	s. 119, .. .. .	524
	s. 152, .. .. .	203, 204
	s. 162, .. .. .	86, 100, 168, 236
c. 117,	(Kingstown Harbour Act, 1836), s. 54, ..	385
7 Wm. 4 & 1 Vict. c. 25,	(Dublin Police Act, 1837), s. 27, ..	310, 311, 664
c. 83,	(Parliamentary Documents Deposit Act, 1837), ..	11

		PAGE
7 Wm. 4 & 1 Vict. c. 88,	(Piracy Act, 1837)—	
	s. 2, .. .. .	923
	s. 3, .. .. .	922
c. 91,	(Punishment of Offences Act, 1837), ss. 1, 2, ..	929
1 & 2 Vict. c. 28,	(Bread (Ir.) Act, 1838)—	
	s. 2, .. .. .	386
	ss. 3-6, .. .. .	387, 388
	s. 7, .. .. .	386
	s. 8, .. .. .	352, 387
	ss. 9-12, .. .. .	387
	s. 10, .. .. .	145
	ss. 13-15, .. .. .	388
	s. 27, .. .. .	388 n. <sup>1</sup>
c. 56,	(Poor Relief (Ir.) Act, 1838)—	
	s. 53, .. .. .	403, 531
	s. 57, .. .. .	404
	s. 58, .. .. .	677
	s. 59, .. .. .	531
	s. 60, .. .. .	403, 677
	s. 63, .. .. .	202
	s. 70, .. .. .	677, 678
	s. 71, .. .. .	202
	s. 73, .. .. .	203
	s. 84, .. .. .	201
	s. 99, .. .. .	404 n. <sup>1</sup> , 677
	s. 100-102, .. .. .	677, 678
	s. 103, .. .. .	404 n. <sup>1</sup> , 677
	s. 105, .. .. .	678
	s. 106, .. .. .	201, 678
	ss. 107-109, 112, .. .. .	201
	s. 124, .. .. .	531
c. 105,	(Oaths Act, 1838), s. 1, .. .. .	259
2 & 3 Vict. c. 1,	(Poor Relief (Ir.) Act, 1839), s. 9, .. .. .	201
c. 35,	(Assessed Taxes), s. 4, .. .. .	492
c. 47,	(Metropolitan Police Act, 1839)—	
	s. 35, .. .. .	526
	s. 42, .. .. .	563
	s. 54, .. .. .	807
	s. 60, .. .. .	806
	s. 66, .. .. .	313 n. <sup>1</sup>
c. 71,	(Metropolitan Police Courts Act, 1839), s. 24, .. .. .	313 n. <sup>1</sup>
c. 75,	(Constabulary (Ir.) Act, 1839), s. 5, .. .. .	676 n. <sup>2</sup>
c. 78,	(Dublin Police Act, 1839)—	
	ss. 13, 15, .. .. .	318
3 & 4 Vict. c. 61,	(Beerhouse Act, 1840), s. 1, .. .. .	111
c. 85,	(Chimney Sweepers and Chimneys Regulation Act, 1840)—	
	s. 2, .. .. .	406
	s. 7, .. .. .	407
c. 91,	(Textile Manufacturers (Ir.) Act, 1840)—	
	ss. 3, 4, .. .. .	911
	s. 5, .. .. .	146
c. 97,	(Railway Regulation Act, 1840)—	
	ss. 7-9, .. .. .	771
	s. 13, .. .. .	770, 816, 927
	s. 14, .. .. .	927
	s. 16, .. .. .	212, 770, 816
c. 108,	(Municipal Corporations (Ir.) Act, 1840)—	
	s. 84, .. .. .	3
	ss. 125-127, .. .. .	279
	s. 157, .. .. .	6
	s. 164, .. .. .	10, 11
	s. 166, .. .. .	3 n. <sup>4</sup>
	s. 168, .. .. .	10
	s. 173, .. .. .	6, 15
4 & 5 Vict. c. 20,	(Excise Management Act, 1841)—	
	s. 7, .. .. .	546
	s. 30, .. .. .	139, 140
5 & 6 Vict. c. 10, s. 80,	.. .. .	83
c. 24,	(Dublin Police Act, 1842)—	
	s. 1, .. .. .	944
	s. 3, 4, .. .. .	310
	s. 5, .. .. .	318
	s. 5, .. .. .	313



5 &amp; 6 Vict. c. 24,

(Dublin Police Act, 1842)—

PAGE

s. 6, .. .. .	312
s. 7, .. .. .	312, 809
ss. 8-10, .. .. .	313
s. 14, .. .. .	314
s. 15, .. .. .	313, 517
s. 16, .. .. .	313
s. 17, .. .. .	314
s. 17 (7), .. .. .	524
s. 18, .. .. .	313
ss. 19-22, .. .. .	313
ss. 23, 24, .. .. .	318
s. 25, .. .. .	103, 149, 312
s. 26, .. .. .	149, 318
s. 27, .. .. .	149, 311, 318
s. 28, .. .. .	149, 318
s. 29, .. .. .	149, 313 n. <sup>1</sup> , 318, 662
ss. 30-35, .. .. .	318
s. 36, .. .. .	310
s. 39, .. .. .	310 n. <sup>1</sup>
s. 46, .. .. .	307
s. 47, .. .. .	55
s. 48, .. .. .	309
ss. 49-51, .. .. .	308
s. 52, .. .. .	308, 311
s. 53, .. .. .	313, 927 n. <sup>3</sup>
s. 54, .. .. .	146, 313
s. 55, .. .. .	313
s. 56, .. .. .	103, 313, 663
s. 57, .. .. .	103, 313
s. 58, .. .. .	313
s. 59, .. .. .	310, 312
s. 60, .. .. .	312
s. 61, .. .. .	313
s. 63, .. .. .	65, 78, 311, 674 n. <sup>1</sup>
s. 64, .. .. .	309
ss. 65, 66, .. .. .	312
s. 67, .. .. .	312, 418
s. 68, .. .. .	312, 661, 662
s. 70, .. .. .	52, 309, 519
s. 71, .. .. .	310, 310 n. <sup>1</sup>
s. 72, .. .. .	309
s. 78, .. .. .	309
c. 28, (Capital Punishment (Ir.) Act, 1842)—	
s. 1, .. .. .	914
ss. 5, 6, .. .. .	930
ss. 7, 8, .. .. .	933
s. 12, .. .. .	885
s. 13, .. .. .	923
s. 19, .. .. .	933
c. 44, (Licensing Act, 1842), s. 1, .. .. .	571
c. 45, (Copyright Act, 1842)—	
ss. 2, 3, .. .. .	411 nn. <sup>1, 2</sup>
s. 11, .. .. .	412 n. <sup>2</sup>
s. 17, .. .. .	411
s. 24, .. .. .	411 n. <sup>1</sup>
c. 46, (Justices (Ir.) Act, 1842), s. 4, .. .. .	15
c. 47, (Customs Act, 1842), ss. 59, 60, .. .. .	513
c. 51, (Treason Act, 1842), s. 2, .. .. .	866, 917
c. 55, (Regulation of Railways Act, 1842), s. 17, .. .. .	770, 816
c. 68, (Textile Manufacturers (Ir.) Act, 1842)—	
s. 2, .. .. .	146, 593
ss. 3, 4, .. .. .	593
c. 81, (Game Certificates (Ir.) Act, 1842)—	
s. 5, .. .. .	489
s. 8, .. .. .	490
c. 82, (Stamp Duties (Ir.) Act, 1842)—	
s. 17, .. .. .	653, 655
s. 18, .. .. .	656
c. 89, (Drainage (Ir.) Act, 1842)—	
s. 58, .. .. .	181
s. 132, .. .. .	424

		PAGE
5 & 6 Vict. c. 89,	(Drainage (Ir.) Act, 1842)—	
	s. 133, .. .. .	913
	s. 134, .. .. .	424
	s. 135, .. .. .	425
	s. 152, .. .. .	425
c. 99,	(Mines and Collieries), ss. 8, 13,	297
c. 106,	(Fisheries (Ir.) Act, 1842)—	
	s. 5, .. .. .	451
	s. 6, .. .. .	444
	ss. 7, 8, .. .. .	450
	s. 9, .. .. .	452
	s. 11, .. .. .	438
	s. 14, .. .. .	451
	s. 22, .. .. .	440, 445
	ss. 26, 27, .. .. .	415
	s. 28, .. .. .	451
	s. 32, .. .. .	454
	s. 34, .. .. .	448 n. <sup>1</sup>
	s. 35, .. .. .	448
	s. 36, .. .. .	449, 454
	s. 37, .. .. .	445, 449
	ss. 38, 39, .. .. .	449
	s. 40, .. .. .	298, 449
	s. 42, .. .. .	448
	s. 57, .. .. .	447
	s. 63, .. .. .	445, 446
	s. 66, .. .. .	444, 449, 450
	s. 69, .. .. .	448
	s. 70, .. .. .	444
	s. 71, .. .. .	439
	s. 72, .. .. .	450
	ss. 73, 74, .. .. .	448
	ss. 75, 76, .. .. .	446
	s. 77, .. .. .	444
	s. 78, .. .. .	443
	s. 79, .. .. .	439
	s. 80, .. .. .	442
	s. 81, .. .. .	451
	s. 88, .. .. .	451
	s. 89, .. .. .	454
	s. 90, .. .. .	451
	s. 91, .. .. .	437, 442, 453
	s. 92, .. .. .	11
	s. 93, .. .. .	442
	s. 94, .. .. .	69, 438
	s. 96, .. .. .	438, 454
	s. 99, .. .. .	438
	s. 103, .. .. .	452
c. 123,	(Private Lunatic Asylums (Ir.) Act, 1842), s. 3,	117
6 & 7 Vict. c. 7,	(Transportation Act, 1843), s. 2, .. .. .	489
c. 8,	(Justices (Ir.) Act, 1843), s. 1, .. .. .	203
c. 18,	(Parliamentary Voters Registration Act, 1843), s. 51,	13 n. <sup>2</sup>
c. 30,	(Pound Breach Act, 1843), ss. 1, 2, .. .. .	682
c. 68,	(Theatres Act, 1843), s. 2, .. .. .	549
c. 86,	(London Hackney Carriages Act, 1843), s. 28,	103
c. 91,	(Charitable Loan Societies (Ir.) Act, 1843)—	961
	s. 23, .. .. .	394
	ss. 24, 30, .. .. .	161
	ss. 38, 39, 43, 53, 55, .. .. .	394
	s. 58, .. .. .	395
c. 92,	(Poor Relief (Ir.) Act, 1843)—	
	ss. 4, 8, .. .. .	202
	s. 10, .. .. .	202 n. <sup>2</sup>
c. 96,	(Libel Act, 1843)—	
	s. 3, .. .. .	892
	ss. 4, 5, .. .. .	910
	s. 6, .. .. .	592, 910
	s. 7, .. .. .	294 n. <sup>1</sup> , 910
7 & 8 Vict. c. 29,	(Night Poaching Act, 1844), s. 1, .. .. .	485
c. 81,	(Marriages (Ir.) Act, 1844)—	
	ss. 44-47, .. .. .	914
	s. 64, .. .. .	776

		PAGE
7 & 8 Vict. c. 81,	(Marriages (Ir.) Act, 1844)—	
	s. 73, .. .. .	914
	s. 74, .. .. .	776, 777
	s. 77, .. .. .	777
c. 106,	(Co. Dublin Grand Jury Act, 1844)—	
	s. 40, .. .. .	29 n. <sup>2</sup>
	s. 59, .. .. .	168
	s. 136, .. .. .	169
c. 108,	(Fisheries (Ir.) Act, 1844), s. 7, .. .. .	450
8 & 9 Vict. c. 15,	(Auctioneers Act, 1845)—	
	ss. 4, 5, .. .. .	383
	ss. 7, 8, .. .. .	384
c. 18,	(Land Clauses Consolidation Act, 1845)—	
	s. 3, .. .. .	176
	s. 22, .. .. .	175, 176
	s. 24, .. .. .	176
	s. 89, .. .. .	185
	s. 121, .. .. .	175, 176
	s. 136, .. .. .	185
c. 20,	(Railway Clauses Consolidation Act, 1845)—	
	s. 7, .. .. .	178
	s. 9, .. .. .	11
	s. 16, .. .. .	770
	s. 47, .. .. .	771, 816 n. <sup>2</sup>
	s. 57, .. .. .	183
	s. 58, .. .. .	183
	ss. 59, 60, .. .. .	183
	s. 62, .. .. .	183, 184
	s. 65, .. .. .	184
	s. 75, .. .. .	771, 772 n. <sup>1</sup> , 816
	s. 95, .. .. .	770
	ss. 98, 99, .. .. .	769, 816
	s. 103, .. .. .	768, 816
	s. 105, .. .. .	771, 816
	s. 108, .. .. .	771, 816
	s. 109, .. .. .	771, 772, 816
	s. 110, .. .. .	771, 816
	s. 111, .. .. .	772
	s. 114, .. .. .	771, 772 n. <sup>1</sup> , 816
	s. 140, .. .. .	166, 167, 184
	s. 141, .. .. .	184
	s. 142, .. .. .	164, 166, 167, 184
	s. 144, .. .. .	770, 772 n. <sup>1</sup>
	s. 145, .. .. .	184, 772
	ss. 148, 149, .. .. .	184
	s. 150, .. .. .	184, 772
	s. 153, .. .. .	184
e. 64,	(Spirits (Ir.) Act, 1845), s. 2, .. .. .	538 n. <sup>1</sup> , 553
c. 77,	(Hosiery Act, 1845), .. .. .	613
c. 108,	(Fisheries (Ir.) Act, 1845)—	
	s. 3, .. .. .	438 n. <sup>5</sup>
	ss. 11, 12, .. .. .	444
	s. 19, .. .. .	454
	s. 20, .. .. .	455
c. 109,	(Gaming Act, 1845)—	
	s. 2, .. .. .	495, 496
	s. 3, .. .. .	145, 497
	s. 4, .. .. .	495
	ss. 5, 6, .. .. .	497
	s. 7, .. .. .	497, 498
	s. 8, .. .. .	497
	s. 9, .. .. .	285, 497
	s. 17, .. .. .	895
	s. 24, .. .. .	497
c. 113,	(Evidence Act, 1845)—	
	s. 1, .. .. .	280
	s. 3, .. .. .	276, 278
	s. 7, .. .. .	278
c. 128,	(Silk Weavers Act, 1845), ss. 1, 2, .. .. .	613
c. cxlii,	(Belfast Improvement Act, 1845)—	
	s. 242, .. .. .	117 n. <sup>2</sup>
	ss. 249-252 .. .. .	663



		PAGE
9 & 10 Vict. c. 2,	(County Works (Ir.) Act, 1846), s. 20, ..	825
c. 4,	(Drainage (Ir.) Act, 1846), s. 42, ..	181
c. 37,	(The Coroners (Ir.) Act, 1846)—	
	s. 22, .. .. .	886 n. <sup>2</sup>
	s. 36, .. .. .	543
	s. 44, .. .. .	153
c. 111	(The Ejectment and Distress (Ir.) Act, 1846)—	
	s. 15, .. .. .	203 n. <sup>1</sup>
	ss. 16, 18, .. .. .	203 n. <sup>1</sup> , 417
	s. 20, .. .. .	418
10 & 11 Vict. c. 14,	(Markets and Fairs Clauses Act, 1847)—	
	ss. 1, 39, .. .. .	185
c. 15,	(Gasworks Clauses Act, 1847)—	
	ss. 6-12, .. .. .	164, 432
	s. 9, .. .. .	506, 507
	ss. 11, 18, .. .. .	506
	ss. 18-20, .. .. .	432
	s. 20, .. .. .	164
	s. 40, .. .. .	164, 507
	s. 44, .. .. .	507
	s. 46, .. .. .	506
c. 16,	(Commissioners Clauses Act, 1847), s. 9,	596
c. 17,	(Waterworks Clauses Act, 1847)—	
	ss. 28-30, .. .. .	715
	s. 31, .. .. .	167, 715
	ss. 32-34, .. .. .	715
	s. 35, .. .. .	166
	ss. 44-48, .. .. .	715
	s. 51, .. .. .	715
	s. 52, .. .. .	167
	s. 53, .. .. .	715, 716
	ss. 54, 55, .. .. .	715
	s. 56, .. .. .	167, 715
	ss. 57, 58, .. .. .	715
	ss. 59, 60, .. .. .	715, 716
	s. 61, .. .. .	384, 715, 716
	ss. 62-74, .. .. .	165, 715, 716
	s. 85, .. .. .	166, 167
c. 27,	(Harbours, Docks, and Piers Clauses Act, 1847)—	
	ss. 1, 35-36, .. .. .	522
	ss. 53-55, 69-75, 83-90, 92, 96, .. .. .	523
c. 31,	(Poor Relief (Ir.) Act, 1847), s. 28, .. .. .	175
c. 34,	(Towns Improvement Clauses Act, 1847)—	
	s. 64, .. .. .	802, 803
	ss. 65-68, .. .. .	842
	s. 69, .. .. .	702, 802, 803
	s. 71, .. .. .	802, 803
	s. 72, .. .. .	802
	s. 73, .. .. .	802, 803
	s. 74, .. .. .	802
	s. 75, .. .. .	802, 803
	s. 76, .. .. .	802
	ss. 77, 78, .. .. .	802, 803
	ss. 79, 80, .. .. .	802, 804
	ss. 81-83, .. .. .	802, 805
	ss. 125-129, .. .. .	805
	s. 130, .. .. .	719, 805
	s. 131, .. .. .	719 n. <sup>1</sup> , 720, 805
	s. 201, .. .. .	385
c. 62,	(Naval Deserters Act, 1847)—	
	s. 3, .. .. .	648 n. <sup>4</sup> , 648 n. <sup>5</sup>
	ss. 4, 9, 10, 12, .. .. .	648
	s. 13, .. .. .	648 n. <sup>1</sup>
	s. 16, .. .. .	648
c. 65,	(Cemeteries Clauses Act, 1847), ss. 58, 59,	731
c. 84,	(Vagrancy (Ir.) Act, 1847)—	
	s. 2, .. .. .	531, 404
	s. 3, .. .. .	385, 527, 830
	s. 4, .. .. .	404
	s. 8, .. .. .	531
c. 89,	(Towns Police Clauses Act, 1847), s. 3,	806 n. <sup>1</sup>

		PAGE
10 & 11 Vict. c. 89,	(Towns Police Clauses Act, 1847)—	
	ss. 10, 11, .. ..	676
	ss. 12, 16, .. ..	676, 810
	ss. 20-22, .. ..	810
	s. 28, .. ..	97, 805
	s. 29, .. ..	95
	s. 66, .. ..	529
11 & 12 Vict. c. 12,	(Treason Felony Act, 1848), s. 3, ..	917
c. 26,	(Grand Jury Cess (Ir.) Act, 1848), s. 6, ..	312
c. 28,	(Execution (Ir.) Act, 1848), s. 9, ..	203
c. 43,	(Summary Jurisdiction Act, 1848)—	
	s. 1, .. ..	46, 48, 94, 95, 325
	s. 2, .. ..	47 n. <sup>1</sup>
	s. 4, .. ..	145 n. <sup>2</sup>
	s. 5, .. ..	297, 354
	s. 9, .. ..	46
	s. 10, .. ..	61, 87 n. <sup>1</sup> , 94
	s. 12, .. ..	47 n. <sup>1</sup>
	s. 13, .. ..	47 n. <sup>1</sup> , 325
	s. 17, .. ..	32, 288
	s. 29, .. ..	8
c. 44,	(Justices' Protection Act, 1848), s. 1, ..	325
c. 47,	(Eviction (Ir.) Act, 1848)—	
	s. 2, .. ..	192
	s. 7, .. ..	888
c. 78,	(Crown Cases Act, 1848), .. ..	964
	s. 1, .. ..	11
c. 92,	(Fisheries (Ir.) Act, 1848)—	
	s. 1, .. ..	441 n. <sup>3</sup>
	s. 21, .. ..	441
	s. 22, .. ..	298
	s. 23, .. ..	440
	s. 24, .. ..	440, 441, 441 n. <sup>1</sup>
	ss. 25, 26, .. ..	440
	ss. 28, 29, .. ..	442
	s. 30, .. ..	441, 441 n. <sup>6</sup>
	s. 41, .. ..	440
	s. 42, .. ..	449
c. 107, s. 4,	.. ..	296
c. 118,	(Excise Act, 1848), s. 3, .. ..	77, 79
12 & 13 Vict. c. 16,	(Justices' Protection (Ir.) Act, 1849), ..	966
	s. 1, .. ..	322-325
	s. 2, .. ..	322-325, 327
	s. 3, .. ..	322
	s. 4, .. ..	203, 322
	s. 5, .. ..	249, 250, 322
	s. 6, .. ..	322
	s. 7, .. ..	323, 326, 327
	s. 8, .. ..	327
	s. 13, .. ..	323, 326
c. 45,	(Quarter Sessions Act, 1849), s. 7, ..	97
c. 69,	(Indictable Offences (Ir.) Act, 1849)—	
	s. 1, .. ..	319, 319 n. <sup>1</sup>
	ss. 2, 3, .. ..	319
	s. 4, .. ..	144 n. <sup>1</sup> , 313 n. <sup>2</sup> , 320
	ss. 5-10, .. ..	320
	s. 16, .. ..	308, 320
	s. 17, .. ..	289 n. <sup>4</sup> , 320
	ss. 18, 19, .. ..	320
	s. 20, .. ..	319 n. <sup>1</sup> , 320
	s. 21, .. ..	320
	s. 22, .. ..	319 n. <sup>1</sup> , 320
	ss. 23, 25, 27, .. ..	321
	s. 29, .. ..	319 n. <sup>1</sup>
c. 92,	(Cruelty to Animals Act, 1849)—	
	s. 2, .. ..	356, 360, 604 n. <sup>1</sup>
	s. 3, .. ..	360
	s. 4, .. ..	356
	ss. 5, 6, .. ..	360
	s. 7, .. ..	356

## TABLE OF STATUTES.

		PAGE
12 & 13 Vict. c. 92,	(Cruelty to Animals Act, 1849)—	
	s. 8, .. .. .	360
	ss. 9-14, .. .. .	361
	s. 18, .. .. .	360 n. <sup>1</sup>
	ss. 19, 20, 22, 26, .. .. .	361
	s. 29, .. .. .	356
c. 97,	(Dublin Improvement Act, 1849), s. 97, .. .. .	845 n. <sup>2</sup>
c. 104,	(Poor Relief (Ir.) Act, 1849)—	
	s. 19, .. .. .	202
	s. 22, .. .. .	201
	ss. 23, 29, .. .. .	202
13 & 14 Vict. c. 88,	(Fisheries (Ir.) Act, 1850)—	
	s. 1, .. .. .	439 n. <sup>2</sup> , 441, 444 n. <sup>1</sup> , 448 n. <sup>2</sup>
	s. 7, .. .. .	440
	s. 12, .. .. .	441
	s. 17, .. .. .	448
	s. 34, .. .. .	449
	s. 36, .. .. .	443
	s. 40, .. .. .	89, 443
	ss. 43, 44, .. .. .	445
	s. 46, .. .. .	449
	s. 47, .. .. .	438
	s. 51, .. .. .	130 n. <sup>3</sup> , 438
	s. 52, .. .. .	438 n. <sup>4</sup>
	s. 54, .. .. .	69, 438
14 & 15 Vict. c. 13,	(Arsenic Act, 1851), ss. 1-4, .. .. .	671
c. 19,	(Prevention of Offences Act, 1851), s. 11, .. .. .	147
c. 57,	(Civil Bill Courts (Ir.) Act, 1851)—	
	s. 2, .. .. .	3, 10, 136
	s. 21, .. .. .	11
	s. 111, .. .. .	57 n. <sup>2</sup> , 59
c. 70,	(Railways (Ir.) Act, 1851)—	
	s. 3, .. .. .	176 n. <sup>1</sup>
	s. 6, .. .. .	921
c. 85,	(Constabulary (Ir.) Act, 1851), ss. 1, 2, .. .. .	676 n. <sup>3</sup>
c. 90,	(Fines Act (Ir.), 1851), .. .. .	969
	s. 3, .. .. .	39
	s. 5, .. .. .	489
	s. 8 (2), .. .. .	676
	s. 9, .. .. .	78, 133, 138, 311, 482
	s. 10, .. .. .	39
	s. 13, .. .. .	68, 431
c. 92,	(Summary Jurisdiction (Ir.) Act, 1851, .. .. .	973
	s. 1, .. .. .	45, 54, 160, 175, 526
	s. 2, .. .. .	151
	s. 3, .. .. .	806
	s. 6, .. .. .	790
	s. 7, .. .. .	352, 387
	s. 8, .. .. .	207, 212, 817, 818
	s. 9, .. .. .	108, 132, 173, 522, 526
	s. 10, .. .. .	526, 527
	s. 10 (1), .. .. .	392, 423
	s. 10 (7), .. .. .	421
	s. 10 (10), .. .. .	382
	s. 10 (11), .. .. .	393
	s. 11, .. .. .	526, 527
	s. 12, .. .. .	185, 527
	s. 13, .. .. .	185, 525, 527
	s. 13 (3), .. .. .	524
	s. 14, .. .. .	185, 526, 527 n. <sup>2</sup>
	s. 15, .. .. .	50, 186, 187, 190
	s. 16, .. .. .	156, 160, 441
	s. 16 (4), .. .. .	608 n. <sup>1</sup>
	s. 17, .. .. .	160, 325, 528
	s. 17 (4) .. .. .	524
	s. 19, .. .. .	71, 682
	s. 19 (10), .. .. .	929
	s. 20, .. .. .	393, 682
	s. 21, .. .. .	59, 101
	s. 23, .. .. .	139, 160, 638 n. <sup>1</sup>



14 & 15 Vict. c. 92,	(Summary Jurisdiction (Ir.) Act, 1851)—	PAGE
	s. 24, .. .. .	143
	s. 25, .. .. .	524
	s. 26, .. .. .	608 n. <sup>1</sup>
c. 93,	(Petty Sessions (Ir.) Act, 1851), .. .. .	995
	s. 1, .. .. .	73
	s. 5, .. .. .	332, 407
	s. 5 (5), .. .. .	407 n. <sup>2</sup>
	s. 7, .. .. .	42, 684
	s. 7 (1), .. .. .	14
	s. 7 (2), (3), (4), .. .. .	15, 15 n. <sup>1</sup>
	s. 8, .. .. .	45, 55, 385, 831
	s. 8 (2), .. .. .	426, 769 n. <sup>1</sup>
	s. 9, .. .. .	13, 23, 47, 56, 72, 411, 689 n. <sup>3</sup> , 694
	s. 10, .. .. .	14, 17, 42, 46, 47, 61, 54, 161, 165, 166, 307, 309, 332, 793, 858
	s. 10 (4), .. .. .	361, 388 n. <sup>1</sup>
	s. 11, .. .. .	17, 43, 45, 46, 307, 793
	s. 12, .. .. .	48, 174, 308, 325
	s. 13, .. .. .	21, 22, 24, 53, 54, 56, 57, 73 n. <sup>2</sup> , 276, 285, 286
	s. 14, .. .. .	22-25, 32, 62, 275, 287, 289 n. <sup>1</sup>
	s. 15, .. .. .	25, 26
	s. 16, .. .. .	29, 30
	s. 17, .. .. .	29, 31
	s. 18, .. .. .	29, 32
	s. 19, .. .. .	29, 38
	s. 20, .. .. .	46, 56, 57, 60, 61, 225 n. <sup>1</sup> , 270, 325, 664
	s. 21, .. .. .	38, 57, 62-64, 100-102, 109, 135 n. <sup>2</sup> , 281, 309, 332, 333
	s. 21 (1), .. .. .	519
	s. 22, .. .. .	39 n. <sup>5</sup> , 47, 54 n. <sup>2</sup> , 64, 65, 67, 68, 69, 157, 159, 160, 161, 168, 175, 354, 360, 438, 545, 680 n. <sup>1</sup> , 681 n. <sup>2</sup>
	s. 22 (8), .. .. .	431
	s. 22 (9), .. .. .	417 n. <sup>2</sup> , 418
	s. 23, .. .. .	65, 69, 137, 230
	s. 24, .. .. .	38, 69, 132, 133, 135, 136, 137, 138, 160, 230, 231, 311, 438, 522
	s. 25, .. .. .	19, 75, 144, 156, 187
	s. 26, .. .. .	19, 70, 130 n. <sup>1</sup> , 187
	s. 27, .. .. .	19, 70
	s. 28, .. .. .	19, 17, 309
	s. 32, .. .. .	70
	s. 32 (4), .. .. .	383
	s. 33, .. .. .	20, 70
	s. 34, .. .. .	38, 39, 72
	s. 35, .. .. .	407, 676
	s. 36, .. .. .	46, 72, 144, 309
	s. 37, .. .. .	72
	s. 38, .. .. .	90
	s. 39, .. .. .	77 n. <sup>8</sup> , 93, 94
	s. 41, .. .. .	14 n. <sup>3</sup> , 41, 72, 76, 319
	s. 42, .. .. .	14 n. <sup>3</sup> , 41, 76, 481, 482, 786
	s. 43, .. .. .	319
	s. 44, .. .. .	107
	s. 74, .. .. .	191
c. 99,	(Evidence Act, 1851)—	
	s. 2, .. .. .	53
	ss. 9, 10, .. .. .	280
	s. 14, .. .. .	277
	s. 16, .. .. .	921
c. 100,	(Criminal Procedure Act, 1851)—	
	s. 19, .. .. .	27, 921
	s. 29, .. .. .	865, 884 n. <sup>1</sup> , 887 n. <sup>2</sup> , 890, 890 n. <sup>1</sup> , 902, 925, 929
15 & 16 Vict. c. 56,	(Pharmacy Act, 1852), s. 12, .. .. .	396, 674
c. 63,	(Valuation (Ir.) Act, 1852)—	
	s. 11, .. .. .	194, 200
	s. 12, .. .. .	200, 202 n. <sup>1</sup>
	ss. 18, 19, .. .. .	196

		PAGE
15 & 16 Vict. c. 63,	(Valuation (Ir.) Act, 1852)—	
	s. 20, .. .. .	196, 200
	s. 21, .. .. .	.. 196
	s. 22, .. .. .	196, 197
	s. 28, .. .. .	.. 201
16 & 17 Vict. c. 33,	(London Hackney Carriage Act, 1853), s. 17, ..	528 n. <sup>3</sup>
c. 34,	(Income Tax (Ir.) Act, 1853), s. 17, ..	.. 178
c. 112,	(Dublin Carriage Act, 1853)—	
	ss. 8, 11, 12, .. .. .	.. 315
	s. 13, .. .. .	.. 316
	s. 14, .. .. .	315, 316
	s. 15, .. .. .	.. 315
	ss. 17-19, 21, 22, 24-26, .. .. .	.. 316
	ss. 27-29, .. .. .	.. 315
	s. 30, .. .. .	.. 316
	s. 32, .. .. .	312, 316
	ss. 33-45, .. .. .	.. 316
	s. 47, .. .. .	.. 317
	ss. 48-50, .. .. .	.. 316
	s. 51, .. .. .	.. 317
	ss. 52-55, .. .. .	.. 315
	ss. 55-60, .. .. .	.. 317
	s. 61, .. .. .	316, 317
	ss. 64, 65, .. .. .	.. 316
	s. 66, .. .. .	.. 317
	s. 67, .. .. .	.. 316
	ss. 69, 70, 72, 73, 77, .. .. .	.. 317
c. 119,	(Betting Act, 1853)—	
	s. 1, .. .. .	28, 498, 500
	s. 2, .. .. .	.. 499
	s. 3, .. .. .	499, 517
	ss. 4, 6, 7, .. .. .	.. 501
	ss. 10-13, 18, .. .. .	.. 502
c. 130,	(Drainage (Ir.) Act, 1853)—	
	s. 41, .. .. .	.. 181
	ss. 42, 43, .. .. .	181, 182
	s. 44, .. .. .	181 n. <sup>2</sup>
17 & 18 Vict. c. 8,	(Valuation (Ir.) Act, 1854)—	
	s. 2, .. .. .	202 n. <sup>1</sup>
	ss. 4, 5, .. .. .	194, 195
c. 17,	(Boundary Survey (Ir.) Act, 1854)—	
	s. 7, .. .. .	.. 386
	s. 8, .. .. .	.. 386
c. 38,	(Gaming Houses Act, 1854) —	
	s. 1, .. .. .	.. 497
	ss. 2, 3, .. .. .	.. 497
	s. 4, .. .. .	.. 496
	s. 5, .. .. .	285, 497
	s. 6, .. .. .	.. 285
	s. 20, .. .. .	.. 498
c. 45,	(Dublin Amended Carriage Act, 1854)—	
	ss. 2, 3, 4, 8, .. .. .	.. 315
	s. 9, .. .. .	.. 317
c. 60,	(Cruelty to Animals Act, 1854)—	
	s. 1, .. .. .	.. 360
	s. 2, .. .. .	.. 363
	s. 3, .. .. .	.. 356
c. 76,	(Convict Prisons (Ir.) Act, 1854), s. 18, ..	890, 929
c. 83,	(Stamp Act, 1854), s. 20, .. .. .	.. 655
c. 89,	(Spirits (Ir.) Act, 1854)—	
	s. 2, .. .. .	146, 538 n. <sup>1</sup> , 574, 576
	s. 3, .. .. .	.. 100 n. <sup>1</sup> , 566
	s. 5, .. .. .	.. 538 n. <sup>1</sup>
	s. 6, .. .. .	.. 576
	s. 8, .. .. .	566, 574, 576, 578
	s. 9, .. .. .	.. 114
	s. 11, .. .. .	.. 120
	s. 12, .. .. .	538, 569, 569 n. <sup>2</sup> , 570 n. <sup>1</sup>
c. 96,	(Gold & Silver Wares Act, 1854), ss. 1, 2, 5, ..	.. 512
c. 102,	(Corrupt Practices Prevention Act, 1854), s. 10, ..	.. 10
c. 103,	(Towns Improvement (Ir.) Act, 1854)—	
	s. 1, .. .. .	111, 204, 804, 805

17 & 18 Vict. c. 103,	(Towns Improvement (Ir.) Act, 1854)—	PAGE
	s. 29, .. .. .	2
	ss. 38, 39, .. .. .	802
	s. 47, .. .. .	805
	s. 50, .. .. .	802, 805
	s. 56, .. .. .	434
	s. 57, .. .. .	279
	ss. 60, 63, .. .. .	204
	s. 70, .. .. .	529, 805
	s. 71, .. .. .	392
	s. 72, .. .. .	2, 86, 355, 422, 423, 426, 527, 536, 801, <b>805</b> , 806, 807
	s. 72 (30), .. .. .	425
	s. 73, .. .. .	810
	s. 74, .. .. .	548 n. <sup>1</sup> , 809
	s. 75, .. .. .	360, 810
	s. 76, .. .. .	505, <b>810</b>
	s. 77, .. .. .	<b>385</b>
	s. 78, .. .. .	528 n. <sup>3</sup> , <b>810</b>
	s. 79, .. .. .	528
	s. 80, .. .. .	528, 529 n. <sup>1</sup>
	ss. 81-83, .. .. .	528
	ss. 84-87, .. .. .	529
	s. 90, .. .. .	801
	ss. 90-92, .. .. .	529
	s. 91, .. .. .	222, 801
	s. 92, .. .. .	426, 801
	s. 93, .. .. .	802
	s. 95, .. .. .	801
	s. 129, .. .. .	719
c. 104,	(Merchant Shipping Act, 1854), s. 2, .. .. .	613 n. <sup>1</sup>
18 & 19 Vict. c. 60,	(Wedding Rings Act, 1855), s. 1, .. .. .	512
c. 62,	(Licensing (Ir.) Act, 1855)—	
	s. 1, .. .. .	121
	s. 2, .. .. .	121, <b>141</b>
c. 90,	(Crown Suits Act, 1855), s. 1, .. .. .	78
c. 103,	(Spirits (Ir.) Act, 1855), s. 2, .. .. .	<b>574</b>
c. 114,	(Public House (Ir.) Act, 1855)—	
	s. 1, .. .. .	119, 123 n. <sup>1</sup> , 124 n. <sup>2</sup>
	s. 2, .. .. .	119
c. 120,	(Metropolis Management Act, 1855), s. 105, .. .. .	701
c. 126,	(Criminal Justice Act, 1855), .. .. .	1033
	s. 1, .. .. .	13 n. <sup>1</sup> , 62, 516 n. <sup>1</sup> , 585
	s. 2, .. .. .	13 n. <sup>1</sup> , 516 n. <sup>1</sup> , 586
	s. 3, .. .. .	586
	s. 5, .. .. .	62
	s. 7, .. .. .	109 n. <sup>2</sup> , 135, 516 n. <sup>1</sup> , 586
	s. 8, .. .. .	586, <b>790</b>
	s. 9, .. .. .	486, 586
	s. 11, .. .. .	691 n. 3
	s. 12, .. .. .	104, 586
	s. 14, .. .. .	29 n. <sup>2</sup> , 516 n. <sup>1</sup> , 517, 518 n. <sup>1</sup> , 586
	s. 16, .. .. .	8, 307, 516 n. <sup>1</sup> , 586
19 & 20 Vict. c. 62,	(Drainage (Ir.) Act, 1856), ss. 32-36, .. .. .	<b>424</b>
c. 63,	(Grand Jury (Ir.) Act, 1856), s. 17, .. .. .	<b>172</b>
c. 65,	(Cottier Tenant (Ir.) Act, 1856), .. .. .	1036
	ss. 1-4, 8, 11, .. .. .	188
c. 68,	(Prisons (Ir.) Act, 1856), s. 34, .. .. .	691
c. 102,	(Common Law Procedure Amendment (Ir.) Act, 1856),	
	s. 92, .. .. .	920
20 & 21 Vict. c. 3,	(Penal Servitude Act, 1857), s. 2, .. .. .	861, 865
c. 40,	(Illicit Distillation (Ir.) Act, 1857)—	
	s. 5, .. .. .	454 n. <sup>1</sup> , 544 n. <sup>1</sup> , 545
	s. 6, .. .. .	63, 76 n. <sup>2</sup> , 100, 545
	s. 8, .. .. .	454 n. <sup>1</sup>
c. 43,	(Summary Jurisdiction Act, 1857), .. .. .	1039
	s. 2, .. .. .	235, 238, 239
	s. 3, .. .. .	238, 241
	s. 4, .. .. .	78, 241
	s. 5, .. .. .	241, 249
	s. 6, .. .. .	78, 93, 241-243
	s. 7, .. .. .	241



## TABLE OF STATUTES.

20 & 21 Vict. c. 43,	(Summary Jurisdiction Act, 1857)—	PAGE
	s. 9, .. .. .	244
	s. 12, .. .. .	235
	s. 13, .. .. .	243
	s. 53, .. .. .	788
c. 60,	(Irish Bankrupt and Insolvent Act, 1857)—	
	ss. 389, 395-398, .. .. .	876
c. 81,	(Burial Act, 1857), s. 25, .. .. .	886 n. <sup>4</sup>
c. 83,	(Obscene Publications Act, 1857)—	
	s. 1, .. .. .	146, 650
	s. 4, .. .. .	651
c. 85,	(Matrimonial Causes Act, 1857), s. 2, .. .. .	536 n. <sup>1</sup>
21 & 22 Vict. c. 90,	(Medical Act)—	
	ss. 27, 32, .. .. .	616
	s. 34, .. .. .	726 n. <sup>1</sup> , 727 n. <sup>1</sup>
	s. 39, .. .. .	615, 915
	s. 40, .. .. .	615, 616
	ss. 41, 42, .. .. .	615
c. 100,	(Petty Sessions Clerk (Ir.) Act, 1858),	1041
	s. 6, .. .. .	331
	s. 7, .. .. .	329
	s. 9, .. .. .	61, 62, 133 n. <sup>2</sup> , 136, 330, 332
	s. 9, .. .. .	331, 332
	s. 10, .. .. .	332
	s. 11, .. .. .	330
	s. 14, .. .. .	46
	s. 28, .. .. .	333
	s. 29, .. .. .	330 n. <sup>1</sup>
c. 101,	s. 5, .. .. .	236
22 Vict. c. 12,	(Defence Act, 1859), s. 6, .. .. .	187
c. 14,	(Manor Courts Abolition (Ir.) Act, 1859),	1047
	s. 5, .. .. .	143 n. <sup>2</sup> , 155, 156
	ss. 6, 9, 10, .. .. .	156
22 & 23 Vict. c. 17,	(Vexatious Indictments Act, 1859), .. .. .	1050
	s. 1, .. .. .	28, 29
	s. 2, .. .. .	27
c. 35,	(Law of Property Amendment Act, 1859), s. 24, .. .. .	902
c. 52,	(Dublin Police Act, 1859)—	
	s. 8, .. .. .	305
	s. 11, .. .. .	307
c. 66,	(Sale of Gas Act, 1859), s. 22, .. .. .	507
23 & 24 Vict. c. 4,	(Annual Revision of Rateable Property (Ir.) Amendment Act, 1860)—	
	s. 10, .. .. .	197, 199, 200
	s. 11, .. .. .	199, 244
c. 27,	(Refreshment Houses Act, 1860)—	
	s. 6, .. .. .	549, 791
	s. 7, .. .. .	791
c. 32,	(Ecclesiastical Courts Jurisdiction Act, 1860), ss. 2-4, .. .. .	418
c. 35,	(Licensing (Ir.) Act, 1860) ss. 1, 2, .. .. .	142
c. 38,	(Law of Property Amendment Act, 1860), s. 8, .. .. .	902 n. <sup>1</sup>
c. 90,	(Game Licences Act, 1860)—	
	s. 2, .. .. .	489, 493
	s. 3, .. .. .	482
	s. 5, .. .. .	489
	s. 13, .. .. .	489, 492 n. <sup>2</sup>
	s. 14, .. .. .	493
	s. 16, .. .. .	492 n. <sup>1</sup>
	s. 17, .. .. .	491 nn. <sup>2, 4</sup>
	s. 18, .. .. .	489
c. 106,	(Lands Clauses Consolidation Acts Amendment Act, 1860),	176 n. 2
	s. 7, .. .. .	
c. 107,	(Refreshment Houses (Ir.) Act, 1860)—	
	ss. 6-7, .. .. .	791 n. <sup>1</sup>
	s. 8, .. .. .	111
	s. 9, .. .. .	772
	ss. 13-17, .. .. .	125
	s. 20, .. .. .	538 n. <sup>1</sup>
	s. 23, .. .. .	575 n. <sup>2</sup>
	s. 24, .. .. .	572
	s. 27, .. .. .	576
	s. 28, .. .. .	551

23 & 24 Vict. c. 107,		(Refreshment Houses (Ir.) Act, 1860)—				PAGE
		s. 30,	..	..	..	151, <b>566</b>
		s. 31,	..	..	..	352, <b>539</b> , 553 n. <sup>3</sup>
		s. 32,	..	..	..	<b>539</b> , 577
		s. 33,	..	..	..	577, 578
		s. 35,	..	..	..	.. 577
		ss. 36, 37, 40,	..	..	..	.. 578
		s. 41,	..	..	..	.. 548 n. <sup>1</sup>
		s. 42,	..	..	..	.. 517
		s. 43,	..	..	..	.. 556, 557, <b>557</b>
		ss. 44, 45,	..	..	..	.. 577
c. 113,		(Excise Act, 1860)—				
		s. 37,	..	..	..	.. 568
		s. 39,	..	..	..	.. 79
c. 146,		(Sale of Gas Act, 1860)—				
		s. 2,	..	..	..	.. 507
c. 151,		ss. 10, 22,	..	..	..	.. 297
c. 152,		(Tramways (Ir.) Act, 1860)—				
		ss. 15-18, 19,	..	..	..	.. 816
		s. 46,	..	..	..	.. 927 n. <sup>2</sup>
c. 154,		(Landlord and Tenant (Ir.) Act, 1860)—				
		s. 35,	..	..	..	.. <b>192</b> , 833
		s. 36,	..	..	..	.. <b>192</b> , <b>833</b>
		s. 37,	..	..	..	.. 192
		s. 81,	..	..	..	.. 179, 186, <b>188</b>
		s. 84,	..	..	..	.. 69, 188, <b>189</b>
		s. 85,	..	..	..	.. 46, 69, 188, <b>189</b> , 191
		s. 86,	..	55, 69, 186, 188,	<b>189</b> , <b>190</b> , 191, 901 n. <sup>1</sup>	
		s. 87,	..	..	..	.. 50, 69, 186, <b>190</b> , 192
		ss. 88, 89,	..	..	..	.. 191
24 & 25 Vict. c. 70,		(Locomotives Act, 1861)—				
		s. 1,	..	..	..	.. 629 n. <sup>2</sup>
		ss. 4, 6,	..	..	..	.. 599
		s. 7,	..	..	..	.. 599, 629 n. <sup>2</sup>
		s. 8,	..	..	..	.. <b>599</b>
		s. 12,	..	..	..	.. 600
		s. 13,	..	..	..	.. 600, 629 n. <sup>2</sup>
c. 91,		(Revenue No. 2 Act, 1861)—				
		s. 18,	..	..	..	.. 545
		s. 19,	..	..	..	.. 140, 545
		s. 22,	..	..	..	.. 544 n. <sup>1</sup> , 545
c. 94,		(Accessories and Abettors Act, 1861)—				
		ss. 3, 4,	..	..	..	.. 886
		s. 8,	..	..	..	.. 680 n. <sup>1</sup> , 885
c. 96,		(Larceny Act, 1861)—				
		s. 1,	..	..	..	.. 879
		ss. 3, 4, 7-10,	..	..	..	.. 907
		ss. 11,	..	..	..	.. 908
		ss. 12, 13,	..	..	..	.. 486, 908
		ss. 14, 15,	..	..	..	.. 486
		s. 16,	..	..	..	.. 874, 908
		s. 17,	..	..	..	.. <b>484</b> , <b>486</b>
		s. 18,	..	..	..	.. <b>586</b> , 908
		s. 19,	..	..	..	.. 908, <b>587</b>
		s. 20,	..	..	..	.. 883, 904
		ss. 21-23,	..	..	..	.. <b>587</b>
		ss. 24,	..	..	..	.. <b>440</b> , 908
		s. 25,	..	..	..	.. <b>440</b>
		ss. 26-32,	..	..	..	.. 908
		s. 33,	..	..	..	.. 908, <b>587</b>
		ss. 34-35,	..	..	..	.. <b>588</b>
		s. 36,	..	..	..	.. <b>588</b> , 908
		s. 37,	..	..	..	.. <b>588</b>
		ss. 38-40,	..	..	..	.. 908
		s. 41,	..	..	..	.. 908 n. <sup>4</sup>
		s. 42,	..	..	..	.. 873, 908
		s. 43,	..	..	..	.. 908
		ss. 44, 45,	..	..	..	.. 891
		s. 46,	..	..	..	.. 891 n. <sup>5</sup> , 892 n. <sup>2</sup> , 892
		ss. 47, 48,	..	..	..	.. 892
		s. 50,	..	..	..	.. 904
		s. 51,	..	..	..	.. 879, 904

## TABLE OF STATUTES.

24 & 25 Vict. c. 96,		(Larceny Act, 1861)—		PAGE
s. 52,	..	..	..	879
s. 53,	..	..	..	879, 904 n. <sup>3</sup>
ss. 55-57,	..	..	..	905
s. 58,	..	..	..	683 n. <sup>7</sup> , 872, 905
s. 59,	..	..	..	872
s. 60,	..	..	..	588, 905
s. 61,	..	..	..	905
ss. 62-64,	..	..	..	909
e. 65,	..	..	..	588, 790, 857
s. 66,	..	..	..	857
s. 67,	..	..	..	909
s. 68,	..	..	..	889, 909
ss. 69, 70,	..	..	..	909
s. 72,	..	..	..	889, 906
ss. 73, 74,	..	..	..	909
ss. 75, 76,	..	..	..	10, 909 n. <sup>2</sup>
ss. 77, 78,	..	..	..	10, 909
s. 79,	..	..	..	10
s. 80,	..	..	..	10, 909, 909 n. <sup>2</sup>
s. 81,	..	..	..	10, 909
ss. 82-84,	..	..	..	10, 871, 909
s. 85,	..	..	..	10
s. 86,	..	..	..	10, 909 n. <sup>2</sup>
s. 87,	..	..	..	10
s. 88,	..	..	..	892, 894, 895
s. 89,	..	..	..	894
s. 90,	..	..	..	895, 901, 909
ss. 91, 95,	..	..	..	927
s. 97,	..	..	..	589
s. 98,	..	..	..	885
s. 99,	..	..	..	589
s. 100,	..	..	..	790
s. 101,	..	..	..	866, 883
s. 102,	..	..	..	883
s. 103,	..	..	..	144, 146, 148, 589
s. 104,	..	..	..	148
s. 106,	..	..	..	589, 649 n. <sup>1</sup>
s. 108,	..	..	..	589, 590
s. 109,	..	..	..	104, 589, 590
s. 110,	..	..	..	435, 590
s. 111,	..	..	..	590
s. 112,	..	..	..	109 n. <sup>2</sup> , 590
s. 114,	..	..	..	927 n. <sup>4</sup>
s. 115,	..	..	..	17
s. 117,	..	871-874, 879, 885, 889, 891, 892, 895,	..	904, 905, 907-909, 927
s. 119,	..	.. 874, 889, 891, 892, 907-909, 927	..	109 n. <sup>2</sup> , 590
s. 120,	..	..	..	29 n. <sup>2</sup>
s. 121,	..	..	..	29 n. <sup>2</sup>
c. 97,		(Malicious Damage Act, 1861)—		
s. 1,	..	..	..	911
ss. 1-51,	..	..	..	208
ss. 2-5,	..	..	..	911
s. 6,	..	..	..	911, 912 n. <sup>3</sup> , 931 n. <sup>1</sup>
ss. 7, 8,	..	..	..	911
ss. 9, 10,	..	..	..	891, 911
ss. 11, 12,	..	..	..	208 n. <sup>2</sup> , 911, 930
s. 13,	..	..	..	911
ss. 14-15,	..	..	..	912
s. 16,	..	..	..	602, 912
ss. 17-21,	..	..	..	912
s. 22,	..	..	..	92, 208 n. <sup>3</sup> , 603
s. 23,	..	..	..	208 n. <sup>3</sup> , 214, 603
s. 24,	..	..	..	92, 208 n. <sup>3</sup> , 603
s. 25,	..	..	..	86, 208, 208 n. <sup>3</sup> , 214, 603
ss. 26-31,	..	..	..	912
s. 32,	..	..	..	443, 912
ss. 33, 35,	..	..	..	912
s. 36,	..	..	..	208 n. <sup>2</sup> , 912
s. 37,	..	..	..	208 n. <sup>3</sup> , 604, 796, 912
s. 38,	..	..	..	604



## xxvii

c 2

24 & 25 Vict. c. 100,		(Offences against the Person Act, 1861)—	PAGE
	ss. 21-24, 26,	.. ..	919
	s. 27, ..	.. ..	259, 880, 919
	ss. 28-30, ..	.. ..	891
	ss. 31-34, ..	.. ..	919
	ss. 35-37, ..	.. ..	873
	s. 38, ..	.. ..	381, 873
	ss. 39, 40, ..	.. ..	382
	s. 42, ..	.. 64, 85, 104, 259,	379-381
	s. 43, ..	.. 64, 85, 104, 259,	380
	s. 44, ..	.. 58, 59, 64, 104, 382,	874
	s. 45, ..	.. 59, 64, 382,	874
	s. 46, ..	.. 41, 207, 211,	381
	s. 47, ..	.. ..	873
	s. 48, ..	.. ..	261, 896
	s. 52, ..	.. 259, 261,	897
	s. 53, ..	.. ..	261
	ss. 53, 54, ..	.. ..	261, 870
	s. 55, ..	.. 259, 261,	870
	s. 56, ..	.. 259, 870, 870 n. <sup>3</sup>	
	s. 57, ..	.. 14 n. <sup>2</sup> ,	913
	ss. 58, 59, ..	.. ..	871
	s. 60, ..	.. ..	877
	s. 61, ..	.. ..	887
	s. 62, ..	.. 259, 873,	887
	s. 65, ..	.. ..	145
	s. 66, ..	.. ..	148
	s. 67, ..	.. ..	885, 918
	s. 68, ..	.. ..	17
	s. 70, ..	.. 870, 891, 915,	919
	s. 71, ..	.. 870, 871, 873, 877, 880, 885, 887,	
		.. 896, 897, 913, 915, 918, 919, 931	
	s. 72, ..	.. ..	95
	s. 77, ..	.. ..	29 n. <sup>2</sup>
	s. 131, ..	.. ..	259 n. <sup>1</sup>
25 & 26 Vict. c. 18,		(Whipping Act, 1862)—	
	s. 1, ..	.. ..	866
	s. 2, ..	.. ..	866, 917 n. <sup>1</sup>
	s. 3, ..	.. ..	905 n. <sup>7</sup>
c. 22,	(Revenue Act, 1862), s. 13, ..	.. ..	125, 572
c. 50,	(Summary Jurisdiction (Ir.) Act, 1862),	.. ..	1051
	s. 2, .. 8, 55, 307, 379 n. <sup>1</sup> , 382, 408, 586 n. <sup>1</sup> ,	.. ..	590
	s. 3, ..	.. ..	382, 591
	s. 4, ..	.. ..	590, 591
	s. 5, ..	.. ..	590, 591, 825
	s. 6, ..	.. ..	590, 591
	s. 7, ..	.. ..	591, 593
	s. 8, ..	.. ..	591
	s. 9, ..	.. ..	380
	s. 10, ..	.. ..	381, 381 n. <sup>1</sup>
c. 68,	(Fine Arts Copyright Act, 1862)—		
	ss. 1, 2, ..	.. ..	413, 414
	s. 3, ..	.. ..	413, 413 n. <sup>1</sup>
	s. 4, ..	.. ..	414
	s. 6, ..	.. ..	413
	s. 7, ..	.. ..	413, 901 n. <sup>3</sup>
	s. 8, ..	.. ..	413
c. 69,	(Harbours Transfer Act, 1862), s. 16, ..	.. ..	522 n. <sup>1</sup>
c. 76,	(Weights and Measures (Ir.) Amendment Act, 1862)—		
	s. 13, ..	.. ..	841
	s. 14, ..	.. ..	848
	s. 15, ..	.. ..	392
	s. 16, ..	.. ..	848
	s. 17, ..	.. ..	848
c. 83,	(Poor Relief (Ir.) Act, 1862)—		
	s. 4, ..	.. ..	612
	s. 12, ..	.. ..	202
c. 89,	(Companies Act, 1862), s. 62, ..	.. ..	48
c. 103,	(Union Assessment Committee Act, 1862), s. 15,	.. ..	200 n. <sup>2</sup>
c. 114,	(Poaching Prevention Act, 1862)—		
	s. 1, ..	.. ..	486 n. <sup>3</sup>
	s. 2, ..	.. ..	486, 487

25 & 26 Vict. c. 114	(Poaching Prevention Act, 1862)—	PAGE
	s. 6, .. .. .	488
26 & 27 Vict. c. 11,	(Registration of Births & Deaths (Ir.) Act, 1863)—	
	s. 4, .. .. .	773
	s. 5, .. .. .	280, 773
	s. 10, .. .. .	777
	ss. 17, 18, 22, 23, 26, .. .. .	773
	s. 56, .. .. .	928
	ss. 64, 65, .. .. .	776
c. 21,	(Bastardy (Ir.) Act, 1863), ss. 2, 3, .. .. .	403 n. <sup>3</sup>
c. 26,	(Land Drainage (Ir.) Act, 1863)—	
	ss. 5, 6, 8-10, .. .. .	182
	ss. 11, 12, .. .. .	183
	s. 13, .. .. .	183, 425
	ss. 14-16, .. .. .	183
c. 27,	(Marriage Law (Ir.) Amendment Act, 1863)—	
	ss. 2, 3, .. .. .	777
	s. 7, .. .. .	914
	s. 11, .. .. .	777, 914 n. <sup>3</sup>
	ss. 13, 14, .. .. .	778
	s. 15, .. .. .	778, 914
	s. 22, .. .. .	914 n. <sup>3</sup>
	ss. 24-26, .. .. .	778, 914 n. <sup>3</sup>
c. 33,	(Revenue Act, 1863)—	
	s. 3, .. .. .	568
	s. 20, .. .. .	125
	s. 20 (2), .. .. .	125 n. <sup>1</sup>
c. 52,	(Vaccination (Ir.) Act, 1863)—	
	ss. 4, 6, .. .. .	828
	s. 7, .. .. .	103, 829
	s. 8, .. .. .	103, 827, 830
	s. 10, .. .. .	829
	s. 12, .. .. .	830
c. 62,	(Seizure of Crops (Ir.) Act, 1863), s. 2, .. .. .	71
c. 90,	(Registration of Marriages (Ir.) Act, 1863), ss. 22, 23, .. .. .	914
c. 93,	(Waterworks Clauses Act, 1863)—	
	s. 12, .. .. .	166, 716 n. <sup>1</sup>
	s. 14, .. .. .	166 n. <sup>1</sup> , 167
	ss. 17-20, .. .. .	716
	s. 21, .. .. .	166
c. 96,	(Petty Sessions (Ir.) Amendment Act, 1863), s. 1, .. .. .	578
c. 112,	(Telegraph Act, 1863), s. 45, .. .. .	796, 797
c. 113,	(Poisoned Grain Prohibition Act, 1863)—	
	ss. 2, 3, .. .. .	670
	ss. 4, 5, .. .. .	670
c. 114,	(Salmon Fishery (Ir.) Act, 1863)—	
	s. 3, .. .. .	445
	ss. 4, 9, 10, 12 (2) (3) (4), .. .. .	447
	s. 14, .. .. .	244
	s. 16, .. .. .	445
	s. 18, .. .. .	449, 450
	s. 20, .. .. .	298, 448, 449, 450
	ss. 24, 25, .. .. .	450
	s. 30, .. .. .	446
c. 117,	(Nuisances Removal Act for England Amendment Act, 1863)—	
	s. 2, .. .. .	724
27 & 28 Vict. c. 35,	(Beerhouses (Ir.) Act, 1864)—	
	s. 3, .. .. .	124
	s. 4, .. .. .	122
	s. 5, .. .. .	123, 124
	s. 6, .. .. .	556, 557
	s. 7, 8, .. .. .	553
	s. 9, .. .. .	556 n. <sup>2</sup>
	s. 12, .. .. .	578
	s. 13, .. .. .	117, 123, 124 n. <sup>2</sup> , 142
c. 37,	(Chimney Sweepers Regulation Act, 1864)—	
	s. 4, .. .. .	407
	s. 6, .. .. .	406
	ss. 7, 8, 10, .. .. .	407
c. 47,	(Penal Servitude Act, 1864)—	
	s. 5, .. .. .	684
	s. 6, .. .. .	148



## TABLE OF STATUTES.

27 & 28 Vict. c. 47,	(Penal Servitude Act, 1864)—	PAGE
	s. 8, .. .. .	683 n. <sup>6</sup> , 684 n. <sup>1</sup> , 685
	s. 9, .. .. .	861
c. 52,	(Valuation (Ir.) Act, 1864)—	
	s. 1, .. .. .	196 n. <sup>2</sup>
	s. 2, .. .. .	196
	ss. 4, 23, .. .. .	197
c. 56,	(Revenue (No. 2) Act, 1864), s. 14, .. .. .	384, 392
c. 67,	(Game Trespass Act, 1864)—	
	s. 1, .. .. .	484
	s. 2, .. .. .	484
c. 71,	(Railways Act (Ir.), 1864), s. 7, .. .. .	244
c. 99,	(Civil Bill Courts Procedure Amendment (Ir.) Act, 1864),	1052
	s. 17, .. .. .	417, 780
	s. 18, .. .. .	417. 925
	s. 26, .. .. .	929
	s. 30, .. .. .	383
	s. 36, .. .. .	244
	s. 49, .. .. .	93
	s. 50, .. .. .	134, 197
	s. 51, .. .. .	137
c. 115,	(Poisoned Flesh Prohibition Act, 1864)—	
	ss. 2, 3, .. .. .	670
28 & 29 Vict. c. 18,	(Criminal Procedure Act, 1865)—	
	s. 1, .. .. .	284 n. <sup>1</sup>
	ss. 3-6, .. .. .	284
c. 43,	(Married Women's Property (Ir.) Act, 1865), s. 1,	536
c. 50,	(Dogs Regulation (Ir.) Act, 1865)—	
	ss. 6, 7, .. .. .	419
	ss. 8, 9, .. .. .	420
	s. 16, .. .. .	333
	ss. 20, 21, .. .. .	420
	s. 22, .. .. .	420
	s. 23, .. .. .	420
c. 54,	(Pheasants (Ir.) Act, 1865), s. 2, .. .. .	488
c. 83,	(Locomotives Act, 1865)—	
	ss. 3, 4, .. .. .	399
	s. 5, .. .. .	599
	s. 6, .. .. .	600
	s. 7, .. .. .	600
	s. 8, .. .. .	599 n. <sup>1</sup>
	s. 9, .. .. .	600
	ss. 10, 12, .. .. .	600
	s. 13, .. .. .	598
c. 104,	(Crown Suits Act, 1865), s. 34, .. .. .	66
c. 124,	(Admiralty Powers, etc., Act, 1865), s. 8, .. .. .	922
c. 126,	(Prisons Act, 1865), s. 17, .. .. .	882 n. <sup>3</sup>
29 & 30 Vict. c. 88,	(Oyster Beds (Ir.) Act, 1866), s. 2, .. .. .	455
c. 100,	(Prisons Act, 1866), s. 10, .. .. .	89
c. 109,	(Naval Discipline Act, 1866), s. 67, .. .. .	921
c. ccv,	(Alliance and Dublin Gas Act, 1866)—	
	s. 49, .. .. .	165
	ss. 49, 51, 59, 63-65, 73, .. .. .	507
30 & 31 Vict. c. 35,	(Criminal Law Amendment Act, 1867)—	
	s. 1, .. .. .	28
	s. 6, .. .. .	22, 23 n. <sup>2</sup> , 24 n. <sup>2</sup>
c. 37,	(Public Libraries (Scot.) Act, 1867), s. 2, .. .. .	111
c. 60,	(Textile Manufacturers (Ir.) Act, 1867), s. 1, .. .. .	146
c. 84,	(Vaccination Act, 1867), s. 31, .. .. .	827 n. <sup>3</sup>
c. 90,	(Revenue Act, 1867)—	
	s. 1, .. .. .	512, 656
	s. 2, .. .. .	656
	ss. 3, 6, .. .. .	512, 656
	s. 14, .. .. .	65, 545
	s. 17, .. .. .	574
c. 115,	(Justices of the Peace Act, 1867), .. .. .	1053
	s. 2, .. .. .	222
c. 118,	(Lunacy (Ir.) Act, 1867)—	
	s. 10, .. .. .	151, 181, 794
	s. 11, .. .. .	152, 794
31 & 32 Vict. c. 24,	(Capital Punishment Amendment Act, 1868), s. 5, .. .. .	886 n. <sup>2</sup>
c. xxxiii,	(Cork Improvement Act, 1868), s. 172, .. .. .	117 n. <sup>2</sup>

		PAGE
31 & 32 Vict. c. 37,	(Documentary Evidence Act, 1868), ss. 2, 5, ..	277
c. 72,	(Promissory Oaths Act, 1868), s. 6, ..	2
c. 87,	(Vaccination Amendment (Ir.) Act, 1868)—	
	s. 2, .. .. .	826
	s. 4, .. .. .	829
c. 103,	(Burial (Ir.) Act, 1868), s. 1, ..	926
c. 107,	(Indictable Offences Act Amendment Act, 1868),	1053
	s. 4, .. .. .	19
c. 110,	(Telegraph Act, 1868), s. 20, ..	797
c. 116,	(Larceny Act, 1868):—	
	s. 1, .. .. .	889, 906 n. <sup>3</sup> , 927
	s. 2, .. .. .	432, 586, 790, 889
c. 119,	(Regulation of Railways Act, 1868):—	
	s. 21, .. .. .	771, 816
	s. 22, .. .. .	771
	s. 23, .. .. .	770, 816
	s. 24, .. .. .	185
	s. 40, .. .. .	772
c. 121,	(Pharmacy Act, 1868):—	
	s. 6, .. .. .	674 n. <sup>2</sup>
	s. 15, .. .. .	673
	s. 17, .. .. .	672
32 & 33 Vict. c. 14,	(Revenue Act, 1869):—	
	ss. 25, 27, .. .. .	640
	s. 33, .. .. .	640, 641
	s. 39, .. .. .	492 n. <sup>2</sup>
c. 42,	(Irish Church Act, 1869), s. 69, ..	418 n. <sup>2</sup>
c. 57,	(Seamen's Clothing Act, 1869):—	
	s. 2, .. .. .	648
	s. 4, .. .. .	648, 660
	s. 5, .. .. .	648, 648 n. <sup>6</sup>
	s. 6, .. .. .	649
	s. 46, .. .. .	660
c. 62,	(Debtors Act, 1869)—	
	s. 12, .. .. .	256
	s. 13 (1), .. .. .	894
c. 73,	(Telegraph Act, 1869), ss. 5, 6, ..	796
c. 92,	(Fisheries (Ir.) Act, 1869)—	
	s. 4, .. .. .	446
	s. 8, .. .. .	441 n. <sup>1</sup>
	s. 11, .. .. .	451
	s. 16, .. .. .	442
	s. 17, .. .. .	441
	s. 19, .. .. .	439
	s. 20, .. .. .	437, 448
c. 112,	(Adulteration of Seeds Act, 1869)—	
	s. 2, .. .. .	352
	s. 3, .. .. .	352
	ss. 4-8, .. .. .	352, 352 n. <sup>2</sup>
33 & 34 Vict. c. 10,	(Coinage Act, 1870)—	
	s. 5, .. .. .	408
	s. 6, .. .. .	482
c. 23,	(Forfeiture Act, 1870)—	
	s. 2, .. .. .	12, 691
	s. 6, .. .. .	692
	s. 7, .. .. .	692
	ss. 9-20, .. .. .	692
	ss. 21-23, 25, 28, .. .. .	692
c. 26,	(Poisons (Ir.) Act, 1870)—	
	s. 1, .. .. .	671, 672
	s. 2, .. .. .	83, 672, 673
c. 30,	(Wages Attachment Abolition Act, 1870), s. 23,	156
c. 32,	(Customs and Inland Revenue Act, 1870)	
	s. 4, .. .. .	512
	s. 5, .. .. .	383
	ss. 13, 14, 17, 18, .. .. .	512
c. 33,	(Salmon Acts Amendment Act, 1870)—	
	ss. 2, 3, .. .. .	450
c. 52,	(Extradition Act, 1870)—	
	ss. 2, 3, .. .. .	301
	ss. 8, 10, 13, 16, .. .. .	302

33 & 34 Vict. c. 52,	(Extradition Act, 1870)—	PAGE
	s. 26, .. .. .	301
c. 57,	(Gun Licence Act, 1870)—	
	s. 2, .. .. .	490
	s. 5, .. .. .	490
	s. 7, .. .. .	489, 490
	s. 8, .. .. .	491
	s. 9, .. .. .	491
c. 58,	(Forgery Act, 1870), ss. 2, 4, .. .. .	922
c. 65,	(Larceny (Advertisements) Act, 1870), s. 3, .. .. .	883
c. 78,	(Tramways Act, 1870)—	
	s. 28, .. .. .	507
	s. 46, .. .. .	339
c. 90,	(Foreign Enlistment Act, 1870)—	
	ss. 16, 17, .. .. .	14 n. <sup>2</sup>
c. 109,	(Common Law Procedure Amendment Act (Ir.), 1870)—	
	ss. 36, 37, 41, .. .. .	777
c. 110,	(Matrimonial Causes and Marriage Law (Ir.) Amendment Act, 1870)—	
	ss. 38-40, .. .. .	914 n. <sup>1</sup>
34 & 35 Vict. c. 22,	(Lunacy (Ir.) Act, 1871)—	
	s. 4, .. .. .	152
	ss. 7, 50, .. .. .	911
c. 31,	(Trade Union Act, 1871)—	
	ss. 4, 6, 8, 9, .. .. .	812
	s. 12, .. .. .	813
	ss. 13, 14, .. .. .	812
	ss. 15, 16, .. .. .	812, 813
	s. 17, .. .. .	812
	ss. 18, 19, .. .. .	813
	s. 20, .. .. .	814
	s. 22, .. .. .	221, 814
	s. 23, .. .. .	811
c. 41,	(Gasworks Clauses Act, 1871)—	
	s. 1, .. .. .	164, 164 n. <sup>1</sup> , 506
	s. 3, .. .. .	164 n. <sup>1</sup> , 506
	s. 15, .. .. .	560
	s. 16, .. .. .	164
	s. 20, .. .. .	164, 507
	s. 21, .. .. .	506, 507
	s. 22, .. .. .	506
	s. 23, .. .. .	164
	ss. 24, 25, 29, 30, 34, 36, 37, .. .. .	506
	s. 38, .. .. .	432, 507
	ss. 39-42, .. .. .	432
	ss. 40, 43, 44, .. .. .	164
	ss. 45, 46, .. .. .	432
c. 48,	(Promissory Oaths Act, 1871), s. 2, .. .. .	5 n. <sup>1</sup>
c. 49,	(Matrimonial Causes and Marriage Law (Ir.) Amendment Act, 1871), s. 22, .. .. .	777
c. 56,	(Dogs Act, 1871)—	
	ss. 2, 3, .. .. .	421
	ss. 4, 5 (sch.), .. .. .	421
c. 65,	(Juries (Ir.) Act, 1871)—	
	s. 29, .. .. .	7
	s. 49, .. .. .	890
c. 70,	(Local Government Board Act, 1871), s. 5, .. .. .	278
c. 76,	(Summary Jurisdiction (Ir.) Amendment Act, 1871), .. .. .	1054
	s. 5, .. .. .	313, 536
	s. 6, .. .. .	312, 314
	s. 7, .. .. .	308
	s. 8, .. .. .	314
	s. 9, .. .. .	312, 314
	s. 10, .. .. .	187, 312
	s. 11, .. .. .	305, 306
c. 78,	(Regulation of Railways Act, 1871), s. 14, .. .. .	770, 816
c. 96,	(Pedlars Act, 1871), .. .. .	1055
c. 99,	(Civil Bill Courts Procedure Amendment (Ir.) Act, 1871), .. .. .	
	s. 5, .. .. .	383
c. 105,	(Petroleum Act, 1871)—	
	s. 3, .. .. .	664
	s. 4, .. .. .	664, 665

34 & 35 Vict. c. 105,	(Petroleum Act, 1871)—	PAGE
	s. 5, .. .. .	665
	s. 6, .. .. .	665, 668, 669
	s. 7, .. .. .	665, 668, 669
	s. 8-10, .. .. .	665
	s. 11, .. .. .	665, 668, 669
	ss. 12, .. .. .	665
	s. 13, .. .. .	146, 665
	s. 14, .. .. .	668, 669
	s. 15, .. .. .	669
c. 109,	(Local Government (Ir.) Act, 1871)—	
	s. 13, .. .. .	175
	s. 29, .. .. .	205
c. 111,	(Beerhouse (Ireland) Act (1864), Amendment Act, 1871),	
	s. 3, .. .. .	553, 566 n. <sup>1</sup>
c. 112,	(Prevention of Crimes Act, 1871)—	
	s. 3, .. .. .	683, 684, 685 n. <sup>7</sup>
	s. 4, .. .. .	684
	s. 5, .. .. .	684 n. <sup>5</sup> , 685
	s. 7, .. .. .	685 n. <sup>7</sup> , 686, 686 n. <sup>1</sup>
	s. 8, .. .. .	683-685
	s. 10, .. .. .	548, 686, 687 n. <sup>2</sup>
	s. 11, .. .. .	391, 687
	s. 12, .. .. .	381, 687
	s. 13, .. .. .	508, 606
	s. 15, .. .. .	648 n. <sup>3</sup> , 759, 831
	s. 16, .. .. .	687
	s. 17, .. .. .	8, 381, 606
	s. 17 (1), .. .. .	683 nn. <sup>1, 5</sup> , 684, 685 n. <sup>3</sup> , 686 n. <sup>1</sup> , 687 n. <sup>1</sup> , 688
	s. 17 (3), .. .. .	688
	s. 17 (4), .. .. .	683
	s. 17 (6), .. .. .	688
	s. 18, .. .. .	282, 284 n. <sup>1</sup> , 291, 381, 688
	s. 19, .. .. .	268, 688, 928
	s. 20, .. .. .	683 nn. <sup>2, 3, 6</sup>
c. 114,	(Tramways (Ir.) Amendment Act, 1871)—	
	s. 2, .. .. .	816
	ss. 3, 4, .. .. .	817
	s. 5, .. .. .	816
35 & 36 Vict. c. 33,	(Ballot Act, 1872), s. 20, .. .. .	888
c. 57,	(Debtors (Ir.) Act, 1872)—	
	s. 6, .. .. .	159
	s. 11, .. .. .	876
	s. 12, .. .. .	255, 876
	s. 13, .. .. .	876
	s. 13 (1), .. .. .	804
	s. 14, .. .. .	876
	s. 18, .. .. .	23 n. <sup>2</sup> , 28, 876
	s. 21, .. .. .	6
c. 58,	(Bankruptcy (Ir.) Amendment Act, 1872), s. 123, .. .. .	921
c. 61,	(Steam Whistles Act, 1872), ss. 2, 3, .. .. .	789
c. 65,	(Bastardy Laws Amendment Act, 1872), s. 4, .. .. .	532
c. 69,	(Local Government Board (Ir.) Act, 1872)—	
	s. 2, .. .. .	196 n. <sup>2</sup> , 677 n. <sup>1</sup> , 578 n. <sup>1</sup>
	s. 4, .. .. .	278
c. 75,	(Commissioners for Oaths (Ir.) Act, 1872), s. 5, .. .. .	920
c. 77,	(Metalliferous Mines Regulation Act, 1872), s. 34, .. .. .	261
c. 93,	(Pawnbrokers Act, 1872)—	
	s. 10, .. .. .	653 n. <sup>1</sup>
	s. 15, .. .. .	654 n. <sup>2</sup>
	s. 33, .. .. .	104, 653 n. <sup>1</sup>
c. 94,	(Licensing Act, 1872)—	
	s. 3, .. .. .	66, 91, 92, 120, 294, 295, 558 n. <sup>2</sup> , 567, 570 n. <sup>2</sup> , 571, 572, 583
	s. 4, .. .. .	567
	s. 5, .. .. .	8, 54, 55, 552, 580
	s. 6, .. .. .	553, 580
	s. 7, .. .. .	540
	s. 8, .. .. .	295, 551
	s. 9, .. .. .	549
	s. 10, .. .. .	576



35 & 36 Vict. c. 94,	(Licensing Act, 1872)—	PAGE
s. 11, .. ..	.. ..	551
s. 12, .. ..	148, 425, 426, 517, 579, 809 n. <sup>1</sup>	
s. 13, .. ..	.. ..	294, 553, 580
s. 14, .. ..	.. ..	294, 555, 580
s. 15, .. ..	.. ..	111, 540
s. 16, .. ..	103, 294, 539, 548, 580	
s. 17, .. ..	.. ..	294, 295, 546, 580
s. 18, .. ..	.. ..	565
s. 25, .. ..	.. ..	562
s. 30, .. ..	.. ..	112, 582
s. 30 (2), ..	.. ..	583
s. 31, .. ..	.. ..	583
s. 32, .. ..	.. ..	584
s. 33, .. ..	.. ..	582 n. <sup>1</sup>
s. 34, .. ..	.. ..	582
s. 49, .. ..	.. ..	551, 557
s. 50 (4), ..	.. ..	565
s. 51, .. ..	3 n. <sup>3</sup> , 53, 66, 89 n. <sup>1</sup> , 260, 574, 579, 688 n. <sup>1</sup> , 802	
s. 52, .. ..	.. ..	584
s. 54, .. ..	.. ..	580
s. 55, .. ..	.. ..	333, 581
s. 56, .. ..	.. ..	333, 583, 583 n. <sup>1</sup>
s. 57, .. ..	.. ..	581
s. 60, .. ..	.. ..	219, 221, 550
s. 61, .. ..	.. ..	580
s. 62, .. ..	.. ..	497 n. <sup>1</sup> , 558, 569
s. 64, .. ..	.. ..	546, 556
s. 65, .. ..	.. ..	556 n. <sup>4</sup>
s. 72, .. ..	.. ..	557, 563, 564
s. 73, .. ..	.. ..	538
s. 77, .. ..	120, 550 n. <sup>2</sup> , 567 n. <sup>2</sup> , 569 n. <sup>2</sup> , 578 n. <sup>1</sup> , 583 n. <sup>1</sup> , 584	
s. 78, .. ..	.. 556, 557, 558, 559, 561, 562, 563	
s. 80, .. ..	.. ..	583
s. 82, .. ..	.. ..	117, 122, 123, 143
s. 83, .. ..	.. ..	552, 580
s. 84, .. ..	.. ..	552, 580
s. 85, .. ..	.. ..	549
s. 86, .. ..	.. 553, 556, 557, 564, 580	
s. 87, .. ..	.. ..	538 n. <sup>1</sup> , 553
36 & 37 Vict. c. 16,	(Marriage Law (Ir.) Amendment Act, 1873)—	
s. 3, .. ..	.. ..	776
c. 60,	(Extradition Act, 1873)—	
s. 2, .. ..	.. ..	301 n. <sup>1</sup>
s. 6, .. ..	.. ..	302
c. 71,	(Salmon Fishery Act, 1873), s. 36, .. ..	452
c. 82,	(Small Penalties (Ir.) Act, 1873), .. ..	1060
s. 4, .. ..	.. ..	67
s. 5, .. ..	.. ..	68
c. 88,	(Slave Trade Act, 1873), s. 27, .. ..	301 n. <sup>1</sup>
37 & 38 Vict. c. 11,	(Game Birds (Ir.) Act, 1874), s. 1, .. ..	488
c. 15,	(Betting Act, 1874)—	
s. 1, .. ..	.. ..	502
s. 3, .. ..	.. ..	501
c. 36,	(False Personation Act, 1874)—	
s. 1, .. ..	.. ..	922
s. 2, .. ..	.. ..	922 n. <sup>2</sup>
s. 3, .. ..	.. ..	10
c. 48,	(Hosiery Manufacture Wages Act, 1874), ss. 2, 3, .. ..	824
c. 67,	(Slaughter Houses, &c., Metropolis Act, 1874), s. 4, .. ..	339
c. 68,	(Attorneys and Solicitors Act, 1874), s. 12, .. ..	219
c. 69,	(Licensing (Ir.) Act, 1874)—	
s. 2, .. ..	.. ..	551, 557
s. 5, .. ..	.. ..	125 n. <sup>1</sup>
s. 6, .. ..	.. ..	552, 565, 580
s. 7, .. ..	.. ..	118, 576
s. 8, .. ..	.. ..	123 n. <sup>2</sup> , 124, 142
s. 9, .. ..	.. ..	122
s. 10, .. ..	.. ..	114, 561
s. 11, .. ..	.. ..	125, 126, 546, 551, 556 n. <sup>1</sup>

# TABLE OF STATUTES.

XXXV

			PAGE
37 & 38 Vict. c. 69,	(Licensing (Ir.) Act, 1874)—		
	s. 12, .. .. .	114, 115, 120, 121, 122 n. <sup>2</sup> , 123	
	s. 15, .. .. .	.. .. .	546, 582
	s. 16, .. .. .	.. .. .	332, 582
	s. 20, .. .. .	.. .. .	.. 92
	s. 21, .. .. .	.. .. .	<b>538, 560, 581</b>
	s. 22, .. .. .	.. .. .	<b>539, 580, 581</b>
	s. 23, .. .. .	.. .. .	265 n. <sup>4</sup> <b>538, 580</b>
	s. 24, .. .. .	.. 145, 538 n. <sup>1</sup> , 567, 569, <b>573, 574</b>	
	s. 25, .. .. .	.. .. .	148, 425
	s. 26, .. .. .	.. .. .	.. 551
	s. 27, .. .. .	.. .. .	562 n. <sup>1</sup> , <b>563</b>
	s. 28, .. .. .	.. .. .	558 n. <sup>1</sup> , <b>560</b>
	s. 29, .. .. .	.. .. .	.. <b>562</b>
	s. 30, .. .. .	.. .. .	579, 809 n. <sup>1</sup>
	s. 31, .. .. .	.. .. .	.. <b>584</b>
	s. 33, .. .. .	.. .. .	<b>556, 580, 581 n.<sup>2</sup></b>
	s. 35, .. .. .	.. .. .	.. 582
	s. 37, .. .. .	.. 120, 123, 123 n. <sup>2</sup> , 124, 584	
c. 72,	(Fines Act (Ir.), 1851, Amendment Act, 1874),	.. .. .	<b>1061</b>
	s. 2, .. .. .	.. .. .	.. 39
c. cxxxv,	(Alliance & Dublin Gas Act, 1874), s. 22,	.. .. .	.. 507
38 & 39 Vict. c. 17,	(Explosives Act, 1875):—		
	ss. 3-6, 8-15, 17-29, .. .. .	.. .. .	.. 433
	s. 30, .. .. .	.. .. .	<b>433, 527</b>
	ss. 31, 32, .. .. .	.. .. .	.. <b>434</b>
	ss. 33, 34, .. .. .	.. .. .	.. 434
	s. 35, .. .. .	.. .. .	434, 771 n. <sup>1</sup>
	ss. 36-38, .. .. .	.. .. .	.. 434
	s. 39, .. .. .	.. .. .	434, 771 n. <sup>1</sup>
	ss. 40-51, 53, 55-66, 71, 72, .. .. .	.. .. .	.. 434
	s. 73, .. .. .	.. .. .	144, 145, 434
	ss. 74-79, .. .. .	.. .. .	.. 434
	s. 80, .. .. .	.. .. .	434, 527
	ss. 81, 82, .. .. .	.. .. .	.. 435
	ss. 83, 84, .. .. .	.. .. .	433, 435
	ss. 85, 86, .. .. .	.. .. .	.. 435
	s. 87, .. .. .	.. .. .	261, 435
	ss. 88-92, .. .. .	.. .. .	.. 435
	ss. 93, 94, .. .. .	.. .. .	.. 435
	ss. 104, 106, .. .. .	.. .. .	.. 433
	ss. 116 (1), (2), (3), (4), .. .. .	.. .. .	.. 435
c. 20.	(Dublin Justices Act, 1875), s. 3, .. .. .	.. .. .	.. 305
c. 24,	(Falsification of Accounts Act, 1875), ss. 1, 3,	.. .. .	.. 871
c. 25,	(Public Stores Act, 1875)—		
	s. 3, .. .. .	.. .. .	.. 606
	ss. 4, 5, .. .. .	.. .. .	.. 926
	s. 7, .. .. .	.. .. .	.. 660
	s. 9, .. .. .	.. .. .	606, 660
	s. 10, .. .. .	.. .. .	.. 606
	s. 12, .. .. .	.. .. .	.. 926
c. 55,	(Public Health Act, 1875)—		
	s. 42, .. .. .	.. .. .	.. 705
	ss. 91, 117, .. .. .	.. .. .	.. 296
	s. 150, .. .. .	.. .. .	.. 700
	s. 157, .. .. .	.. .. .	.. 339
	s. 259, .. .. .	.. .. .	694 n. <sup>1</sup>
	s. 305, .. .. .	.. .. .	.. 236
c. 57,	(Pharmacy (Ir.) Act, 1875)—		
	s. 3, .. .. .	.. .. .	395 n. <sup>4</sup> , 673
	s. 17, .. .. .	.. .. .	.. 395
	s. 27, .. .. .	.. .. .	280, 396
	s. 28, .. .. .	.. .. .	.. 880
	s. 30, .. .. .	.. 100, 395 n. <sup>3</sup> , <b>396, 673</b>	
	s. 31, .. .. .	.. .. .	.. <b>673</b>
	s. 32, .. .. .	.. .. .	.. 396
	s. 36, .. .. .	.. .. .	.. 676
c. 63,	(Sale of Food and Drugs Act, 1875)—		
	s. 2, .. .. .	.. .. .	.. <b>457</b>
	s. 3, .. .. .	.. .. .	<b>457, 900</b>
	ss. 4, 5, .. .. .	.. .. .	.. <b>457</b>
	s. 6, .. .. .	.. 83, 95, 295, 296, <b>458, 460, 467</b>	

## TABLE OF STATUTES.

38 & 39 Vict. c. 63,	(Sale of Food and Drugs Act, 1875)—	PAGE
s. 6 (4),	.. .. .	460
s. 7,	.. .. .	<b>460</b>
s. 8,	.. .. .	<b>461</b>
s. 9,	.. .. .	106, 295, <b>461</b> , 462
s. 12,	.. .. .	457, <b>462</b> , 473
s. 13,	295, 457, <b>462</b> , 467, <b>472</b> , 472 n. <sup>6</sup> ,	473
s. 14,	.. .. .	457, <b>462</b> , 463, 467, 473
s. 15,	.. .. .	457, 473
s. 16,	.. .. .	296, 457, 473
s. 17,	.. .. .	295, 457, <b>463</b> , 473
s. 18,	.. .. .	457, 470, 473
s. 19,	.. .. .	457, 473
s. 20,	.. .. .	457, <b>468</b> , <b>469</b> , 473
s. 21,	.. .. .	53, 261, 457, 466, 469, 473
s. 22,	.. .. .	457, <b>470</b> , 473
s. 23,	.. .. .	457, 470, 473
s. 24,	.. .. .	457, <b>469</b> , 473
s. 25,	.. .. .	457, 459, <b>464</b> , 465, 466, 470, 473
s. 26,	.. .. .	457, 470, 473
s. 27,	.. .. .	457, <b>466</b> , 473, 900
s. 28,	.. .. .	457, <b>468</b> , 473
c. 67,	(Lunatic Asylums (Ir.) Act, 1875)—	
ss. 5, 13,	.. .. .	152
s. 14,	.. .. .	151 n. <sup>1</sup>
s. 16,	.. .. .	<b>180</b> , <b>181</b>
c. 69,	(Militia (Voluntary Enlistment) Act, 1875), s. 98,	8
c. 70,	(Chimney Sweepers Act, 1875)—	
ss. 5, 6, 15-19,	.. .. .	407
s. 20,	.. .. .	406, 407
c. 86,	(Conspiracy and Protection of Property Act, 1875)—	
s. 3,	.. .. .	<b>610</b>
ss. 4, 5,	.. .. .	612, 884
s. 6,	.. .. .	<b>612</b> , 884
s. 7,	.. .. .	89, 610 n. <sup>1</sup> , <b>611</b> , 884
s. 8,	.. .. .	612
s. 9,	.. .. .	612, 612 n. <sup>2</sup> , <sup>3</sup> , <sup>4</sup> , 884
s. 10,	.. .. .	612
s. 11,	.. .. .	53, 261, 612
s. 12,	.. .. .	613
s. 16,	.. .. .	610 n. <sup>5</sup> , 613
s. 17,	.. .. .	157
s. 21,	.. .. .	612
c. 90,	(Employers and Workmen Act, 1875; and Rules),	<b>1061</b>
s. 3,	.. .. .	157, 158
s. 4,	.. .. .	157
s. 5,	.. .. .	158
s. 6,	.. .. .	158, 159 n. <sup>2</sup> , <b>615</b>
s. 7-9,	.. .. .	159
s. 10,	.. .. .	157, <b>819</b>
s. 12,	.. .. .	158
s. 15,	.. .. .	159
s. 21,	.. .. .	159 n. <sup>1</sup>
c. cxcv,	(Dublin Traffic Act, 1875),	<b>1074</b>
ss. 1, 5-17, 19, 21,	.. .. .	317
ss. 22, 23,	.. .. .	318
39 & 40 Vict. c. 20,	(Statute Law Revision (Substituted Enactments) Act, 1876), s. 5,	686
c. 22,	(Trade Union Amendment Act, 1876)—	
ss. 1, 2,	.. .. .	811
s. 3,	.. .. .	811, 812
ss. 5, 13, 14,	.. .. .	813
s. 15,	.. .. .	<b>813</b>
s. 16,	.. .. .	<b>811</b>
c. 36,	(Customs Consolidation Act, 1876)—	
s. 42,	.. .. .	454
ss. 50, 101, 135, 136, 142, 146,	.. .. .	782
ss. 175-178,	.. .. .	786
ss. 179-181, 185,	.. .. .	787
s. 186,	.. .. .	788
s. 188,	.. .. .	932
s. 190,	.. .. .	148, 931, 932

		PAGE
39 & 40 Vict. c. 36,	(Customs Consolidation Act, 1876)—	
	s. 195, .. .. .	781
	s. 197, .. .. .	80, 88
	s. 201, .. .. .	788
	s. 205, .. .. .	81, 145
	s. 214, .. .. .	81 n. <sup>4</sup> , 788 n. <sup>1</sup>
	ss. 221-225, .. .. .	80
	s. 227, .. .. .	80, 786
	ss. 228, 229, .. .. .	81
	s. 230, .. .. .	81 n. <sup>2</sup>
	ss. 232, 233, .. .. .	81
	s. 236, .. .. .	81 n. <sup>3</sup>
	s. 243, .. .. .	81, 232
	s. 247, .. .. .	80 n. <sup>3</sup>
	s. 255, .. .. .	81
	s. 257, .. .. .	80, 932
	s. 284, .. .. .	781 n. <sup>2</sup>
c. 57,	(Winter Assize Act, 1876), s. 63,	321
c. 75,	(Rivers Pollution Prevention Act, 1876), s. 3, ..	66
c. 77,	(Cruelty to Animals Act, 1876)—	
	ss. 2, 6, .. .. .	362
	ss. 13, 19-21, .. .. .	363
	s. 22, .. .. .	362 n. <sup>2</sup>
c. 79,	(Elementary Education Act, 1876)—	
	ss. 4 (1), 11, 12, .. .. .	429
c. 80,	(Merchant Shipping Act, 1876), s. 28, ..	298
40 & 41 Vict. c. 4,	(Beer Licences Regulation (Ir.) Act, 1877), s. 2, ..	124
c. 13,	(Customs, Inland Revenue, and Savings Bank Act, 1877),	
	s. 10, .. .. .	141
c. 14,	(Evidence Act, 1877), s. 1, .. .. .	261
c. 42,	(Fisheries (Oyster, Crab, and Lobster) Act, 1877)—	
	s. 3, .. .. .	414 n. <sup>1</sup>
	ss. 8, 9, .. .. .	414
	s. 10, .. .. .	414
	s. 11, .. .. .	415
	s. 12, .. .. .	414
	s. 13 (4) (a), .. .. .	415
c. 49,	(General Prisons (Ir.) Act, 1877)—	
	ss. 4, 9, 17, .. .. .	691 n. <sup>2</sup>
	s. 24, .. .. .	153
	s. 25, .. .. .	153, 691
	s. 26, .. .. .	154
	s. 55, .. .. .	691
	s. 56, .. .. .	886 n. <sup>2</sup>
c. 56,	(County Officers and Courts (Ir.) Act, 1877)—	
	s. 8, .. .. .	8, 11
	s. 13, .. .. .	6
	s. 72, .. .. .	130 n. <sup>3</sup> , 133, 134 n. <sup>2</sup> , 136, 138, 230
	s. 73, .. .. .	137, 222
	s. 74, .. .. .	438, 438 n. <sup>4</sup>
	s. 76, .. .. .	93, 95, 97
	s. 78, .. .. .	89, 90
c. 57,	(Supreme Court of Judicature (Ir.) Act, 1877)—	
	s. 27, .. .. .	327 n. <sup>1</sup>
	s. 50, .. .. .	234, 249
c. 65,	(Fisheries (Dynamite) Act, 1877), ss. 2, 3, ..	443
c. 68,	(Destructive Insects Act, 1877)—	
	ss. 2, 3, .. .. .	417
	s. 7, .. .. .	416 n. <sup>1</sup>
	s. 7 (4), .. .. .	417
41 & 42 Vict. c. 15,	(Customs and Inland Revenue Act, 1878)—	
	s. 4, .. .. .	788
	s. 6, .. .. .	782
c. 17,	(Adulteration of Seeds Act, 1878), s. 2, ..	352 n. <sup>2</sup>
c. 33,	(Dentists Act, 1878)—	
	s. 3, .. .. .	415, 416
	s. 4, .. .. .	416
	ss. 6, 8-11, .. .. .	415
	s. 11 (3), .. .. .	416
	s. 13, .. .. .	415
	s. 18, .. .. .	415 n. <sup>1</sup>
	ss. 34, 35, .. .. .	416



## TABLE OF STATUTES.

41 &amp; 42 Vict. c. 49,

(Weights and Measures Act, 1878)—

PAGE

s. 19, ..	..	835, 836 n. <sup>3</sup>
ss. 20, 22, ..	..	835
ss. 23, 24, ..	..	836
s. 25, ..	..	297, 837, 838
ss. 26, 27, ..	..	839
s. 28, ..	..	839
s. 29, ..	..	297, 836, 839, 840
s. 30-32, ..	..	840
s. 40, ..	..	842 n. <sup>2</sup>
s. 44, ..	..	840, 842
s. 48, ..	..	842, 847
s. 49, ..	..	842
ss. 56-58, ..	..	847
s. 77, ..	..	841
s. 81, ..	..	841, 842
s. 84, ..	..	848
c. 52, Public Health (Ir.) Act, 1878)—		
s. 2, ..	696, 700, 701, 702, 707 n. <sup>1</sup> , 717 n. <sup>1</sup> , 719, 733, 742, 806 n. <sup>2</sup>	
s. 4, ..	..	693
s. 6, ..	..	693, 742
s. 9, ..	..	529 n. <sup>5</sup>
s. 15, ..	..	697 n. <sup>1</sup>
s. 23, ..	..	697
ss. 24, 25, ..	..	698
s. 27, ..	..	699
s. 28, ..	..	700, 744
s. 29, ..	..	702
s. 39, ..	..	703
s. 40, ..	..	695
s. 41, ..	..	702, 703, 745
ss. 42, 44, 45, ..	..	704
s. 48, ..	..	705
s. 51, ..	..	713, 748
s. 52, ..	..	705
s. 53, ..	..	706
s. 54, ..	..	706, 708
s. 56, ..	..	706
ss. 57, 58, ..	..	712
ss. 59, 60, ..	..	713
ss. 61-65, ..	..	714
s. 66, ..	..	165, 714
s. 67, ..	..	165, 167, 715, 834
s. 68, ..	..	166 n. <sup>1</sup> , 714
s. 69, ..	..	714
s. 70, ..	..	715
s. 72, ..	..	166, 715
s. 74, ..	..	166
ss. 77, 78, ..	..	506 n. <sup>1</sup>
s. 79, ..	..	715
ss. 82-84, 86, ..	..	716
s. 87, ..	..	717 n. <sup>2</sup>
s. 90, ..	..	717
s. 91, ..	..	714 n. <sup>1</sup> , 717
s. 92, ..	..	717, 718
s. 93, ..	..	717
s. 94, ..	..	717 n. <sup>3</sup>
s. 95, ..	..	717 n. <sup>4</sup>
s. 96, ..	..	718
s. 97, ..	..	717
s. 99, ..	..	718
s. 100, ..	..	718
s. 101, ..	..	718
s. 105, ..	..	297, 719
s. 106, ..	..	719
s. 107, ..	..	296, 707, 720
s. 107 (5), ..	..	714
s. 107 (7), ..	..	389
s. 108, ..	..	708
s. 109, ..	..	708
s. 110, ..	..	708, 720

41 & 42 Vict. c. 52,	(Public Health (Ir.) Act, 1878)—	PAGE
	s. 111, .. ..	694, <b>708</b> , 720
	s. 112, .. ..	55, 63, <b>709</b> , 720
	s. 113, .. ..	<b>709</b> , 720
	s. 114, .. ..	<b>709</b>
	ss. 115, 116, .. ..	<b>710</b>
	s. 117, .. ..	<b>710</b>
	ss. 118, 119, .. ..	<b>710</b> , <b>750</b>
	ss. 120–122, .. ..	<b>711</b> , <b>712</b>
	s. 125, .. ..	707 n. <sup>1</sup> , <b>714</b> , 718 n. <sup>1</sup>
	s. 126, .. ..	<b>714</b> , 718 n. <sup>1</sup>
	s. 127, .. ..	<b>712</b> , 718 n. <sup>1</sup>
	s. 128, .. ..	389, 718 n. <sup>1</sup> , <b>723</b> , 752
	s. 129, .. ..	718 n. <sup>1</sup> , <b>723</b>
	s. 130, 131, .. ..	718 n. <sup>1</sup> , 723
	s. 132, .. ..	720, <b>724</b>
	s. 133, .. ..	296, <b>724</b>
	s. 134, .. ..	<b>725</b>
	s. 135, .. ..	146, 720, <b>725</b>
	s. 137, .. ..	<b>726</b>
	s. 141, .. ..	726, 755
	s. 142, .. ..	<b>727</b> , 755
	ss. 143–146, .. ..	<b>727</b>
	s. 147, .. ..	103, 827, <b>828</b>
	s. 148, 149, .. ..	<b>728</b>
	s. 154, .. ..	728, 729, 733
	s. 158, .. ..	<b>729</b>
	s. 160, .. ..	730 n. <sup>2</sup>
	s. 162, .. ..	<b>730</b>
	ss. 163, 166, .. ..	<b>730</b>
	s. 167, .. ..	<b>730</b>
	s. 168, .. ..	<b>730</b>
	ss. 170, 171, .. ..	<b>730</b>
	ss. 181, 185, .. ..	<b>730</b>
	s. 193, .. ..	<b>731</b>
	ss. 216–218, .. ..	699 n. <sup>1</sup> , 700 n. <sup>1</sup> , 730 n. <sup>3</sup>
	ss. 219, 220, .. ..	647, 703, 708, 722
	ss. 221, 222, .. ..	647, 708, 722
	s. 223, .. ..	279, 647, 703, 708, 722
	s. 224, .. ..	<b>279</b>
	ss. 229, 230, .. ..	698 n. <sup>1</sup> , <b>740</b>
	s. 231, .. ..	698 n. <sup>1</sup>
	s. 249, .. ..	55, 694, 728, <b>750</b> , 828, 830
	s. 250, .. ..	<b>695</b>
	s. 251, .. ..	<b>694</b>
	s. 252, .. ..	<b>695</b>
	s. 254, .. ..	204 n. <sup>1</sup>
	s. 255, .. ..	<b>695</b> , <b>750</b>
	s. 256, .. ..	222, 694
	s. 257, .. ..	694, <b>725</b>
	s. 261, .. ..	<b>695</b>
	s. 265, .. ..	<b>278</b>
	ss. 266, 267, .. ..	827 n. <sup>2</sup>
	s. 268, .. ..	<b>742</b>
	s. 269, .. ..	<b>695</b>
	s. 271, .. ..	<b>731</b>
	s. 272, .. ..	<b>732</b> , <b>740</b>
	s. 273, .. ..	<b>732</b>
	s. 274, .. ..	730, <b>732</b>
	s. 278, .. ..	<b>834</b>
	s. 294, .. ..	<b>789</b>
c. 69,	(Petty Sessions Clerks and Fines (Ir.) Act, 1878),	<b>1079</b>
	s. 2, .. ..	<b>331</b>
c. 72,	(Sale of Liquors on Sunday (Ir.) Act, 1878)—	
	s. 1, .. ..	556, 557
	s. 3, .. ..	<b>560</b> , 563
c. 73,	(Territorial Waters Jurisdiction Act, 1878), s. 7,	14 n. <sup>2</sup>
c. 74,	(Contagious Diseases (Animals) Act, 1878), s. 34,	<b>371</b>
c. 76,	(Telegraph Act, 1878)—	
	s. 2, .. ..	796, 798
	ss. 8, 9, .. ..	<b>796</b>
	s. 10, .. ..	796, 798

# TABLE OF STATUTES.

41 & 42 Vict. c. 77,	(Highways and Locomotives Amendment Act, 1878)—	598 n. <sup>3</sup>
	s. 30 .. .. .	..
42 & 43 Vict. c. 11,	(Bankers' Books Evidence Act, 1879)—	280
	s. 3, .. .. .	..
	s. 7, .. .. .	21, 53, 276
	s. 10, .. .. .	53
c. 19,	(Habitual Drunkards Act, 1879)—	..
	s. 1, .. .. .	521
	s. 2, .. .. .	521
	s. 3, .. .. .	514, 520
	ss. 4-6, .. .. .	521
	s. 6, .. .. .	514
	s. 10, .. .. .	515, 521
	s. 11 (2), .. .. .	520
	s. 12, .. .. .	515, 521
	ss. 13-16, .. .. .	514
	ss. 19 22, .. .. .	515
	s. 23, .. .. .	419
	ss. 24-27, .. .. .	520
	s. 28, .. .. .	419, 520
	ss. 29, 36, .. .. .	520
c. 21,	(Customs and Inland Revenue Act, 1879)—	..
	s. 9, .. .. .	782
	s. 10, .. .. .	788, 932
	s. 12, .. .. .	81 n. <sup>3</sup>
	s. 14, .. .. .	932
	s. 20, .. .. .	782
c. 23,	(Hares Preservation (Ir.) Act, 1879), ss. 3, 4,	489
c. 30,	(Sale of Food and Drugs Act Amendment Act, 1879)—	..
	s. 2, .. .. .	458
	s. 3, .. .. .	95, 106, 467
	s. 4, .. .. .	467
	s. 5, .. .. .	463
	s. 6, .. .. .	458, 459
	s. 10, .. .. .	95, 96
c. 34,	(Children's Dangerous Performances Act, 1879)—	..
	s. 3, .. .. .	397
	s. 4, .. .. .	397
c. 47,	(Petroleum Act, 1879), ss. 1, 2,	664
c. 49,	(Summary Jurisdiction Act, 1879)—	..
	s. 5, .. .. .	68 n. <sup>2</sup>
	s. 6, .. .. .	529 n. <sup>3</sup>
	s. 12, .. .. .	586
	s. 16, .. .. .	59, 60, 101
	s. 17, .. .. .	28
	s. 22, .. .. .	519
	s. 26, .. .. .	516
	s. 27, .. .. .	592, 592 n. <sup>3</sup>
	s. 31, .. .. .	134 n. <sup>1</sup>
	s. 33, .. .. .	235 n. <sup>2</sup>
	s. 35, .. .. .	529 n. <sup>3</sup>
	s. 37, .. .. .	18
	s. 39, .. .. .	84
c. 50,	(Bills of Sale (Ir.) Act, 1879), s. 17,	921
c. 55,	(Prevention of Crime Act, 1879), s. 2,	684 n. <sup>5</sup> , 685 n. <sup>1</sup>
c. 57,	(Public Health (Ir.) Amendment Act, 1879), s. 6,	600, 629 n. <sup>2</sup>
c. 58,	(Public Offices Fees Act, 1879), s. 3,	282
c. 70,	(Vaccination Amendment (Ir.) Act, 1879)—	..
	s. 3, .. .. .	827
	s. 4, .. .. .	828
	s. 5, .. .. .	829
	s. 7, .. .. .	827, 829, 830
	s. 8, .. .. .	829
	s. 9, .. .. .	830
	s. 10, .. .. .	828
	s. 12, .. .. .	826
c. clxxxiii,	(Alliance and Dublin Gas Act, 1879), s. 9,	507
43 & 44 Vict. c. 9,	(Statutes (Definition of Time) Act, 1880),	53
c. 13,	(Births and Deaths Registration Act (Ir.), 1880)—	..
	ss. 1-3, .. .. .	773
	ss. 4-6, .. .. .	774
	s. 7, .. .. .	773

43 & 44 Vict. c. 13,	(Births and Deaths Registration Act (Ir.), 1880)—	PAGE
	ss. 10, 11, .. .. .	774, 775
	ss. 12-16, .. .. .	.. 774
	ss. 17-19, .. .. .	.. 775
	s. 20, .. .. .	774, 775
	ss. 21, 22, .. .. .	.. 773
	s. 29, .. .. .	773, 774, 775
	s. 30, .. .. .	.. 775
	ss. 35, 36, .. .. .	.. 776
	s. 42, .. .. .	.. 773
c. 16,	(Merchant Seamen (Payment of Wages and Rating) Act, 1880), s. 11, .. .. .	.. 157
c. 20,	(Inland Revenue Act, 1880)—	
	s. 2, .. .. .	566 n. <sup>1</sup>
	s. 40, .. .. .	568 n. <sup>3</sup>
	s. 43 (1) (7), .. .. .	569 n. <sup>2</sup>
c. 24,	(Spirits Act, 1880)—	
	s. 3, .. .. .	543 n. <sup>2</sup>
	s. 5, .. .. .	.. 543
	s. 7, .. .. .	543 n. <sup>1</sup>
	s. 102, .. .. .	.. 575
	s. 105, 116, .. .. .	.. 576
	s. 140, .. .. .	.. 145
	s. 142, .. .. .	.. 575
	s. 146, .. .. .	575, 576
	ss. 148, 149, .. .. .	.. 576
	s. 156, .. .. .	.. 543
c. 35,	(Wild Birds Protection Act, 1880)—	
	s. 2, .. .. .	.. 488, n. <sup>1</sup>
	s. 3, .. .. .	488, 850, 851, 853
	s. 4, .. .. .	.. 856
	ss. 5, 7, .. .. .	.. 856
	s. 8, .. .. .	835, 852
	s. 9, .. .. .	835, 852
c. 45,	(Criminal Law Amendment Act, 1880), s. 2, .. .. .	887 n. <sup>3</sup> , 897
c. 47,	(Ground Game Act, 1880)—	
	s. 1, (2) (3), .. .. .	.. 493
	s. 4, .. .. .	489, 491
	s. 6, .. .. .	493, 494
	s. 8, .. .. .	494 n. <sup>2</sup>
	s. 10, .. .. .	.. 494
44 & 45 Vict. c. 12,	(Customs and Inland Revenue Act, 1881)—	
	s. 10, .. .. .	.. 782
	s. 12, .. .. .	.. 787
c. 17,	(Tramways (Ir.) Amendment Act, 1881), s. 5, .. .. .	.. 817
c. 18,	(Petty Sessions Clerks (Ir.) Act, 1881), .. .. .	.. 1081
	s. 1, .. .. .	.. 331
	s. 2, .. .. .	.. 333
	s. 3, .. .. .	.. 330
	s. 5, .. .. .	.. 332
c. 35,	(Coroners (Ireland) Act, 1881)—	
	s. 2, .. .. .	.. 153
	ss. 7, 8, .. .. .	29 n. <sup>1</sup>
c. 49,	(Land Law (Ir.) Act, 1881)—	
	s. 5, .. .. .	.. 484
	s. 19, .. .. .	.. 179
	ss. 42, 48, .. .. .	.. 280
c. 51,	(Wild Birds Protection Act, 1881)—	
	s. 1, .. .. .	.. 851
	s. 3, .. .. .	.. 850
c. 58,	(Army Act, 1881)—	
	s. 12, .. .. .	625 n. <sup>2</sup>
	s. 30, .. .. .	.. 375
	ss. 41 (5), 69, .. .. .	.. 373
	s. 72, .. .. .	.. 379
	s. 80, .. .. .	373, 624
	s. 80 (6), .. .. .	.. 373
	ss. 96, 98, .. .. .	374, 624
	s. 99, .. .. .	.. 624
	s. 99 (1) (2), .. .. .	.. 373
	ss. 100, 101, .. .. .	.. 624
	ss. 103-107, 108 (6) (7), 109, .. .. .	.. 374



## TABLE OF STATUTES.

		PAGE
44 & 45 Vict. c. 58,	(Army Act, 1851)—	375
	s. 110, ..	375, 926
	s. 111, 111 (2), ..	375
	ss. 112, 113, ..	374, 375
	s. 114, ..	375
	ss. 115-120, ..	376, 922 n. <sup>1</sup>
	s. 121, ..	921
	s. 126 (2), ..	145
	s. 136, ..	376, 922 n. <sup>1</sup>
	s. 142, ..	378
	s. 144, ..	376
	ss. 152, 153, ..	376, 377 n. <sup>4</sup>
	s. 154, ..	926
	s. 155, ..	261, 376, 377, 660
	s. 156, ..	660
	s. 156 (1), (2), ..	53, 660
	s. 156 (3), ..	660
	s. 156 (4)-(6), ..	377, 378
	s. 162, ..	377, 624, 625
	s. 163, ..	378, 625
	s. 164, ..	377 n. <sup>3</sup>
	s. 165 (5), ..	377, 625
	s. 166, ..	625
	s. 167, ..	377
	s. 170 (1), ..	378
	s. 173, ..	379
	s. 174, ..	373 n. <sup>1</sup>
	ss. 175, 176, 178, ..	374
	s. 181, ..	373 n. <sup>1</sup>
	s. 181 (2), ..	374 n. <sup>1</sup>
	s. 190 (38), ..	
c. 60,	(Newspaper Label & Registration Act, 1881)—	649 nn. <sup>2, 3</sup>
	s. 1, ..	23 n. <sup>2</sup> , 592
	s. 4, ..	592
	s. 5, ..	28
	s. 6, ..	649
	s. 8, ..	280, 649
	s. 9, ..	649
	ss. 10, 12, ..	280, 649
	s. 15, ..	649
	ss. 16-18, ..	
c. 62,	(Veterinary Surgeons Act, 1881)—	833
	ss. 9, 11, 12, ..	832 n. <sup>2</sup>
	s. 15, ..	832
	s. 16, ..	832, 832 n. <sup>2</sup> , 833
	s. 17, ..	833
	s. 19, ..	832 n. <sup>1</sup>
	s. 20, ..	
c. 67,	(Petroleum (Hawkers) Act, 1881)—	666
	s. 1, ..	292, 667
	s. 2, ..	667
	ss. 3-6, ..	664
	s. 7, ..	
c. 69,	(Fugitive Offenders Act, 1881)—	302, 303
	s. 2, ..	303
	ss. 3-5, 7-11, 22, 24, 26-28, ..	304
	ss. 33, 34, ..	303
	s. 39, ..	
45 & 46 Vict. c. 9,	(Documentary Evidence Act, 1882)—	278
	s. 2, ..	277
	s. 4, ..	
c. 22,	(Boiler Explosions Act, 1882)—	386
	ss. 3, 4, ..	386
	s. 5, ..	386
	s. 8, ..	47
c. 24,	(Petty Sessions (Ir.) Act, 1882), s. 1,	
c. 49,	(Militia Act, 1882)—	8
	s. 5, ..	624
	ss. 9, 10, ..	625
	ss. 22-24, 25 (1) (2), 26, ..	8
	ss. 29, 30, 33, ..	625
	ss. 42 (3), 43 (2), 44, ..	

45 & 46 Vict. c. 49,	(Militia Act, 1882)—	PAGE
	ss. 53, 54, .. .. .	8
c. 50,	(Municipal Corporations Act, 1882), s. 23, .. .. .	335, 339
c. 56,	(Electric Lighting Act, 1882)—	
	s. 12, .. .. .	165, 432
	s. 22, .. .. .	432, 909, 913
	s. 23, .. .. .	432
c. 60,	(Labourers' Cottages and Allotments (Ir.) Act, 1882)—	
	s. 3, .. .. .	179
	s. 4, .. .. .	180
c. 72,	(Revenue, Friendly Societies, and National Debt Act, 1882), s. 11, .. .. .	280
c. 73,	(Ancient Monuments Protection Act, 1882)—	
	s. 2, .. .. .	356
	s. 6, .. .. .	355
	s. 7, .. .. .	356
	ss. 8, 10, 11, .. .. .	355
c. 75,	(Married Women's Property Act, 1882)—	
	s. 12, .. .. .	260, 299, 530, 906 n. <sup>3</sup> , 927 n. <sup>4</sup>
	s. 16, .. .. .	299, 530, 906 n. <sup>3</sup> , 927 n. <sup>4</sup>
	s. 20, .. .. .	403, 535
	s. 21, .. .. .	535
46 & 47 Vict. c. 3,	(Explosive Substances Act, 1883)—	
	s. 2, .. .. .	890
	s. 3, .. .. .	891
	s. 4, .. .. .	53, 261, 891
	s. 5, .. .. .	891
	s. 6, .. .. .	285, 890 n. <sup>2</sup>
	s. 7, .. .. .	14 n. <sup>2</sup>
	s. 8, .. .. .	145 <sup>2</sup>
c. 10,	(Customs and Inland Revenue Act, 1883)—	
	s. 5, .. .. .	489
	s. 6, .. .. .	490
c. 14,	(Constabulary and Police (Ir.) Act, 1883)—	
	s. 12, .. .. .	676 nn. <sup>2,4</sup> , 683 nn. <sup>2,3</sup>
	s. 17, .. .. .	305
c. 22,	(Sea Fisheries Act, 1883), s. 11, .. .. .	43
c. 38,	(Trial of Lunatics Act, 1883), s. 2, .. .. .	257
c. 43,	(Tramways and Public Companies (Ir.) Act, 1883)—	
	s. 23, .. .. .	817
	s. 25, .. .. .	816 n. <sup>1</sup>
c. 45,	(Counterfeit Medals Act, 1883), s. 2, .. .. .	882
c. 49,	(Statute Law Revision and Civil Procedure Act, 1883)—	
	s. 5, .. .. .	341
c. 51,	(Corrupt and Illegal Practices (Prevention) Act, 1883)—	
	s. 3, .. .. .	431 n. <sup>1</sup> , 888
	s. 6, .. .. .	7, 889
	ss. 7-9 .. .. .	431, 431 n. <sup>1</sup>
	s. 10, .. .. .	431, 431 n. <sup>1</sup> , 690
	ss. 13-17, .. .. .	431, 431 n. <sup>1</sup>
	s. 18, .. .. .	431, 431 n. <sup>1</sup> , 690
	s. 20, .. .. .	431, 431 n. <sup>1</sup> , 432
	ss. 21 (1), (21) (2), 28 (2), 29 (2) (4), .. .. .	431 n. <sup>1</sup> , 432
	s. 33, .. .. .	888, 889
	s. 38 (5) (6), .. .. .	7
	s. 38 (8), .. .. .	580 n. <sup>2</sup>
	s. 51, .. .. .	889
	ss. 51 (1), 52, .. .. .	432
	s. 53, .. .. .	10, 53, 261
	s. 54, .. .. .	432
	s. 59, .. .. .	285
	ss. 64, 69 (7) (8), .. .. .	7
c. 52,	(Bankruptcy Act, 1883), s. 32 (1) (3), .. .. .	6
c. 55,	(Revenue Act, 1883)—	
	s. 1 (2) (3) (4) (6), .. .. .	513
	s. 5, .. .. .	781, 782
	ss. 6, 7, .. .. .	782
	s. 8, .. .. .	81 n. <sup>2</sup>
	s. 10, .. .. .	513
	s. 11, .. .. .	781 n. <sup>3</sup>
c. 57,	(Patents, Designs and Trade Marks Act, 1883)—	
	s. 58, .. .. .	66

## TABLE OF STATUTES.

		PAGE
46 & 47 Vict. c. 60,	(Labourers (Ir.) Act, 1883),—	180
	s. 11, .. .. .	179, 186
	s. 13, .. .. .	185
	s. 16, .. .. .	189
	s. 81, .. .. .	507, 508
c. cix,	(Alliance and Dublin Gas Act, 1883), ss. 42, 43,	53, 260, 530
47 & 48 Vict. c. 14,	(Married Women's Property Act, 1884), s. 1,	1082
c. 19,	(Summary Jurisdiction over Children (Ir.) Act, 1884),	74
	ss. 4-7, .. .. .	59, 74
	s. 8, .. .. .	74
	s. 9, .. .. .	153
c. 36,	(Prisons (Ir.) Amendment Act, 1884), s. 3, ..	455
c. 48,	(Oyster Cultivation (Ir.) Act, 1884)—	439, 455
	s. 11, .. .. .	455
	s. 13, .. .. .	896
	ss. 14, 19,	513
c. 55,	(Pensions and Yeomanry Pay Act, 1884), s. 3 (1),	7
c. 62,	(Revenue Act, 1884), s. 4, ..	432, 690
c. 70,	(Municipal Elections (Corrupt and Illegal Practices) Act, 1884)—	690
	s. 3, .. .. .	797
	s. 7, .. .. .	789 n. <sup>1</sup>
	s. 14, .. .. .	539
	ss. 17, 30, .. .. .	897, 898 n. <sup>4</sup>
	s. 23, .. .. .	897 n. <sup>4</sup>
	s. 34, .. .. .	899
	ss. 56, 74, 75,	255, 866, 897-899, 905 n. <sup>7</sup> , 906
c. 76,	(Post Office (Protection) Act, 1884)—	255, 897-899, 906
	s. 4, .. .. .	899, 900, 906
	s. 11, .. .. .	870
	s. 19, .. .. .	899
48 & 49 Vict. c. 51,	(Customs and Inland Revenue Act, 1885), s. 8,	896, 899
c. 69,	(Criminal Law Amendment Act, 1885)—	146
	s. 2, .. .. .	887, 887 n. <sup>3</sup> , 891 n. <sup>5</sup> , 892 n. <sup>2</sup>
	s. 2 (1), .. .. .	390
	s. 3, .. .. .	28, 897 n. <sup>6</sup> , 898 n. <sup>4</sup>
	s. 4, .. .. .	29 n. <sup>2</sup>
	s. 5, .. .. .	53, 261, 390
	s. 6, .. .. .	718
	s. 7, .. .. .	714
	s. 8, .. .. .	707
	s. 9, .. .. .	179
	ss. 9 (1), 15,	178
c. 72,	(Housing of the Working Classes Act, 1885)—	371
	s. 8, .. .. .	372
	s. 9, .. .. .	412 n. <sup>3</sup>
c. 77,	(Labourers (Ir.) Act, 1885)—	415 n. <sup>3</sup> , 416
	s. 17, .. .. .	416
	s. 19, .. .. .	532, 649 n. <sup>5</sup>
49 & 50 Vict. c. 32,	(Contagious Diseases (Animals) Act, 1886)—	533 n. <sup>1</sup>
	s. 9, .. .. .	432
	s. 9 (5), .. .. .	179
c. 33,	(International Copyright Act, 1886), s. 3, ..	1084
c. 48,	(Medical Act, 1886)—	285
	s. 26, .. .. .	537, 778, 874
	ss. 29, 40, .. .. .	537, 778
c. 52,	(Married Women (Maintenance in Case of Desertion) Act, 1886)—	
	s. 1, .. .. .	
	s. 1 (2), .. .. .	
	s. 2, .. .. .	
c. 59,	(Labourers (Ir.) Act, 1886), s. 14, ..	
50 & 51 Vict. c. 20,	(Criminal Law & Procedure (Ir.) Act, 1887), ..	
	s. 1, .. .. .	
	s. 2 (3), .. .. .	
	s. 11, .. .. .	

50 & 51 Vict. c. 20,	(Criminal Law and Procedure (Ir.) Act, 1887)—	PAGE
	s. 11 (2), .. .. .	581
	s. 12, .. .. .	282
c. 27,	(Markets and Fairs (Weighing of Cattle) Act, 1887)—	
	ss. 2, 3, .. .. .	848
	ss. 4, 5, .. .. .	848
	ss. 6, 7, .. .. .	849
	s. 8, .. .. .	848, 849
	ss. 9, 10, .. .. .	848
c. 28,	(Merchandise Marks Act, 1887)—	
	s. 2, .. .. .	41, 296, 617, 621
	s. 2 (1), .. .. .	622, 837, 838
	s. 2 (2), .. .. .	838
	s. 2 (3), .. .. .	622
	ss. 2 (4), 2 (5), .. .. .	623
	s. 2 (6), .. .. .	21
	s. 3, .. .. .	618
	s. 3 (a), .. .. .	838
	s. 3 (3), .. .. .	620
	ss. 4, 5, .. .. .	618
	s. 5 (a), .. .. .	619
	s. 6, .. .. .	621
	s. 7, .. .. .	621
	s. 8, .. .. .	621
	s. 9, .. .. .	622
	s. 10, .. .. .	53, 261, 621
	s. 11, .. .. .	621, 915
	s. 12, .. .. .	145
	s. 12 (1) (2) (3), .. .. .	623
	s. 13, .. .. .	28, 622, 915
	s. 14, .. .. .	622
	s. 15, .. .. .	621
	s. 18, .. .. .	620
	s. 19, .. .. .	285, 300
	ss. 19 (3), 20, .. .. .	621
c. 29,	(Margarine Act, 1887)—	
	s. 3, .. .. .	471
	s. 4, .. .. .	471, 473 n. <sup>1</sup>
	s. 5, .. .. .	456, 474, 478
	s. 6, .. .. .	471
	s. 7, .. .. .	466, 474, 476
	s. 8, .. .. .	472
	s. 9, .. .. .	473, 477
	s. 10, .. .. .	473
	ss. 11, 12, .. .. .	456, 457, 473, 478
	s. 13, .. .. .	472 n. <sup>6</sup>
c. 33,	(Land Law (Ir.) Act, 1887), s. 7, .. .. .	188, 191, 193 n. <sup>2</sup>
c. 42,	(Public Libraries Consolidation (Scot.) Act, 1887), s. 2, .. .. .	111,
c. 46,	(Truck Act Amendment Act, 1887)—	
	s. 2, .. .. .	810
	ss. 3, 4, .. .. .	829
	ss. 5, 6, .. .. .	813
	ss. 7, 8, .. .. .	821
	s. 9, .. .. .	821
	s. 10, .. .. .	821
	s. 11, .. .. .	823
	s. 12, .. .. .	823
	s. 13, .. .. .	824
	s. 18, .. .. .	818 n. <sup>1</sup>
c. 58,	(Coal Mines Regulation Act, 1887)—	
	s. 15, .. .. .	847
	s. 37, .. .. .	707
	s. 62, .. .. .	261
	s. 69, .. .. .	222
	s. 74, .. .. .	705
	s. 77, .. .. .	8, 705, 707
51 & 52 Vict. c. 8,	(Customs and Inland Revenue Act, 1888)—	
	s. 4, .. .. .	640, 641
	s. 4 (3), .. .. .	641
	s. 8, .. .. .	79 n. <sup>1</sup> , 837 n. <sup>1</sup>
c. 12,	(Electric Lighting (Clauses) Act, 1888), s. 4 (3), .. .. .	432
c. 19,	(Inebriates Act, 1888), s. 4, .. .. .	515



				PAGE
51 & 52 Vict. c. 30,	(Fishery (Ir.) Act, 1888), s. 1,	..	..	453
c. 33,	(Hawkers Act, 1888),	..	..	1091
c. 41,	(Local Government Act, 1888), s. 16,	..	..	339
c. 46,	(Oaths Act, 1888),	..	..	54
	s. 1,	..	..	259
c. 47,	(Law of Distress and Small Debts (Ir.) Act, 1888)—			
	s. 5,	..	..	71, 418
	ss. 6-11,	..	..	318
	s. 12, 13,	..	..	314, 319, 418
	s. 14,	..	..	319, 418
c. 55,	(Sand Grouse Protection Act, 1888), s. 1,	..	..	856
c. 64,	(Law of Libel Amendment Act, 1888)—			
	s. 3, 4, 8,	..	..	910
	s. 9,	..	..	261, 592
52 & 53 Vict. c. 10,	(Commissioners for Oaths Act, 1889), s. 9,	..	..	14 n. <sup>2</sup>
c. 11,	(Sale of Horseflesh, etc., Regulation Act, 1889)—			
	s. 1,	..	..	529
	ss. 3, 4, 5,	..	..	530
	s. 6,	..	..	529, 530
	s. 7,	..	..	529
c. 18,	(Indecent Advertisements Act, 1889)—			
	s. 3,	..	..	352
	s. 4,	..	..	353
	ss. 5, 6,	..	..	353
c. 21,	(Weights and Measures Act, 1889)—			
	s. 1 (1),	..	..	836, 839
	s. 1 (2),	..	..	836, 840
	s. 1 (4),	..	..	840
	s. 3,	..	..	836, 839
	s. 4,	..	..	847
	s. 7,	..	..	842 n. <sup>2</sup>
	s. 9,	..	..	842
	s. 14,	..	..	847
	s. 19 (1),	..	..	841
	ss. 20, 21, ..	..	..	843
	ss. 22-24, ..	..	..	844
	ss. 25, 26 (2), 27,	..	..	845
	s. 28,	..	..	338, 846
	s. 29,	..	..	845
	s. 29 (3),	..	..	846
	s. 33,	..	..	847
	s. 35,	..	..	840 n. <sup>2</sup>
c. 27,	(Advertising Stations (Rating) Act, 1889), s. 5,	..	..	804 n. <sup>1</sup>
c. 42,	(Revenue Act, 1889)—			
	s. 28,	..	..	551 n. <sup>1</sup> , 568 n. <sup>1</sup>
	s. 29,	..	..	837
c. 52,	(Official Secrets Act, 1889)—			
	s. 1,	..	..	919, 920
	ss. 2, 3,	..	..	920
	s. 6,	..	..	14 n. <sup>2</sup>
c. 57,	(Regulation of Railways Act, 1889)—			
	s. 4,	..	..	772
	s. 5,	..	..	772, 768
	s. 6,	..	..	768, 771
	s. 7,	..	..	771, 816
c. 63,	(Interpretation Act, 1889)—			
	ss. 1, 2,	..	..	335
	s. 2 (1),	..	..	83
	s. 3,	..	..	52, 335
	s. 4,	..	..	335
	s. 9,	..	..	335, 336
	s. 11,	..	..	335
	s. 13,	..	..	335, 236
	s. 13 (9),	..	..	16 n. <sup>1</sup> , 41
	s. 13 (10),	..	..	377 n. <sup>1</sup> , 669, 681 n. <sup>3</sup>
	ss. 14, 20,	..	..	336
	s. 26,	..	..	49 n. <sup>1</sup> , 336
	s. 33,	..	..	102, 336
	s. 34,	..	..	336
	s. 36,	..	..	334
	s. 38,	..	..	334, 335, 783 n. <sup>1</sup> , 789 n. <sup>1</sup>
	s. 38 (1),	..	..	399 n. <sup>3</sup> , 429 n. <sup>3</sup>

## TABLE OF STATUTES.

xlvii

		PAGE
52 & 53 Viet. c. 63,	(Interpretation Act, 1889)—	
	s. 42, .. .. .	334
	s. 88, .. .. .	784
c. 69,	(Public Bodies Corrupt Practices Act, 1889)—	
	ss. 1, 2, 4, .. .. .	878
	s. 5, .. .. .	29 n. <sup>2</sup>
	s. 7, .. .. .	878
c. 72,	(Infectious Diseases (Notification) Act, 1889)—	
	s. 2, .. .. .	728, 729
	s. 3, .. .. .	728
	ss. 4, 5, .. .. .	729
	s. 6, .. .. .	728, 729
	ss. 7-12, .. .. .	729
	s. 13, .. .. .	728, 729
	ss. 15, 16, .. .. .	728
	s. 18, .. .. .	729
	s. 18 (3), .. .. .	728
c. 74,	(Steam Trawling (Ir.) Act, 1889)—	
	s. 3, .. .. .	453, 454
53 & 54 Vict. c. 5,	(Lunacy Act, 1890)—	
	s. 299, .. .. .	236
	s. 322, .. .. .	601, 911
	s. 324, .. .. .	897, 911
c. 21,	(Inland Revenue Regulation Act, 1890), s. 11,	539, 641 n. <sup>1</sup>
	s. 21, .. .. .	79, 80, 641 n. <sup>1</sup>
	ss. 24, 27, 33, .. .. .	79
	s. 39, .. .. .	80
c. 30,	(Poor Law Acts (Ir.) Amendment Act, 1890), s. 2,	202
c. 34,	(Infectious Diseases (Prevention) Act, 1890)—	
	s. 3, .. .. .	728
	s. 4, .. .. .	372
	s. 15, .. .. .	755
c. 37,	(Foreign Jurisdiction Act, 1890), s. 6,	290
c. 48,	(Pharmacy Act (Ir.) Amendment Act, 1890), s. 5,	396
	ss. 6-8, 10, .. .. .	395
	s. 15, .. .. .	100, 673, 674
	s. 17, .. .. .	674
	s. 23, .. .. .	396 n. <sup>1</sup> , 675, 676
c. 56,	(Customs Consolidation Act, 1876, Amendment Act, 1890)—	
	s. 1, .. .. .	786 n. <sup>1</sup> , 787
	s. 2, .. .. .	787
c. 59,	(Public Health Acts Amendment Act, 1890)—	
	s. 1, .. .. .	117
	s. 2, 2 (2), .. .. .	733
	s. 3, .. .. .	720
	ss. 3 (1) (2), 5, .. .. .	733
	s. 11, .. .. .	704
	s. 12, .. .. .	732, 733, 734
	ss. 13-52, .. .. .	733
	ss. 16, 17, .. .. .	699, 733, 734, 735
	s. 18, .. .. .	698, 699, 733, 734, 735
	s. 19, .. .. .	697, 733, 734, 735
	s. 20, .. .. .	735
	s. 21, .. .. .	733, 735
	s. 22, .. .. .	736
	s. 23, .. .. .	733, 736
	s. 24, .. .. .	737
	s. 25, .. .. .	698, 733, 737
	s. 26, .. .. .	733, 737
	s. 26 (2), .. .. .	733
	s. 27, .. .. .	733, 737
	s. 28, .. .. .	733, 737
	s. 29, .. .. .	720, 733, 737, 805
	ss. 30, 31, .. .. .	720, 733, 738, 805
	ss. 32, 33, .. .. .	733, 738
	s. 34, .. .. .	733, 738, 804
	s. 35, .. .. .	733, 739
	s. 36, .. .. .	549, 733, 739
	s. 37, .. .. .	733, 739
	s. 38, .. .. .	340, 733, 739
	s. 40, .. .. .	733, 740

53 & 54 Vict. c. 59,		(Public Health Acts Amendment Act, 1890)—	PAGE
	s. 41, .. .. .	..	733
	s. 44, .. .. .	..	733, 740
	s. 47, .. .. .	..	733, 740
	s. 48, .. .. .	732, 733, 740	733, 740
	s. 49, .. .. .	..	733, 740
	s. 50, .. .. .	..	733
	s. 51, .. .. .	..	733, 741
	s. 60, .. .. .	..	698
c. 70,	(Housing of the Working Classes Act, 1890)—		
	ss. 30-32 (2), .. .. .	..	720
	s. 32 (3), .. .. .	..	721
	ss. 33, 34, .. .. .	..	721
	s. 51, .. .. .	..	721
	ss. 58, 59, 61, .. .. .	..	721
	ss. 62, 84, .. .. .	..	722
	s. 89, .. .. .	..	721
	s. 90, 98, .. .. .	..	722
54 & 55 Vict. c. 15,	(Merchandise Marks Act, 1891), s. 2,	..	622 n. <sup>2</sup>
c. 20,	(Pollen Fisheries (Ir.) Act, 1891)—		
	s. 2, .. .. .	..	437
	ss. 3, 4, .. .. .	..	448
	s. 5, .. .. .	..	451
	s. 6, .. .. .	..	452
c. 22,	(Museums & Gymnasiums Act, 1891)—		
	ss. 3, 4, 7 (2), 14, 15 (1) (2), .. .. .	..	647
c. 38,	(Stamp Duties Management Act, 1891)—		
	s. 17, .. .. .	..	146
	s. 26, .. .. .	..	80
c. 39,	(Stamp Act, 1891)—		
	s. 9, .. .. .	80, 681, 789	
	s. 14, .. .. .	..	282
	ss. 43, 44, .. .. .	..	788
	s. 121, .. .. .	..	788
c. 48,	(Purchase of Land (Ir.) Act, 1891), s. 26,	..	179
c. 69,	(Penal Servitude Act, 1891)—		
	s. 1, .. .. .	775, 861, 932 n. <sup>1</sup>	
	s. 1 (1), .. .. .	..	909 n. <sup>3</sup>
	s. 2 (1), .. .. .	..	683, 865
	s. 2 (2), .. .. .	..	684
	s. 3 (3), .. .. .	..	861
	s. 4, .. .. .	..	685
	s. 6, .. .. .	..	686
	s. 7, .. .. .	..	831
c. 70,	(Markets and Fairs (Weighing of Cattle) Act, 1891)—		
	s. 2, .. .. .	..	848
	s. 3, .. .. .	..	849
	s. 4, .. .. .	..	849
	s. 6, .. .. .	..	848
c. 71,	(Labourers (Ir.) Act, 1891), s. 5, .. .. .	..	180
c. 76,	(Public Health (London) Act, 1891)—		
	s. 41, .. .. .	705, 705 n. <sup>1</sup>	
	s. 142, .. .. .	..	339
55 & 56 Vict. c. 4,	(Betting and Loans (Infants) Act, 1892)—		
	ss. 1-4, .. .. .	..	405, 877
	s. 6, .. .. .	..	261, 405
c. 42,	(Irish Education Act, 1892)—		
	s. 1, .. .. .	..	428
	s. 2, .. .. .	..	430
	s. 3, .. .. .	..	428
	s. 3 (5), .. .. .	..	68, 431
	s. 4, .. .. .	..	69, 428
	ss. 5, 6, .. .. .	..	430
	s. 7, .. .. .	..	431
	s. 8, .. .. .	..	430
	s. 9, .. .. .	..	430
	s. 13, .. .. .	..	430
	s. 14, .. .. .	..	431
	s. 15, .. .. .	..	427
c. 55,	(Burgh Police (Scot.) Act, 1892), s. 4, .. .. .	..	111
c. 56,	(Coroners Act, 1892), s. 3, .. .. .	..	153
c. 57,	(Private Street Works Act, 1892), ss. 6-8, .. .. .	..	104

		PAGE
55 & 56 Vict. c. 62,	(Shop Hours Act, 1892)—	
	s. 3, .. .. .	783
	s. 4, .. .. .	783, 784
	s. 5, .. .. .	783
	s. 6, .. .. .	784
	s. 7, .. .. .	784
	ss. 9, 10, .. .. .	783
c. clxv,	(Glasgow Police (Further Powers) Act, 1892), s. 22, ..	504
56 & 57 Vict. c. 7,	(Customs and Inland Revenue Act, 1893), s. 2, ..	489
c. 32,	(Barbed Wire Act, 1893), .. .. .	1093
c. 39,	(Industrial and Provident Societies Act, 1893), s. 49, ..	162
c. 41,	(Irish Education Act, 1893)—	
	s. 2, .. .. .	428 n. <sup>1</sup>
	s. 3, .. .. .	427
c. 66,	(Rules Publication Act, 1893)—	
	s. 1, .. .. .	336, 337
	s. 4, .. .. .	336
c. 69,	(Savings Bank Act, 1893), s. 6, .. .. .	280
57 & 58 Vict. c. 24,	(Wild Birds Protection Act, 1894)—	
	s. 1, .. .. .	850, 854 n. <sup>2</sup>
	ss. 2, 3, .. .. .	854
	s. 4, .. .. .	854
	ss. 5, 7 (1), .. .. .	854
c. 28,	(Notice of Accidents Act, 1894), s. 1, .. .. .	351
c. 41,	(Prevention of Cruelty to Children Act, 1894)—	
	s. 1, .. .. .	131
	s. 19, .. .. .	131, 311 n. <sup>1</sup> , 402 n. <sup>2</sup>
c. 42,	(Quarries Act, 1894)—	
	s. 1, .. .. .	626 n. <sup>1</sup>
	s. 3, .. .. .	626
c. 45,	(Uniforms Act, 1894), ss. 2, 3, .. .. .	826
c. 47,	(Building Societies Act, 1894), s. 24, .. .. .	261
c. 51,	(Chimney Sweepers Act, 1894), s. 1, .. .. .	407
c. 57,	(Diseases of Animals Act, 1894)—	
	s. 2, .. .. .	369
	s. 4, .. .. .	366
	ss. 5, 6, 7, .. .. .	364
	s. 8, .. .. .	364, 369
	ss. 9, 10, .. .. .	364
	s. 11, .. .. .	365
	s. 12, .. .. .	365
	s. 13, .. .. .	365
	ss. 14-17, 19-21, .. .. .	364
	s. 22, .. .. .	364, 364 n. <sup>6</sup> , 365, 423
	s. 23, .. .. .	367
	s. 23 (3), .. .. .	366 n. <sup>3</sup>
	ss. 25, 27, .. .. .	367
	s. 28, .. .. .	367 n. <sup>1</sup>
	s. 30 (1) (3), .. .. .	367 n. <sup>2</sup>
	s. 31 (2), .. .. .	369 n. <sup>1</sup>
	s. 37, .. .. .	280, 369
	s. 38, .. .. .	369
	s. 43, 44, .. .. .	364 n. <sup>6</sup> , 370
	s. 45, .. .. .	367 n. <sup>2</sup>
	s. 46, .. .. .	367
	s. 48, .. .. .	371
	s. 49, .. .. .	366, 370
	s. 51, .. .. .	367
	s. 52, .. .. .	368
	s. 53, .. .. .	369
	s. 55, .. .. .	371
	s. 56, .. .. .	367, 370 n. <sup>1</sup>
	s. 57, .. .. .	261, 370, 371
	s. 57 (3), .. .. .	53
	s. 59, .. .. .	365 nn. <sup>1, 2</sup> , 366 nn. <sup>1, 2</sup> , 367 n. <sup>1</sup>
	s. 65, .. .. .	364 n. <sup>6</sup>
	s. 65 (1), .. .. .	364 n. <sup>2</sup>
	s. 67 (1), .. .. .	369
	s. 68, .. .. .	365, 370
	s. 69 (4), .. .. .	370
	s. 74, .. .. .	364 n. <sup>6</sup> , 370
	s. 75, .. .. .	131 n. <sup>2</sup> , 370, 371



		PAGE
57 & 58 Vict. c. 57,	(Diseases of Animals Act, 1894)—	
	s. 76 (1), .. .. .	366
	s. 267, .. .. .	281
c. 60,	(Merchant Shipping Act, 1894)—	
	s. 10 (1), .. .. .	856 n. <sup>5</sup>
	s. 13, .. .. .	160
	s. 16, .. .. .	915
	s. 45, .. .. .	261
	s. 59, .. .. .	780
	s. 66, .. .. .	781
	s. 67, .. .. .	781, 915
	s. 70, .. .. .	915
	s. 72, .. .. .	613 n. <sup>1</sup>
	s. 96 (2), .. .. .	916
	s. 104, .. .. .	781
	ss. 108, 109, .. .. .	615
	s. 164, 167, .. .. .	160
	s. 220, .. .. .	615, 781, 916
	s. 221, .. .. .	615
	ss. 222-224, .. .. .	781
	ss. 225, 227, .. .. .	615, 781
	ss. 236-238, .. .. .	781
	s. 254, .. .. .	776
	s. 287, .. .. .	517
	s. 301, .. .. .	781
	s. 339, .. .. .	776
	s. 373, .. .. .	786
	ss. 383, 384, 387, 392, 395, .. .. .	615
	ss. 398, 422, .. .. .	916
	s. 436 (1), .. .. .	780
	s. 442, .. .. .	298, 780
	ss. 446-449, .. .. .	781
	ss. 452-456, .. .. .	781
	s. 457, .. .. .	916, 931
	ss. 511-513, 516, 518, .. .. .	857
	s. 535, .. .. .	916
	ss. 536, 537, .. .. .	857
	s. 538, .. .. .	508, 605
	s. 539, .. .. .	605
	ss. 540-543, .. .. .	606
	s. 547, .. .. .	8, 176
	s. 548, .. .. .	176, 177
	ss. 549, 550, .. .. .	176
	ss. 551-553, .. .. .	176, 177
	s. 554, .. .. .	176
	s. 555, .. .. .	178
	s. 610, .. .. .	8
	s. 634, .. .. .	916 n. <sup>3</sup>
	s. 667 (3), .. .. .	916
	s. 680, .. .. .	606, 915, 916, 931
	s. 680 (1 b), .. .. .	857
	s. 681, .. .. .	160, 606
	s. 681 (1), .. .. .	781
	s. 683, .. .. .	160, 606, 857
	s. 684, 685, .. .. .	16, 857
	s. 686, .. .. .	16, 918
	s. 687, .. .. .	16
	s. 691, .. .. .	290
	ss. 695, 696, .. .. .	857
58 & 59 Vict. c. 5,	(Shop Hours Act, 1895), s. 1, .. .. .	783
c. 28,	(False Alarms of Fire Act, 1895)—	
	s. 1, .. .. .	436
	s. 2, .. .. .	261, 463
c. 33,	(Extradition Act, 1895), s. 1, .. .. .	302
c. 37,	(Factory and Workshop Act, 1895), s. 54, .. .. .	351 n. <sup>2</sup>
c. 39,	(Summary Jurisdiction (Married Woman) Act, 1895)—	
	s. 4, .. .. .	534
	s. 7, .. .. .	533 n. <sup>1</sup>
59 & 60 Vict. c. 15,	(Diseases of Animals Act, 1896)—	
	s. 1 (1), .. .. .	367
	s. 3, .. .. .	364, 364 n. <sup>1</sup>

59 & 60 Vict. c. 19,	(Public Health Act, 1896)—	PAGE
	s. 1 (3), .. .. .	728
	s. 4, .. .. .	698 n. <sup>1</sup>
	s. 26, .. .. .	702 n. <sup>1</sup>
	s. 27, .. .. .	699 n. <sup>2</sup>
c. 25,	(Friendly Societies Act, 1896)—	
	ss. 24, 25, 26, 27, 39, 40, .. ..	480 n. <sup>1</sup>
	s. 62, .. .. .	814
	s. 63, .. .. .	480 n. <sup>1</sup> , 814
	ss. 64, 67, .. .. .	814
	s. 68, .. .. .	161, 162
	s. 84, .. .. .	480, 814
	ss. 85, 86, .. .. .	480
	s. 89, .. .. .	481, 814
	s. 91, .. .. .	814
	s. 92, .. .. .	162, 481
	s. 93, .. .. .	163, 481
	s. 94, .. .. .	50, 162
	s. 94 (6), .. .. .	481
	s. 100, .. .. .	163
c. 26,	(Collecting Societies and Industrial Assurance Companies Act, 1896)—	
	s. 7, .. .. .	164
	s. 16, .. .. .	49
c. 36,	(Locomotives on Highways Act, 1896)—	
	s. 1, .. .. .	628, 629, 629 n. <sup>1</sup> , 630, 645 n. <sup>1</sup>
	s. 2, .. .. .	633, 642
	s. 3, .. .. .	633, 643
	s. 5, .. .. .	640
	s. 6, .. .. .	629, 635, 638, 639
	s. 7, .. .. .	637, 645
	s. 11, .. .. .	635 n. <sup>2</sup>
c. 43,	(Coal Mines Regulation Act, 1896), s. 6,	.. .. 626
c. 44,	(Truck Act, 1896)—	
	ss. 1, 2, .. .. .	820 n. <sup>1</sup> , 822
	s. 3, .. .. .	820 n. <sup>1</sup> , 823
	s. 4, .. .. .	823
	s. 6, .. .. .	824
	s. 12, .. .. .	818, 933
c. 52,	(Larceny Act, 1896)—	
	s. 1, .. .. .	17, 528, 927
	s. 4, .. .. .	927, 928
c. 53,	(Labourers (Ir.) Act, 1896)—	
	s. 3, .. .. .	176 n. <sup>1</sup>
	s. 5, .. .. .	179, 189
c. 54,	(Public Health (Ir.) Act, 1896), s. 8,	.. .. 176 n. <sup>1</sup> , 921
c. 56,	(Wild Birds Protection Act, 1896), s. 7,	.. .. 850
60 & 61 Vict. c. 30,	(Police (Property) Act, 1897),	.. .. 1094
	s. 1, .. .. .	146, 326, 790
c. 43,	(Military Manœuvres Act, 1897)—	
	s. 3, .. .. .	378
	s. 7 (1) (2), .. .. .	379
c. 46,	(Weights and Measures Act, 1897), s. 1,	835 nn. <sup>1 2</sup> ; 836 n. <sup>1</sup>
c. 52,	(Dangerous Performances Act, 1897), ss. 1, 2,	.. .. 397
c. 60,	(Chaff Cutting Machines (Accidents) Act, 1897),	.. .. 1095
	s. 5, .. .. .	261
61 & 62 Vict. c. 10,	(Finance Act, 1898), s. 4, .. ..	547
c. 17,	(Solicitors (Ir.) Act, 1898), ss. 51, 52,	.. .. 799
c. 28,	(Mussels, Periwinkles, and Cockles (Ir.) Act, 1898)—	
	s. 1, .. .. .	437
	s. 2, .. .. .	455
	s. 8, .. .. .	414
	s. 12, .. .. .	414
c. 30,	(Pauper Children (Ir.) Act, 1898), s. 1 (4),	.. .. 652, 677, 678
c. 36,	(Criminal Evidence Act, 1898)—	
	s. 1, .. .. .	260 n. <sup>5</sup> , 261
	ss. 1-4, .. .. .	639 n. <sup>1</sup>
c. 37,	(Local Government (Ir.) Act, 1898)—	
	s. 3 (4), .. .. .	2
	s. 4, .. .. .	153 n. <sup>1</sup> , 600 n. <sup>4</sup> , 700 n. <sup>3</sup>
	s. 6, .. .. .	369, 417 n. <sup>1</sup>
	s. 6 (c) .. .. .	435, 435 n. <sup>3</sup>

TABLE OF STATUTES.

		PAGE
61 & 62 Vict. c. 37,	(Local Government (Ir.), Act. 1898)—	
	s. 9, .. .. .	597
	s. 10, .. .. .	176 n. <sup>1</sup>
	s. 10 (1) (2), .. .. .	921
	s. 12, .. .. .	169
	s. 14, .. .. .	153
	s. 16, .. .. .	279, 340
	s. 17, .. .. .	6
	s. 21, .. .. .	196 n. <sup>3</sup> , 201, 369, 854 n. <sup>1</sup>
	s. 22 (1), .. .. .	435
	s. 26, .. .. .	801
	s. 26 (1), .. .. .	75
	s. 26 (1) (2), .. .. .	2
	s. 26 (2), .. .. .	3
	s. 26 (3) (4) (5), .. .. .	2
	s. 27, .. .. .	176 n. <sup>1</sup>
	s. 28, .. .. .	730
	s. 40, .. .. .	6
	s. 49, .. .. .	355
	s. 52, 62, .. .. .	202
	s. 65, .. .. .	198, 200
	s. 66, .. .. .	202
	s. 67, .. .. .	654
	s. 69, .. .. .	8
	s. 72, .. .. .	174
	s. 74 (1), .. .. .	427
	s. 94 (3), .. .. .	596
	s. 95 (1) (2), .. .. .	2
	s. 96, .. .. .	678
	s. 102, .. .. .	278
	s. 104, .. .. .	888
	s. 116, .. .. .	203
	s. 173, .. .. .	6
c. 46,	(Revenue Act, 1898)—	
	s. 2, .. .. .	782
	s. 7 (5), .. .. .	80
	s. 15, .. .. .	546, 571
	s. 16, .. .. .	546
	s. 24, .. .. .	572 n. <sup>2</sup>
c. 53,	(Libraries Offences Act, 1898), s. 2,	593
c. 60,	(Inebriates Act, 1898)—	
	s. 1, .. .. .	516
	s. 2, .. .. .	516, 517, 518
	ss. 2 (1) (2), .. .. .	518 n. <sup>1</sup>
	s. 4, .. .. .	515, 520
	s. 5 (1), .. .. .	515
	s. 6, .. .. .	515, 520
	ss. 7, 9, .. .. .	515
	s. 12, .. .. .	520
	s. 13, .. .. .	514
	s. 16, .. .. .	515
	s. 18, .. .. .	517, 520
	s. 26 (a), .. .. .	518 n. <sup>1</sup>
	s. 26 (b), .. .. .	515, 520
	s. 26 (c), .. .. .	514, 515
	s. 26 (e), .. .. .	514
	s. 30, .. .. .	514, 520
62 & 63 Vict. c. 11,	(Fine or Imprisonment (Scot. and Ir.) Act, 1899), s. 11,	67
c. 19,	(Electric Lighting Clauses Act, 1899), s. 57, ..	165
c. 21,	(Seats for Shop Assistants Act, 1899), ss. 1, 2,	784
c. 35,	(Inebriates Act, 1899)—	
	s. 1, .. .. .	517
	s. 2, .. .. .	520
	s. 3, .. .. .	514
c. 50,	(Agricultural and Technical Instruction (Ir.) Act, 1899)—	
	s. 2, .. .. .	411 n. <sup>1</sup>
	s. 2 (1), .. .. .	364 n. <sup>2</sup>
	s. 2 (1) (d), .. .. .	848
	s. 2 (1) (i), .. .. .	414
	s. 2 (11), .. .. .	453
	s. 21, .. .. .	277, 337
	s. 21 (1), .. .. .	442
	s. 22, .. .. .	277

## TABLE OF STATUTES.

liii

62 & 63 Vict. c. 51,	(Sale of Food and Drugs Act, 1899)—	PAGE
	s. 1, .. .. .	474, 475
	s. 1 (1), .. .. .	475 n. <sup>3</sup>
	s. 1 (2), .. .. .	474 n. <sup>3</sup> , 475
	s. 2, .. .. .	45, 478
	s. 3, .. .. .	478
	s. 4, .. .. .	458, 471 n. <sup>3</sup> , 478
	s. 5, 471 n. <sup>1</sup> , 472, 473 n. <sup>3</sup> , 473 n. <sup>4</sup> , 474 n. <sup>1</sup> , 474 n. <sup>2</sup>	
	s. 6, .. .. .	471, 472, 473 n. <sup>5</sup>
	s. 6 (1), .. .. .	472
	s. 7, .. .. .	473, 477
	s. 7 (4), .. .. .	473
	s. 8, .. .. .	473
	s. 9, .. .. .	468
	ss. 10, 11, .. .. .	474
	s. 12, .. .. .	461
	s. 14, .. .. .	468
	s. 16, .. .. .	463, 468, 478
	s. 17, .. .. .	457 n. <sup>2</sup> , 460, 466, 469, 471 n. <sup>2</sup> , 473 n. <sup>1</sup> , 474 n. <sup>4</sup> , 477 n. <sup>2</sup> , 478
	s. 18, .. .. .	463
	s. 19, .. .. .	95, 466 n. <sup>3</sup> , 468, 469
	s. 20, .. .. .	464, 466, 471
	s. 20 (6), .. .. .	466
	ss. 21, 22, .. .. .	470
	s. 24, .. .. .	458, 472 n. <sup>1</sup> , 475 n. <sup>1</sup> , 476, 476 n. <sup>4</sup> , 477 n. <sup>1</sup> , 478 n. <sup>1</sup>
	s. 25, .. .. .	471
	s. 26, .. .. .	457 n. <sup>1</sup>
63 & 64 Vict. c. 24,	(Veterinary Surgeons Amendment Act, 1900)—	
	s. 1, .. .. .	832
	s. 2, .. .. .	832 n. <sup>3</sup>
c. 25,	(Charitable Loan Societies (Ir.) Act, 1900), ..	1095
	s. 1, .. .. .	395 n. <sup>1</sup>
	ss. 2, 3, .. .. .	161
	s. 5, .. .. .	395
c. 30,	(Beer Retailer and Spirit Grocers' Retail Licences (Ir.) Act, 1900)—	
	s. 1, .. .. .	123, 124
	s. 2, .. .. .	122, 124
c. 33,	(Wild Animals in Captivity Protection Act, 1900)—	
	s. 1, .. .. .	362
	s. 2, .. .. .	362
	ss. 3, 4, .. .. .	362
c. 35,	(Oil in Tobacco Act, 1900), s. 1, ..	799
c. 51,	(Moneylenders Act, 1900)—	
	s. 2, .. .. .	627
	s. 3 (1), .. .. .	626 n. <sup>2</sup>
	s. 3 (2), .. .. .	626 n. <sup>3</sup>
	s. 4, .. .. .	627, 896
	s. 5, .. .. .	405
	s. 6, .. .. .	627
c. cclxiv,	(Dublin Corporation Act, 1900), s. 60, ..	199
1 Ed. 7, c. 5,	(Demise of the Crown Act, 1901), ..	7
c. 10,	(Larceny Act, 1901), ss. 1, 2, ..	909
c. 17,	(Lunacy (Ir.) Act, 1901)—	
	s. 2, .. .. .	601 n. <sup>1</sup> , 897, 911
	s. 3, .. .. .	181
c. 22,	(Factory and Workshop Act, 1901), ..	1097
	ss. 68, 69, .. .. .	429 n. <sup>3</sup>
	ss. 97-102, .. .. .	384
	s. 117, .. .. .	847
	s. 139, .. .. .	922 n. <sup>1</sup>
	ss. 143-146, .. .. .	784
	s. 144, .. .. .	222
	ss. 147, 160, .. .. .	784
	s. 161, .. .. .	429
c. 27,	(Intoxicating Liquors (Sale to Children) Act, 1901)—	
	s. 1, .. .. .	541
	s. 2, .. .. .	295, 540
	s. 3, .. .. .	540
	s. 4, .. .. .	578, 585

1 Ed. 7, c. 27,	(Intoxicating Liquors (Sale to Children) Act, 1901)—	PAGE
	s. 5, .. .. .	540
c. 38,	(Fisheries (Ir.) Act, 1901)—	
	s. 1, .. .. .	454
	s. 1 (4), .. .. .	439
	s. 1 (5), .. .. .	438
2 Ed. 7, c. 6,	(Wild Birds' Protection Act, 1902), s. 2,	850
c. 15,	(Musical (Summary Proceedings) Copyright Act, 1902)—	
	ss. 1-3, .. .. .	412, 412 n. <sup>1</sup>
c. 18,	(Licensing (Ir.) Act, 1902),	1157
	s. 2, .. .. .	113, 225
	s. 3, .. .. .	113
	s. 4, .. .. .	113, 554
	ss. 5, 6, .. .. .	113
c. 20,	(Public Libraries (Ir.) Act, 1902)—	
	s. 7, .. .. .	593
	s. 8, .. .. .	593
c. 21,	(Shop Clubs Act, 1902),	1158
3 Ed. 7, c. 25,	(Licensing Act (Scot.), 1903)—	
	s. 59, .. .. .	541
	s. 60, .. .. .	562 n. <sup>2</sup>
	s. 98, .. .. .	554
c. 36,	(Motor Car Act, 1903)—	
	s. 1, .. .. .	86, 104, 630, 631
	s. 2, .. .. .	634
	s. 2 (4), .. .. .	644
	s. 3, .. .. .	290, 634
	s. 3 (5), .. .. .	634
	s. 4, .. .. .	632, 634, 637, 638
	s. 4 (1 a), .. .. .	638
	s. 4, (1), (c), .. .. .	630
	s. 4, (4), .. .. .	638
	s. 4, (5), .. .. .	634
	s. 5, .. .. .	635, 640
	s. 6, .. .. .	635
	s. 7, .. .. .	629, 633 n. <sup>2</sup> , 636, 638, 639
	s. 8, .. .. .	629, 636
	s. 9, .. .. .	629, 632, 638
	s. 9 (2), .. .. .	633
	s. 10, .. .. .	636
	s. 11, .. .. .	630, 633 n. <sup>1</sup> , 637
	s. 11 (1), .. .. .	637
	s. 12, .. .. .	629, 629 n. <sup>1</sup> , 637
	s. 19, .. .. .	53, 261, 262 n. <sup>1</sup> , 638, 639
	s. 19 (3), .. .. .	630, 638, 639
	s. 20 (1), .. .. .	637
	s. 20 (3), .. .. .	639
c. 37,	(Irish Land Act, 1903), s. 14,	355
c. 39,	(Housing of the Working Classes Act, 1903), s. 9,	721
c. 43,	(Diseases of Animals Act, 1903)—	
	ss. 1, 4, .. .. .	364 n. <sup>6</sup>
	s. 5, .. .. .	364, 364 n. <sup>1</sup>
	ss. 10, 21, 23, 25, 30, 68,	364 n. <sup>6</sup>
c. 44,	(General Dealers (Ir.) Act, 1903)—	
	s. 1, .. .. .	312, 509
	ss. 2-4, .. .. .	510
	ss. 5, 6, .. .. .	511
	s. 7, .. .. .	511, 928
	ss. 8-10, .. .. .	511
	s. 11, .. .. .	509
	s. 12, .. .. .	312, 508, 509, 510
c. 45,	(Employment of Children Act, 1903)—	
	ss. 1, 2, 3, .. .. .	398
	s. 4, .. .. .	398 n. <sup>2</sup>
	s. 5, .. .. .	399
	s. 6, .. .. .	400
	s. 7, .. .. .	400
	s. 8, .. .. .	400
	s. 9, .. .. .	398 n. <sup>2</sup> , 399 n. <sup>1</sup>
	s. 10, .. .. .	400
	s. 13, .. .. .	398 n. <sup>3</sup> 4 <sup>2</sup> , 399 n. <sup>1</sup> 2
	s. 16, .. .. .	398 n. <sup>1</sup> , 400



3 Ed. 7, c. 45,	(Employment of Children Act, 1903)—	PAGE
	s. 22, .. .. .	401 n. <sup>3</sup>
	s. 29, 31, .. .. .	401 n. <sup>2</sup>
4 Ed. 7, c. 4,	(Wild Birds' Protection Act, 1904)—	
	s. 1, .. .. .	856
	s. 3, .. .. .	850
c. 6,	(Hall Marking of Foreign Plate Act, 1904) s. 1 (1),	513
c. 9,	(Registration of Clubs (Ir.) Act, 1904),	1160
	s. 1, .. .. .	128, 333
	ss. 2, 3, .. .. .	127
	s. 4, .. .. .	127, 128
	s. 4 (h), .. .. .	543
	s. 5, .. .. .	127
	s. 6, .. .. .	128, 145
	s. 7, .. .. .	128
	s. 8, .. .. .	128, 543
	s. 9, .. .. .	128
	s. 11, .. .. .	127, 128
	s. 12, .. .. .	128
	s. 13, .. .. .	127
c. 15,	(Prevention of Cruelty to Children Act, 1904)—	
	s. 2, .. .. .	401, 542
	s. 3, .. .. .	402
	s. 4, .. .. .	402
	ss. 7, 8, .. .. .	399 n. <sup>3</sup>
	s. 12, .. .. .	402
	s. 15, .. .. .	260, 402
	s. 17, .. .. .	400, 402
	s. 18, .. .. .	402
	s. 19, .. .. .	311 n. <sup>1</sup> , 402
	s. 23 (1), .. .. .	401 n. <sup>1</sup>
	s. 24, .. .. .	403
	s. 27, .. .. .	898, 899
c. 24,	(Wireless Telegraphy Act, 1904)—	
	s. 1, .. .. .	162 n. <sup>2</sup> , 797
	s. 3, .. .. .	797
c. 28,	(Weights and Measures Act, 1904)—	
	s. 5, .. .. .	842 n. <sup>3</sup> , 842 n. <sup>4</sup>
	s. 6, .. .. .	842 n. <sup>4</sup>
	s. 8 (3), .. .. .	843
	s. 10, .. .. .	841
	s. 13, .. .. .	839, 842 n. <sup>2</sup> , 847, 847 n. <sup>1</sup>
	s. 14, .. .. .	847
	s. 16, .. .. .	840 n. <sup>2</sup>
c. 31,	(Shop Hours Act, 1904),—	
	s. 1, .. .. .	784
	s. 2, .. .. .	785
	s. 3, 4, .. .. .	785
	s. 5, .. .. .	785
	s. 6-8 (1) (2) (3), .. .. .	785
5 Ed. 7, c. 11,	(Railway Fires Act, 1905), s. 2,	185
c. 13,	(Aliens Act, 1905),—	
	s. 3, .. .. .	355
	s. 3 (1), .. .. .	869
	s. 7, .. .. .	355
	s. 7 (2), .. .. .	16 n. <sup>2</sup>
	s. 8, .. .. .	354
	s. 9, .. .. .	355
c. 15,	(Trade Marks Act, 1905)—	
	ss. 40, 50, .. .. .	623
	s. 62, .. .. .	624
	s. 66, .. .. .	623, 932
	s. 67, .. .. .	623
6 Ed. 7, c. 5,	(Seamen's & Sailors' False Characters Act, 1906)—	
	ss. 1, 2, .. .. .	376
	s. 3, .. .. .	648 n. <sup>2</sup>
c. 15,	(Extradition Act, 1906), ss. 1, 2, .. .. .	301
c. 20,	(Revenue Act, 1906), s. 5, .. .. .	81
c. 21,	(Ground Game (Amendment) Act, 1906), s. 2,	494
c. 23,	(Charitable Loan Societies (Ir.) Act, 1906),	1166
	s. 4, .. .. .	161
	s. 8, .. .. .	395 n. <sup>1</sup>

			PAGE
6 Ed. 7, c. 27,	(Fertilizers & Feeding Stuffs Act, 1906),	..	1167
	ss. 3, 8, .. .. .	..	279
	s. 12, .. .. .	..	353
c. 32,	(Dogs Act, 1906)—		
	s. 1, .. .. .	..	167, 423
	s. 2 (4), .. .. .	..	421
	s. 3, .. .. .	..	422
	s. 4, .. .. .	..	423
	ss. 6, 7, .. .. .	..	423
	s. 9, .. .. .	..	422, 423
	s. 22, .. .. .	..	423
c. 34,	(Prevention of Corruption Act, 1906)—		
	s. 1, .. .. .	389, 878, 878 n. <sup>2</sup>	
	s. 2, .. .. .	28, 389, 878 n. <sup>2</sup>	
c. 36,	(Musical Copyright Act, 1906)—		
	s. 1, .. .. .	..	412, 413
	s. 2, .. .. .	..	146, 412, 413
	s. 3, .. .. .	..	411 n. <sup>5</sup>
c. 37,	(Labourers (Ir.) Act, 1906), s. 11, ..	..	176 n. <sup>1</sup>
c. 39,	(Intoxicating Liquors (Ir.) Act, 1906)—		
	ss. 1, 2, .. .. .	..	556
	s. 3, .. .. .	..	560 n. <sup>1</sup>
c. 43,	(Street Betting Act, 1906)—		
	s. 1, .. .. .	..	92
	s. 1 (1), .. .. .	..	504, 505
	s. 1 (1c), .. .. .	..	877
	s. 1 (2), .. .. .	..	504
	s. 1 (3), .. .. .	..	504, 877 n. <sup>1</sup>
	s. 1 (4), 2, .. .. .	..	504
	s. 4, .. .. .	..	505
c. 47,	(Trade Disputes Act, 1906)—		
	s. 1, .. .. .	610 n. <sup>4</sup> , 884	
	s. 2, .. .. .	..	611, 612
	s. 5, .. .. .	610 n. <sup>3</sup> , 811, 884	
	s. 5 (3), .. .. .	..	610 n. <sup>2</sup> , 612 n. <sup>1</sup>
c. 48,	(Merchant Shipping Act, 1906)—		
	ss. 3, 6, 10, 11, .. .. .	..	781
	ss. 30, 36, 43, .. .. .	..	915
	s. 53, .. .. .	..	780
	s. 65, .. .. .	..	781
	s. 86, .. .. .	..	780
c. 49,	(Census of Production Act, 1906)—		
	s. 6, .. .. .	..	394, 880
	s. 12, .. .. .	..	394
c. 53,	(Notice of Accidents Act, 1906), ss. 1-6, ..	..	351
c. 58,	(Workmen's Compensation Act, 1906), s. 12, ..	..	351
7 Ed. 7. c. 4,	(Destructive Insects and Pests Act, 1907)—		
	s. 1, .. .. .	..	337, 417
	s. 2, .. .. .	..	417
c. 5,	(Injured Animals Act, 1907)—		
	s. 1, .. .. .	..	363
	s. 2, .. .. .	..	363
c. 8,	(Assay of Imported Watch-cases (Existing Stocks Exemption) Act, 1907), ss. 1 (1) (2), ..	..	513
c. 13,	(Finance Act, 1907), s. 5, .. .. .	..	513
c. 16,	(Evidence (Colonial Statutes) Act, 1907), ..	..	303 n. <sup>2</sup>
c. 17,	(Probation of Offenders Act, 1907), ..	..	1172
	s. 1, .. .. .	59, 60, 426, 867	
	s. 2, .. .. .	..	426, 867
	s. 6 (5), .. .. .	..	10
c. 21,	(Butter and Margarine Act, 1907)—		
	s. 1 (1), .. .. .	..	473
	s. 1 (2), (3), .. .. .	..	477
	s. 1 (b), .. .. .	..	471
	ss. 2, 3, .. .. .	..	478
	s. 4, .. .. .	..	476, 458
	s. 5, .. .. .	474, 474 n. <sup>4</sup> , 475	
	s. 5 (1) (2), .. .. .	..	475
	s. 6, .. .. .	..	458, 478
	s. 7, .. .. .	..	476
	s. 8, .. .. .	..	472
	s. 9, .. .. .	..	473, 477

7 Ed. 7, c. 21,	(Butter and Margarine Act, 1907)—	PAGE
	s. 11, .. .. .	456, 472, 476, 478
	s. 12, .. .. .	472 n. <sup>3</sup>
	s. 13, .. .. .	470, 476 n. <sup>3</sup>
	s. 14, .. .. .	472 n. <sup>1</sup> , 475 n. <sup>1</sup> , 476, 476 n. <sup>4</sup> , 477 n. <sup>1</sup>
c. 22,	(Petty Sessions Clerks (Ir.) Amendment Act, 1907),	1175
c. 24,	(Limited Partnerships Act, 1907), s. 12,	920
c. 27,	(Advertisements Regulation Act, 1907)—	
	ss. 1-3, 7, 9, 10, .. .. .	353
c. 29,	(Patents and Designs Act, 1907)—	
	s. 84 (1), .. .. .	651
	s. 84 (4), .. .. .	651 n. <sup>2</sup>
	s. 89 (2), .. .. .	651
	s. 89 (3), .. .. .	651 n. <sup>4</sup>
	s. 89 (4) (5), .. .. .	651
	s. 90 (1) (3), .. .. .	652 n. <sup>1</sup>
	s. 90 (2), .. .. .	652
	s. 93, .. .. .	652
c. 39,	(Factory and Workshop Act, 1907),	1175
c. 45,	(Lights on Vehicles Act, 1907),	1178
c. 52,	(Merchant Shipping Act, 1907)—	
	s. 3, .. .. .	781
	ss. 4, 10, 10 (3), 14, 15, 18, 20 (4), 21, 47, 48,	780
c. 53,	(Public Health Acts Amendment Act, 1907)—	
	ss. 1-5, .. .. .	742
	s. 6, .. .. .	742
	s. 7, .. .. .	743
	s. 8, .. .. .	742, 743
	s. 9, .. .. .	742, 760, 761, 763
	ss. 10-13, .. .. .	742
	s. 14, .. .. .	722 n. <sup>2</sup> , 742
	s. 15, .. .. .	722 n. <sup>2</sup> , 743
	s. 16, .. .. .	743
	ss. 17-19, .. .. .	744
	s. 20, .. .. .	745
	s. 21, .. .. .	745, 802
	ss. 22, 23, 25, .. .. .	745
	s. 26, .. .. .	746
	ss. 27-30, .. .. .	747
	ss. 31-37, .. .. .	748
	s. 38, .. .. .	749
	ss. 39-42, .. .. .	750
	s. 43, .. .. .	751
	s. 44, .. .. .	751, 798
	s. 45, .. .. .	751
	ss. 46-49, .. .. .	752
	s. 51, .. .. .	722 n. <sup>1</sup> , 752
	ss. 52-55, .. .. .	753
	ss. 56-59, .. .. .	754
	ss. 61-65, .. .. .	755
	ss. 66-68, .. .. .	756
	ss. 69-75, .. .. .	757
	s. 76, .. .. .	758
	ss. 78-80, .. .. .	759
	s. 81, .. .. .	760, 806
	ss. 82-84, .. .. .	760
	s. 82, .. .. .	522
	s. 85, .. .. .	761
	s. 86, .. .. .	607, 761
	s. 87, .. .. .	761
	ss. 88, 89, .. .. .	762
	s. 91, .. .. .	763
	s. 92, .. .. .	385, 763
	s. 93, .. .. .	763
	ss. 94, 95, .. .. .	764
8 Ed. 7, c. 16,	(Finance Act, 1908), s. 3, .. .. .	799
c. 19,	(Seed Potatoes and Seed Oats (Ir.) Act, 1908), s. 2,	167
c. 24,	(Summary Jurisdiction (Ir.) Act, 1908),	1180
	s. 1, .. .. .	514 n. <sup>1</sup> , 521
	s. 2, .. .. .	514 n. <sup>1</sup>
	s. 4, .. .. .	661
	s. 7, .. .. .	426

8 Ed. 7, c. 24,	(Summary Jurisdiction (Ir.) Act, 1908)—	PAGE
	s. 8, .. .. .	426, <b>565</b>
	s. 9, .. .. .	148, 426, 514 n. <sup>1</sup> , 517, 543, 550
	s. 10, .. .. .	.. <b>556</b>
	s. 12, .. .. .	.. 261, 578
c. 31,	(Whale Fisheries (Ir.) Act, 1908), .. .. .	.. <b>1181</b>
c. 32,	(Friendly Societies (Ir.) Act, 1908)—	
	s. 6, .. .. .	161, 162
	s. 9, .. .. .	.. 479 n. <sup>2</sup>
	s. 11, .. .. .	.. 163, <b>481</b>
	s. 87, .. .. .	.. <b>479</b>
	ss. 88, 90, .. .. .	.. <b>480</b>
c. 34,	(Bee Pest Prevention (Ir.) Act, 1908, and Rules), .. .. .	.. <b>1184</b>
	s. 8, .. .. .	.. 337
c. 37,	(Coroners (Ir.) Act, 1908), s. 1, .. .. .	.. 153
c. 40,	(Old Age Pensions Act, 1908)—	
	ss. 3, 9 (1), .. .. .	.. <b>651</b>
c. 42,	(White Phosphorus Matches Prohibition Act, 1908), .. .. .	.. <b>1190</b>
c. 45,	(Punishment of Incest Act, 1908)—	
	ss. 1, 2, .. .. .	.. 905
	s. 4, .. .. .	.. 8
	s. 4 (2), .. .. .	.. 10
c. 48,	(Post Office Act, 1908),—	
	ss. 6, 27, 28, 30, 32, 34, .. .. .	.. 679
	s. 34(2), .. .. .	.. 679 n. <sup>2</sup>
	s. 35, .. .. .	.. 681 n. <sup>1</sup>
	s. 36, .. .. .	.. 277
	s. 44, .. .. .	.. 679
	ss. 50–56, .. .. .	.. 924
	s. 57, .. .. .	.. <b>679</b>
	s. 58, .. .. .	.. 924
	s. 59 (1), .. .. .	.. 908 n. <sup>3</sup> , 924
	ss. 59 (2), 60, .. .. .	.. 924
	s. 61, .. .. .	.. 679, 924
	s. 62, .. .. .	.. 680
	s. 63, .. .. .	.. <b>680</b> , 686 n. <sup>1</sup> , 887, 925
	s. 64, .. .. .	.. <b>680</b>
	s. 65, .. .. .	.. 680
	ss. 66, 67, .. .. .	.. <b>681</b>
	s. 68, .. .. .	.. 681
	s. 69, .. .. .	.. 925
	s. 71, .. .. .	.. 681
	s. 71 (3), .. .. .	.. 680 n. <sup>1</sup> , 681
	s. 72, .. .. .	.. 682
	s. 74, .. .. .	.. 679 n. <sup>1</sup> , 682, 789 n. <sup>1</sup>
	s. 79, .. .. .	.. 681
	s. 89, .. .. .	.. 679 n. <sup>1</sup> , 797, 924 n. <sup>2</sup>
	s. 92, .. .. .	.. 789 n. <sup>1</sup>
c. 55,	(Poisons and Pharmacy Act, 1908)—	
	s. 2 (1), .. .. .	.. <b>675</b>
	s. 2 (4), .. .. .	.. 674 n. <sup>3</sup>
	s. 5, .. .. .	.. <b>675</b> , 676
	s. 5 (2), .. .. .	.. <b>675</b>
	s. 6 (c), .. .. .	.. 675 n. <sup>3</sup>
c. 56,	(Tuberculosis Prevention (Ir.) Act, 1908)—	
	s. 1, .. .. .	.. <b>825</b>
	s. 3, .. .. .	.. 825 n. <sup>1</sup>
	ss. 16, 18, 21, .. .. .	.. 825
c. 59,	(Prevention of Crime Act, 1908)—	
	s. 1, .. .. .	.. 869
	s. 2, .. .. .	.. 688, <b>689</b>
	s. 5, .. .. .	.. 688
	ss. 10, 12, 13, .. .. .	.. 903
	s. 14 (7), .. .. .	.. 861 n. <sup>1</sup>
	s. 15, .. .. .	.. 688
	s. 18 (a), .. .. .	.. 869, 903
	s. 18 (f), .. .. .	.. 11
c. 61,	(Housing of the Working Classes (Ir.) Act, 1908)—	
	s. 9, .. .. .	.. 720, 721
c. 66,	(Public Meeting Act, 1908), s. 1, .. .. .	.. 767
c. 67,	(Children Act, 1908), .. .. .	.. <b>1191</b>
	s. 1, .. .. .	.. 689

8 Ed. 7, c. 67,

(Children Act, 1908)—

	PAGE
ss. 1-11, ..	405
s. 2, ..	688 n. <sup>2</sup>
ss. 3, 4 (1), 5 (1), ..	689
s. 5 (4), ..	689
s. 5 (5), ..	689, 690 n. <sup>1</sup>
ss. 5 (7), 10, ..	689
s. 12, ..	380 n. <sup>2</sup> 689, 880
s. 12-38, ..	406
s. 13, ..	880
s. 14, ..	385, 528, 689
s. 15 (3) (4), ..	690
s. 16, ..	580
s. 17, ..	899, 899 n. <sup>5</sup>
s. 18, ..	689
ss. 19-21, ..	397
ss. 22, 23, ..	399 n. <sup>3</sup>
s. 24, ..	145, 397
s. 26, ..	397, 514, 519
s. 29, ..	288, 899
s. 30, ..	259, 260, 287 n. <sup>5</sup> , 899
s. 32, ..	268, 397
s. 35, ..	28, 880 n. <sup>3</sup>
s. 38, ..	401 n. <sup>1</sup>
ss. 39-56, ..	406
s. 57, ..	406, 536, 688 n. <sup>2</sup>
s. 57 (1), ..	406, 536, 688 n. <sup>2</sup> , 867
s. 58, ..	385, 536, 406, 688 n. <sup>2</sup> , 867
s. 59, ..	406, 536, 688 n. <sup>2</sup>
s. 60, ..	406, 536, 688 n. <sup>2</sup> , 867
ss. 61-64, ..	406, 536, 688 n. <sup>2</sup>
s. 65, ..	406, 536, 688 n. <sup>2</sup> , 867
ss. 66-68, ..	406, 536, 688 n. <sup>2</sup>
s. 68 (2), ..	406, 536, 688 n. <sup>2</sup> , 867
ss. 69, 70, ..	406, 536, 688 n. <sup>2</sup>
ss. 71 (1), (2)-93, ..	406, 688 n. <sup>2</sup>
ss. 94-98, ..	406, 688 n. <sup>2</sup>
s. 99, ..	60, 406, 688 n. <sup>2</sup> , 868
s. 100, ..	406, 691 n. <sup>3</sup> , 688 n. <sup>2</sup>
s. 101, ..	406, 688 n. <sup>2</sup>
s. 102 (1) (2) (3), ..	406, 688 n. <sup>2</sup> , 866
s. 103, ..	406, 688 n. <sup>2</sup> , 866, 867
s. 104, ..	406, 688 n. <sup>2</sup> , 868
s. 105, ..	406, 688 n. <sup>2</sup>
s. 106, ..	406, 688 n. <sup>2</sup> , 868
s. 107, ..	74, 406, 688 n. <sup>2</sup> , 867
s. 108, ..	406, 688 n. <sup>2</sup> , 866
ss. 109, 110, ..	406, 688 n. <sup>2</sup>
s. 111, ..	74, 406, 688 n. <sup>2</sup>
s. 113, ..	406, 688 n. <sup>2</sup>
ss. 114, 115, ..	56, 406
s. 116, ..	406, 511 n. <sup>1</sup>
s. 117, ..	406
s. 118, ..	406, 831
s. 119, ..	406
s. 120, ..	400 n. <sup>2</sup> , 406, 541, 542, 578, 585
s. 120-123, ..	406
s. 123 (2), ..	406, 541 n. <sup>1</sup>
s. 123 (4), ..	406, 661
s. 124, ..	280, 406
s. 125, ..	403, 406
s. 126, 127, ..	406
s. 128, ..	74 n. <sup>1</sup> , 406
s. 129, 130, ..	406
s. 131, ..	56, 287 n. <sup>4</sup> , 400 n. <sup>2</sup> , 406, 541 n. <sup>1</sup> , 688 n. <sup>2</sup> , 866, 899
s. 132, ..	406
s. 133, ..	74 n. <sup>1</sup> , 261, 287 n. <sup>5</sup> , 406
s. 133 (12), ..	406, 661
s. 133 (28), ..	406, 542, 578
s. 133 (29), ..	406, 542, 585
s. 134, ..	74 n. <sup>1</sup> , 406, 898 n. <sup>5</sup>



8 Ed. 7, c. 69,	(Companies Consolidation Act, 1908)—	PAGE
	ss. 18, 25, 26, .. .. .	408
	s. 30, .. .. .	409
	s. 38 (1) .. .. .	922
	ss. 41, 44, 52, .. .. .	409
	s. 54, .. .. .	883
	ss. 60-64, 70, 72, 73, 75, 80, 87, 88, 92, 94, 95, 99, 100, .. .. .	409
	ss. 101, 102, 108-110, 113, .. .. .	410
	s. 116, .. .. .	48, 309
	ss. 147, 172, 187, 195, .. .. .	410
	s. 216, .. .. .	871
	s. 218, .. .. .	921
	s. 223, .. .. .	410
	s. 243, .. .. .	280
	ss. 274, 276, .. .. .	410
	s. 281, .. .. .	410, 883
	s. 282, .. .. .	410
9 Ed. 7, c. 7,	(Labour Exchanges Act, 1909), s. 3, .. .. .	614
c. 8,	(Trawling in Prohibited Areas Prevention Act, 1909)—	
	ss. 1, 2, 5 (2), 6, .. .. .	454
c. 12,	(Marine Insurance (Gambling Policies) Act, 1909),	1267
c. 21,	(Irish Handloom Weavers Act, 1909),	
	s. 1, .. .. .	623
	ss. 2, 3, .. .. .	624
c. 22,	(Trade Boards Act, 1909), .. .. .	1268
c. 30,	(Cinematograph Act, 1909), .. .. .	1273
	s. 9, .. .. .	129
c. 31,	(Weeds and Agricultural Seeds (Ir.) Act, 1909),	1275
c. 39,	(Oaths Act, 1909), s. 3, .. .. .	259
c. 42,	(Irish Land Act, 1909), s. 32, .. .. .	799
c. 49,	(Assurance Companies Act, 1909)—	
	ss. 1, 4, 7, 8, .. .. .	410
	s. 21, .. .. .	280
	s. 23, .. .. .	410
	ss. 24, 25, .. .. .	410, 874
c. lxi,	(Alliance and Dublin Gas Act, 1909), s. 36, .. .. .	508
10 Ed. 7, c. 6,	(Army (Annual) Act, 1910), s. 2 (2), .. .. .	373
c. 8,	(Finance (1909-10) Act, 1910)—	
	s. 4 (2), .. .. .	436
	s. 26, .. .. .	194 n. <sup>1</sup>
	s. 44 (1), .. .. .	569 n. <sup>2</sup>
	s. 44 (3), .. .. .	436, 576
	s. 48, .. .. .	128, 129
	s. 50, .. .. .	550, 568, 572 n. <sup>2</sup>
	s. 50 (4), .. .. .	543, 553
	s. 52, .. .. .	553 n. <sup>2</sup> , 566 n. <sup>1</sup>
	s. 86, .. .. .	640, 641
	s. 86 (3), .. .. .	641
	s. 86 (4), .. .. .	640 n. <sup>1</sup>
	s. 94, .. .. .	129 n. <sup>1</sup> , 436
	s. 122, First Schedule,	575
	Schedule 1 (F), .. .. .	552
	First Schedule, .. .. .	122, 124, 125
10 Ed. 7 & 1 Geo. 5,	(Census (Ir.) Act, 1910)—	
c. 11,	s. 1, .. .. .	393
	s. 7, .. .. .	112, 393
	s. 8, .. .. .	394
c. 25,	(Children Act (1908) Amendment Act, 1910), s. 1, .. .. .	899
c. 33,	(Hotels and Restaurants (Dublin) Act, 1910), ss. 2, 3, .. .. .	126

# TABLE OF CASES.

	PAGE		PAGE
<b>A.</b>		<i>Ex parte</i> Andrews, (1001) 65 J.P.	
Abrath <i>v.</i> N. E. Ry. Co., (1883) 11		490,	246
Q. B.D. 440,	326	Andrew Wilson, The, (1863) 32 L.J.	
Ackroyd <i>v.</i> Barrett, (1894) 11 T.L.R.		Adm. 104; 8 L.T. 177 ..	177
115,	873	Andrews <i>v.</i> Denton, (1897) 2 B.B.	
Acton L. B. <i>v.</i> Batten, (1884) 28		37, ..	571
C.D. 283, ..	696	Andrews <i>v.</i> Mitchell, (1905) A.C. 78,	162
Adair <i>v.</i> Martin, (1897) 3 I.W.L.R.		Anglo-American Oil Co. <i>v.</i> Manning,	
76, ..	526	(1908) 1 K.B. 536, ..	297, 838
Adams <i>v.</i> Masters, (1871) 24 L.T.		Annakin <i>v.</i> Smith, (1868) 32 J.P.	
502,	210	759, ..	89
Adams <i>v.</i> Batley, (1887) 18 Q.B.D.		Annette <i>v.</i> Osborne, (1840) 2 Jebb &	
625,	65, 66	Sym. 376; 2 L.R.I. 317; 1 Cr.	
Adcock <i>v.</i> Murrell, (1890) 54 J.P.		& Dix, C.C. 540, ..	147, 323
776,	357	Aplin <i>v.</i> Porritt, (1893) 2 Q.B. 57,	356
Addy <i>v.</i> Blake, (1887) 19 Q.B.D.		Apothecaries' Co. <i>v.</i> Greenough,	
478, ..	551	(1841) 1 Q.B. 800, ..	395
Aerated Bread Co. <i>v.</i> Gregg, (1873)		Apothecaries' Co. <i>v.</i> Jones, (1893)	
L.R. 8 Q.B. 355, ..	388	1 Q.B. 89, ..	106
Agnew <i>v.</i> Jobson, (1877) 13 Cox		Apothecaries' Co. <i>v.</i> Lotinga, (1843)	
625, ..	20	2 Moo. & R. 500, ..	395
Agriculture, Dept. of, and Marchbank		Apolebee <i>v.</i> Percy, (1874) L.R. 9	
<i>v.</i> Porter, (1910) 44 I.L.T.R. 13,	44, 45	C.P. 647, ..	167
Airton <i>v.</i> Scott, (1909) 25 T.L.R.		Archer <i>v.</i> James, (1862) 2 B. & S. 61,	820
250, ..	505	Archer <i>v.</i> Willingrice, (1802) 4 Esp.	
Allchorn <i>v.</i> Hopkins, (1905) 69 J.P.		186,	741
355 ..	541	Armstrong, <i>Re</i> , (1861) 14 I.C.L.R.	
Allardice <i>v.</i> Robertson, (1830) Dow		97, ..	26
and Cl. 495,	327	Armstrong <i>v.</i> Armstrong, (1834) 3	
Allen <i>v.</i> Baldock, (1867) 31 J.P. 311,	807	M. & K. 45,	656
Allen <i>v.</i> Lumb, (1893) 57 J.P. 377,	295	Armstrong <i>v.</i> Commissioners of	
	571	Valuation, (1905) 2 I.R. 448, ..	200
Allen <i>v.</i> Small, (1904) 2 I.R. 705, ..	356	Armstrong <i>v.</i> Donovan, (1902) 3	
Allen <i>v.</i> Tunbridge, (1871) L.R. 6		N.I.J.R. 15, ..	562
C.P. 481, ..	528	Armstrong <i>v.</i> Mitchell, (1903) 20	
Allinson <i>v.</i> General Council of Medi-		Cox 479, ..	358
cal Education, (1894) 1 Q.B. 750,		Arnold <i>v.</i> Morgan, (1911) 103 L.T.	
758, ..	215, 219	764, ..	<i>Add. et Cor.</i>
Allison <i>v.</i> Hayden, (1828) 4 Bing		Arnold <i>v.</i> Townsend, ..	240
624, ..	395	Ashdown <i>v.</i> Curtis, (1862) 6 L.T. 331,	240
Allport <i>v.</i> Nutt, (1845) 1 C.B. 974,	503	Asher <i>v.</i> Caleroft, (1887) 18 Q.B.D.	
Alton <i>v.</i> Parker, (1896) 30 I. L. T.		607,	419
and S.J. 87, ..	443	Ashford <i>v.</i> Dover Harbour Board,	
Alty <i>v.</i> Farrell, (1896) 1 Q.B. 636,	846	(1898) Times, April 2, ..	732
Anderson <i>v.</i> Mayor of Dublin, (1885)		Ashton, <i>Re</i> , (1845) 7 Q.B. 169, ..	37
15 L.R.I. 410, ..	802	Ashton <i>v.</i> L. & Y.R. Co., (1904) 2	
Anderson <i>v.</i> Hamlin, (1890) 25		K.B. 313, ..	769
Q.B.D. 224, ..	44	Aspinall <i>v.</i> Sutton, (1894) 2 Q.B.	
Anderson <i>v.</i> Reid, (1902) 86 L.T.		349,	240
713, ..	240	Asquith <i>v.</i> Griffin, (1884) 48 J.P.	
Anderson <i>v.</i> Vicary, (1899) 2 Q.B.		724, ..	491
436; (1900) 2 Q.B. 287, ..	493, 494	Athersmith <i>v.</i> Drury, (1852) 1 E. &	
		E. 46, ..	819

	PAGE		PAGE
Atkinson v. Carty, (1838) 1 J. & S.	37	Bagg v. Colquhoun, (1904) 1 K.B.	62
369,		554,	388
Atkinson v. Jameson, (1792) 5 T.R.	793	Bailey v. Barsby, (1909) 2 K.B.	1124
25,		Barker v. Carter, (1878) 3 Ex. D.	844, 846
Atkinson v. Sellers, (1858) 5 C.B.N.S.	560	Baker v. Herd, (1894) 58 J.P.	339,
442,		Baker v. Williams, (1898) 1 Q.B.	365, 372
Attenborough v. London, (1853) 8			808
Ex. 661,	510, 657	Ball v. Ward, (1876) 33 L.T.	
Attorney-General, <i>Ex parte</i> , (1877)		Ballymena U.D.C. v. McKay, (1901)	
41 J.P. 118,	62	1 N.I.J.R. 48,	709
Att.-Gen. v. Allen, (1850) Ct. Exch.,		Banbridge U.D.C. v. Gracey, (1905)	
29th Nov. (cited Highmore's Ex-		39 I.L.T.R. 106,	243
cise Laws, 7),	293	Banbury S. A. v. Page, (1881) 8	
Att.-Gen. v. Ball, (1902) 66 J.P.		Q.B.D. 97,	712
553,	221, 550	Bannon v. Breen, 17 Nov., (1910)	
Att.-Gen. v. Bradlaugh, (1885) 14		K.B.D. (Ir.) Unreported,	280, 499
Q.B.D. 667,	66	Banton v. Davies, (1892) 56 J.P.	
Att.-Gen. v. Briant, (1846) 15		294; 17 Cox 469,	528
M. & W. 185,	286	Barclay v. Pearson, (1893) 2 Ch.	
Att.-Gen. v. Brighton Corp., (1908)		154,	503
77 L.J.Ch. 603,	784	Barlow, <i>Re</i> , (1861) 30 L.J.Q.B.	
Att.-Gen. v. Brighton & Hove		271,	248
Supply Association, (1900) 1 Ch.		Barlow v. Terret, (1891) 2 Q.B.	725
276	525	Barnacle v. Clark, (1900) 1 Q.B.	
Att.-Gen. v. Churchill, V.S., Ltd.,		279,	597
& James Churchill, (1910) 26		Barnard v. Barton, (1906) 1 K.B.	
T.L.R. 630,	833	357,	60, 101, 570
Att.-Gen. v. Edison Telephone Co.,		Barnard v. Roberts, (1907) 23 T.L.R.	
London, (1880) 6 Q.B.D. 244,	796, 797	439,	440
Att.-Gen. v. Good, (1825) McC. &		Barnard Castle U.D.C. v. Wilson,	
Y. 286,	264	(1902) 2 Ch. 746,	167, 716
Att.-Gen. v. Hitchcock, (1847) 1		Barnes v. Akroyd, (1872) L.R. 7	
Ex. 91,	283	Q.B. 474,	296
Att.-Gen. v. Co. Council of Mayo,		Barnes v. Brown, (1909) 1 K.B.	38, 416
(1902) 2 I.R. 13,	524, 525	Barnes v. Lucille, (1907) 96 L.T.	
Att.-Gen. v. Myddletons, Ltd.,		680	167
(1907) 1 I.R. 471,	416	Barnett v. Covell, (1903) 20 T.L.R.	
Att.-Gen. v. Panter, (1772) 6 Bro.		134,	701
P.C. 486,	334	Barnett v. Eccles Corp. (1900) 2	
Att.-Gen. v. Radloff, (1854) 10 Ex.		Q.B. 423,	733
84,	66	Baron v. Luscombe, (1835) 3 A. & E.	
Att.-Gen. v. Siddon, (1830) 1 Cr.		589, 596	71
& J. 220,	297	Barr v. L. & N. W. R., (1905) 2	
Att.-Gen. v. Smith, (1909) 2 Ch.		K.B. 113,	769
524,	416	Barrett v. Burden, (1893), 57 J.P.	
Att.-Gen. v. Willet, (1896) 12		772,	503
T.L.R. 494,	550	Barrett v. Henry, (1904) 2 I.R. 693;	
Att.-Gen. v. Williams, (1813) Man-		(1905) 5 N.I. J. R. 8	280, 396
ning's Exchequer 277,	265	Barrow-in-Furness, (1886) 4 O.M.	
Audley's, Lord, Case, (1631) 3 State		and H. 77,	431
Tr. 401,	896	Bartell v. Gray, (1902) 1 K.B.	225, 1130
Austin, <i>Ex parte</i> , (1880) 34 L.T. 102;		Barton v. Bricknell, (1850) 13 Q.B.	
50 L.J.M.C. 8,	81, 234, 310	393,	324
Austin v. St. Mary's Vestry, (1858)		Barton v. Hudson, (1909) 2 K.B.	
27 L.J. Ch. 677	698	564,	213
Authors, <i>Re</i> , (1889) 22 Q.B.D. 345,	67,	Basingsstoke School, <i>Re</i> , (1877) 41	
	92, 572	J.P. 118,	383
Avards v. Dance, (1862) 26 J.P. 437,	547	Bastable v. Little, (1907) 1 K.B.	59
Averson v. Kinnaird, (1805) 6 East			633, 873
188,	264	Bastable v. Metcalfe, (1906) 2 K.B.	
Avery v. Wood, (1891) 3 Ch. 115,	733	288,	815
		Bater, <i>Re</i> , (1893) 2 Q.B. 77,	725
		Bates v. M'Cormick, (1863) 8 Ir.	
		Jur. N.S. 239,	356
		Bath v. White, (1878) 3 C.P.D. 175,	553
		Batt. v. Mattinson, (1900) 82 L.T.	
		800,	95
		Batthews v. Galindo, (1828) 4 Bing.	
		610,	261
		Baxter v. Langley, (1868) L.R. 4	
		C.P. 21,	549

# TABLE OF CASES.

lxiii

PAGE

Baxton v. Scott, (1909) 25 T.L.R.	500
239,	
Bazeley v. Forder, (1868) L.R. 3	403
Q.B. 559, ..	
Bayley v. Pearks, (1902) 87 L.T.	473
67, ..	
Bayley v. Wilkinson, (1864) 16 C.B.	701
N.S., 161, ..	
Beal, <i>Ex parte</i> , (1868) L.R. 3 Q.B.	414
387, .. 106, 360, 413,	
Beamish v. Cox, (1885) 16 L.R.I.	186
276,	
Beardsley v. Giddings, (1904) 1 K.B.	482
847, .. 51, 90, 469,	
Beardsley v. Pike, (1904) 20 Cox	844
648,	
Beatty v. Gillbanks, (1882) 9 Q.B.D.	874
308, ..	
Beatson v. Skene, (1860) 5 H. & N.	287
838,	
Beckenhams U.D.C. v. Wood, (1896)	696
60 J.P. 490, ..	
Beecher, <i>Ex parte</i> , (1876) 12 I.L.	73
T.R. 167, ..	
Beetham v. Crewdson, (1891) 55 J.P.	820
55, ..	
Belfast Guardians v. McIlroy, (1903)	460
3 N.I.J.R. 17, ..	
Belfast Union v. Walker, (1905) 39	826, 827
I.L.T.R., 102, ..	
Bellamy v. G. W. & Metropolitan	837
Dairies, (1908) 72 J.P. 284, ..	
Bellamy v. Pow, (1896) 12 T.L.R.	835
527,	
Bellerby v. Heyworth, (1910) A.C.	416, 832
377, ..	
Bellis v. Burghall, (1799) 2 Esp. 722,	741
Belmore v. Kent C.C., (1901) 1 Ch.	524
873, ..	
Belper School Attendance Committee	428
v. Bailey, (1882) 9 Q.B.D. 259, ..	
Belton v. Busby, (1899) 2 Q.B. 380,	500
Benford v. Sims, (1898) 2 Q.B. 641,	354
Bennett v. Harding, (1900) 2 Q.B.	1098
397, ..	
Bennett v. Tyler, (1900) 19 Cox	457
434, ..	
Bennett v. Watson, (1819) 3 M. & S.	30, 1003
1, ..	
Bentham v. Hoyle, (1878) 3 Q.B.D.	768
289, ..	
Beresford v. St. Albans JJ., (1905)	632, 633
22 T.L.R. 1, ..	
Birmingham v. Turner, (1889) 24	192
L.R.I. 321, ..	
Berry v. Henderson, (1870) L.R. 5	102
Q.B. 296	
Bessell v. Wilson, (1853) 1 E. & B.	47, 431
489; 22 L.J.M.C. 94, ..	
Bethel, <i>In re</i> , (1899) 19 Cox 262 ..	236
Betts v. Armstead, (1888) 20 Q.B.D.	459
771	
Betts v. Stephens, (1910) 1 K.B. 1	244,
633, 873	
Billingham v. Mehinick, (1909) 73	792
J.P. 384	
Billings v. Holloway, (1899) 1 Q.B.	1130
70, ..	
Bingley v. Quest, (1907) 71 J.P. 443,	86
Birmingham, Mayor of, <i>Ex parte</i> ,	
(1869) 30 L.J.Q.B. 2, ..	3, 6

PAGE

Bishop Auckland L.B. v. Bishop	
Auckland Iron Co., (1882) 10	707
Q.B.D. 138,	
Bishop v. Toler, (1895) 65 L.J.M.C.	620
1,	
Blackpool Local Bd. v. Bennett,	529
(1859) 38 L.J.M.C. 293, ..	
Blake v. Beech, (1877) 2 Ex.D.	234
335,	95,
Blake v. Beech, (1876) 1 Ex.D. 320,	498
Blake v. Kelly, (1887) 52 J.P. 263,	718
Blake v. Shea, (1896) 30 I.L.T.R.	483
102, ..	
Blaker v. Tillstone, (1894) 1 Q.B.	296, 725
345,	
Blues, <i>Re</i> , (1855) 6 E. & B. 291, ..	131
Blue v. Fullerton, (1876) I.R. 10	48, 186,
C.L. 233; 10 I.L.T.R. 138, ..	187, 190, 795
Blundell v. Catterall, (1821) 5 B. &	384
Ald. 258,	
Blith v. Hulton, (1908), 24 T.L.R.	503
719, ..	
Bogle v. Sherborne L.B., (1880) 46	705
J.P. 675,	
Bollard v. Spring, (1887) 51 J.P.	103
501,	
Bott v. Ackroyd, (1859) 28 L.J.M.C.	310, 324
207; 5 Jur. N.S. 1053; 7 W.R.	
420, ..	
Bond v. Evans, (1888) 21 Q.B.D.	294, 547
249,	
Bond v. Plumb, (1894) 1 Q.B. 169	498
Bonella v. Twickenham L.B., (1887)	700
20 Q.B.D. 63	
Boosey v. Wright, (1900) 1 Ch. 122	411
Boothroyd, <i>Re</i> , (1846) 15 M. & W. 1,	91
Boots v. Cowling, (1903) 19 T.L.R.	459
370,	
Borrow v. Howland, (1896) 60 J.P.	732
391,	
Bosley v. Davies, (1875) 1 Q.B.D.	295, 547
84, ..	
Bottomley, <i>Ex parte</i> , (1909) 2 K.B.	22, 56
14, ..	
Boucas v. Cooke, (1903) 2 K.B. 227,	414
Boulter v. Kent JJ., (1897) A.C.	228
566,	
Bound v. Lawrence, (1892) 1 Q.B.	158, 819, 822
226,	
Bows v. Fenwick, (1874) L.R. 9 C.P.	500
339, ..	
Bowyer v. Morgan, (1906) 22 T.L.R.	356
426,	
Boyce v. Higgins, (1853) 4 C.B. 1,	694
802	
Boyle v. Edwards, (1901) 1	525
N.I.J.R. 79, ..	
Boyle v. Smith, (1906) 1 K.B. 432,	295,
570, 571	
Brabham v. Wookey, (1901) 18	807
T.L.R. 99, ..	
Bradfield v. Cheltenham Guardians,	596
(1906) 2 Ch. 371, ..	
Bradford v. Dawson, (1897) 1 Q.B.	500
307,	
Bradlaugh, <i>Ex parte</i> , (1878) 3	226, 650
Q.B.D. 509, ..	
Bradshaw v. Beard, (1862) 12 C.B.	886
N.S. 344, ..	



	PAGE
Bradshaw v. Bradshaw, (1897) P. 24,	534
Brady v. Slater, (1864) 9 I.J.N.S.	
152, ..	193
Braintree L.B. v. Boyton, (1884) 52	
L.T. 99, ..	723
Brass v. London C.C., (1904) 2 K.B.	
236, ..	697, 1102, 1144
Brearley v. Morley, (1899) 2 Q.B.	
121, ..	742
Brewer v. Shepherd, (1872) 37 J.P.	
102, ..	558
Brewster v. Wallace, (1897) 31	
I.L.T.R. 153, ..	525
Bridge v. Parsons, (1863) 2 B. & S.	
382, ..	356
Bridge v. Passman, (1903) 47 S.J.	
420, ..	388
Brierley Hill case, (1884) 9 A.C.	
595, ..	733
Brighton, Stipendiary Magistrate at,	
<i>In re</i> , (1893) 9 T.L.R. 582, ..	47
Brigden v. Heighes, (1876) 1 Q.B.D.	
330 ..	559, 564
Brinckman v. Matley, (1904) 2 Ch.	
313, ..	384
Bristol W. W. Co. v. Uren, 15	
Q.B.D. 637, ..	166
Bristol and North Somerset Rail-	
way Co., <i>Re</i> , (1877) 3 Q.B.D. 10,	247
Bromage v. Prosser, (1825) 4 B. & C.	
247, ..	602
Bromley v. Cheshire, (1908) 1 K.B.	
680 ..	713
Brooke v. Milliken, (1789) 3 T.R.	
509, ..	103
Brooks v. Bagshaw, (1904) 2 K.B.	
798, ..	59, 104, 469
Brooks v. Hamlyn, (1899) 19 Cox	
231, ..	213
Brooks v. Mason, (1902) 2 K.B. 743,	541
Brophy v. Ward, (1859) 4 Ir. Jur.	
N.S. 235, ..	90
Brosnan, <i>Ex parte</i> , (1888) 22 L.R.I.	
334, ..	244
Brown <i>re</i> , (1894) 2 I.R. 363; (1878)	
3 Q.B.D. 545, ..	67
Brown v. Biggleswade Union, 19	
May, (1879) Times Newspaper, ..	710
Brown v. Bussell, (1868) L.R. 3	
Q.B. 251, ..	708
Brown v. Crossley, (1911) 27 T.L.R.	
194, ..	631, 633, 638
Brown v. Foot, (1892) 17 Cox 509;	
61 L.J.M.C. 110, ..	295, 459
Brown v. Foster, (1857) 1 H. and N.	
736, ..	285
Brown v. Kinsella, (1889) 24 L.R.I.	
99, ..	133
Brown v. Turner, (1863) 13 C.B.N.S.	
485, ..	487
Brown v. Patch, (1899) 1 Q.B. 892,	
Brownrigg v. Mulligan K.B.D. (Ir.)	
unreported, ..	295, 539, 559, 571
Bruner v. Moore, (1904) 1 Ch. 305,	
195, ..	482, 483
Bruce v. Prosser, (1808) 35 Sc. L.R.	
433, ..	493
Bryan v. Eaton, (1875) 40 J.P. 213,	
Bryant, <i>Ex parte</i> , (1863) 27 J.P.	
277, ..	59, 383

	PAGE
Buckler v. Wilson, (1896) 1 Q.B.	
83, ..	463, 468
Buckley v. Finegan, (1906) 40	
I.L.T.B. 76, ..	527, 528
Buckley v. Finucane, (1897) 31	
I.L.T.R. 124, ..	205
Budd v. Lucas, (1891) 1 Q.B.	
408, ..	266, 622, 837
Budge v. Parsons, (1863) 3 B. & S.	
382, ..	356
Bullen v. Ward, (1905) 21 T.L.R.	
753, ..	792
Bullivairt v. A.-G. for Victoria,	
(1901) A.C. 196, ..	285
Burgess v. Clark, (1884) 14 Q.B.D.	
735, ..	597
Burden v. Rigler, (1911) 1 K.B. 337,	
525, 767	
Burley v. Bethune, (1814) 5 Taunt	
580, ..	326
Burnby, <i>Ex parte</i> , (1901) 2 K.B.	
458, ..	51
Burnett v. Berry, (1876) 12 T.L.R.	
464, ..	234
Burrowes v. Barnes, (1900) 82 L.T.	
721, ..	660
Burslem, Mayor of, v. Stafford-	
shire C. C., (1896) 1 Q.B. 214,	524
Burt v. Burt, (1860) 2 Sw. & Tr.	
88, ..	914
Burton v. Atkinson, (1908) 21 Cox,	
575, ..	423
Burton v. Bradley, (1886) 51 J.P.	
118, ..	725
Burton v. Hudson, (1909) 2 K.B.	
564, ..	522
Burton v. Nicholson, (1909) 1 K.B.	
397, ..	527, 643
Burslem v. Attenborough, (1873)	
L.R. 8 C.P. 122, ..	657
Busby v. Chesterfield W. W. Co.,	
(1858) 27 L.J.M.C. 174, ..	166
Bushell's Case, (1670) Vaugh 135,	
252	
Busker v. Hodgson, (1904) 68 J.P.	
310, ..	239
Butler v. Gregory, (1902) 18 T.L.R.	
370, ..	401, 1207
Butler v. Leahy, (1867) 1 I.L.T.	
& S.J. 477, ..	86, 170
Butler v. M. S. & L. Ry. Co., (1888)	
21 Q.B.D. 207, ..	768
Butler v. Turley, (1827) M. & M. 54	
Buxton v. Scott, (1909) 25 T.L.R.	
239, ..	500
Byrne, <i>Re</i> , (1848) 11 I.L.R. 538, ..	68, 90
Byrne v. Ring, (1876) I.R. 10 Ch.	
192, ..	524
Byrne v. Rogers, (1910) 2 I.R. 220	
416	

## C.

Cahill, <i>Re</i> , (1899) 33 I.L.T.R. 138,	334
Cairns v. Todd, (1910) S.C. (J.) 17,	561,
562	
Caledonian Ry. Co. v. Raper, (1908)	
S.C. (J.) 69, ..	769
Callaghan v. Dolwin, (1869), L.R.	
4 C.P. 288, ..	236



## TABLE OF CASES.

lxv

	PAGE		PAGE
Cameron v. Tyler, (1899) 2 Q.B. 94,	843	Charter v. Greame, (1849) 13 Q.B.D.	
Cameron v. Wiggins, (1901) 1 K.B., 1,		216,	209
	618, 620	Chawner v. Cummins, (1846) 8 Q.B.	
Caminada v. Holton, (1906) 60		311,	820
L.J.M.C. 116,	499, 503	Chelsea Vestry v. Stoddart, (1897)	
Campbell v. Finn, (1907) 2 I.R.		43 J.P. 782,	806
502 ..	508, 606	Chepstow C.L.Co. v. Chepstow Gas	
Campbell v. Hadley, (1876) 40 J.P.		Co., (1905) 1 K.B. 198,	108
756,	490	Chisholm v. Doulton, (1889) 22	
Campbell v. Wilkinson, (1909) 43		Q.B.D. 736,	292
I.L.T.R. 237 ..	421	Christie, Mason, & Woods v. Cooper,	
Cardell v. New Quay L. B., (1875)		(1900) 2 Q.B. 522,	296, 618
39 J.P. 742 ..	723	Chuter v. Freeth & Pollock Ltd.,	
Carden v. M'Pharlane, K.B.D. (Ir.)		(1911) 27 T.L.R. 467,	<i>Add. et Cor.</i>
18, Nov. 1898,	59	City of London E.L.Co. v. Oakley,	
Cardiff Manure Co. v. Cardiff Gdns.,		Times Newspaper, 12 November,	
(1890) 54 J.P. 661,	723	1902,	16
Carman v. St. Margaret's JJ.,		Clare, Co. Council of, v. McInerney,	
(1900) 64 J.P. 488,	121	(1902) 2 I.R. 536; 35 I.L.T.R.	
Carpenter v. Hamilton, (1877) 41		158; 1 N.I.J.R. 320,	203
J.P. 615,	616	Clark v. Hague, (1860) 2 El. & El.	
Carpenter v. Mason, (1840) 12 Ad.		281,	360
& E. 629,	85	Clark v. McGuire, (1909) 2 I.R. 681	44,
Carshulton U. D. C. v. Burrage,		241, 616	
(1911) 27 T.L.R. 280 .. <i>Add. et Cor.</i>		Clark v. Stanford, (1871) L.R. 6 Q.B.	
Carty v. Nicholl, (1878) 6 R. (Ct. of		357,	528
Sess.) 194,	1118	Clark v. Woods, (1848) 2 Ex. 325,	323
Case v. Story, (1869) L.R. 4 Eq. 319,	528	Clarke, <i>Ex parte</i> , (1890) 26 L.R.	
Casey v. Pope, (1906) 40 I.L.T.R.		Ir. 1,	32, 137, 221, 222, 380
48, 68,	152, 333	Clarke v. Clarke, (1895) 2 I.R. 451;	
Cassidy v. Moore, (1876) I.R. 10		29 I.L.T.R. 70,	169
C.L. 216,	802	Clarke v. Davey, (1820) 4 Moore	
Caswell v. Hundred House J., (1889)		465,	328
54 J.P. 87,	539	Clarke v. Crowder, (1869) L.R. 4	
Cates v. South, (1859) 1 L.T. 365,	558	C.P. 638,	486
Catherwood v. Caslon, (1844) 13 M.		Clarke v. Hoggins, (1862) 11	
& W. 261,	913	C.B.N.S. 545,	808
Catt v. Wood, (1910) A.C. 404; 26		Clarkin v. McCartan, (1888) 22	
T.L.R. 455,	162	I.L.T.R. 95,	463
Cattell v. Ireson, (1858) El., Bl. &		Claydon v. Green, (1868) L.R. 3	
El. 91,	66	C.P. 522,	155
Cattermole v. Atlantic Transport,		Clayton, <i>Ex parte</i> , (1899) 63 J.P.	
(1902) 1 K.B. 204,	1130	788,	115
Caudle v. Seymour, (1841) 1 Q.B.		Claxton's Case, (1701) 12 Mod. 566	34
889,	18, 56	Cleary v. Booth, (1893) 1 Q.B. 465	383
Cavan Co. C. v. Kane, (1910) 2 I.R.		Cleary v. De Vescl, (1895) 2 I.R.	
644,	601	704,	484
Cave v. Mountain, (1840) 1 M. & G.		Clemson v. Hubbard, (1876) 1 Ex. D.	
257; 9 L.J.M.C. 90,	17, 323	179,	158, 162
Cavil v. Amos, (1900) 16 T.L.R.		Clew, <i>In re</i> , (1881) 8 Q.B.D. 511,	67
156,	528	Clifford v. Timms, (1908) A.C. 12,	415
Chaddock v. Wilbraham, (1848) 5		Clutton Union v. Pointing, (1879)	
C.B. 645,	91	4 Q.B.D. 340,	704
Chamberlain, <i>Ex parte</i> , (1870) 34		Cobb v. Cobb, (1900) P. 294	535
J.P. 773,	218	Cobbett v. Hudson, (1854) 1 E. & B.	
Chandler v. Horne, (1842) 2 Moo. &		77,	291
Robb 423,	60, 291	Cobbett v. Hudson, (1850) 15 Q.B.	
Chapman v. Pointon, (1740) Stra.		988	253
1150,	79	Cocks v. Mayner, (1894) 17 Cox 745,	528
Chapman v. Rawlings, (1910) 26		Codd v. Cabe, (1876) 1 Ex. D. 352, 19, 145	
T.L.R. 15,	526	Coe v. Platt, (1852) 7 Ex. 923	1101
Chapman v. Robinson, (1858) 1 El.		Coghlan v. Woods, (1882) 10 L.R.I.	
& El. 25,	238	29; 16 I.L.T.R. 105, 152, 324, 325, 326	
Charles v. Plymouth Waterworks,		Cohen v. Morgan, (1825) 6 D. & R.	
(1890) 60 L.J.M.C. 20 ..	158, 159	8,	21
Charlton v. Combes, (1863) 32 L.J.		Colam v. Pagett, (1884) 12 Q.B.D.	
Ch. 284,	285	66,	356
Charnock v. Marchant, (1900) 1 K.B.		Colam v. Hall, (1871) L.R. 6 Q.B.	
474,	284, 639	206,	360, 361
Charter v. Charter, (1901) 84 L.T.		Colbeck v. Ashford, (1898) 62 J.P.	
272,	533	214,	452

	PAGE		PAGE
Colchester, Mayor of, <i>v.</i> Brooke, (1845) 7 Q.B. 339, ..	455	Cooper, <i>Ex parte</i> , (1884) 26 Ch. D. 693, ..	821
Cole <i>v.</i> Coulton, 2 E. & E. 695, ..	44, 549	Cooper <i>v.</i> Hawkins, (1904) 2 K.B. 164, ..	599
Cole <i>v.</i> Miles, (1889) 60 L.T. 145, ..	770	Co-operative Drapery & Furnishing Society, Ltd., <i>v.</i> Bligh, (1902) 39 Sc.L.R. 500, 66 J.P. 215, ..	1,092
Coll <i>v.</i> Porteous, (1892) 19 Ont. App. 111, ..	334	Coppen <i>v.</i> Moore, No. 2, (1898) 2 Q.B. 306, ..	264, 293, 296, 618, 621, 839
College of Veterinary Surgeons <i>v.</i> Groves, (1893) 57 J.P. 505, ..	832	Corbet <i>v.</i> Haigh, (1879) 5 C.P.D. 50, ..	562
Collen <i>v.</i> Ellis, (1893) 32 L.R.I. 491, 213, 524, 980, 1093		Corbett <i>v.</i> Pearce, (1904) 2 K.B. 422, ..	613
Collen <i>v.</i> Lord Howth, (1903) 3 N.I.J.R. 350, ..	170, 236	Core <i>v.</i> James, (1871) L.R. 7 Q.B. 135, ..	386
Collett <i>v.</i> Walker, (1895) 59 J.P. 600, ..	459	Cork Gas Co. <i>v.</i> Bible, (1897) 31 I.L.T. 477, ..	507
Collier <i>v.</i> Nokes, (1849) 2 C. & K. 1012, ..	484	Cork Harbour Commissioners <i>v.</i> City of Cork Steam Packet Co., (1897) 31 I.L.T. & S.J. 439, ..	523
Collins <i>v.</i> Denny, (1897) 31 I.L.T.R. 167, ..	841	Cormack <i>v.</i> Brennard, (1873) 37 J.P. 276, ..	828
Collins <i>v.</i> Hornsey Urban Council, (1901) 1 K.B. 180, ..	803	Cornwell <i>v.</i> Sanders, (1862) 3 B. & S. 206, 32 L.J.M.C. 6, ..	207
Collins <i>v.</i> Rose, (1839) 5 M. & W. 194, ..	328	Cortis <i>v.</i> Kent Waterworks Co., (1827) 7 B. & C. 331, ..	134
Collman <i>v.</i> Roberts, (1896) 1 Q.B. 457, ..	784	Costar <i>v.</i> Hetherington, (1859) 1 El. & El. 802, ..	382
Collman <i>v.</i> Mills, (1897) 1 Q.B. 396, 339, 719	297,	Cotterill <i>v.</i> Lempiere, (1890) 24 Q.B.D. 634, ..	85
Colman <i>v.</i> Griffin, (1859) 4 H. & N. 265, ..	147	Coulbert <i>v.</i> Troke, (1875) 1 Q.B.D. 1, 560	
Colonial Bank <i>v.</i> Willun, (1874) L.R. 5; C.P. 417, ..	226	Coulson <i>v.</i> Desborough, (1894) 2 Q.B. 316, ..	286
Combridge <i>v.</i> Harrison, (1895) 72 L.T. 592, ..	441	Coulter <i>v.</i> Martin, (1887) I.R. 11 C.L. 477, ..	44, 426, 802
Commissioners of Excise <i>v.</i> Thompson, (1838) 1 I.L.R. 5, ..	102	Cousins <i>v.</i> Stockbridge, (1866) 30 J.P. 166, ..	528
Commissioners of Police <i>v.</i> Cartman, (1896) 1 Q.B. 615, ..	264, 293, 294, 555	Coutts <i>Re</i> , (1902) 22 N.Z.L.R. 203, ..	303
Commissioners of Police <i>v.</i> Donovan, (1903) 1 K.B. 895, ..	282, 519	Cowap <i>v.</i> Atherton, (1893) 1 Q.B. 93, 560	
Commissioners of Police <i>v.</i> Roberts, (1904) 1 K.B. 369, ..	558	Coward <i>v.</i> Baddeley, (1859) 4 H. & N. 478, ..	147
Commissioners of Valuation <i>v.</i> Sligo Harbour Commissioners, (1899) 2 I.R. 214, ..	200	Cowles <i>v.</i> Gale (1871) L.R. 7 Ch. 12, 123, 572	
Condon <i>v.</i> Duffy, (1897) 2 I.R. 143, 524		Cowie <i>v.</i> Harris, (1827) M. & M. 141, 653, 656	
Conlan <i>v.</i> Muldowney, (1904) 2 I.R. 498; 4 N.I.J.R. 40, ..	243, 295, 541	Cox <i>v.</i> Ambrose, (1891) 7 T.L.R. 59, 597	
Connor <i>v.</i> Butler, (1902) 2 I.R. 569, 462, 463, 469	45, 611	Cox <i>v.</i> Andrews, (1883) 12 Q.B.D. 126, ..	502
Connor <i>v.</i> Kent, ..	611	Cox <i>v.</i> Bleines, (1902) 1 K.B. 670 387	
Connor <i>v.</i> Quest, (1906) 71 J.P. 62, 792	85	Cox <i>v.</i> Hutchinson, (1910) 1 Ch. 510, ..	162
Conroy <i>v.</i> M'Cann, (1896) 2 I.W.L.R. 217, ..	457	Coyne <i>v.</i> Brady, (1862) 12 I.C.L.R. 577, ..	360
Conssett U.D.C. <i>v.</i> Crawford, (1903) 2 K.B. 183, ..	732	Crabb <i>v.</i> Crabb, (1868) L.R. 1 P. & D. 601, ..	534
Consolidation Exploration & Finance Co. <i>v.</i> Musgrave, (1900) 1 Ch. 37, 31		Crabtree <i>v.</i> Bulman, (1896) 12 T.L.R. 469, ..	847
Constable's Case, 5 Coke 106, ..	857	Crabtree <i>v.</i> Commercial Mills Co., (1910) 130 L.T.J. 55, ..	1107
Conybeare's Case, (1889) Judgments of Superior Courts, 327, ..	87	Crabtree <i>v.</i> Ferns Shipping Co., Ltd., (1902) 18 T.L.R. 91, ..	1102
Conybeare <i>v.</i> London School Board, (1891) 1 Q.B. 118, ..	595	Crabtree <i>v.</i> Hole, (1879) 43 J.P. 799, ..	294, 547
Cook <i>v.</i> North Metropolitan Tram Co., (1887) 18 Q.B.D. 683, ..	158	Crabtree <i>v.</i> Skelton, (1901) 70 L.J.K.B. 560, ..	468
Cook <i>v.</i> Trevener, (1910) W.N. 211, ..	492	Craig <i>v.</i> Boyan, (1901) 2 I.R. 429, 547	
Cook <i>v.</i> White, (1896) 1 Q.B. 284, 469		Craig <i>v.</i> McPhee, (1884) 48 J.P. 115, 835	
Cooke <i>v.</i> Nethercote, (1835) 6 C. & P. 744, ..	60, 147	Crane <i>v.</i> Lawrence, (1890) 25 Q.B.D. 152, ..	472
		Creagh <i>v.</i> Gamble, (1888) 24 L.R.I. 458, ..	19, 147

	PAGE		PAGE
Crean <i>v.</i> Devlin & Johnston, (15th April, 1909), unreported, ..	310	Davis <i>v.</i> Harrison, (1909) 2 K.B. 104, ..	557
Creek, <i>Re</i> , (1863) 3 B. & S. 459, ..	905	Davis <i>v.</i> Nest, (1833) 6 C. & P. 167, ..	84
Crepps <i>v.</i> Durden, (1777) Cowp. 640; 1 Smith's L.C., 7th edition 651, ..	106, 792	Davis <i>v.</i> Pembrokeshire JJ., (1881) 7 Q.B.D. 513, ..	6
Crichton <i>v.</i> Brady, (1892) 27 I.L.T.R. 42, ..	482, 483	Davis <i>v.</i> Russell, (1829) 5 Bing. 354, ..	18
Crick <i>v.</i> Nicholls, (1905) 1 K.B. 501, ..	846	Davis <i>v.</i> Sly, (1910) 26 T.L.R. 460, ..	502
Crick <i>v.</i> Theobald, (1895) 72 L.T. 807, ..	835	Davy <i>v.</i> Bennett, (1905) 79 J.P. 200, ..	131
Crofts <i>v.</i> Taylor, (1887) 19 Q.B.D. 524, ..	539	Davys <i>v.</i> Douglas, (1859) 4 H. & N. 180, ..	237, 549
Croker <i>v.</i> Raymond, (1886) 3 T.L.R. 181, ..	380	Dawes <i>v.</i> Wilkinson, (1907) 1 K.B. 278, ..	459
Cropper <i>v.</i> Horton, (1826) 4 D. & R. M.C. 44, ..	291	Dawkins <i>v.</i> Lord Rokeby, (1875) L.R. 7 H. L. 744, ..	327
Cross, <i>Ex parte</i> , (1887) 2 H. & N. 354, ..	70	Dawson <i>v.</i> Mackay, (1904) 38 I.L.T.R. 163, ..	59, 803
Crowther <i>v.</i> Boulton, (1884) 13 Q.B.D. 680, ..	243	Dawson's Case, (1717) 2 East P.C. 978, ..	901
Croydon R.D.C. <i>v.</i> Cowley, (1909) 25 T.L.R. 306, ..	210	Day <i>v.</i> King, (1836) 5 A. & E. 359, ..	70, 87
Crozier <i>v.</i> Cundy, (1827) 9 D. & R. 224, ..	145	Deane <i>v.</i> Wilson, (1906) 2 I.R. 405, ..	821
Crystal Palace District Gas Co. <i>v.</i> Idris & Co., Ltd., (1900) 16 T.L.R. 180, ..	164	Deasy <i>v.</i> Hickey, (1905) 5 N.I.J.R. 209, ..	187
Cuba, The, (1860) 6 Jur. N.S. 152, ..	177	Deer <i>v.</i> Bell, (1894) 64 L.J.M.C. 85, ..	569
Cullen <i>v.</i> McNair, (1908) 24 T.L.R. 692, ..	457	Deer <i>v.</i> Wirrell JJ., (1894) 11 T.L.R. 188, ..	569
Cullen <i>v.</i> Trimble, (1872) L.R. 7 Q.B. 416, ..	41	Demer <i>v.</i> Cook, (1903) 88 L.T. 629; 67 J.P. 206, ..	327, 333
Cundy <i>v.</i> Le Cocq, (1884) 13 Q.B.D. 207, ..	294, 555	Denaby and Cadeby Main Collieries Co., Ltd. <i>v.</i> Yorkshire Miners Assoc., (1906) A.C. 384, ..	812
Curran <i>v.</i> Treleaven, (1891) 2 Q.B. 545, ..	611	Denny <i>v.</i> Thwaites, (1876) 2 Ex. D. 21, ..	210
Curtis's Case, (1756) Frost 137, ..	19	Dept. of Agric. & Tec. Inst. for Ireland <i>v.</i> Cork Stm. Pkt. Co., (1909) 2 I.R. 479, ..	1171
Curtis <i>v.</i> Embery, (1872) L.R. 7; Eq. 369, ..	528, 806	Dept. of Agriculture <i>v.</i> Porter, (1910) 44 I.L.T.R. 13, 90, 1170, ..	1171
Curtiss <i>v.</i> Skinner, (1906) 95 L.T. 31, ..	1145	Derby <i>v.</i> Bloomfield, (1904) 68 J.P. 391, ..	<i>Add. et Cor.</i>
Cutts <i>v.</i> Ward, (1867) L.R. 2; Q.B. 357, ..	821	Derby Co. C. <i>v.</i> Matlock Bath U.D.C., (1896) A.C. 315, ..	524
		Derby, Mayor of, <i>v.</i> Derbyshire C.C., (1897) A.C. 550, ..	66
		Derbyshire Co. Council <i>v.</i> Derby, (1896) 2 Q.B. 57, 58, 297, ..	65
		Despard <i>v.</i> Wilcox, (1910) 74 J.P. 115, ..	873
		Devlin <i>v.</i> Hurst, (1897) 2 I.R. 290, ..	448
		Devonshire <i>v.</i> Foot, (1900) 2 I.R. 211, ..	243
		Dewhurst <i>v.</i> Eddles, (1893) 9 T.L.R. 494, ..	528
		Dews <i>v.</i> Riley, (1851) 11 C.B. 434, ..	333
		Dexter <i>v.</i> Cust, (1862) 7 Ir. J.N.S. 156, ..	392
		Dexter <i>v.</i> Hayes, (1860) 11 I. Ch. R. 106; 13 I.C.L.R. 22, ..	291, 392
		Diamond, The, (1906) P. 282, ..	916
		Dickenson <i>v.</i> Brown, (1795) 1 Peake N.P.C. 307, ..	18
		Dickenson <i>v.</i> Dickenson, (1893) 62 L.T. 330, ..	533
		Dickenson <i>v.</i> Fletcher, (1873) L.R. 9 C.P. 1, ..	297
		Dickson <i>v.</i> Mayes, (1910) 1 K.B. 452; 26 T.L.R. 236, ..	240, 379, 563
		Dicksee <i>v.</i> Hoskins, (1901) 2 K.B. 122, 660, ..	570
		Dickins <i>v.</i> Randerson, (1901) 1 K.B. 437, ..	459
		Digby <i>v.</i> West Ham Bd., (1858) 6 W.R. 468, ..	712

D.

Dalkey U.D.C. <i>v.</i> Horner, (1903) 37 I.L.T.R. 83; 2 N.I.J.R. 124, ..	980
Daly <i>v.</i> Webb, (1869) I.R. 4 C.L. 309, ..	724, 725
Dallimore <i>v.</i> Sutton, (1898) 78 L.T. 469, ..	565
Dames <i>v.</i> Bond, (1891) 55 J.P. 503, ..	560
Danford <i>v.</i> Taylor, (1869) 20 L.T. 483, ..	547
Daniels' Case, (1907) Times, 6th April, ..	621
Daniel <i>v.</i> Janes, (1887) 2 C.P.D. 351, ..	209, 358, 604
Dargan <i>v.</i> Davies, (1877) 2 Q.B.D. 118, ..	360
Davey <i>v.</i> Bennett, (1905) 69 J.P. 200, ..	639
Davies <i>v.</i> Harvey, (1874) L.R. 9; Q.B. 433, ..	297
Davis, <i>Ex parte</i> , (1857) 26 L.J.M.C. 178, ..	549
Davis, <i>Ex parte</i> , (1871) 35 J.P. 551; 24 L.T. 547, ..	35, 63, 380



	PAGE
Dillon, <i>Re</i> , (1859) 11 I. Ch. R. 232, 43, 121, 235	
Dillon v. O'Brien, (1887) 20 L.R.I. 300, .. 12, 20, 51, 149, 283	
Diss U. Sanitary Authority v. Aldrich, (1877) 2 Q.B.D. 179, 236, 731	
Dive v. Manningham, (1550) 1 Plowd. 60, .. 925	
Dixon v. Wells, (1890) 25 Q.B.D. 249, .. 46, 96, 17	
Dobree v. Norcliffe, (1870) 25 L.T. 552, .. 569	
Dodd v. Pearson, (1911) 27 T.L.R. 376, .. 725	
Doel v. Sheppard, (1856) 5 E. & B. 856, .. 1101	
Doherty v. McClelland, (1890) 28 L.R.I. 168, .. 544	
Doherty v. Myles, (1905) 40 I.L.T.R. 39, .. 333	
Donaghue v. McIntyre, (1911) H.C. (Just.) 48 S.L.R. 310, .. 1236	
Donaghy, <i>Ex parte</i> , (1867) I.R. 2 Ch. 22, .. 193	
Donnelly v. Ingram, (1897) 31 I.L.T.R. 139, .. 62, 382	
Dover v. Child, (1876) 1 Ex. D. 172, .. 103	
Donohoe v. Cherry, (1909) 26 R.P.C. 545, .. 619	
Doran v. Cunningham, (1887) 20 L.R.I. 544, .. 438	
Doran v. Doyle, (1896) 30 I.L.T.R. 138, .. 254	
Dorrian v. M'Hugh, (1907) 2 I.R. 564, .. 103, 107, 563	
Dove v. Westmeath J.P., (1904) 38 I.L.T.R. 87, .. 86	
Downing v. Capel, (1867) L.R. 2 C.P. 461, .. 149	
Dowling v. Byrne, (1876) I.R. 10, C.L. 135, .. 524	
Dowling v. Fahy, (1903) 3 N.I.J.R. 343, .. 570	
Downes v. Johnson, (1895) 2 Q.B. 203, .. 500	
Dowling v. O'Loughlin, (1877) L.R. 11 C.L. 488, .. 553	
Doyle v. Lambe, (1901) 2 N.I.J.R. 107; 3 N.I.J.R. 186, .. 557	
Draper v. Newnham, (1910) 74 J.P. 124, .. 465	
Draper v. Sperring, (1861) 10 C.B.N.S. 113, .. 708	
Drogheda Union Guardians of v. McCann, (1905) 39 I.L.T.R. 210; 5 N.I.J.R. 216, .. 404, 531	
Drury v. Defontaine, (1808) 1 Taunt 131, .. 791	
Dublin Cemeteries Committee v. Commissioners of Valuation, (1897) 2 I.R. 157, .. 199	
Dublin Corporation v. Allen, (1904) 38 I.L.T.R. 73, .. 702	
Dublin, Lord Mayor of, v. Hayes, (1876) I.R. 10 C.L. 226, .. 655	
Dublin Lord Mayor of, &c., v. Irish Church Missions, (1901) 2 I.R. 387, .. 90, 237, 702, 703	
Ducworth v. <i>In re</i> , (1813) 58 L.J.M.C. 158, .. 533	

	PAGE
DuCros v. Lambourne, (1907) 1 K.B. 40, .. 54, 354, 631	
Dudley Corporation, <i>Re</i> , (1881) 8 Q.B.D. 86, .. 732	
Duffell v. Curtis, (1877) 35 L.T. 853, .. 792	
Dumigan v. Walsh, (1004) 2 I.R. 298; 38 I.L.T.R. 92, .. 119, 571	
Duncan v. Dowding, (1897) 1 Q.B. 575, .. 538	
Duncan v. Knill and others, (1907) 96 L.T. 911, .. 854	
Duncan v. Pope, (1899) 19 Cox 241, .. 357, 359	
Duncan v. Toms, (1887) 16 Cox 267, 51 J.P. 631, .. 56, 999	
Dunne v. Owens, (1903) 3 N.I.J.R. 45, .. 315, 528	
Dunning v. Owen, (1907) 2 K.B. 237, .. 570	
Dunning v. Trainer, (1909) 25 I.L.R. 658, .. 60	
Durose v. Wilson, (1907) 21 Cox 421, .. 390	
Dutton v. Atkins, (1871) L.R. 6 Q.B. 373, .. 827	
Dwyer v. Larkin, (1904) 39 I.L.T.R. 40; 5 N.I.J.R. 25, .. 236, 243, 266	
Dyer v. Munday, (1895) 1 Q.B. 742, .. 382	
Dyer v. Tully, (1894) 2 Q.B. 794, .. 79	
Dyke v. Gower, (1892) 1 Q.B. 220, .. 461, 462	
Dysart v. Dysart, (1848) 3 N.C. 340, .. 533	
Dyson v. Mason, (1889) 22 Q.B.D. 351, .. 547	

E.

Evans v. Weatheritt, (1907) 2 K.B. 80, .. 465
Everitt v. Davies, (1878) 42 J.P. 248, .. 357
Evison v. Marshall, (1868) 32 J.P. 691, .. 213, 603
Exeter, Mayor of, v. Heaman, (1877) 37 L.T. 524, .. 94
Emary v. Nolloth, (1903) 2 K.B. 264, .. 295, 541
Embleton v. Brown, (1860) 3 E. & E. 234, .. 14, 42
Enniscorthy U.D.C. v. Field, (1904) 2 I.R. 518; 38 I.L.T.R., 340, 703, 739
Enniskillen Loan Society v. Green, (1898) 2 I.R. 103, .. 214
Enniskillen Guardians v. Hilliard, (1884) 14 L.R.I. 214, .. 216, 242, 463
Enoch & Co., <i>In re</i> , (1910) 1 K.B. 327, .. 286
Entick v. Carrington, (1765) 19 State Trials 1030; 2 Hale 113, 149, 150; 5 Burns, 30th edition, 1180, .. 144
Ethelstane, <i>Ex parte</i> , (1875) 33 L.T. 339, .. 555
Evans, <i>Ex parte</i> , (1894) A.C. 16 .. 62
Evans v. Botterill, (1863) 3 B. & S. 787, .. 487

	PAGE		PAGE
Evans v. Nicholl, (1909) 1 K.B. 778, .. .. .	629, 645	Fernandez, <i>Ex parte</i> , (1861) 10 C.B.N.S. 3; 6 H. & N. 717, ..	73, 291
Evans v. Reeves, (1840) 12 A. & E. 55, .. .. .	1003	Ferrand v. Hallas Land Co., (1893) 2 Q.B. 135, .. .. .	696
Eaton v. Best, (1909) 1 K.B. 632, ..	514	Field v. Receiver of Metropolitan Police, (1907) 2 K.B. 853, 860, ..	150, 930
East London Waterworks Co. v. Charles, (1894) 2 Q.B. 730, ..	165, 166	Fielding, <i>Ex parte</i> , (1861) 25 J.P. 759, .. .. .	59
Eastwood v. Miller, (1874) L.R. 9 Q.B. 440, .. .. .	499	Fielding v. Morley, (1899) 1 Ch. 1, ..	336
Eccles v. Wirrell R.S.A., (1886) 17 Q.B.D. 107, .. .. .	698	Fielding v. Turner, (1903) 1 K.B. 867, .. .. .	496
Edwards v. Ferris, (1836) 7 C. & P. 542, .. .. .	325	Filshie v. Evington, (1892) 2 Q.B. 200, .. .. .	467
Edwards v. Roberts, (1891) 1 Q.B.D. 302, .. .. .	239, 240	Filson v. Morrell, (1888) 22 I.L.T.R. 7, .. .. .	525
Edmunds v. James, (1822) 1 Q.B. 18, ..	553	Finch v. Blundell, (1862) 5 L.T. 672, ..	558
Edwards v. Punell, (1899) 1 Q.B. 449, .. .. .	843	Finegan v. L.N.W.Ry. Co., (1889) 53 J.P. 663, .. .. .	527
Edmundson v. Longton Corporation, (1902) 19 T.L.R. 15, .. .. .	164	Firth v. McPhail, (1905) 2 K.B. 300, .. .. .	725
Eggington, <i>Ex parte</i> , (1853) 2 E. & B. 717, .. .. .	793	Fitzgerald v. Fitzgerald, (1869) L.R. 1 P. & D. 694, .. .. .	534
Eggington v. Pearl, (1875) 40 J.P. 56; 33 L.T. 428, .. .. .	96, 815	Fitzgerald v. Leonard, (1893) 32 L.R.I. 675, .. .. .	733
Elder v. Dryden, (1908) 99 L. T. 20, ..	470	Fitzgerald v. Hosford, (1900) 2 I.R. 391, .. .. .	292, 293, 298, 450
Elder v. Smithson, (1893) 57 J.P. 809, .. .. .	464	Fitzpatrick v. Pine, (1861) 13 I.C.L.R. 32, .. .. .	86, 170
Eley v. Lytle, (1885) 50 J.P. 308, ..	603	Fisher v. Apollinaris Co., (1875) L.R. 10 Ch. 297, .. .. .	51
Elliott v. Longden, (1901) 17 T.L.R. 648, .. .. .	168	Fisher v. Howard, (1864) 34 L.J.M.C. 42, .. .. .	563
Elliott v. Osborne, (1891) 17 Cox 346, .. .. .	356, 358, 359	Fletcher v. Commissioners of Valuation, (1907) 2 I.R. 112, .. ..	200
Elliott v. Pilcher, (1901) 2 K.B. 817, ..	464	Fletcher v. Calthrop, (1845) 6 Q.B. 880, .. .. .	85
Elliott v. Russell, (1902) 2 K.B. 748, ..	165, 166	Fletcher v. Fields, (1891) 1 Q.B. 790, .. .. .	843
Ellis v. Cory, (1902) 1 K.B. 38, ..	1130	Flower v. Watts, (1910) 2 K.B. 327, ..	853
Elsy v. Mawdit, (1650) Styles, 226	30	Fogarty v. G. S. & W. Ry., (1911), ..	239
Elwes v. Hopkins, (1906) 2 K.B. 1, ..	631	Foinett v. Clarke, (1877) 41 J.P. 359, .. .. .	528
<b>F.</b>		Follet v. Jeffereys, (1850) 1 Sim. N.S. 17, .. .. .	285
Falconer v. Corp. of South Shields, (1895) 11 T.L.R. 223, .. .. .	696, 697	Forbes v. Lloyd, (1876) I.R. 10 C.L. 552 .. .. .	8, 325
Farley v. Higginbotham, (1892) 42 S.J. 309, .. .. .	293, 295	Ford v. Byrne, (1863) 8 I.J.N.S. 65, .. .. .	190
Farmers & Cleveland Dairies Co. v. Stevenson, (1891) 63 L.T. 776, ..	464	Ford v. Foster, (1872) L.R. 7 Ch. 611, .. .. .	620
Farndale v. Dillon, (1907) 2 K.B. 513, .. .. .	541	Ford v. Newth, (1901) 1 K.B. 683 ..	596
Farrell v. Ryan, (1904) 2 I.R. 596; 4 N.I.J.R. 193, .. .. .	202	Ford v. Wiley, (1889) 23 Q.B.D. 203, .. .. .	357
Farthing v. Parkinson, (1904) 20 Cox, 661, .. .. .	466	Foreman v. Free Fishers of Whitstable, (1869) L.R. 4 H. of L. 266, .. .. .	522
Fearon v. Warrenpoint U.D.C., (1910) 44 I.L.T.R. 265, .. .. .	763	Foster v. Hull, (1869) 33 J.P. 629, ..	102
Featherstonhaugh v. Atkinson, (1736) Barnes 373, .. .. .	793	Foss v. Best, (1906) 2 K.B. 105, ..	237, 238, 240
Fecitt v. Walsh, (1891) 2 Q.B. 304, ..	106, 360, 462, 468	Foulger v. Steadman, (1872) L.R. 8 Q.B. 65, .. .. .	212, 770
Fenel v. Ridler, (1826) 5 B. & C. 406, .. .. .	791	Fourth City Bdg. Socy. v. Churchwards, &c., of East Ham, (1892) 1 Q.B. 661 .. .. .	75, 145
Fenwick v. Croydon R.S.A., (1891) 2 Q.B. 216, .. .. .	700	Francis, <i>Ex parte</i> , (1903) 1 K.B. 275, .. .. .	51, 412, 720
Ferens v. O'Brien, (1883) 11 Q.B.D. 21, .. .. .	237, 907	Franco v. Alvares, (1746) 3 Atk. 346, ..	53
Ferguson v. Earl of Kinnoull, (1842) 9 Cl. & F. 251, .. .. .	602	Francomb v. Freeman, (1868) L.R. 3 Q.B. 251, .. .. .	708
Ferguson v. Norman, (1838) 5 Bing (N.C.) 76, .. .. .	656, 657	Franklin v. Godfrey, (1894) 63 L.J.M.C. 239, .. .. .	846



	PAGE		PAGE
French v. Card, (1909) 101 L.T.		Gloucester Local Board v. Chandler,	
428, .. .. .	474	(1863) 7 L.T. 722, .. .. .	239
Frederick v. Bognor Water Co.,		Glover v. Booth, (1862) 31 L.J.M.C.	
(1909) 1 Ch. 149, .. .. .	166, 167	270, .. .. .	243
Frew v. Morris, (1897) 34 Sc.L.R.		Godfrey v. Radford, (1896) 18 Cox	
527, .. .. .	469	417, .. .. .	844
Frost, Re, (1888) 4 T.L.R. 757, ..	31	Goldstein v. Vaughan, (1897) 1 Q.B.	
Frowd v. Frowd, (1904) P. 177, ..	533	549, .. .. .	1114
Fulham D. B. of Works v. Goodwin,		Goldstraw v. Duckworth, (1880) 5	
(1876) 1 Ex.D. 400, .. .. .	700	Q.B.D. 275, .. .. .	803
Fuller v. Jackson, (1896) Times, 8th		Gordan v. Cann, (1899) 15 T.L.R.	
Dec., .. .. .	793	165, .. .. .	450, 484
Fyfe v. Hamilton, (1894) 1 Adam,		Gordon v. Howden, (1845) 12 C. &	
484, .. .. .	470	F. 237, .. .. .	656
G.		Gordon v. Chief Commissioners of	
		Metropolitan Police, (1910) 2 Q.B.	
Gabriel v. Vestry of St. James,		1080, .. .. .	502
(1859) 23 J.P. 372, .. .. .	803	Gordon v. Jennings, (1882) 51	
Gage v. Elsay, (1883) 10 Q.B.D.		L.J.Q.B. 417, .. .. .	156
518, .. .. .	459	Goldsmiths Co. v. Wyatt, (1907)	
Gallagher v. Flower, (1896) 2		1 K.B. 95, .. .. .	513
I.W.L.R. 171, .. .. .	559	Goldstein v. Vaughan, (1897) 1 Q.B.	
Gallagher v. Rudd, (1898) 1 Q.B.		549, .. .. .	559
114, .. .. .	118, 379, 557, 576	Gorham v. Brice, (1902) 18 T.L.R.	
Galloway v. Maries, (1881) 8		424, .. .. .	632
Q.B.D. 275, .. .. .	499	Goodall v. Bilsland, (1909) S.C.	
Galliard v. Laxton, (1862) 9 Cox		1152, .. .. .	56, 217, 219, 220
127 .. .. .	19	Gorman v. W. and L. Railway Co.,	
Gallimore v. Goodall, (1874) 38 J.P.		(1900) 2 I.R. 341, .. .. .	816
597, .. .. .	561	Gould v. Bacup L.B., (1881) 50	
Galloway v. Weber, (1889) 16 R.(J.)		L.J.M.C. 44, .. .. .	701
46, .. .. .	561	Gould v. Haynes, (1889) 16 Cox	
Gamble, In re, (1899) 1 Q.B. 305, ..	533	732, .. .. .	820
Gamble v. Green, (1910) 44 I.L.T.R.		Gowing v. Walsh, (1859) 10 I.C.L.R.	
14, .. .. .	125	431, .. .. .	19
Gardiner v. Mansbridge, (1887) 19		Gozney v. Bristol Trade, &c., Society,	
Q.B.D. 217, .. .. .	588, 604	(1909) 1 K.B. 901, .. .. .	812
Garnsworthy v. Payne, (1870) 35		Grady v. Hunt, (1855) 5 I.C.L.R.	
J.P. 21, .. .. .	243	445, .. .. .	37, 324
Garritt v. Godson, (1899) 2 Q.B.		Graff v. Evans, (1882) Q.B.D.	
193, .. .. .	570	373, .. .. .	543
Gas Light & Coke Co. v. Creswell,		Graham v. Hart, (1908) S.C. (Just.)	
(1897) 61 J.P. 699, .. .. .	507	26, .. .. .	389
Gartan v. Southampton JJ., (1893),		Grainger v. Aynsley, (1880) 6 Q.B.D.	
6 T.L.R. 430, .. .. .	137	182, .. .. .	158
Garth v. Howard, (1832) 8 Bing. 451,	265	Grange v. Silcock, (1897) 18 Cox	
Gayford v. Chouler, (1898) 1 Q.B.		644, .. .. .	168
316, .. .. .	603	Grant v. Corcoran, (1868) I.R. 2	
Generous, The, (1868) 37 L.J. Adm.		C.L. 317, .. .. .	445
37, .. .. .	177	Graves v. Graves, (1864) 10 L.T.	
Gentel v. Rapps, (1902) 1 K.B. 160,	339	273, .. .. .	533
Geswood, Re, (1853) 2 El. & B. 952,	89	G. E. Ry. v. Hackney Bd., (1883)	
Gibson v. Lawson, .. .. .	611	8 A.C. 687, .. .. .	701
Gilbert v. R., (1907) 38 Canada		G. N. Ry. Co. v. Ineth, (1877) 2	
S. C. 284, .. .. .	264	Q.B.D. 284, .. .. .	243
Gill v. Bright, (1871) 41 L.J.M.C.		G. S. & W. Ry. Co. v. Darby,	
22; 25 L.T. 591, .. .. .	51, 574	(1892) 27 I.L.T.R. 45, .. .. .	62, 100
Gillingham v. Walker, (1881) 44		G. S. & W. Ry. Co. v. Gooding,	
L.T. 715, .. .. .	768	(1908) 2 I.R. 429 .. 63, 101, 102, 103	
Glasgow Tram Co. v. Dempsey,		G. S. & W. Ry. Co. v. Leyden,	
(1877) 3 Coup 440, .. .. .	157	(1907) 2 I.R. 160, .. 45, 77, 307, 482	
Glasgow v. Henry, (1907) 41		G. W. Ry. v. Bailie, (1865) 5 B. &	
I.L.T.R. 245, .. .. .	41, 69, 429	S. 928 .. .. .	838
Glasgow v. Independent Printing		G. W. Ry. Co. v. Gonnolly, (1902)	
Co., (1901) 2 I.R. 305, .. .. .	820	2 N.I.J.R. 63, .. .. .	770
Glasgow v. O'Connor, (1911) 45		Greaves v. Keene, (1879) 4 Ex. D.	
I.L.T.R. 5, .. .. .	101, 546	73, .. .. .	328
Glasgow Parish Co. v. Martin, 1910		Greene v. Britten, (1904) 1 K.B.	
J.S.C. 102, .. .. .	1197	350, .. .. .	1130
		Green v. Carstang, (1902) 20 Cox	
		92, .. .. .	851

	PAGE		PAGE
Green v. Cross, (1910) 26 T.L.R.	359	Hanks v. Bridgeman, (1896) 1 Q.B.	339, 815
507, ..		253, ..	
Green v. Duckett, (1883) 11 Q.B.D.	929	Hannam v. Morrissey, (1906) 40	48
275, ..		I.L.T.R. 222, ..	
Green v. Irish Independent Co.,	413	Harbottle v. Gill, (1877) 41 J.P.	561
(1899) 1 I.R. 386, ..		742, ..	
Green v. Leamington Vestry, (1898)	696	Hardcastle v. Beilby, (1892) 1 Q.B.	292
2 Q.B. 1 ..		712, ..	
Greenwood v. Backhouse, (1902) 20	359	Hardwick v. Lane, (1904) 1 K.B.	503
Cox 190, ..		204, ..	
Greig v. MacLeod, (1908) S.C. (J.)	541	Hardy v. Ryle, (1829) 9 B. & C.	328
14, ..		603, ..	
Gregory v. Tuffs, (1833) 6 C. & P.	741	Hare v. Osborne, (1876) 34 L.T. 294,	547
271, ..		Hargreaves v. Baldwin, (1905) 21	631
Griffiths, <i>Ex parte</i> , (1821) 5 B. &	21	T.L.R. 715, ..	
Ald. 730, ..		Hargreaves v. Diddams, (1875) L.R.	207
Griffith v. Harries, (1837) 2 M. & W.	91	10 Q.B. 582, ..	
335, ..		Hargreaves v. Hilliam, (1894) 58	57, 78
Griffiths v. Place, (1869) 20 L.T.	837	J.P. 655, ..	
484, ..		Hargreaves v. Taylor, (1863) 3 B. &	713
Groenvelt v. Burwell, (1699) 1 Ld.	234	S. 613, ..	
Raym. 454, ..		Harken, <i>Ex parte</i> , (1899) Judg-	
Groom v. Grimes, (1903) 89 Ld.	541	ments of the Superior Courts 316	
129, ..		& 320, ..	34, 35, 37, 136, 341
Guerin, <i>In re</i> , (1888) 16 Cox 596, ..	22, 56	Harper v. Marcks, (1894), 2 Q.B.	356
Guild v. Freeman, (1898) 36 Sc. L.R.	575	319, ..	
6, ..		The Harriett, (1857) Swabey 218,	177
Gunn v. McCullagh, (1901) 1	1207	Harris v. Allwood, (1893) 57 J.P. 7,	839
N.L.J.R. 262, ..		Harris v. London C.C., (1895)	
Guyar v. R., (1889) 23 Q.B.D.	489	1 Q.B. 240, ..	837
100, ..		Harris v. May, (1883) 12 Q.B.D. 97,	464
		Harris v. Scurfield, (1904) 20 T.L.R.	697
		659, ..	
		Harrison v. Barney, (1894) 3 Ch. 562,	701
		Harrison v. Leaper, (1862) 5 L.T.	298
		640, ..	
		Harrison v. Mac. L. Meel, (1880) 50	538
		L.J. 210, ..	
		Harrison v. Rutland, (1893) 1 Q.B.	483
		142, ..	
		Harrogate v. McKay (1907) 2 K.B.	166, 716
		611, ..	
		Harrod v. Harrod, (1854) 1 K. & J.	262
		4, ..	
		Harrop v. Bayley, (1856) 6 El. & Bl.	802
		218, ..	
		Hartley, <i>Re</i> , (1862) 26 J.P. 438, 130,	725
		Hartley v. Chadwick, (1904) 68 J.P.	815
		512, ..	
		Hartley v. Hindmarsh, (1866)	
		L.R. 1 C.P. 553, ..	382
		Harvey v. Copeland, (1892) 30	
		L.R.I. 412; 26 I.L.T.R. 105, 187, 244	
		Harvey v. Harvey, (1884) 26 C.D.	18
		644, ..	
		Harvey v. Wallis, (1851) 3 Ir. Jur.	204
		409, ..	
		Hastings v. Cogavin, (1904) 2 I.R.	597
		529, ..	
		Hatton v. Treeby, (1897) 2 Q.B.	147
		452, ..	
		Hawke v. Dunn, (1897) 1 Q.B. 579,	499
		Hawke v. Hulton, (1909) 2 K.B. 93,	84
		Hawke v. MacKenzie, (1902) 2 K.B.	311
		234, ..	
		Hawkins v. Edwards, (1901) 2 K.B.	528
		169, ..	
		Hawkins v. M'Loughlin, (1851) 14	446
		I.C.L.R. App. 1, ..	
		Hawkins v. Williams, (1895) 59 J.P.	464
		533, ..	

## H.

Haddock v. Humphrey, (1900) 1	1130
Q.B. 609, ..	
Haddon v. Neilson, ..	619
Hadley v. Perks, (1866) L.R. 1;	
Q.B. 444, 456, ..	147, 313
Haigh v. Town Co. of Sheffield,	
(1875) L.R. 10 Q.B. 102, ..	499
Hales v. Buckley, (1911) W.N. 32,	568
Hale v. Cole, (1891) 55 J.P. 376,	462
Hall v. Brien, (1906) 2 I.R. 6, ..	509
Hall v. Mayor of Bristol, (1867)	
L.R. 2 C.P. 322, ..	732
Hall v. Cox, (1899) 1 Q.B. 198, ..	503
Hall v. Knox, (1863) 4 B. & S. 515,	486
Hall v. McWilliam, (1901) 20 Cox	
33, ..	503
Hall v. Potter, (1869) 39 L.J.M.C.	
1, ..	701
Hall v. Roche, (1799) 8 I.R. 187, ..	19
Halpin v. Rice, (1901) 2 I.R. 593, ..	33,
	34, 37
Hamilton v. Walker, (1892) 2 Q.B.	
25, ..	107
Hammond v. Stewart, (1722) Stra.	
510, ..	79, 291
Hancock v. Somes, (1859) 1 El. &	
El. 795, ..	382
Handcock v. Baker, (1800) 2 Bos.	
& P. 260; 2 Hale, P.C. 95, ..	149
Handford v. Clark, (1907) 2 K.B.	
409, ..	1130
Handley v. Moffat, (1873) I.R. 7	
C.L. 104; 7 I.L.T.R. 9, ..	609
Handsworth D. C. v. Derington,	
(1897) 2 Ch. 438, ..	700

	PAGE
Hay v. Tower JJ., (1890) 24 Q.B.D. 561, ..	572
Hayes v. Rule, (1902) 18 T.L.R. 535, ..	461
Hayley v. Taylor, (1900) 19 Cox 538 ..	840
Haylock v. Sparke, (1853) 1 E. & B. 471; 22 L.J.M.C. 67, ..	36, 324, 342
Hayward's case ..	342
Heap v. Barnley R. S. A., (1884) 12 Q.B.D. 617, ..	706
Heap v. Day, (1886) 51 J.P. 213, ..	815
Heaphy, <i>In Re</i> , (1888) 22 L.R.I. 510, ..	105, 224, 226, 326
Hearne v. Garton, (1859) 2 E. & E. 66, ..	298, 771
Heaton v. McSweeney, (1905) 2 I.R. 47, ..	298
Heaven v. Crutchley, (1903) 68 J.P. 53, ..	208, 214, 603
Hedley v. Webb, (1901) 2 Ch. 126, ..	696
Heiton v. McSweeney, (1905) 2 I.R. 47, ..	340
Helliwell v. Haskins, (1911) 27 T.L.R. 463, ..	<i>Add. et Cor.</i>
Henderson v. Preston, (1888) 21 Q.B.D. 362 ..	328
Hennan v. Duckworth, (1904) 20 T.L.R. 436, ..	416
Hennessey v. Ryall, (1911) 45 I.L.T.R. 4, ..	44, 483
Henton v. Radford, (1881) 45 J.P. 224, ..	839
Hepburn v. Wilson, (1901) 4 F. (Just. case) 18, ..	281, 337, 1169
Herbert v. Leigh Mills Co., (1889) 53 J.P. 679, ..	453, 789
Herman v. Jeuchner, (1885) 15 Q.B.D. 561, ..	31
Hewett v. Thompson, (1889) 60 L.T. 268, ..	428
Hewitt v. Jervis, (1903) 68 J.P. 54, ..	570
Hewitt v. Taylor, (1896) 1 Q.B. 287, ..	470
Hewlett v. Allen, (1894) A.C. 383, ..	821
Heywood v. Whitehead, (1898) 18 Cox 615, ..	459
Hickman v. Birch, (1899) 24 Q.B.D. 172, ..	528
Hides v. Littlejohn, (1896) 18 Cox 219, ..	719
Hielt v. Ward, (1894) 70 L.T. 374; 17 Cox 736, ..	95
Higgins v. Hall, (1886) 51 J.P. 293, ..	459
Hildersheimer v. Faulkner, (1901) 2 Ch. 552, ..	413
Hildreth v. Adamson, (1860) 8 C.B.N.S., 587 ..	716
Hill v. Browning, (1870) L.R. 5 Q.B. 453, ..	387
Hill v. Phoenix Vet. Supplies Ltd., (1911) 2 K.B., 217, ..	1171
Hill v. Wallasey, L. B., (1894) 1 Ch. 133, ..	702
Hill v. Wright, (1896) 60 J.P. 312, ..	240
Hindle v. Birthwhistle, (1897) 1 Q.B. 192, ..	1101
Hindley v. Haslam, (1878) 3 Q.B.D. 481, ..	158
Hitchman v. Watt, (1894) 58 J.P. 720, ..	525, 806

	PAGE
Hoare v. Green, (1907) 2 K.B. 315, ..	1144
Hoare v. Ritchie, (1901) 1 K.B. 434, ..	1122
Hobbs v. Winchester Corp., (1910) 102 L.T.J. 841, ..	725, 733
Hoddinott v. Newton, (1901) A.C. 49, ..	1130
Hodgins v. Poe, (1867) I.R. 2 C.L. 52; 17 I.C.L.R. 383, ..	18, 70
Hodson v. Pare, (1899) 1 Q.B. 455, ..	794
Hogan, <i>Re</i> , (1879) 13 I.L.T.R. 96, ..	809
Holcombe v. Hewson, (1810) 2 Camp. 391, ..	263
Holden v. King, (1876) 35 L.T. 479, ..	380
Hole v. Digby, (1879), 27 W.R. 884, ..	770
Holland v. Halley, (1902) 18 T.L.R. 368, ..	1092
Hollis v. Marshall, (1858) 2 H. & N. 755, ..	694, 802
Hollis v. Young, (1900) 1 K.B. 629, ..	851
Holland v. Lazarus, (1897) 66 L.J. Q.B. 285, ..	696
Holloway v. Coster, (1897) 1 Q.B. 346, ..	827
Homer v. Cadman, (1886) 16 Cox 51, ..	525
Hooker v. Gray, (1907) 21 Cox 437, ..	358
Hope v. Callaghan, (1888) 24 I.L.T.R. 5, ..	484
Hope v. Warburton, (1892) 2 Q.B. 134, ..	554
Hopkin v. Hills, (1910) 2 K.B. 29, ..	627
Hopkins v. Smethwick L.B., (1890) 24 Q.B.D. 712, ..	704
Hopwood, <i>Ex parte</i> , (1850) 15 Q.B. 121, ..	226
Horder v. Middings, (1880) 44 J.P. 234, ..	461
Horder v. Roberts, (1880) 44 J.P. 256, ..	835
Horder v. Scott, (1880) 5 Q.B.D. 552, ..	462
Horgan v. Driscoll, (1908) 42 I.L.T.R. 238, ..	569
Horner v. Franklin, (1905) 1 K.B. 479, ..	1100, 1103
Hornsey L.B. v. Davis, (1893) 1 Q.B. 756, ..	700
Hosford v. McAuliffe, (1884) 29 I.L.T.R. 31, ..	130
Hosford v. Devine, (1898) 2 I.R. 28, ..	69, 130, 175, 417, 438
Hosford v. Mackey, (1897) 2 I.R. 292, ..	298, 441
Hotchin v. Hindmarsh, (1891) 2 Q.B. 181, ..	298, 459
Houghton v. Andrews, (1905) 1 K.B. 503, ..	846
Houghton v. Mundy, (1910) 103 L.T. 103, ..	296, 460
Houldershaw v. Martin, (1885) 1 T.L.R. 323, ..	723
Houlston v. Smyth, (1825) 2 C. & P. 24, ..	519
Housine v. Barrow, (1794) 6 T.R. 122, ..	18
Howard v. Clarke, (1888) 20 Q.B.D. 558, ..	662
Howe v. Knowles, (1909) S.C. (Just. Cas.) 61 ..	463



	PAGE		PAGE
Howes v. Bd. Inland Revenue, (1876) 1 Ex. D. 385, ..	772	Jacomb v. Dodgson, (1863) 3 B. & S. 461, ..	52
Howells v. Wynne, (1863) 15 C.B.N.S. 3, ..	297, 354	James v. Saunders, (1834) 10 Bing. 429, ..	323
Hoye v. Bush, (1840) 1 M. & G. 775, ..	18	J'Anson v. Stuart, (1787) 1 T.R. 754, Jarrow L.B. v. Kennedy, (1870) L.R. 6 Q.B. 128, ..	269
Huckle v. Wilson, (1877) 2 C.P.D., Huddersfield, Corp. of, v. Shaw, (1890) 54 J.P. 724, ..	102	Javes v. Harris, (1908) 21 Cox 639 Jefferson v. Richardson, (1871) 35 J.P. 470, ..	700
Hudson v. McRea, (1863) 4 B. & S. 585, ..	733	Jeffrey v. Weaver, (1899) 2 Q.B. 449, ..	500
Hudson v. Shooter, (1891) 55 J.P. 325, ..	207	Jenkin v. King, (1872) L.R. 7 Q.B. 478, ..	558
Huffam v. N. Staffordshire R. Co., (1894) 2 Q.B. 821, ..	1091	Jenkinson v. Neilson, (1899) 2 Fraser (J.C.) 13, ..	558
Hughes v. Bonella, (1894) 10 T.L.R. 197, ..	338	Jenks v. Turpin, (1884) 13 Q.B.D. 505, ..	619
Hughes v. Humphreys, (1854) 3 E. & B. 954, ..	820	Jenney v. Brooke, (1844) 6 Q.B. 323, Jennings v. Guardians of Clonakilty Union, (1895) 29 I.L.T. & S.J. 617, ..	495, 496, 497
Hughes v. Mooney, (1909) 43 I.L.T.R. 127, ..	836	Jennings v. McCarthy, 42 I.L.T.R. 217, ..	108
Hughes v. Nimmo, (1910) 47 S.L.R. 381; noted 44 I.L.T. & S.J. 102, ..	359	Jessopp v. Clarke, (1908) 24 T.L.R. 672, ..	152
Hughes v. Vargas, (1893) 9 T.L.R. 471, ..	632	Jeune Louise, The, (1868) 37 L. J. Adm. 32, ..	731
Hull v. Horsnell, (1904) 20 Cox 759, ..	287	Jobson v. Henderson, (1900) 19 Cox 477, ..	632
Hulse, <i>Ex parte</i> , (1851) 21 L.J.M.C. 21, ..	457	Johnson, <i>Ex parte</i> , (1863) 3 B. & S. 947, ..	44
Humphries v. Connor, (1864) 17 I.C.L.R. 1, ..	268	Johnson v. Colam, (1875) L.R. 10 Q.B. 544, ..	231
Humphrey v. Young, (1903) 1 K.B. 44, ..	35	Johnson v. Coltson, (1678) Sir T. Raym, 250, ..	41
Hunt v. G.N.Ry. Co., (1891) 2 Q.B. 189, ..	696	Johnson v. Croydon, Mayor of, &c., (1886) 16 Q.B.D. 708, ..	33, 794
Hunt v. Green, (1907) 21 Cox 333, Hunt v. Williams, (1888) 52 J.P. 821, ..	158	Johnson v. Leigh, (1816) 6 Taunt 246, ..	815
Hunter's Licence, <i>In re</i> , (1910) 44 I.L.T.R. 220, ..	503	Johnson v. Needham, (1909) 1 K.B. 626, ..	18
Hunter v. Clare, (1899) 1 Q.B. 635, Hurley, <i>In re</i> , Q.B.D. (Ir.), 19th Dec. (1888), ..	114	Johnston v. Laing, (1876) 3 C. 250, Johnston v. Meldon, (1891) 30 L.R. Ir. 15, ..	61, 88, 359
Hutchings & Reeves, (1842) 9 M. & W. 747, ..	616	Jones v. Cashin, (1893) 27 I.L.T. 87 C.C. ..	560
Hutchinson v. Stevenson, (1902) 39 Sc. L.R. 789, ..	841	Jones v. Davies, (1893) 60 L.T. 497, Jones v. German, (1896) 2 Q.B. 418; (1897) 1 Q.B. 374, ..	660
Hutchinson v. Walsh, (1904) 38 I.L.T.R. 133, ..	470	Jones v. Giles, (1854) 10 Ex. 119, Jones v. Huxtable, (1867) L.R. 2 Q.B. 460, ..	461
Hyland v. Hamilton, (1902) 36 I.L.T.R. 193, ..	152	Jones v. Jones, (1910) 2 K.B. 262, Jones v. Jones, (1894) 10 T.L.R. 300, Jones v. Marshall, (1889) 24 Q.B.D. 269, ..	144
	245, 559, 564	Jones v. Robson, (1901) 1 K.B. 673, Jones v. Shervington, (1908) 2 K.B. 539, ..	836
I.		Jones v. Short, (1900) 19 Cox 472, ..	387
Ingle v. Bell, (1836) 1 M. & W. 516, ..	147	Jones v. Slee, (1886) 32 C.D. 585, Jones v. Wasley, (1902) 18 T.L.R. 418, ..	562
Innes v. Newman, (1894) 2 Q.B. 292, ..	338, 807	Jones v. Williams, (1877) 46 L.J.M.C. 270, ..	461
Irish Society v. Fleming, ..	444	Jowett v. Idle L.B., (1888) 36 W.R. 530, ..	659
Irons v. Van Tromp, (1895) 18 Cox 132, ..	464	Judge v. Bennett, (1877) 36 W.R. 103, ..	626
Irvine v. Teague, (1898) 32 I.L.T.R. 109, ..	161		540
Irving v. Gallow Park Dairy Co., Ltd., (1902) 87 L.T. 70, ..	466		528
			254
J.			819
Jackson v. A. G. Mulliner Motor Body Co., Ltd., (1911) 1 K.B. 546, ..	1100		109
			700
			611

K.		PAGE			PAGE
Kavanagh v. Dolan, (1876)	10		Kitson v. Ashe, (1899)	1 Q.B. 425,	549
I.L.T.R. 80,	..	524	Knight v. Halliwell, (1874)	1 L.R. 9 ;	
Kavanagh v. Grant, (1876)	11		Q.B. 412,	..	242
I.L.T.R. 34,	..	524	Knights v. L. C. & D. Ry. Co.,	..	
Kavanagh v. Glorney, (1876)	..		(1893)	62 L.J.Q.B. 378,	768
I.R. 10 C.L. 210,	..	64, 242, 446	Knight v. Whitmore, (1885)	53 L.T.	
Kean v. Robinson, (1910)	2 I.R.		233 ; 33 W.R. 907,	..	104
306,	..	193, 239, 244	Knill v. Knill, (1822)	5 B. & Ald.	
Kearley v. Tylor, (1891)	65 L.T.		929,	..	921
261,	..	296	Knowles v. Sinclair, (1898)	1 Q.B.	
Kearse v. O'Mahony, (1910)	44		170,	..	844
I.L.T.R. 231,	..	597	Knox v. Galbraith, (1898)	32	
Keates v. Lewis Merthyr Consoli-	..		I.L.T.R. 50	..	674
dated Collieries, (1910)	1 K.B.		Koch v. Koch, (1899)	P. 221,	533
386 ; (1910)	2 K.B. 445,	158	Korten v. West Sussex C. C., (1903)	..	
Keen v. Henry, (1894)	1 Q.B. 292,	529	67 J.P. 167,	..	1170
Keen v. R., (1847)	10 Q.B. 928,	9, 11	Kruse v. Johnson, (1898)	2 Q.B.	
Keenan v. Collie, (1907)	41		91	..	337, 339, 807
I.L.T.R. 226,	..	88, 345, 505	Kydd v. Watch Committee of	..	
Keenan v. Costelloe, (1910)	44		Liverpool, (1907)	2 K.B. 591, 235, 237	
I.L.T.R. 218,	95, 97, 99, 242, 460		Kyle v. Barbar, (1888)	16 Cox 378,	694
Keep v. Stephens, (1910)	100 L.T.		Kyle v. Dunsden, (1908)	2 K.B. 293,	844
491,	..	547			
Keir v. Leeman, (1844)	6 Q.B. 308 ;				
9 Q.B. 371,	..	51			
Keller, <i>In re</i> , (1887)	22 L.R.I. 158,	253			
Kelly v. Drought, (1887)	21				
I.L.T.R. 31,	..	193			
Kelly v. Lawrence, (1864)	3 H. &				
C. 1.	..	18			
Kelly v. Moloney, (1854)	4				
I.C.L.R. 413,	..	392			
Kelly v. Rive, (1906)	2 I.R. 1,	510			
Kenealy v. O'Keeffe, (1901)	2 I.R.				
39,	..	43, 44, 598			
Kennington v. Daniel, (1888)	22				
L.R.Ir. 667,	36, 64, 96, 100, 380				
Kennedy v. Cowie, (1891)	1 Q.B.				
771,	..	613			
Kenyon, <i>Ex parte</i> , (1881)	45 J.P.				
303,	..	81, 99, 234			
Kensit v. St. Paul's Dean &	..				
Chapter, (1905)	2 K.B. 249,	419			
Kent County Council v. Humphrey,	..				
(1895)	1 Q.B. 903,	338, 846			
Kenny v. Harrison, (1902)	2 K.B.				
168,	..	1130			
Kiarley v. Tonge, (1891)	17 Cox				
328,	..	459			
Kidner v. Daniels, (1910)	102 L.T.				
132,	..	638			
Killeway v. MacDougal, (1880)	45				
J.P. 207,	..	772			
Killick v. Graham, (1896)	2 Q.B.				
196,	..	575			
King v. Guardians of Delvin Union,	..				
(1908)	2 I.R. 15,	152, 87			
King's Co. C. C. v. Kennedy, (1910)	..				
2 I.R. 544,	..	980			
King v. R., (1849)	14 Q.B. 31,	920			
King v. Russell, (1909)	2 I.R. 25,	449			
King v. Spencer, (1904)	20 Cox				
692,	..	839			
Kinnis v. Graves, (1898)	67 L.J.Q.B.				
583,	..	62, 103			
Kippins, <i>Ex parte</i> , (1897)	1 Q.B. 1,	528			
Kirk v. Coates, (1885)	16 Q.B.D.				
49,	..	459			
Kirshenboim v. Gluckstein, (1898)	..				
2 Q.B. 19,	..	83, 618			

L.

Lacon v. Hooper, (1795)	6 T.R.	
224,	..	930
Laidlow v. Wilson, (1894)	1 Q.B.	
74,	..	464
Laird v. Dobell, (1906)	1 K.B. 131,	1170
Lalor v. Bland, (1858)	8 I.C.L.R.,	324,
		326
Lamb v. Burnett, (1831)	1 Cr. & J.	
291,	..	383
Lamb v. G. N. Ry. Co., (1891)	2	
Q.B. 281,	..	821
Lamond v. Richard, (1897)	1 Q.B.	
541,	..	565
Lane v. Rendall, (1899)	2 Q.B. 673,	837
Lang v. Walker, (1902)	40 Sc. L.R.	
284	..	505
Langdon v. Howells, (1879)	4	
Q.B.D. 337,	..	768
Langhorn v. Massy, (1900)	34	
I.L.T.R. 161 ; 1 N.I.J.R. 4	..	561
Langley v. Bombay Tea Co., Ltd.,	..	
(1900)	2 Q.B. 460,	618, 838
Langrish v. Archer, (1882)	10 Q.B.D.	
44,	..	549
Lanton v. Jeffries, (1894)	58 J.P.	
318,	..	89
Langton v. Waite, (1868)	1 L.R. 6	
Eq. 165,	..	660
Launock v. Brown, (1819)	2 B. &	
Ald. 592,	..	145
Larkin v. Belfast Harbour Comms.,	..	
(1908)	2 I.R. 214,	90, 612
Latimer v. Birmingham JJ., (1896)	..	
60 J.P. 660,	..	120
La Touche v. Coady, (1900)	35	
I.L.T.R. 44,	..	169
Laurence v. King, (1868)	1 L.R. 3	
Q.B. 345,	..	393
Law v. Llewellyn, (1906)	1 K.B.	
487,	..	327
Lawless v. McAleer, (1897)	2 I.R.	
248,	..	63, 101, 103, 140
Lawlor v. Egan, (1901)	2 I.R. 589,	44,
		83, 672, 675



	PAGE		PAGE
Lawrance v. O'Hara, (1903) 67 J.P.		Liverpool United Gas Light Co. v. Overseers of the Poor of Everton, (1871) L.R. 6 C.P. 414, ..	254
369, ..	571	Llandudno Urban C. v. Woods, (1899) 2 Ch. 709, ..	384
Lawrenson v. Hill, (1860) 10 I.C.L.R. 177, ..	17, 325	Lloyd v. Barrett, (1900) 19 Cox 540, ..	558, 559, 564
Laws v. Eltringham, (1881) 8 Q.B.D. 283, ..	604	Lloyd v. Lloyd, (1885) 14 Q.B.D. 725, ..	486, 487
Lawson v. Edminson, (1908) 2 K.B. 952, ..	555	Lock v. Ryan, 43 I.L. T.R. 110, ..	245
Lawson v. Reynolds, (1904) 1 Ch. 718, ..	6	Lockett v. Withey, (1909) 25 T.L.R. 16, ..	421
Leader v. Yell, (1864) 16 C.B.N.S. 595, ..	120, 121, 269	Lockhart v. St. Albans, (1888) 21 Q.B.D. 188, ..	238
Leahy v. Reddy, (1895) 1 I.W.L.R. 139, ..	427, 802	Lockwood v. Cooper, (1903) 2 K.B. 428, ..	497, 547
Leary v. Patrick, (1850) 15 Q.B. 266; 19 L.J.M.C. 211, ..	324	Lockwood v. Walker, (1910) S.C. Just. 3, ..	870
Leatt v. Vine, (1861) 30 L.J.M.C. 207, ..	207, 210	Local Govt. Bd. v. Eivers, (1902) 2 I.R. 262, ..	596
Lee v. Baltinglass, Lady, (1655), Styles 475, ..	30	L. B. & S. C. Ry. Co. v. Fairbrother, (1900) 16 T.L.R. 167, ..	770
Lee Conservancy Board v. Bishop's Stortford U.C., (1906) 70 J.P. 244, ..	101	London C. C. v. Bermondsey Bioscope Co., Ltd., (1910), 27 T.L.R. 141, ..	117, 1273
Lee v. Dangar Grant & Co., (1892) 2 Q.B. 337, ..	925	London C. C. v. Brass, (1901) 17 T.L.R. 504, ..	1102
Lee v. Gansel, (1774) 1 Cowp. 1, ..	18	London County Council v. Fairbank, (1911) 2 K.B. 3, ..	Add. et Cor.
Leeds Corporation v. Ryder, (1907) A.C. 420, ..	114, 121, 217, 219	London C. C. v. Hearn, (1909) 73 J.P. 211, ..	428, 429
Le Feuvre v. Lankester, (1854) 3 E. & B. 530, ..	597	London C. C. v. Holzapfels Comp. Co., Ltd., (1899) 19 Cox 383, ..	664
Leicester Urban Authority v. Holland, (1888) 57 L.J.M.C. 75, ..	213, 214, 525	London C. C., Re, v. Lewis, (1900) 82 L.T. 195, ..	1102
Leigh v. Cole, (1853) 6 Cox 329, 332, ..	20, 149	London C. C. v. Read, (1900) 1 Q.B. 288, ..	387
Lemon v. Fletcher, (1873) L.R. 8 Q.B. 319, ..	616	London C. C. v. Payne, (1905) 1 K.B. 410, ..	837
Lemon v. McIntyre, (1897) I.R. 11 C.L. 479, ..	203	London C. C. v. Tubbs, (1903) 1 L.G.R. 746, ..	1102
Le Neve v. Mile End Vestry, (1857) 27 L.J.Q.B. 208, ..	803	London Co. Council v. Worley, (1894) 2 Q.B. 826, ..	51
Leonard v. Richards, (1891) 25 I.L.T.R. 58, ..	165, 281, 370	Londonderry Port and Harbour Commissioners v. Londonderry Bridge Commissioners, (1894) 2 I.R. 384, ..	523
Lester v. Torrens, (1877) 2 Q.B.D. 403, ..	426	London, Edinburgh, and Glasgow Assurance Co., Ltd., v. Partington, (1903) 88 L.T. 732, ..	242
Lewis, Ex parte, (1888) 21, Q.B.D. 191, ..	17	L. & N. W. Ry. v. Amptill Union, (1906) 94 L.T. 314, ..	237
Lewis v. Carr, (1876), 1 Ex. D., 484, 598	596, 598	L. N. W. Ry. Co. v. Richards, (1862) 2 B. & S. 326, ..	838
Lewis v. Gilbertson, (1904) 20 Cox 677, ..	1100	London and Provincial Steam Laundry v. Willesden Bd., (1892) 2 Q.B. 277, ..	706
Lewis v. Termor, (1887) 18 Q.B.D. 352, ..	357	London School Bd. v. Harvey, (1879) 4 Q.B.D. 451, ..	519
Liddiard v. Reece, (1880) 44 J.P. 233, ..	461	London School Board v. Jackson, (1881) 7 Q.B.D. 502, ..	430
Liddell v. Lofthouse, (1896) 1 Q.B. 295, ..	500	London School Bd. v. St. Mary's, Islington, (1875) 1 Q.B.D. 65, ..	701
Little v. Donnelly, (1871) I.R. 5 C.L. 1, ..	239	London Tram Co. v. Bailey, (1877) 3 Q.B.D. 217, ..	157
Limerick Union, Guardians of, v. White, (1852) 2 I.C.L.R. 630, ..	202	Loome v. Bailey, (1860) 3 E. & E. 444, ..	489
Linehan v. Hartnett, (1897) 31 I.L.T. & S.J. 429, ..	419	Lord v. Colvin, (1855) 24 L.J. Ch. 517, ..	283
Linford v. Fitzroy, (1849) 13 Q.B. 240; 18 L.J.M.C. 108; 13 Jur. 303, ..	324	Lord Advocate v. Carse, (1899) 63 J.P. 472, ..	547, 548
Liskeard Union v. Liskeard W. W. Co., (1841) 7 Q.B.D. 505, ..	166		
Listowel R.D.U. v. Stack, (1910) 44 I.L.T.R. 255, ..	188		
Litchfield v. Dreyfus, (1906) 1 K.B. 584, ..	627		

	PAGE		PAGE
Lord Advocate v. Stewart, (1899) 63 J.P. 311, ..	107, 360, 547, 548	Marsh v. Loader, (1863) 14 C.B.N.S. 535, ..	255
Ld. Advocate v. Young, W. N., (1898) 62 J.P. 199, ..	491	Martin v. Barker, (1881) 45 L.T. 214, ..	564
Lord Listowel's Fishery, <i>In re</i> , (1875) L.R. 9 C.L. 46, ..	227	Martin v. Benjamin, (1907) 1 K.B. 64, ..	390, 504
Lort v. Hutton, (1876) 33 L.T. 730, ..	37, 262	Martin v. Brooman, (1909) 25 T.L.R. 783, ..	633
Lowe v. Volp, (1896), Q.B. 256, ..	819	Martin v. Clark, (1893) 9 T.L.R. 656, ..	847
Lowery v. Hallard, (1906) 1 K.B. 398, ..	463	Martin v. Pidgeon, (1859) 1 E. & E. 778; 28 L.J.M.C. 179, ..	95
Lowdens v. Keaveny, (1903) 2 I.R. 82, ..	525	Martin v. Treacher, (1886) 16 Q.B.D. 507, ..	66, 598
Luff v. Leaper, (1872) 36 J.P. 773, ..	547	Martin v. White, (1910) 1 K.B. 665, 281, ..	291, 635, 640
Lutton v. Doherty, (1885) 16 L.R.I. 493, ..	706	"Mary Ann," The, (1865) 34 L.J. Adm. 73; 12 L.T. 238, ..	177
Lydon v. Stanbridge, (1857) H. & N. 57, ..	705	Massereene v. Bellew, (1889) 2 L.R.I. 420, ..	190, 235, 240
Lynam v. O'Reilly, (1898) 2 I.R. 48, ..	543	Mason v. Cowdary, (1900) 2 Q.B. 419, ..	463
Lyons v. Wilkins, (1896) 1 Ch. 811, ..	812	Masson v. L.C. & D.R. Co., (1868) L.R. 6 Eq. 101, ..	491
Lyons v. Wilkins, (1899) 1 Ch. 255, ..	611	Massey v. Cassidy, (1883) 13 L.R.I. 97, ..	102
<b>M.</b>		Massey v. Johnson, (1809) 12 East 67, ..	328
Mabe v. Connor, (1909) 1 K.B. 515, ..	66, 411, 412	Massey v. Morris, (1894) 2 Q.B. 412, ..	265, 293, 298
Mace v. Philcox, (1864) 15 C.B.N.S. 600, ..	385	Mathews v. Carpenter, (1885) 16 L.R.I. 420, ..	214, 242, 818
Macey v. McKenzie, (1903) 88 L.T. 631, ..	540	Mattinson v. Bindley, (1908) 2 K.B. 534, ..	387
Magee v. Montgomery, (1883) 17 I.L.T.R. 92, ..	825	May v. Waters, (1910) 1 K.B. 431, ..	494
Maguire v. Leigh-on-Sea U.D.C., (1906) 95 L.T. 319, ..	701	May v. Beely, (1910) 2 K.B. 722, ..	57, 109
Maguire v. Porter, (1905) 2 I.R. 147, ..	472	Mayor v. Harding, (1867) L.R. 2 Q.B. 410, ..	240
Makin v. A.-G. of N. S. Wales, (1894) A.C. 57, ..	263	Mayhew v. Sutton, (1901) 20 Cox 146, ..	631
Mallison v. Carr, (1891) 1 Q.B. 48, ..	725	Maynard v. Robinson, (1903) 89 L.T. 136, ..	158
Maloney v. French, (1869) I.R. 3 C.L. 391, ..	325	Mayo Presentments, <i>Re</i> , (1861) 14 I.C.L.R. 392, ..	227
Malone v. Spellesey, (1842) I.C.R. 504, ..	283	Mead's Case, (1824) 2 B. & C. 605, ..	270
Malton Bd. of Health v. Malton Manure Co., (1879) 4 Ex. D., 302, ..	707	Mearing v. Hellings, (1845) 14 M. & W. 711, ..	503
Manchester Corp. v. Hampson, (1887) 35 W.R. 334, ..	701	Mee v. Cruikshank, (1902) 20 Cox 210, ..	149
Margate Pier v. Margate T.C., (1869) 20 L.T. 564, ..	708	Megarry v. McCullagh, (1863) 14 I.C.L.R. 151, ..	841
Mannerling, <i>Ex parte</i> , (1862) 2 B. & S. 431, ..	214	Mellor v. Denham, (1880) 5 Q.B.D. 467, ..	66
Manners v. Tyler, (1902) 1 K.B. 901, ..	466	Mellor v. Warden, (1896) 40 S.J. 567, ..	804
Mansell v. Griffin, (1908) 1 K.B. 160, ..	383	Melville v. Mirror of Life Co., (1895) 2 Ch. 531, ..	413
Mantle v. Jordan, (1897) 1 Q.B. 248, ..	807	Mercer v. O'Shaughnessy, 9th Dec., (1910) Ir., unreported, ..	550, 564
Markham, <i>Ex parte</i> , (1869) 21 L.T. 748, ..	241	Merrill v. Wilson, (1910) 1 K.B. 35, ..	1130
Marshall <i>Ex parte</i> , (1907) 71 J.P. 501, ..	60	Met. Water Board v. L. B. & S. C. Ry. Co., (1910) 1 K.B. 804, ..	167
Marshall v. Ford, (1908) 90 L.T. 796, ..	281, 635	Meunier <i>In re</i> , (1894) 2 K.B. 418, ..	286
Marshall v. Smith, (1873) L.R. 8 C.P. 416, ..	242	Midland Ry. Co. v. Edminton Guardians, (1895) 1 Q.B. 357, ..	116
Marks v. Beyfus, (1890) 25 Q.B.D. 498, ..	286, 287	Midland Ry. Co. v. Freeman, (1884) 12 Q.B.D. 629, ..	371
Marks v. Ford, (1881) 45 J.P. 157, ..	528, 806	Midland Ry. Co. v. Watton, (1886) 17 Q.B.D. 30, ..	700, 701
Marks v. Frogley, (1898) 1 Q.B. 888	451	Middleton, <i>Ex parte</i> , (1824) 3 B. & C. 164, ..	792
		Middleton v. Gale, (1838) 8 A. & E. 155, ..	44, 439

	PAGE		PAGE
Migotti v. Colville, (1879) 4 C.P.D.		Morley v. Attenborough, (1848) 3	
233, ..	52	Ex. 500, ..	660
Milch v. Frankau, (1909) 2 K.B.		Morley v. Greenhalgh, (1863) 3	
100, ..	52, 795	B. & S. 374, ..	360
Mineral Water Bottle Exchange v.		Morris v. Beal, (1904) 2 K.B. 585, ..	1129
Booth, (1887) 36 Ch.D. 465 ..	811	Morris v. Corbet, (1892) 56 J.P.	
Miles v. Hutchings, (1903) 2 K.B.		649, ..	293, 295
714, ..	209	Morris v. Duncan, (1899) 1 Q.B. 4, ..	52
Millar v. McCabe, (1892) 26 I.L.T.		Morris v. Jeffries, (1866) L.R. 1;	
& S.J. 348, ..	581	Q.B. 261, ..	393
Millard v. Balby U.D.C., (1905) 1		Morris v. Johnson, (1890) 54 J.P.	
K.B. 60, ..	701	612, ..	459
Millard v. Wastall, (1898) 1 Q.B.		Morris v. Millar, (1767) 4 Burr.	
342, ..	708, 709	2057, ..	913
Miller v. Dudley JJ., (1898) 46		Morrison v. Leonard, (1827) 3	
W.R. 606, ..	555	C. & P. 127, ..	260
Millett v. Coleman, (1873) 44		Motterman v. Eastern Counties Ry.	
L.J.Q.B. 194; 39 J.P. 805, ..	103, 157	Co., (1859) 29 L.J.M.C. 57, ..	279, 772
Milner v. Maclean, (1825) 2 C. & P.		Mountfield v. Ward, (1897) 1 Q.B.	
17, ..	900	326, ..	561
Milnes v. Bale, (1875) L.R. 10		Mulcahy, <i>Ex parte</i> , (1898) 4	
C.P. 591, ..	103	I.W.L.R. 186, ..	62, 332
Milton v. Studd, (1910) 2 K.B.		Mulcahy's Case, (1903) 2 I.R.	
118, ..	405	113, ..	116
Mitchell v. Brown, (1858) 1 E. & E.		Muir v. Hore, (1877) 37 L.T. 315, ..	236, 237
267, ..	87	Mulkern v. Lord, (1879) 4 A.C.	
Mitchell v. Crawshaw, (1903) 1		182, ..	162
K.B. 701, ..	540	Mullins v. Collins, (1874) L.R. 9 Q.B.	
Mitchell v. Smyth, (1894) 2 I.R.		292, ..	294, 548
351, ..	73	Mullis v. Hubbard, (1903) 2 Ch.	
Mitchell v. Torup, (1766) Parker		431, ..	702
227, ..	296	Munster v. Lamb, (1883) 11 Q.B.D.	
Mitchelstown Union, Guardians of, v.		588, ..	327
Duffy, (1893) 28 I.L.T.R. 20, ..	217, 694	Munro v. Kelly, (1911) 45 I.L.T.R.	
Mogul Steamship Co. v. McGregor,		174, ..	<i>Add. et Cor.</i>
Gow, & Co., (1889) 23 Q.B.D.		Murnane v. Adams, (1910) 2 I.R.	
598; (1892) A.C. 25, ..	88 4	175, ..	538, 558, 570
Molloy v. Cunningham, (1865) 11		Murphy v. Ahern, (1869) I.R. 3 Ch.	
Ir.J.N.S. 37, ..	566, 572	586, ..	809
Molloy v. Gray, (1889) 24 L.R.I.		Murphy v. Conservators Ilan River,	
258, ..	704	(1887) 21 I.L.T.R. 20, ..	442
Monson v. Tussaids, Ltd., (1894)		Murphy v. Grady, (1903) 37	
1 Q.B. 671, ..	909	I.L.T.R. 161, ..	190
Manth v. Arnold, (1902) 1 K.B.		Murphy v. Macrory, (1909) 43	
761, ..	1100, 1103	I.L.T.R. 243, ..	169
Moody v. Leach, (1880) 44 J.P.		Murphy v. Manning, (1877) 2 Ex.D.	
459, ..	725	307, ..	356
Moore's Case, Sir Wm., (1704) 2		Murphy v. Ryan, (1867) I.R. 2 C.L.	
Ld. Rym. 1028, ..	793	143, ..	211
Moore v. Donagher, (1903) 2 I.R.		Murray v. Thompson, (1888) 22	
290, ..	161	Q.B.D. 142, ..	68, 91, 92
Moore v. Pearce, (1895) 2 Q.B. 657,		Mussett v. Burch, (1876) 35 L.T.	
Moore v. Smith, (1859) 1 E. & E.		486, ..	207
597, ..	78, 243	Musther v. Musther, (1894) 58 J.P.	
Moore v. Wilson, 5 F. Just. C. ss.		53, ..	239
88, ..	103	M'Auliff's Case, (1890) unreported,	438
Moran v. Jones, (1911) 27 T.L.R.		M'Bride v. M'Govern, (1906) 2 I.R.	
421, ..	<i>Add. et Cor.</i>	181, ..	527, 552
Morden v. Porter, (1860) 29		M'Caffrey v. M'Mahon, (1901) 35	
L.J.M.C. 213; 7. C.B.N.S., ..		I.L.T.R. 97, ..	163
641, ..	44, 483, 484	M'Connell v. Brennan, (1908) 2 I.R.	
Moreton v. Reeve, (1907) 2 K.B.		411, ..	268, 500
401, ..	244	M'Cormack v. Carroll, (1911) 45	
Morgan v. Brown, (1836) 4 A. & E.		I.L.T.R. 7, ..	44, 439
515, ..	47	M'Cusker v. Com. of Valuation, (1902)	
Morgan v. Edwards, (1860) 5		36 I.L.T.R. 176, ..	194, 195
H. & N. 415, ..	238, 239	M'Donald v. Bulwer, (1862) 13	
Morgan v. London Genl. Omnibus		I.C.L.R. 549, ..	17, 325, 326
Co., (1884) 13 Q.B.D. 832, ..	158	M'Donogh v. Davis, (1875) I.R. 9	
Morgan v. McClure, (1898) 4		C.L. 302, ..	227
I.W.L.R. 199, ..	49		



	PAGE
M'Dowell v. Corp. of Dublin, (1903) 2 I.R. 549, ..	602
M'Donald v. Hughes, (1902) 1 K.B. 94, ..	119, 571
M'Elroy v. Freeman, (1905) 2 I.R. 367, ..	420
M'Evoy v. Guardians of Kilkenny Union, (1896) 30 I.L.T.R. 156, ..	531
M'Fadden, <i>Ex parte</i> , (1888) Judgments of Superior Courts, 165, ..	136
M'Garry v. Fairbairn, (1869) I.R. 3 C.L. 552, ..	103, 185, 312
M'Gann v. Kelly, (1894) 2 I.R. 8, 100, 244, 673, 674	
M'Gowan v. Sligo Harbour Commrs., (1899) 5 I.W.L.R. 26, ..	818
M'Hugh v. Cartin, (1903) 3 N.I.J.R. 250, ..	103, 107, 563
M'Hugh v. M'Grath, (1894) 2 I.R. 78, ..	463
M'Ilroy v. Kenny, (1906) 40 I.L.T.R. 138, ..	541
M'Innay v. Hildreth, (1897) 1 Q.B. 600, ..	499
MacKalley's Case, (1611) 9 Co. Rep. 65 b, ..	793
M'Kee v. M'Grath, (1892) 30 L.R.I. 41, ..	524, 806, 807
M'Kenna v. Harding, (1905) 69 J.P. 354, ..	541
M'Kenzie v. Day, (1893) 1 Q.B. 289, ..	574
Mackenzie v. Hawke, (1902) 2 K.B. 216, ..	500
MacKenzie v. MacKenzie, (1895) A.C. 384, ..	533
Mackenzie v. Spear, (1902) Unreported, ..	559
MacMahon, <i>Ex parte</i> , (1883) 48 J.P. 70, ..	46
M'Lean v. Monk, (1898) 18 Cox 686, ..	364
M'Loughlin v. M'Cloy, (1892) 26 I.L.T.R. 161, ..	570
M'Naghten's Case, (1843) 10 C. & F. 200, ..	256
M'Nair v. Baker, (1904) 1 K.B. 208, ..	707
M'Nair v. Cave, (1903) 1 K.B. 24, ..	467
M'Nair v. Horan, (1904) 20 Cox 729, ..	472
M'Namara v. Apjohn, (1850) 13 I.L.R. 394, ..	204
M'Nulty v. Hope, (1870) I.R. 4 C.L. 377, ..	103, 185, 312
McQueen v. Jackson, (1903) 2 K.B. 163, ..	48

N.

Nagle v. Devane, (1901) 2 N.I.J.R. 17, ..	561
Nantyglo U.D.C. v. Ebley, (1905) 69 J.P. 40, ..	239
Nash v. Hollinshead, (1901) 1 K.B. 700, ..	1145
Neal v. Devenish, (1894) 1 Q.B. 544, ..	95
Needham v. Worcestershire C.C., (1909) 25 T.L.R. 471, ..	1170
Neeld v. Hendon U.D.C., (1899) 16 T.L.R. 50, ..	524
Nell v. Longbottom, (1894) 1 Q.B. 767, ..	596

	PAGE
New Ross Union, Guardians of, v. Boyne, (1892) 30 L.R.I. 160, ..	202
Newman v. Bendyshe, (1893) 10 A. & E. 11, ..	83
Newman v. Hardwicke, (1838) 8 A. & E. 124; 3 N. & P. 368; 7 L.J.M.C. 101, ..	85, 323, 326
Newman v. Jones, (1886) 17 Q.B.D. 132, ..	295
Newman v. Oughton, (1911) 1 K.B. 124, ..	627
Newport Union v. Stead, (1907) 2 K.B. 460-465, ..	242
Newton v. Harland, (1840) 1 M. & G. 644, ..	901
Newton v. Pyke, (1909) 25 T.L.R. 127, ..	627
Nicholson v. Booth, (1888) 16 Cox 373, ..	380
Nicholson v. Fields, (1862) 7 H. & N. 810, ..	596
Nicholas v. Parker, (1902) 18 T.L.R. 459, ..	413
Nisbet v. Lloyd, (1904) 68 J.P. 396, ..	60
Nix v. Nottingham JJ., (1899) 2 Q.B. 294, ..	111
Niven v. Greaves, (1890) 54 J.P. 548, ..	296
Nixon v. Rogers, (1869) I.R. 3 C.L. 614, ..	805, 809
Noble v. Hughes, (1896) 2 I.W.L.R. 90, ..	65, 78, 91, 341, 482
Noblett v. Hopkinson, (1905) 2 K.B. 214, ..	559, 858
Noden v. Johnson, (1850) 16 Q.B. 218, ..	383
Norman v. Villars, (1897) 2 Ex. D. 359, ..	913
N.D.U., Guardians of, v. Scott, (1850) 1 I.L.C.R. 76, ..	202
N. E. Breweries, Limited v. Gibson, (1904) 20 Cox 706, ..	838
North London R. Co. v. St. Mary's, Islington, (1872) 27 L.T. 672, ..	700
Norton v. Counties Conservative Permanent Building Society, (1895) 1 Q.B. 246, ..	162
Norton v. Monckton, (1895) 43 W.R. 350, ..	327
Nottingham Corp., <i>In re</i> , (1897) 2 Q.B. 502, ..	33
Nuttage v. Jackson, (1883) 11 Q.B.D. 627, ..	414
Nutton v. Wilson, (1889) 22 Q.B.D. 744, ..	596, 597
Novis, <i>Ex parte</i> , (1905) 2 K.B. 456, ..	132

O.

Oakey v. Stretton, (1884) 48 J.P. 709, ..	281, 370
Oatley v. Lemon, (1905) 20 Cox 791, ..	467
O'Brien, <i>Ex parte</i> , (1883) 12 L.R.I. 29, ..	592
O'Brien Dalton, <i>Ex parte</i> , (1890) 28 L.R.I. 36, ..	52
O'Brien v. Brabner, (1885) 49 J.P. 227, ..	17
O'Brien v. Dobbie, (1905) 1 K.B. 346, ..	1130

# TABLE OF CASES.

lxxix

	PAGE		PAGE
O'Carroll v. Hastings, (1905) 2 I.R.	598	Parker v. Boughey, (1862) 3 B. & S. 43,	161
590, 609, 610, ..		Parker v. Green, (1862) 9 Cox 169,	66
O'Connor v. O'Neill, (1903) 3 N.I.J.R. 362, ..	175	Parker v. Inge, (1886) 17 Q.B.D. 584,	709
O'Connor v. O'Reilly, (1910) Unreported, ..	562	Parker v. Walsh, (1896) 2 I.R. 404,	560
O'Connor v. Synott, (1902) 36 I.L.T.R. 239, ..	549	Partington, <i>Ex parte</i> , (1845) 13 M. & W. 684,	252
O'Dea v. Crowhurst, (1899) 19 Cox 260, ..	1091, 1092	Parkinson v. Mayor of Blackburn, (1859) 28 L.J.M.C. 7,	701
O'Driscoll v. Dolan, (1911) 45 I.L.T.R. 144, ..	Add. et Cor.	Parsons v. Birmingham Dairy Co., (1882) 9 Q.B.D. 172,	463
O'Duffy v. Jaff, (1904) 2 I.R. 27; 37 I.L.T.R. 236, ..	83, 84, 416	Parsons v. King, (1891) 8 T.L.R. 114,	167
O'Grady v. Synan, 6 I.W.L.R. 85,	223	Pasquier v. Neale, (1902) 2 K.B. 287,	570
O'Keeffe v. Walsh, (1903) 2 I.R. 651,	266	Passey v. Oxford L.L., (1879) 43 J.P. 622, ..	723
O'Kelly v. Harvey, (1882) 10 L.R. 1. 291, ..	150	Pater, <i>Ex parte</i> , (1864) 5 B. & S. 299,	9, 72, 73
Oldham v. Sheasby, (1891) 60 L.J.M.C. 81, ..	560, 561	Patter v. Rhymer, (1860) 3 E. & E. 1,	547
Oliver v. Loudon, (1896) 33 S.L.R. 274, ..	562	Paterson v. Duke, (1901) 6 F. (Just. Cas.) 53,	1106
O'Neill v. Stevenson, (1877) I.R. 11 C.L. 134, 140, ..	2	Paterson v. Hunt, (1909) 101 L.T. 571,	1144
O'Neill v. Waldron, (1905) 5 N.I.J.R. 241, ..	697	Paul v. Hargreaves, (1908) 2 K.B. 289,	846
O'Reilly, James, In the matter of, (1894) 29 I.L.T.R. 33, ..	152	Payne v. Hack, (1894) 58 J.P. 165,	463
Original Hartlepool Collieries Co. v. Gibb, (1877) 5 Ch. D. 713, ..	525	Payne v. Thomas, (1890) 63 L.T. 456,	551
Osborne v. Cocquet, (1896) 2 Q.B. 109,	167	Payne v. Wright, (1892) 61 L.J. M.C. 114,	234
Osborne v. Wood, (1897) 1 Q.B. 197, ..	1128	Peache v. Colman, (1866) L.R. 1 C.P. 324,	561
Otter v. Edgley, (1883) 57 J.P. 457,	461	Peacock v. R., (1858) 4 C.B.N.S. 264; 27 L.J.C.P. 224, ..	52, 238, 794
Ouley v. Gee, (1861) 30 L.J.M.C. 222, ..	84	Pearks and others v. Houghton, (1902) 1 K.B. 889,	461
Overbury's case, Sir Thomas, (1616) 2 St. Tr. 957, ..	298	Pearks v. Knight, (1901) 2 K.B. 825,	460
Owen v. Langford, (1891) 55 J.P. 484,	570	Pearks v. Richardson, (1902) 1 K.B. 91, ..	48, 50, 309, 468
Owner v. Cottingham, (1910) 74 J.P. 219, ..	1144	Pearks v. Ward, (1902) 2 K.B. 1, ..	83, 97, 457, 459
Owner v. Hooper, (1903) 20 Cox 518,	820	Pearse v. Gill, (1877) 41 J.P. 742,	558
Oxford Tram Co. v. Sankey, (1890) 54 J.P. 564, ..	99	Pearse v. Lansdowne, (1893) 62 L.J.Q.B. 441,	158
		Pease v. Chaytor, (1863) 3 B. & S. 620,	325
		Pearson v. Belgian Mills Co., (1896) 1 Q.B. 244, ..	1102
		Peckover v. Defries, (1906) 21 Cox 323,	570
		Pengriff v. Chevalier, (1860) 8 C.B.N.S. 240, ..	616
		Penn v. Alexander, (1893) 1 Q.B. 532, ..	267, 560
		Pennell v. Attenborough, (1843) 4 Q.B. 868, ..	653
		Pennell v. Uxbridge Overseers, (1862) 5 L.T. 685, ..	239, 794
		Pennington v. Pincock, (1908) 2 K.B. 244, ..	551
		Penny, <i>Re</i> , (1857) 7 E. & B. 660,	224
		Percival, <i>Ex parte</i> , (1907) 1 K.B. 696,	303
		Perry v. Brown, (1904) 38 I.L.T.R. 37, ..	158, 242
		Perry v. Bowen, (1903) 38 I.L.T.R. 37, ..	98

## P.

Paddington Vestry v. Bramwell, (1880) 44 J.P. 815, ..	701
Pain v. Boughtwood, (1890) 24 Q.B.D. 353, ..	461
Pakenham v. Ticehurst, R.D.C., (1903) 67 J.P. 448, ..	696
Pankhurst v. Jarvis, (1909) 74 J.P. 64, ..	873
Paley v. Birch, (1867) 8 B. & S. 336; 16 L.T. 410, ..	211
Palmer v. Balrothery Guardians, (1895) 2 I.R. 586, ..	50
Palmer v. Snow, (1900) 1 Q.B. 725,	791
Panhaus v. Browne, (1904) 63 J.P. 435, ..	416
Pape v. Pape, (1887) 20 Q.B.D. 76,	534
Parker v. Alder, (1899) 1 Q.B. 20, ..	296, 459



	PAGE
Perry v. Gibson, (1834) 1 A. & E.	48, 259, 276
Perth General Stn. Comm. v. Ross, (1897) A.C. 479, ..	770
Peterborough, Corp. of, v. Overseers of Wilsthorpe, (1884) 32 W.R. 548, ..	244
Petrie v. S.S. Rostrevor, (1898) 2 I.R. 556, ..	455
Pettitman, <i>Ex parte</i> , (1864) 33 L.J.M.C. 99, ..	218
Pettitward v. Metropolitan B. of W., (1865) 19 C.B.N.S. 489, ..	732
Petty v. Taylor, (1897) 1 Ch. 465, ..	413
Pharmaceutical Socy. v. Arnson, (1894) 1 Q.B. 720, ..	672
Pharm. Socy. v. Boyd, (1896) 2 I.R. 394, ..	84, 671, 673, 674
Pharmaceutical Socy. v. Delve, (1894) 1 Q.B. 71, ..	672
Pharmaceutical Socy. v. Jacks, (1911) 2 K.B. 115, ..	<i>Add. et Cor.</i>
Pharmaceutical Socy. v. London & Prov. Supply Co., Ltd., (1880) 5 A.C. 857, ..	83, 675
Pharmaceutical Socy. v. Mercer, (1910) 1 K.B. 74, ..	396, 673, 674
Pharmaceutical Socy. v. Nash, (1911) 1 K.B. 520, ..	675
Pharmaceutical Socy. v. Piper, (1893) 1 Q.B. 866, ..	672
Pharmaceutical Socy. v. Wheeldon, (1890), 24 Q.B.D. 683, ..	621, 672
Pharmaceutical Socy. v. White, (1901) 1 Q.B. 601, ..	673
Phelan v. Rourke, (1883) 17 I.L.T. & S.J. 649, ..	467
Phillips v. Evans, (1896) 1 Q.B. 305, ..	101
Phillips v. Guardians of S.D.U., (1902) 2 I.R. 112; 34 I.L.T.R. 171; 1 N.I.J.R. 31, ..	404, 531
Philpott v. Alright, (1906) 4 L.G.R. 1013, ..	1092
Phythian v. Baxendale, (1895) 1 Q.B. 768, ..	527
Pickavance v. Pickavance, (1901) P. 60, ..	63, 104
Pickford v. Corsi, (1901) 2 K.B. 212, ..	104, 661
Pickering v. Willoughby, (1907) 2 K.B. 296, ..	379, 380
Pidgeon v. Gt. Yarmouth Waterworks Co., (1902) 1 K.B. 310, 166, 716	
Piercy v. Pope, (1881) 45 L.T.N.S. 477, ..	716
Pigott v. Goldstraw, (1901) 19 Cox 621, ..	803
Pilbrow v. St. Leonard's, Shore-ditch, (1895) 1 Q.B. 433, ..	697
Pillar v. Llynvi Coal & Iron Co., (1869) L.R. 4 C.P. 725, ..	821
Pine v. Barnes, (1887) 20 Q.B.D. 221, ..	562
Piper v. Piper, (1902) P. 198, ..	534
Pitts v. Miller, (1874) L.R. 9 Q.B. 380, ..	360
Plaistow W.M.C. v. Harrod, (1910) 26 T.L.R. 210, ..	128
Plancq v. Marks. (1906) 21 Cox 157, ..	632

	PAGE
Plant v. Wright, (1905) 1 K.B. 353, ..	1,130
Pletts v. Beatty, (1896) 1 Q.B. 519, ..	570, 858
Pletts v. Campbell, (1895) 1 Q.B. 229, ..	570
Pollard, <i>Re</i> , (1868) L.R. 2 P.C.C. 106, ..	72
Pollard v. Photographic Co., (1888) 40 Ch.D. 345, ..	413, 414
Polley v. Fordham, No. 2, (1904) 2 K.B.D. 345; 91 L.T. 525; 68 J.P. 504; 20 T.L.R. 639, ..	326, 328
Pollock v. Cumberton, (1903) 3 N.I. J.R. 229, ..	59
Pomeroy v. Malvern U.D.C., (1903) 89 L.T. 555, ..	101, 340, 703
Portingell, <i>Ex parte</i> , (1892) 1 Q.B. 15, ..	121
Portsmouth, Mayor of, v. Smith, (1885) 10 A.C. 364, ..	806
Postmaster-Gen. v. National Tel. Co., Ltd., (1909) A.C. 269, ..	796
Potter v. Challans, (1910) 102 L.T. 325, ..	359
Powell v. Castletown, (1891) 30 L.R.Ir. 93, ..	68, 370, 377, 484, 690, 772, 779, 847
Powell v. Kempton Park Racecourse Co., (1899) A.C. 143, ..	499, 500
Powell v. Knight, (1878) 42 J.P. 597, ..	357, 359
Powell v. Mahony, Unreported, ..	557
Pratt v. Martin, (1911) 27 T.L.R. 377, ..	<i>Add. et Cor.</i>
Price v. Manning, (1889) 42 Ch. D. 372, ..	284
Price v. Messenger, (1800) 2 Bos. & P. 158; 3 Esp. 96, ..	145
Prince v. Samo, (1838) 7 A. & E. 627, ..	285
Price v. Seely, (1843) 10 Cl. & Fin. 28, ..	147
Prickett v. Gratex, (1846) 8 Q.B. 1020, ..	37, 324
Prior v. Slaithwaite Spg. Co., (1898) 1 Q.B. 881, ..	1106
Pritchard v. Mayor of Bangor, (1888) 13 A.C. 241, ..	249
Provincial Motor Cab Co. v. Dunning, (1909) 2 K.B. 599, ..	240, 634, 640
Public Prosecutions, Director of, v. Withowski, (1911) 27 T.L.R. 211, ..	238
Pugh v. Griffith, (1838) 7 A. & E. 827, ..	879

Q.

Queen v. Wilson, (1910) S.C. (J) 62, ..	505
Quin v. Bourke, (1906) 2 I.R. 94; 39 I.L.T.R. 293, ..	113, 572, 675
Quinn v. Leatham, (1901) A.C. 528, ..	884
Quinn v. Maguire, (1911) 45 I.L.T.R. 77, ..	500
Quinn v. Murray, (1862) 8 Ir. J.N.S., ..	566, 572
Quinn v. Pratt, (1908) 2 I.R. 69, ..	55, 63, 73, 146, 326

## TABLE OF CASES.

lxxxii

R.		PAGE	R.		PAGE
R v. —, (1845) 1 Cox 250, ..	881		R v. Beesby, (1909) 1 K.B. 849, ..	66, 68,	
„ v. Abbott, (1903) 67 J.P. 151, ..	932		„ v. Beeston, (1854) Dears. 405, ..	91, 92	288
„ v. Adamson, (1876) 1 Q.B.D. 201, ..	46		„ v. Bell, (1899) 15 T.L.R. 487, ..	241	
„ v. Alison, (1838) 8 C. & P. 418, ..	932		„ v. Bell, (18—) I.R. 8 C.L. 543, ..	877	
„ v. Allen, (1872) L.R. 1 C.C.R. 367, ..	914		„ v. Bellamy, (1823) 1 B. & C. 500, ..	52,	309
„ v. Allen, (1841) C. & M. 295, ..	890		„ v. Bennett, (1815) Russ. & Ry. 289, ..	879	
„ v. Allen, (1864) 4 B. & S. 915, ..	216, 231		„ v. Bennett, (1870) L.T. Newspaper 387, ..	25	
„ v. Allmey, (1871) 35 J.P. 534, ..	111		„ v. Bennett, (1908) 24 T.L.R. 681, ..	46	
„ v. Andover JJ., (1886) 16 Q.B.D. 711, ..	585		„ v. Berkshire JJ., (1878) 4 Q.B.D. 469, 471, ..	140	
„ v. Antrim JJ., (1895) 2 I.R. 603; (1906) 2 I.R. 328, ..	105, 134, 238		„ v. Berriman, (1854) 6 Cox 388, ..	275	
„ v. Anwyl, (1909) 73 J.P. 485, ..	50, 225		„ v. Berry, (1859) 8 Cox 124, ..	299	
„ v. Archer, (1826) 1 Moody C.C. 143, ..	299, 928		„ v. Berry, (1857) 23 J.P. 86, ..	48, 109	
„ v. Archer, (1855) Dears. 449, ..	893		„ v. Best, (1909) 1 K.B. 692, ..	274	
„ v. Armitage, (1910) 74 J.P. 48, ..	894		„ v. Bickley, (1909) 73 J.P. 239, ..	286	
„ v. Ashford, (1852) 1 E. & B. 286, ..	546, 547		„ v. Biggins, (1862) 5 L.T. (N.S.) 605, ..	23, 62	
„ v. Ashwell, (1885) 16 Q.B.D. 190, ..	906		„ v. Biggs, (1909) 1 K.B. 381, ..	517, 518	
„ v. Aspinall, (1876) 2 Q.B.D. 48, ..	892		„ v. Binney, (1853) 1 E. & B. 810, ..	325	
„ v. Ashplant, (1888) 52 J.P. 474, ..	62		„ v. Birmingham and Gloucester Ry. Co., (1842) 3 Q.B. 223, ..	20	
„ v. Attkins, (1870) L.T. Newspaper 421, ..	25		„ v. Birwhistle, (1889) 58 L.J.M.C. 158, ..	533	
„ v. Avery, (1859) 8 Cox 184, ..	299		„ v. Blaby, (1894) 2 Q.B. 170, ..	91, 92	
„ v. Aves, (1871) 24 L.T.N.S. 64, ..	57		„ v. Black, (1910) 74 J.P. 71, ..	290	
„ v. Badger, (1843) 4 Q.B. 668, ..	328, 925		„ v. Blake, (1910) W.N. 123, ..	903	
„ v. Baggott, (1910) 26 T.L.R. 266, ..	903, 904		„ v. Blake, (1765) 3 Burr. 1731, ..	901	
„ v. Bailly, (1850) 4 Cox 390, ..	895		„ v. Blathwayt (1846) 3 D. & L. 542; 15 L.J.M.C. 48, ..	227, 229	
„ v. Baines, (1909) 1 K.B. 258, ..	53, 229		„ v. Bleasdale, (1848) 2 C. & K. 765, ..	300	
„ v. Baker, (1883) 48 J.P. 666, ..	381		„ v. Bloxam, (1836) 1 A. & E. 386, ..	244	
„ v. Baker, (1895) 1 Q.B. 797, ..	920		„ v. Bodmin JJ., (1892) 2 Q.B. 21, ..	250	
„ v. Bancroft, (1909) 26 T.L.R. 10, ..	893		„ v. Bollingbroke, (1893) 2 Q.B. 347, ..	219	
„ v. Bannen, (1844) 2 Mood C.C. 309, ..	298, 882		„ v. Bolton, (1841) 1 Q.B. 66, ..	225, 226	
„ v. Barnard, (1837) 7 C. & P. 784, ..	893		„ v. Bond, (1837) 6 A. & E. 905, ..	134	
„ v. Barnes, (1910) 74 J.P. 231, ..	143, 229		„ v. Bond, (1906) 2 K.B. 359, ..	267, 871	
„ v. Barnett, (1876) 1 Q.B.D. 558, ..	802		„ v. Booth, (1910) 74 J.P. 475, ..	274	
„ v. Barnett, (1829) 3 C. & P. 600, ..	20		„ v. Borron, (1820) 3 B. & Ald. 432, ..	328	
„ v. Barracrough, (1906) 1 K.B. 201, ..	887		„ v. Bostock, (1893) 17 Cox 700, ..	899	
„ v. Barratt, (1840) 9 C. & P. 387, ..	870		„ v. Boteler, (1884) 33 L.J.M.C. 101, ..	46	
„ v. Barrett, (1710) 1 Salk. 383, ..	77, 482		„ v. Boulter, (1852) 3 C. & K. 236, ..	921	
„ v. Barronet, (1852) Dears. C.C. 51, ..	30		„ v. Boulton, (1849) 1 Den. 508, ..	895	
„ v. Barry, (1889) 26 L.R.Ir. 40, ..	34, 36, 37, 66, 226, 235,		„ v. Boulton, (1871) 12 Cox 87, ..	20	
„ v. Barthelemy, (1852) Dears C.C. 60, ..	30		„ v. Boundy, (1904) 68 J.P.N. 340, ..	1216	
„ v. Bartholomew, (1908) 1 K.B. 554, ..	525		„ v. Bowden, (1843) 2 Mood C.C. 285, ..	905	
„ v. Barton, (1902) A.C. 268, ..	234		„ v. Bowman, (1898) 1 Q.B. 663, ..	247	
„ v. Bass, (1849) 2 C. & K. 822, ..	20, 149		„ v. Bowes, (1787) 2 Dougl. 466 n, ..	30	
„ v. Bates, (1911) 27 T.L.R. 314, ..			„ v. Bowyer, (1831) 4 C. & P. 559, ..	930	
„ v. Bather, (1848) 42 L.T. 532, ..			„ v. Boyes, (1861) 1 B. & S. 311, ..	54, 285	
„ v. Baxendale, (1880) 44 J.P. 763, ..	837		„ v. Boyle, (1900) 6 I.W.L.R. 141, ..	239, 249	
„ v. Bazely, (1799) 2 Leach 835, ..	907		„ v. Bradlaugh, (1878) 3 Q.B.D. 509, ..	232	
„ v. Beadle, (1857) 7 E. & B. 492, ..	78		„ v. Brackenbridge, (1884) 48 J.P. 293, ..	103	
„ v. Beauchamp, (1909) 25 T.L.R. 330, ..	286, 930		„ v. Brackenbury, (1897) 17 Cox 628, ..	275	
„ v. Beaver, (1910) 74 J.P. 127, ..	638		„ v. Braithwaite, (1859) 8 Cox 254, ..	921	
„ v. Beeton, (1910) Times Newspaper, 22nd June, ..	886		„ v. Bradford JJ., (1896) 74 L.T. 28, ..	569	
„ v. Beckley, (1887) 20 Q.B.D. 187, ..	14		„ v. Brawn, (1843) 1 C. & K. 144, ..	913	
„ v. Bedingfield, (1879) 14 Cox 341, ..	264				

	PAGE		PAGE
R. v. Bray, (1862) 3 B. & S. 255,	27	R. v. Cambridgeshire JJ., (1880) 44	49
,, v. Breen, James. Unreported, ..	10	J.P. 168, ..	86, 160, 232
,, v. Brennan, (1854) 6 Cox 381; 69	929	,, v. Campbell, (1853) 3 I.C.L.R.	485
Jur. O.S. 307, ..	879	586, ..	897
,, v. Bridges, (1845) 1 Cox 261, ..	235,	,, v. Capewell, (1833) 5 C. & P.	24
,, v. Bridge, (1890) 24 Q.B.D. 609,	237	549, ..	246
,, v. Brickall, (1864) 33 L.J.M.C.	95, 229	,, v. Camplin, (1845) 1 Cox 22, ..	56
12 W.R. 909, ..	913	,, v. Carden, (1879) 5 Q.B.D. 6, ..	905
,, v. Briggs, (1856) Dears & B. 98,	896	,, v. Carnarvon JJ., (1820) 4 B. &	928
,, v. Brimilow, (1840) 9 C. & P.	246	Ald. 86, ..	897
366, ..	260	,, v. Carrick-on-Suir JJ., (1889) 16	273
,, v. Bristol & Exeter Railway Co.,	75	Cox 571, ..	865
(1843) 12 L.J.Q.B. 106, ..	254	,, v. Carter, (1843) 1 C. & K. 173,	68
,, v. Brittleton, (1884) 12 Q.B.D.	928	,, v. Carter, (1884) 12 Q.B.D. 522,	899
266, ..	46	,, v. Case, (1850) 4 Cox 220, ..	90
,, v. Brodhurst, (1863) 32 L.J.	32	,, v. Cass, (1784) 1 Leach 2931 n.,	901
M.C. 168, ..	28, 498	,, v. Castro, (1880) 5 Q.B.D. 490,	914
,, v. Bromley JJ., (1890) 38 W.R.	246	,, v. Cathbush, (1867) L.R. 2 Q.B.	631
253, ..	255,	379, ..	84
,, v. Brooks, (1853) Dears C.C.	875, 896	,, v. Catheral, (1875) 13 Cox 109, 898,	899
184, ..	923	,, v. Catherall, (1731) 2 Str. 900, ..	90
,, v. Bros, (1901) 18 T.L.R. 39, ..	46	,, v. Chadwick, (1844) 2 Mood & R.	901
,, v. Bros, (1910) 27 T.L.R. 41, ..	32	545, ..	914
,, v. Brown, (1895) 1 Q.B. 119, ..	28, 498	,, v. Chadwick, (1847) 11 Q.B. 205,	631
,, v. Brown, 7 E. & B. 757, ..	246	,, v. Chancellor, (1905) 69 J.P. 383,	90
,, v. Brown, (1889) 24 Q.B.D. 357,	255,	,, v. Chandler, (1701) 1 Lord	84
875, 896	923	Ramond 581, ..	84
,, v. Brown, (1841) 1 C. & M. 314,	877	,, v. Chandler, (1702) 1 Salk 378,	84
,, v. Brown, (1870) L.R. 1 C.C.R.	871	,, v. Chantrell, (1875) L.R. 10 Q.B.	227, 237
244, ..	291	587, ..	919
,, v. Brown, (1899) 63 J.P. 790, ..	876	,, v. Chapin, (1910) 74 J.P. 71, ..	921
,, v. Brownall, (1834), 1 A. & E.	588	,, v. Chapman, (1849) 1 Den. 432,	895
598, ..	603	,, v. Chapman, (1310) 4 Cr. App.	19
,, v. Brownlow, (1910) 4 Cr. App.	513, 656	Rep. 296, ..	73
R. 131, ..	300	,, v. Chapman, (1871) 12 Cox 4, ..	487
,, v. Brumby, (1851) 5 Cox 315, ..	872	,, v. Charlesworth, (1860) 2 F. & F.	22
,, v. Brumby, (1851) 3 C. & K.	299	326, ..	897
315, ..	858	,, v. Cheshire JJ., (1876) 40 J.P.	505
,, v. Buckle, (1803) 4 East 346,	883	148, ..	269
513, 656	894	,, v. Christopher, (1850) 4 Cox 76,	32, 73
,, v. Bull, (1845) 1 Cox 281,	874	,, v. Clarence, (1888) 22 Q.B.D.	874
,, v. Bullingham, (1825) 2 C. & P.	893	23, ..	269
234, ..	700	,, v. Clark, (1883) 15 Cox 171, ..	877
,, v. Buncombe, (1845) 1 Cox 183,	256	,, v. Clarke, (1884) 14 Q.B.D. 92,	505
,, v. Burdett, (1820) 4 B. & Ald. 95,	28, 895	,, v. Clarke, (1817) 2 Starke, N.P.,	269
,, v. Burgess, (1885) 16 Q.B.D.	217,	241, ..	874
141, ..	219, 788	,, v. Clarke, (1910) 27 T.L.R. 32, ..	269
,, v. Burgon, (1856) Dears and B.,	893	,, v. Clarkson, (1892) 17 Cox 483,	921
,, v. Burns & Ors., (1886) 16 Cox	700	,, v. Clay, (1851) 5 Cox 146, ..	208
420, ..	893	,, v. Clegg, (1868) 19 L.T. 47, ..	214, 603
,, v. Burnsides, (1860) 30 L.J.M.C.	894	,, v. Clemens, (1898) 1 Q.B. 556,	291
42, ..	700	214, 603	286
,, v. Burnup, (1886) 50 J.P. 598,	256	,, v. Clement, (1821) 4 B. & Ald. 231,	300
,, v. Burton, (1863) 3 F. & F.	28, 895	,, v. Cliburn, (1898) 62 J.P. 232,	907
772, ..	217,	,, v. Clifford, (1845) 2 C. & K.	300
,, v. Burton, (1875) 13 Cox 71, ..	219, 788	202, ..	907
,, v. Burton, (1897) 2 Q.B. 468, ..	263	,, v. Clinton, (1869) I.R. 4 Ch. 6,	61, 84
219, 788	31	,, v. Clonmel, Mayor of, (1858) 9	901
,, v. Butler, (1846) 2 C. & K.	46	I.C.L.R. 267, ..	21,
221, ..	257	,, v. Closs, (1858) Dears & B. 460,	56, 109, 621
,, v. Butler, (1881) 8 L.R. Ir. 39,	897	,, v. Cockshott, (1898) 1 Q.B. 582,	299
,, v. Byrde, (1890) 63 L.T. 645, ..	359	461, ..	266
,, v. Byron, (1863) Halsbury's	270, 289	,, v. Coll, (1889) 24 L.R.I. 522, ..	290
"Laws of England," vol. 9,		,, v. Collins, (1843) 2 Mood & R.	90
p. 243, ..		461, ..	896
,, v. C., (1910) 74 J.P. 208, ..		,, v. Collins, (1864) L. & C. 471,	360,
,, v. Cable, (1906) 1 K.B. 719, ..		,, v. Coney, (1832) 8 Q.B.D. 534,	872, 873
359			
,, v. Callaghan, (1793) McNally's			
Ev. 385, ..			



## TABLE OF CASES.

lxxxiii

	PAGE		PAGE
R. v. Connor, (1908) 2 K.B. 26, ..	401	R. v. Davidson, (1871) 24 L.T. 22, ..	802
1198, 1207		„ v. Davidson, (1889) 5 T.L.R.	
„ v. Connors, (1858) 4 Ir. Jur.		199, ..	533
N.S. 263, ..	290	„ v. Davis, (1854) 6 Cox 369, ..	879
„ v. Considine, (1902) 36 I.L.T. &		„ v. Davis, (1817) Russ. and Ry.	
S.J. 78, ..	228	322, ..	879
„ v. Cooper, (1875) 1 Q.B.D. 19, ..	267	„ v. Davis, (1833) 5 B. & Ad. 551, ..	85
„ v. Cooper, (1877) 2 Q.B.D. 510, ..	893	„ v. Davis, (1881) 14 Cox 563, ..	257
„ v. Cope, (1719) 1 Str. 144, ..	884	„ v. Davis, (1870) L.R. 1 C.C.R.	
„ v. Corden, (1769) 4 Burr. 2279, ..	44, 89	272, ..	268
„ v. Cork JJ., (1875) I.R. 9 C.L.		„ v. Davison, (1885) 7 Cox. 158, ..	858
203, ..	187	„ v. Dawson, (1696) 13 State Tr. 454, ..	922
„ v. Cork JJ., (1900) 2 I.R. 105, ..	176	„ v. Dayman, (1857) 7 E. & B.	
„ v. Cornwall JJ., (1903) 2 K.B.		672, ..	246
178, ..	247	„ v. Deal Corp., (1881) 45 L.T.	
„ v. Cornwall JJ., (1844) 1 N.		439, ..	216, 218
Sess. Ca. 414, ..	229, 230	„ v. Dean, (1843) 12 M. & W. 39, ..	47
„ v. Corrie & Watson, (1904) 20		„ v. Deaville, (1903) 1 K.B. 468, ..	500
T.L.R. 365, ..	501	„ v. De Kromme, (1892) Cox 17	
„ v. Cotham, (1898) 1 Q.B. 802, ..	247	492, ..	875
„ v. Cotton, (1873) 12 Cox 400, ..	266	„ v. de Marney, (1907) 2 K.B. 388, ..	680
„ v. Cotton, (1896) 60 J.P. 824, ..	899	„ v. Dennehy, (1902) 3 N.I.J.R.	
„ v. Cowle, (1759) 2 Burr. 835, ..	246	154, ..	274
„ v. Cowle, (1907) 71 J.P. 152, ..	290	„ v. Deny, (1851) 20 L.J.M.C.	
„ v. Cox, (1759) 2 Burr. 786, ..	792	189, ..	36, 64, 100, 380
„ v. Cox, (1898) 1 Q.B. 179, ..	276	„ v. Derham, (1843) 1 Cox 56, ..	877
„ v. Cramp, (1880) 14 Cox 390, ..	272, 286	„ v. Derrington, (1826) 2 C. & P.	
„ v. Crawford, (1845) 2 C. & K.		418, ..	273
129, ..	891	„ v. Devine, (1904) 38 I.L.T.R.	
„ v. Crawford, (1854) 6 Cox 481, ..	1003	227, ..	274
„ v. Creagh, (1852) 5 Ir. Jur. O.S.		„ v. Dibble, (1908) 1 Cr. App. R. 155, ..	47
109, ..	63, 78, 91, 482	„ v. Dickenson, (1857) 7 E. & B.	
„ v. Creese, (1874) L.R. 2 C.C.R.		831, ..	227
105, ..	875	„ v. Dickman, (1910) 26 T.L.R.	
„ v. Cridland, (1857) 7 E. & B.		640, ..	290
853, ..	206, 214	„ v. Dillon, (1891) 28 L.R. 1. 280, ..	38,
„ v. Crocker, (1805) Russ. & Ry.		122, 159, 341, ..	341,
97, ..	901	„ v. Dingler, (1791) 2 Leach 561, ..	270,
„ v. Crossley, (1909) 1 K.B. 411, ..	920, 921	289	
„ v. Crossman, (1908) 24 T.L.R.		„ v. Dixon, (1814) 3 M. & S. 11, ..	882
517; 98 L.T. 760; 72 J.P.		„ v. Dixon, 10 Mod. 335, ..	299
250, ..	71, 247, 870	„ v. Dobbins, (1883) 48 J.P. 182, ..	538
„ v. Crump, (1825) 1 C. & P. 658, ..	906	„ v. Dodson, (1839) 9 A. & E. 704, ..	209,
„ v. Crunden, (1809) 2 Camp 89, ..	384, 887	328	
„ v. Cruse, (1838) 8 C. & P. 541, ..	887	„ v. Doherty. Unreported, ..	71, 516
„ v. Cryer, (1857) Dears & B. 324, ..	299	„ v. Doherty, (1874) 8 I.L.T.R.	
„ v. Cubitt, (1889) 22 Q.B.D. 622, ..	928	192, ..	273
„ v. Cuffe, (1904) 4 N.I.J.R. 144, ..	43	„ v. Doherty, (1910) 74 J.P. 304, ..	229
„ v. Cumption, (1880) 5 Q.B.D.		„ v. Dolan, (1855) 6 Cox 449, ..	928
341, ..	19	„ v. Donegal JJ., (1878) Q.B.D.	
„ v. Cundick, (1822) 1 D. & R.M.C.		(Ir.). Unreported, ..	140
356, ..	886, 887	„ v. Doody, (1854) 6 Cox 463, ..	932
„ v. Cunningham Grahame & Burns,		„ v. Dougal, (1903) 67 J.P. 325, ..	275
(1886) 16 Cox 420, ..	874	„ v. Dowey, (1868) 37 L.J.M.C.	
„ v. Curgerwen, (1865) L.R. 1		52, ..	893
C.C.R. 1, ..	913	„ v. Downes, (1790) 3 T.R. 560, ..	572
„ v. Curnane, (1903) 4 N.I.J.R. 49, ..	270	„ v. Doye, (1908) 2 K.B. 333, ..	291
„ v. Curran, (1828) 3 C. & P. 397, ..	149	„ v. Drage, (1878) 14 Cox 85, ..	928
„ v. Curtis, (1885) 15 Cox 746, ..	918	„ v. Drury, (1894) 2 I.R. 489, ..	227
„ v. Dalloway, (1847) 2 Cox 273, ..	918	„ v. Drury, (1849) 3 C. & K. 193; ..	
„ v. Dant, (1865) Le & Ca. 567, ..	918	18 L.J.M.C. 189; 3 Cox C.C.	
„ v. Darley, (1829) 2 Hud. & B. 486, ..	655	546, ..	105
„ v. Darlington L.B., (1865) 6		„ v. Dublin JJ., (1875) I.R. 9 C.L.	
B. & S. 562, ..	732	85, ..	13
„ v. Dash, (1822) R. & R. 489, ..	83	„ v. Dublin JJ., (1873) 8 I.L.T.R.	
„ v. Davey, (1899) 2 Q.B. 301, ..	726	134, ..	63
„ v. Davies, (1909) 1 K.B. 892, ..	426	„ v. Dublin JJ., (1894) 2 I.R. 527, ..	219
„ v. Davies, (1897) 2 Q.B. 199, ..	496, 500	„ v. Dublin C.C., (1905) 5 N.I.J.R.	
„ v. Davey, (1899) 2 Q.B. 301, ..	241	273, ..	248
		„ v. Dublin, Recorder of, (1843)	
		I.L.R. 440, ..	134, 485

	PAGE		PAGE
R. v. Duffy, (1846) 9 I.L.R. 329,	592	R. v. Flicker, (1910) 26 T.L.R. 540,	903
„ v. Duguid, (1906) 21 Cox 200,	870	„ v. Flowers, (1886) 16 Q.B.D. 643,	906
„ v. Duncan, (1881) 7 Q.B.D. 198,	102	„ v. Foley, (1896) 2 I.W.L.R. 69,	78,
„ v. Dunleavy, (1908) 1 Cr. App.			231
Rep. 240, ..	892	„ v. Foote, (1884) 10 Q.B.D. 378,	31
„ v. Dunn, (1847) 12 Q.B. 1026,	862	„ v. Forbes, (1865) 10 Cox 362, 381,	787
„ v. Dunn, (1840) 12 A. & E. 599,		„ v. Ford, (1899) 5 I.W.L.R. 97,	32
1, 37, 268		„ v. Forster, (1855) Dears 456, ..	267
„ v. Dykes, (1885) 15 Cox 771, ..	299	„ v. Foster, (1834) 6 C. & P. 325, ..	264
„ v. Dymock, (1901) 17 T.L.R. 593,	421	„ v. Fowler, (1894) 64 L.J.M.C. 9, 91, 92	
„ v. Dyson, (1823) Russ. & Ry. 523,	932	„ v. Francis, (1874) L.R. 2 C.C.R.	
„ v. Dyson, (1894) 2 Q.B. 176, ..	876	128, ..	267, 622
„ v. Dyson, (1908) 2 K.B. 454, ..	918	„ v. Fraser, (1893) 57 J.P. 500, ..	217,
„ v. Eadon, (1813), 31 St. Tr. 1064,	916		219
„ v. Eaton, (1787), 2 T. B. 285, ..	109	„ v. Freeman, (1875) I.R. 9 C.L.	
„ v. Eaves, (1870) L.R. 5 Ex. 75,	140	527, 539, ..	916, 931
„ v. Eayres, (1900) 64 J.P. 217, ..	28	„ v. Freeman's Journal, Ltd.,	
„ v. Edmunds, (1909) 25 T.L.R.		(1902) 2 I.R. 82, ..	32
658, ..	288	„ v. French, (1902) 1 K.B. 637, ..	211
„ v. Edwards. (1868) 33 J.P. 119,	273	„ v. Fretwell, (1864) Le. & Ca.	
„ v. Eldershaw, (1828) 3 C. & P.		443, ..	919
396, ..	255, 896	„ v. Fry, (1898) 19 Cox 135, ..	107
„ v. Elliott, (1777) 1 Leach 175, ..	901	„ v. Fulford, (1864) 9 Cox 453, ..	806
„ v. Ellis, (1899) 1 Q.B. 230, ..	858, 876	„ v. Fulwood, (1895) 72 L. T. 592,	702
„ v. Ellis, (1910) 2 K.B. 746; 26		„ v. Gainer, (1835) 7 C. & P. 231,	485
T.L.R. 535, ..	268, 892	„ v. Gainsford, (1892) 1 Q.B. 381,	215,
„ v. Elrington, (1861) 31 L.J.M.C.			216
14; 1 B. & S. 688, ..	41, 102	„ v. Galvin, (1865) 16 I.C.L.R.	
„ v. Eriswell, (1790) 3 T.R. 720, ..	288	452, ..	289
„ v. Evans, (1890) 54 J.P. 471, ..	61	„ v. Galway JJ., (1879) 6 L.R.I. 1,	50
„ v. Evans, (1850) 19 L.J.M.C.		„ v. Gamble, (1847) 16 M. & W.	
151, ..	48, 225	384, ..	136
„ v. Everest, (1909) 73 J.P. 269,	286	„ v. Garland, (1870) L.R. 5 Q.B.	
„ v. F., (1910) 74 J.P. 384, ..	897	272, ..	247
„ v. Falkingham, (1870) L.R. 1		„ v. Garrell-Pegge, (1911) 27	
C.C.R. 222, ..	1198	I.L.R. 187, ..	77, 95
„ v. Fanning, (1866) 17 I.C.L. 289,	914	„ v. Garrett, (1893) 10 T.L.R. 167,	893
„ v. Farmer, (1892) 1 Q.B. 637, ..	48	„ v. Gaunt, (1895) 18 Cox 210, ..	379
„ v. Farquhar, (1874) L.R. 9 Q.B.		„ v. Gavin, (1885) 15 Cox 656, ..	275
258, ..	248	„ v. Gee, (1901) 17 T.L.R. 374, ..	215
„ v. Farrant, (1888) 20 Q.B.D. 58,	218,	„ v. Geering, (1849) 18 L.J.M.C.	
	254	215, ..	266
„ v. Farre, (1665) Kel. 43, ..	879	„ v. George, (1908) 73 J.P. 11, ..	291
„ v. Farrell, (1862) 9 Cox 446, ..	887	„ v. Gibbon, (1862) Le & Ca 109,	920
„ v. Faulkes, (1903) 19 T.L.R. 250,	913	„ v. Gibbons, (1821) Russ. & Ry.	
„ v. Faulkner, (1877) I.R. 11		442, ..	879
C.L. 8, ..	931	„ v. Gibbs, (1722) 1 Str. 497, ..	90
„ v. Fennell, (1881) 7 Q.B.D. 147,	274	„ v. Gibney, (1822) Jebb C. C. 15,	274
„ v. Ferguson, (1890) 54 J.P. 101,	219	„ v. Giles, (1865) L. & C. 502, ..	893
„ v. Finnerty, (1830) 1 Cr. & D.		„ v. Gill, (1909) 100 L.T. 858, ..	634
C.C. 166 n., ..	20	„ v. Gilligannon, (1899) 63 J.P.	
„ v. Finucane, (1875) I.R. 9 C.L.		457, ..	891, 892
408, ..	140	„ v. Gilham & others, (1884) 15 Cox	
„ v. Fisher, (1910) 1 K.B. 149;		719, ..	851
26 T.L.R. 589, 268, 892, 893, 894		„ v. Gilham, (1828) 1 Moo C. C.	
„ v. FitzGerald, (1841) I. Cir. Rep.		186, ..	273
168, ..	270	„ v. Gilles, (1866) 11 Cox 69, ..	274
„ v. FitzPatrick, (Oct. 1910) C.C.R.		„ v. Gillyard, (1848) 12 Q.B. 527,	226
(Ir.), unreported, ..	270	„ v. Gilroys, (1866) 4 Sc. Sess.	
„ v. Fladbury, (1841) 10 A. & E.		Cases, 3rd Series, 625,	295
706, ..	62	„ v. Glamorganshire JJ., (1890)	
„ v. Flaherty, (1847) 2 C. & K.		17 Cox 45, ..	238
782, ..	913	„ v. Gold & Cohen, (1907) 71 J.P.	
„ v. Flattery, (1877) 2 Q.B.D. 410,	897	360, ..	897
„ v. Flavell, (1884) 14 Q.B.D. 364,	21	„ v. Goodall, (1874) L.R. 9 Q.B.	
„ v. Flemming, (1799) 2 Leach		557, ..	802
C. C., 854, ..	24	„ v. Graham, (1910) 74 J.P. 246,	898
„ v. Fletcher, (1908) 72 J.P. 249,	528	„ v. Grant, (1857) 21 J.P. 70, ..	84
„ v. Fletcher, (1876) 2 Q.B.D. 43,	234	„ v. Gravesend JJ., (1891) 55 J.P.	
„ v. Fletcher, (1871) L.R. 1		277, ..	46
C.C.R. 320, ..	96	„ v. Gray, (4841) I. Cir. R. 76, ..	270



## TABLE OF CASES.

lxxxv

	PAGE		PAGE
R. v. Gray, (1865) 2 F. & F. 1098,	918	R. v. Haynes, (1614) 12 Co. Rep.	
„ v. Gt. N. of England Ry. Co.,		113; 2 East P.C. 652,	886
(1846) 9 Q.B. 315, ..	20	„ v. Haywood, (1908) 21 Cox 692,	918
„ v. Gt. Yarmouth JJ., (1882) 8		„ v. Hazell, (1810) 13 East 139,	
Q.B.D. 525, ..	215, 216	141, ..	108
„ v. Green, (1851) 20 L.J.M.C.		„ v. Healy, (1902) N.I.J.R. 73, ..	22, 289
168, ..	108	„ v. Heaton, (1863) 3 F. & F. 819,	913
„ v. Greenaway, (1845) 7 Q.B. 126,	21	„ v. Hehir, (1895) 2 I.R. 709;	
„ v. Grice, (1837) 7 U. & P 803, ..	485	29 I.L.T.R. 119, ..	907
„ v. Griffiths, (1822) 5 B. & Ald.		„ v. Hendy, (1850) 4 Cox 253, ..	276
731, ..	247	„ v. Hendry, (1909) 25 T.L.R. 635, 24, 47	
„ v. Griffiths, (1887) 16 Cox 46, ..	57	„ v. Henley, (1892) 1 Q.B. 504,	216,
„ v. Groombridge, (1836) 7 C. & P.			222, 694
582, ..	255, 896	„ v. Hensler, (1870) 11 Cox 570, ..	895
„ v. Goddard, (1882) 15 Cox 7, ..	264	„ v. Henson, (1852) Dears. 24, ..	882
„ v. Gordon, (1781) 2 St. Tr.		„ v. Hermann, (1879) 4 Q.B.D.	
485; 5 Burns, 30th Ed., 149,	151	284, ..	681
„ v. Gutch, (1829) M. & M. 433, ..	294	„ v. Herrington, (1864) 3 N.R.	
„ v. Gutridge, (1840) 9 C. & P.		468; 12 W.R. 420, ..	102, 106
471, ..	269	„ v. Hertfordshire JJ., (1845) 6 Q.B.	
„ v. Gould, (1840) 9 C. & P. 364,	274	753, ..	221
„ v. Gourley, (1828) 7 B. & C. 669,	26	„ v. Hertfordshire JJ., (1911) 1 K.B.	
„ v. Guy, (1902), ..	931	612, ..	586
„ v. Haddock, (1902) 2 N.I.J.R.		„ v. Hested, (1899) 19 Cox 16, ..	275
257, ..	280	„ v. Hewett, (1806) 4 F. & F. 1101,	877
„ v. Hain, (1896) 12 T.L.R. 323,	217	„ v. Hibbert, (1869) L.R. 1 C.C.R.	
„ v. Haines, (1847) 2 C. & K. 368,	918	184, ..	870
„ v. Haines, (1695) Comb. 337, ..	519	„ v. Hicklin, (1868) L.R. 3 Q.B.	
„ v. Hale, (1905) 1 K.B. 126, ..	1206	360, ..	650, 887
„ v. Halkett, (1910) 1 K.B. 50, ..	45	„ v. Hicks, (1855) 4 E. & B. 633,	84
„ v. Hall, (1821) Russ. & Ry. 463,	893	„ v. Higgins, (1801) 2 East 5, ..	875
„ v. Hall, (1822) 1 B. & C. 123, ..	110	„ v. Hill, (1843) 2 M. & R. 458,	905
„ v. Hall, (1891) 1 Q.B. 767, ..	13, 41	„ v. Hind, (1860) 8 Cox 300, ..	270
„ v. Hall, (1825) 6 D. & R. 84, ..	77, 79,	„ v. Hobbs, (1898) 2 Q.B. 647, 499, 503	
	482	„ v. Hobson, (1854) Dears. C.C.	
„ v. Hall, (1828) 3 C. & P. 409, ..	906	400, ..	928
„ v. Hamilton, (1843) 1 C. & K.		„ v. Hodges, (1838) 8 C. & P. 195,	256,
212, ..	891		257
„ v. Hamilton, (1901) 1 K.B. 740,	902	„ v. Holbrook, (1878) 4 Q.B. D. 42;	
„ v. Hamilton, (1908) Cr. App.		3 Q.B.D. 60, ..	292, 294, 910
Rep. 87, ..	862	„ v. Holland JJ., (1882) 46 J.P.	
„ v. Hammond, (1863) 9 L.T. 423,	216	312, ..	294, 390
„ v. Hampshire JJ., (1862) 32		„ v. Holmes, (1871) L.R. 1 C.C.R.	
L.J.M.C. 46, ..	68	334, ..	269
„ v. Handcock, (1878) 14 Cox 119,	928	„ v. Hood, (1830) 1 Mood C.C. 281,	18,
„ v. Handley, (1864) 9 L.T. 827,	297		70
„ v. Handsley, (1881) 8 Q.B.D.		„ v. Hook, (1858) Dears. & B. 606,	921
383, ..	218	„ v. Hooper, (1819) 1 Chitt C.L.	
„ v. Hankey, (1905) 2 K.B. 687, 86, 631		491, ..	30
„ v. Hannam, (1886) 2 T.L.R.		„ v. Hopkins, (1893) 1 Q.B. 621,	67
234, ..	522	„ v. Horrocks, (1900) 19 Cox 529,	709
„ v. Hanson, (1821) 4 B. & Ald.		„ v. Huggins, (1895) 1 Q.B. 563,	215,
521, ..	131		217
„ v. Hants JJ., (1830) 1 B. & Ald.		„ v. Hughes, (1844) 1 Car. & Kir.	
654, ..	802	519, ..	920
„ v. Hants JJ., (1880) 44 J.P.		„ v. Hughes, (1879) 4 Q.B.D. 614, 18, 96	
72, ..	569	„ v. Hulcott, (1796) 6 T.R. 583,	108
„ v. Harding, No. 2, (1909) 53 S.J.		„ v. Humphrey, (1898) 1 Q.B. 875,	499
762, ..	269	„ v. Hunt, (1825) 1 Mood C.C. 93,	147
„ v. Harris, (1871) L.R. 1 C.C.R.		„ v. Hunt, (1845) 1 Cox 177, ..	872
282, ..	887	„ v. Hunt, (1847) 2 Cox 239, ..	270
„ v. Harris, (1795) 2 Leach 701, ..	879	„ v. Huntingdon JJ., (1879) 4	
„ v. Harrison, (1875) 1 Q.B.D.		Q.B.D. 522, ..	218
173, ..	222	„ v. Hussey, (1860) 11 I.C.L.R.	
„ v. Harrison, (1800) 8 T.R. 508,	83	app. xx., ..	31
„ v. Haswell, (1821) Russ. & Ry.		„ v. Hutchings, (1881) 6 Q.B.D.	
458, ..	925	300, ..	104
„ v. Hatts, (1883) 49 L.T. 780;		„ v. Hutchinson, (1822) 2 B. & C.	
48 J.P. 248, ..	274	608, ..	270
„ v. Harvey, (1823) 2 B. & C. 257,	910	„ v. Hutchinson, (1784) 1 Leach	
„ v. Hausman, (1909) W.N. 198,	66	339, ..	788

	PAGE		PAGE
R. v. Hutton, (1907) 2 K.B. 578, ..	166	R. v. Kiddle, (1898) 19 Cox 77, ..	269
„ v. Ingall, (1880) 44 J.P. 552;		„ v. Kilham, (1870) L.R. 1 C.C.R.	
42 L.T. 533, ..	85	261, ..	894
„ v. Ingram, (1712) 1 Salk 384, ..	299	„ v. Kilkenny JJ., (1871) I.R. 5	
„ v. Ingrey, (1900) 64 J.P. 106, ..	269	C.L. 394, ..	20, 32, 381, 873
„ v. Ion, (1852) 2 Den 475, ..	881, 902	„ v. Kilmallock R.D.C., (1910)	
„ v. Isaac, (1799) 2 East P.C.		unreported, ..	372
1031, ..	911	„ v. King, (1844) 1 Cox 36, ..	883
„ v. Ivens, (1835) 7 C. & P. 213, ..	565	„ v. King, (1897) 1 Q.B. 214, ..	862
„ v. Jackson, (1910) 74 J.P. 352, ..	291	„ v. Kinghorn, (1908) 2 K.B. 949, ..	21,
„ v. Jacobson, (1880) 14 Cox 522, ..	886	53, 276	
„ v. James, (1902) 1 K.B. 540, ..	300	„ v. Kingston JJ., (1902) 86 L.T.	
„ v. Jarrald, (1863) Le. & Ca. 301, ..	905	589, ..	248
„ v. Jarvis, (1867) L.R. 1 C.C.R.		„ v. Kinsey, (1836) 7 C. & P. 447, ..	20,
96, ..	273	149	
„ v. Jeffrey, (1870) 22 L.T. 786, ..	56	„ v. Kirby, (1897) 31 I.L.T.R. 46, ..	911,
„ v. Jenkins, (1812) 2 Russ. & Ry.		912	
244, ..	879	268	
„ v. Jenkins, (1891) 65 L.T. 857, ..	557,	„ v. Kirkham, (1909) W.N. 141, ..	
	564	„ v. Kirkpatrick, (1908) 73 J.P.	
„ v. Jennings, (1896) 1 Q.B. 66, ..	95	29; 25 T.L.R. 66 (C.C.A.), ..	869
„ v. Jennings, (1910) 26 T.L.R.		„ v. Kitchener, (1873) L.R. 2	
339, ..	903	C.C.R. 88, ..	599
„ v. Jennison, (1862) Lea. & Ca.		„ v. Knight, (1905) 20 Cox 711, ..	273
157, ..	895	„ v. Knight, (1909) 25 T.L.R. 87, ..	906
„ v. Jessop, (1858) Dears. & B. 442, ..	893	„ v. Knox, (1888) 22 L.R.I. 603, ..	239
„ v. Jessop, (1877) 16 Cox, 204, ..	932	„ v. Laitwood, (1910) 4 Cr. App.	
„ v. Johnson, (1786) 2 East P.C.		248, ..	875
488, ..	879	„ v. Lancashire JJ., (1906) 94 L.T.	
„ v. Johnston, (1847) 2 C. & K.		481; 70 J.P. 337, ..	221
354, ..	22	„ v. Lancashire JJ., (1874) 38	
„ v. Johnston, (1864) 15 I.C.L.R.		J.P. 215, ..	102
60, ..	275	„ v. Latchford, (1844) 6 Q.B. 567, ..	229
„ v. Johnson, (1905) 2 K.B. 59, ..	125, 228	„ v. Latchford, Judgments of the	
„ v. Jones, (1809) 31 St. Fr. 251, ..	925	Superior Courts, 282, ..	84
„ v. Jones, (1809) R. & R. 152, ..	273	„ v. Latimer, 17 Q.B.D. 359, ..	919
„ v. Jones, (1812) 3 Camp. 230, ..	525	„ v. Lavin, (1843) Ir. Cir. Rep.	
„ v. Jones, (1851) 1 Den. 551, ..	894	813, ..	274
„ v. Jones, (1869) 11 Cox 358, ..	913	„ v. Law, (1900) 1 Q.B. 605, ..	889
„ v. Jones, (1898) 1 Q.B. 119, ..	894	„ v. Lawley, (1731) 2 Stra. 904, ..	935
„ v. Jones, (1907) 96 L.T. 723, ..	242	„ v. Lee, (1863) L. & C. 309, ..	893
„ v. Jordan, (1836) 7 C. & P. 432, ..	879	„ v. Lee, (1864) 4 F. & F. 63, ..	288
„ v. Jukes, (1800) 8 T.R. 542, ..	229	„ v. Lee, (1878) 4 Q.B.D. 75, ..	804
„ v. Justices, (1822) R. & R. 492, ..	274	„ v. Lee, (1882) 9 Q.B.D. 394, ..	216, 222
„ v. Kelly, (1910) 26 T.L.R. 193, ..	904	„ v. Lefroy, (1873) L.R. 8 Q.B.D.	
„ v. Kempson, (1893) 28 L.J. 477, ..	918	134, ..	9, 73
„ v. Kennedy, (1902) 86 L.T. 753, ..	46	„ v. Leicester Union, (1899) 2 Q.B.	
„ v. Kennett, (1781) 5 C. & P. 282, ..	926	632, ..	248
„ v. Kennett, (1869) L.R. 4 Q.B.		„ v. Leicester JJ., (1850) 15 Q.B.	
565, ..	388	88, ..	137
„ v. Kenny, (1877) 2 Q.B.D. 307, ..	299,	„ v. Leicester JJ., (1825) 4 B. &	
	530	C. 891, ..	246
„ v. Kent JJ., (1873) L.R. 8 Q.B.		„ v. Leresche, (1891) 2 Q.B. 418, ..	534
305, ..	133	„ v. Leresche, (1881) L.J.M.C. 135, ..	535
„ v. Kent JJ., (1880) 44 J.P., 298, ..	221,	„ v. Lewis, (1827) 2 C. & P. 628, ..	879
	227	„ v. Lewisham Union, (1897) 1 Q.B.	
„ v. Kent, Inhabitants of, (1885) 1		498, ..	247
T.L.R. 539, ..	709	„ v. Light, (1857) 27 L.J.M.C. 1, ..	147
„ v. Kent Co. Treasurer, (1889) 22		„ v. Lilly, (1911) 75 J.P. 95, ..	1001
Q.B.D. 603, ..	87	„ v. Lillyman, (1896) 2 Q.B. 167, ..	269
„ v. Kent JJ., or Bromley JJ.,		„ v. Lindsay, (1902) 66 J.P. 505, ..	913
(1889) 24 Q.B.D. 181, ..	838	„ v. Lines, (1844) 1 C. & K. 393, ..	896
„ v. Kerry JJ., (1875) I.R. 9 C.L.		„ v. Lines, (1902) 1 K.B. 199, ..	92, 485
471, ..	172	„ v. Lingate, (1815), ..	273
„ v. Kersey, (1908) 21 Cox 690, ..	275,	„ v. Lipton, (1893) 32 L.R.I. 115, ..	620
	877	„ v. Little, (1785) 1 Burr. 610, ..	1091
„ v. Kershaw, (1902) 18 T.L.R.		„ v. Little Wise, <i>Ex parte</i> , (1910)	
357, ..	255, 275	26 L.T.R. 8, ..	36, 37
„ v. Kerswill, (1895) 1 Q.B. 1, ..	66, 529	„ v. Littlechild, (1871) L.R. 6 Q.B.	
„ v. Kettle, (1905) 1 K.B. 212, ..	238	293, ..	47
„ v. Keyn, (1876) 2 Ex.D. 63, ..	918	„ v. Liverpool JJ., (1883) 11	
		Q.B.D. 638, ..	120

## TABLE OF CASES.

lxxxvii

	PAGE		PAGE
R. v. Liverpool, Mayor of, (1802) 3		R. v. Marsham, (1907) 2 K.B. 638,	638
East 86,	20	„ v. Marsham, (1892) 1 Q.B. 375,	225,
„ v. Llanfillo JJ., (1866) 15 T.L.			247
277, ..	214	„ v. Martin, (1806) Russ. & Ry. 108,	879
„ v. Llewellyn, (1884) 13 Q.B.D.		„ v. Martin, (1841) Arm. Mac. &	
681, ..	708	Ogn. 197, ..	274
„ v. London Corp., (1844) 5 Q.B.		„ v. Martin, (1874) I.R. 8 C.L.	
555, ..	22	556, ..	587
„ v. London, Lord Mayor of,		„ v. Martin, (1881) 8 Q.B.D. 54, ..	919
(1886) 16 Cox 77, ..	27	„ v. Martin, (1910) 5 Cr. App. Rep.	
„ v. London JJ., (1890) Q.B.D.		31, ..	903
357, .. 133, 585, 696,	802	„ v. Mason, (1909) 73 J.P. 250, ..	286
„ v. London C.C., (1892) 1 Q.B.		„ v. Master, (1869) L.R. 4 Q.B.	
1905, ..	217, 219, 221	285, ..	66, 529
„ v. London JJ., (1894) 1 Q.B.		„ v. Maxwell & Clanchy, (1909)	
453, ..	254	73 J.P. 176, ..	381
„ v. London JJ., (1896) 45 W.R.		„ v. Mayers, (1872) 12 Cox 311, ..	897
58; 60 J.P. 726, ..	219	„ v. Mayorisk, (1898) 32 I.L.T.R.	
„ v. London School Board, (1885)		56, ..	274
55 L.J.M.C. 33, ..	200	„ v. Mead, (1895) 64 L.J. 169, ..	707
„ v. London Co. JJ., (1908) 72 J.P.		„ v. Meade, (1903) 19 T.L.R. 540,	872
513, ..	790	„ v. Meade, (1909) 1 K.B. 899, ..	257
„ v. Long, (1833) 6 C. & P. 179, ..	274	„ v. Mean, (1904), 21 T.L.R. 172,	268,
„ v. Long, (1888) 16 Cox 442, ..	808		500
„ v. Loughran, (1839) 1 Craw &		„ v. Medley, (1834) 6 C. & P. 292,	882
D. 79, ..	935	„ v. Meehan, (1905) 2 I.R. 577, ..	516
„ v. Louth JJ., (1900) 2 I.R. 714,	158	„ v. Merioneth JJ., (1908) 99 L.T.	
„ v. Lowe, (1850) 3 C. & K. 123,	918	89, ..	120
„ v. Lumley, (1869) L.R. 1 C.C.R.		„ v. Merry, (1847) 2 Cox 240, ..	485
196, ..	913	„ v. Merthyr Tydvil JJ., (1894)	
„ v. Lydane, (1858) 8 Cox 38, ..	288	10 T.L.R. 375, ..	899
„ v. Lynch, (1898) 1 Q.B. 61, ..	613	„ v. Meyer, (1875) 1 Q.B.D. 173,	216,
„ v. Lyndon, (1908) 72 J.P. 227,	638		234
„ v. Lynn, (1788) 2 T.R. 733, ..	886	„ v. Michael, (1840) 9 C. & P.	
„ v. Lyon, (1898) 14 T.L.R. 357,	571	356, ..	300
„ v. McCabe, (1841) 2 C. & D. 235,	10	„ v. Michell, (1880) 14 Cox 490,	875
„ v. McCarthy, (1903) 2 I.R. 146,	611,	„ v. Middlesex JJ., (1836) 5 A. & E.	
	875	626, ..	231
„ v. McCartie, (1859) 11 I.C.L.R.		„ v. Middlesex JJ., (1839) 9 A. & E.	
188, ..	30	540, ..	229
„ v. McCormick, (1864) 17 I.C.L.R.		„ v. Middlesex JJ., (1843) 7 Jur.	
411, ..	30	396; 12 L.J.M.C. 59, ..	52, 795
„ v. McDonagh, (1891) 28 L.R. Ir.		„ v. Middlesex JJ., (1848) L.J.M.C.	
204, ..	356, 357	111, ..	795
„ v. McDonald, (1885) 15 Q.B.D.		„ v. Middlesex JJ., (1850) 1 L.M.	
323, ..	256	& P. 621, ..	133
„ v. M'Hugh, (1857) 7 Cox 483,	274	„ v. Middlesex JJ., (1877) 41 J.P.	
„ v. M'Hugh, (1901) 2 I.R. 569, 592, 911		261; 2 Q.B.D. 516,	62, 138
„ v. McKenzie, (1892) 2 Q.B. 519,	85,	„ v. Middlesex JJ., (1881) 45	
	611, 612	J.P. 420, ..	254
„ v. M'Mahon, (1875) I.R. 9 C.L.		„ v. Middlesex Co. C., (1898) 15	
372, ..	137	T.L.R. 14, ..	634
„ v. M'Nair, (1909) 25 T.L.R. 228,	24	„ v. Middlesex JJ., (1908) 72 J.P.	
„ v. M'Naghton, (1846) 9 I.L.R.		251, ..	220
93, .. 81, 89, 225,	232	„ v. Middleton, (1873) L.R. 2	
„ v. Macathey, (1862) Le. & Ca.		C.C.R. 38, ..	906
250, ..	928	„ v. Miles, (1890) 24 Q.B.D. 423,	382
„ v. Macclesfield JJ., (1860) 2 L.T.		„ v. Miles, (1909) 73 J.P. 516, ..	103
352, ..	236	„ v. Millard, (1853) 6 Cox 150,	77, 482
„ v. Machen, (1849) 14 Q.B. 74,	102	„ v. Milledge, (1879) 4 Q.B.D. 332,	216,
„ v. Male, (1893) 17 Cox 689, ..	275		222, 694
„ v. Mallon, (1910) 5 Cr. App.		„ v. Miller, (1853) 6 Cox 353, ..	928
Rep. 216, ..	865	„ v. Miller (1901) 65 J.P. 313,	402, 406
„ v. Manchester JJ., (1899) 1 Q.B.		„ v. Millis (1844) 10 Cl. & Fin.	
571, ..	111	534, ..	914
„ v. Manchester, (1857) 7 E. & B.		„ v. Mills, (1857) Dears. & B. 205,	894
459, ..	135	„ v. Milner, (1846) 2 C. & K. 310,	595,
„ v. Manley, (1844) 1 Cox 104, ..	300		858
„ v. Manning, (1888) 5 T.L.R. 139,	25	„ v. Minshall, (1833) 1 N. & M.	
„ v. Marsden, (1868) L.R. 1 C.C.R.		277, ..	572
131, ..	149	„ v. Mitton, (1827) 3 C. & P. 31,	19



	PAGE		PAGE
R. v. Montgomery, (1910) I.L.R.		R. v. Owen, (1830) 4 C. & P. 236,	255
225; 102 L.T. 325, 47. 71, 229		v. Owen, (1907) 52 S.J. 132, ..	421
„ v. Moon, (1910) 1 K.B. 818, 900, 1200		v. Oxford, (1840) 9 C. & P. 525,	256
„ v. Moore, (1702) 2 Ld. Raymond		v. Oxfordshire JJ., (1895) 2 Q.B.	
791, ..	85	149, ..	135
„ v. Moore, (1852) 2 Den. C.C. 522,	272	„ v. Paget, (1831) 8 Q.B.D. 151, ..	65
„ v. Moore (1869) 20 L.T. 987, 24,	290	„ v. Pain, (1826) 7 D. & R. 678,	88
„ v. Moore, (1892) 61 L.J.M.C. 80,	259	„ v. Paine, (1834) 7 C. & P. 135,	879
„ v. Moreley, (1760) 2 Burr. 1040,	227	„ v. Palin, (1906) 1 K.B. 7, ..	871
„ v. Morley, (1827) 1 Y. & J. 221,	88	„ v. Parke, (1903) 2 K.B. 432, ..	32, 73
„ v. Morley, (1868) L.R. 3 Ex.D.		„ v. Parker, (1870) L.R. 1 C.C.R.	
137, ..	500	225, ..	22, 289
„ v. Morrice, (1845) 1 N. Sess. Cases		„ v. Parker, (1861) 8 Cox 465, ..	273
585; 2 D. & L. 952, 229, 230, 231		„ v. Parker, (1842) Car. & Mar. 639,	921
„ v. Morris, (1909) 26 I.L.T.R.		„ v. Parnell, (1881) 14 Cox 508,	884
419, ..	225	„ v. Partridge, (1836) 7 C. & P. 551,	273
„ v. Morris, (1814) R. & K. 270, ..	299	„ v. Pascoe, (1849) 3 Cox 462, ..	883
„ v. Morris, (1867) L.R. 1 C.C.R.		„ v. Passy, (1836) 7 C. & P. 282,	483
90, ..	874	„ v. Payne, (1824) 4 D. & R. 72,	68,
„ v. Morrison, (1859) 8 Cox 194,	657	91, 310	
„ v. Mortimer, (1910) 27 T.L.R. 17,	498,	„ v. Payne, (1872) L.R. 1 C.C.R.	
500		349, ..	53
„ v. Mortimer, (1906) 70 J.P. 542,	67	„ v. Payne, (1906) 1 K.B. 97, 530, 927	
„ v. Morton, (1892) 1 Q.B. 39, ..	598	„ v. Payne, (1909) 3 Cr. App. Rep.	
„ v. Moss, (1910) 26 I.L.R. 323,	500	529, ..	928
„ v. Most, (1880) 7 Q.B.D. 244, ..	875	„ v. Pearson, (1870) L.R. 5 Q.B.	
„ v. Mullen, (1862) 7 I.J.N.S. 304,	24	237, ..	207, 211
„ v. Mullins, (1884), ..	25	„ v. Pearson, (1893) 37 Sol. Jour.	
„ v. Murry, (1698) 2 East P.C., 496,	879	749, ..	503
„ v. Muirhead, (1908) 1 Cr. App.		„ v. Pelly, (1897) 2 Q.B. 33, ..	555
R. 189, ..	876	„ v. Pembilton, (1874) L.R. 2 C.C.R.	
„ v. Murphy, (1876) Ir. Rep. 10		119, ..	602
C.L. 508; 13 Cox 298, ..	893	„ v. Penkridge JJ., (1892) 56 J.P.	
„ v. Muters, (1864) L. & C. 491,	882	87; 66 L.T. 371; 61 L.J.M.C.	
„ v. Myers, (1786) 1 T.R. 265, ..	793	132, ..	115
„ v. Naylor, (1865) L.R. 1 C.C.R. 4,	895	„ v. Pereira, (1834) 2 Ad. & E. 375,	85
„ v. Neale, (1839) 9 C. & P. 431,	151	„ v. Perkin, (1845) 7 Q.B. 165, ..	153
„ v. Neat, (1900) 19 Cox 424, ..	889	„ v. Perkins, (1840) 2 Moody's C.C.	
„ v. Neill, (1892) Sessions' Papers		135, ..	270
CXVI., 1417 (Kenny's Crim.		„ v. Perry, (1855) Dears. 471, ..	877
Law Cases, 483), ..	266	„ v. Perry, (1909) 2 K.B. 697, ..	270
„ v. Newborough, (1869) L.R. 4		„ v. Peters, (1886) 16 Q.B.D. 636,	876
Q.B. 585, ..	227	„ v. Pettit, (1850) 4 Cox 164, ..	23, 275
„ v. Nicholson, (1899) 2 Q.B. 455,	227	„ v. Phillips, (1839) 8 C. & P. 736,	255
„ v. Nicholson, (1909) 73 J.P. 347,	24	„ v. Philp, (1830) 1 Mood. C.C.	
„ v. Nickless, (1839) 8 C. & P. 757,	485	263, ..	931
„ v. Noonan, (1876) I.R. 10 C.L.		„ v. Phillips, (1842) 2 Mood. C.C.	
505, ..	929	252, ..	930
„ v. North, (1825) 6 D. & R. 143,	88	„ v. Phillips, (1909) 73 J.P. 458,	621
„ v. North Riding JJ., (1845) 1		„ v. Pierce, (1852) 6 Cox 117, ..	20
N.S. Cases 574, ..	140	„ v. Pinny, (1832) 5 C. & P. 254,	151
„ v. Norton, (1910) 2 K.B. 496, 45		„ v. Plowden, (1909) 2 K.B. 269,	632
L.J. Misc. 581, ..	104, 271	„ v. Plowright, (1686) 3 Mod. 95,	227
„ v. Nutbrown, (1750) Frost 76, ..	879	„ v. Porter, (1854) 18 J.P. 772,	30
„ v. O'Connell, (1888) 20 L.R. Ir.		„ v. Porter, (1910) 1 K.B. 369, ..	31
625, ..	26	„ v. Poynder, (1823) 1 B. & C. 178,	110,
„ v. O'Connor, (1881) 15 Cox 3,	895	111	
„ v. O'Donnell, (1835) 7 C. & P.		„ v. Pratt, (1855) 4 E. & B. 860,	483
138, ..	20, 149	„ v. Price, (1837) 8 C. & P. 19, ..	299
„ v. O'Donnell, (1857) 7 Cox 337,	883	„ v. Preece, (1843) 5 Q.B. 94, ..	594
„ v. Oldham, (1852) 2 Den. 472, ..	905	„ v. Price, (1884) 12 Q.B.D. 247,	886
„ v. Ollis, (1900) 2 Q.B. 758, ..	268	„ v. Prince, (1875) L.R. 2 C.C.R.	
„ v. O'Neill, (1871) I.R. 6 C.L. 1,	871	154, ..	870
„ v. Orris, (1908) 1 Cr. App. Rep.		„ v. Probert, (1799) 2 East P.C.	
199; 73 J.P. 15, ..	928	1030, ..	911
„ v. Orton, (1878) 14 Cox 226, ..	872	„ v. Produce Brokers Co., Ltd.,	
„ v. Osborne, (1905) 1 K.B. 551,	269	(1910) 45 L.J. 288, ..	20
„ v. Otto Monstead, (1906) 2 K.B.		„ v. Quail, (1866) 4 F. & F.	
456, ..	131	1076, ..	875
„ v. Over Darwen JJ., (1878) 39		„ v. Queen's Co. JJ., (1882) L.R.I.	
L.T. 444, ..	115	294, ..	268

## TABLE OF CASES.

lxxxix

	PAGE		PAGE
R. v. Radnorshire JJ. (1840) 9		R. v. Salford, Overseers of, (1852)	
Dowl. 98, .. .. .	108	18 Q.B.D. 687, .. ..	228
„ v. Rae, (1874) J.R. 8 C.L. 524,	328	„ v. Salmon, (1880) 6 Q.B.D. 79,	918
„ v. Raffles, (1876) 1 Q.B.D. 207,	120,	„ v. Salop JJ., (1859) 2 E. & E.	
569		386, .. .. .	214
„ v. Ram, (1893) 17 Cox 609, ..	896	„ v. Sansome, (1850) 3 C. & K.	
„ v. Ramsey, (1867) 16 W.R. 191,	794	332, .. .. .	275
„ v. Rand, (1866) L.R. 1 Q.B. 230,		„ v. Saunders, (1875) 1 Q.B.D. 15,	887
232, .. .. .	215	„ v. Saunders, (1898) 63 J.P. 24,	261
„ v. Rankin, (1841) 7 State Trials		262	
N.S. 711, .. .. .	872	„ v. Savage, (1876) 13 Cox 178, ..	913
„ v. Ransford, (1874) 13 Cox 9, 875,	887	„ v. Scaife, (1836) 1 Moo. & Rob.	
„ v. Rawson, (1909) 2 K.B. 748, 69, 91,		551, .. .. .	270
95, 106, 359, 393		„ v. Scaife, (1841) 9 Dowl. 553, ..	30
„ v. Rawson & Horton, (1866) 15		„ v. Scaife, (1851) 20 L.J.M.C.	
L.T. 179, .. .. .	183	229, .. .. .	288
„ v. Reed, (1871) 12 Cox 1, .. ..	384, 887	„ v. Scalan, (1910) 44 I.L.T.R.	
„ v. Reeves, (1867) L.R. 1 C.C.R.		228, .. .. .	289
362, .. .. .	273	„ v. Schmidt, (1866) L.R. 1 C.C.R.	
„ v. Rhodes, (1899) 1 Q.B. 77, ..	262	15, .. .. .	928
„ v. Riall, (1860) 11 I.C.L.R. 279,	152,	„ v. Schofield, (1894) 58 J.P. 132,	183
232, 252		„ v. Scott, (1842) 2 Q.B. 248 n., ..	886
„ v. Richards, (1844) 5 Q.B. 926, ..	70	„ v. Scott, (1863) 4 B. & S. 638,	795
„ v. Richards, (1858) 1 F. & F. 87,	257	„ v. Scott-Lewis, (1876), .. ..	30
„ v. Richards, (1866) 4 F. & F.		„ v. Scotton, (1844) 5 R.B. 493, ..	109
860, .. .. .	22, 289,	„ v. Sedley, (1663) 1 Sid. 168, ..	887
„ v. Richardson, (1909) 2 K.B. 851,	66,	„ v. Senior, (1899) 1 Q.B. 283, ..	1198
533		„ v. Sharman, (1854) Dears. C.C.	
„ v. Richardson, (1863) 3 F. & F.		285, .. .. .	902
693, .. .. .	286	„ v. Sharman, (1898) 1 Q.B. 578,	228
„ v. Richmond JJ., (1860) 8 Cox		„ v. Sharpe, (1857) 1 D. & B.	
314, .. .. .	221	160, .. .. .	886
„ v. Ridgway, (1822) 1 D. & R.		„ v. Shaw, 10 Cox 72, .. ..	77
132, .. .. .	102, 105	„ v. Shaw, (1865) 34 L.J.M.C. 169,	96
„ v. Rigg, (1866) 4 F. & F. 1085,	290	„ v. Sheffield JJ., (1899) 63 J.P.	
„ v. Riley, (1887) 11 Q.B.D. 481,	269	595, .. .. .	114, 120, 569
„ v. Riley, (1896) 1 Q.B.D. 309, ..	901	„ v. Sheil, (1900) 19 Cox 507, ..	241
„ v. Ring, (1892) 17 Cox 491, ..	875, 896	„ v. Shepherd, (1868) L.R. 1 C.C.R.	
„ v. Ritson, (1869) L.R. 1 C.C.R.		118, .. .. .	602
200, .. .. .	901	„ v. Sherlock, (1866) L.R. 1 C.C.R.	
„ v. Roberts, (1744)? (1733) 2 Str.		20, .. .. .	923
937, .. .. .	234, 243	„ v. Simons, (1834) 6 C. & P., 541,	273
„ v. Roberts, (1860) 2 F. & F. 272,	252	„ v. Simpson, (1716) 10 Mod. 341,	77,
„ v. Robinson, (1859) 28 L.J. 58;		79, 482	
Bell 34, .. .. .	895, 907	„ v. Silverman, (1908) 12 Canada	
„ v. Robson, (1885) 16 Q.B.D.		Cr. Cas. 79, .. .. .	935
137, .. .. .	889	„ v. Silvester, (1864) 33 L.J.M.C.	
„ v. Robson, (1893) 57 J.P. 133, ..	47, 57	79, .. .. .	791
„ v. Roden, (1874) 12 Cox 630, ..	266	„ v. Slade, (1888) 21 Q.B.D. 433,	312
„ v. Roebuck, (1856) Dears & B.		„ v. Slade, (1895) 2 Q.B. 247; 59	
24, .. .. .	895	J.P. 279, .. .. .	52, 99, 108, 229
„ v. Rogers, (1868) L.R. 1 C.C.R.		„ v. Slater, (1903) 67 J.P. 299, ..	88
136, .. .. .	928	„ v. Slowly, (1873) 12 Cox 269,	894
„ v. Rogers, (1902) 66 J.P. 825, ..	28	„ v. Smith, (1820) Russ. & Ry. 417,	879
„ v. Rooney, (1836) 7 C. & P. 515,	20	„ v. Smith, (1827) 1 Mood. C.C.	
„ v. Rose, (1898) 18 Cox 717, ..	30	178, .. .. .	879
„ v. Rosier, (1821) 1 Philips' Evi-		„ v. Smith, (1831) 4 C. & P. 569;	
dence, 10 Ed. 414, .. ..	273	5 C. & P. 201, .. .. .	901, 930
„ v. Row, (1809) Russ. & Ryan 153,	273	„ v. Smith, (1833) 1 Mood. & Rob.	
„ v. Rowlands, (1906) 2 K.B. 292,	596	256, .. .. .	879
„ v. Rowland, (1910) 1 K.B. 458,	928	„ v. Smith, (1845) 1 Cox 260, ..	255
„ v. Russett, (1892) 2 Q.B. 312, ..	894	„ v. Smith, (1858) 1 Dea. & B.	
„ v. Rowton, (1865) 34 L.M.C. 57,	120	C.C. 553, .. .. .	298
„ v. Rowton, (1865) 34 L.J.M.C.		„ v. Smith, (1865) 10 Cox 82, ..	270
57, .. .. .	269	„ v. Smith, (1866) 15 L.T. 178, ..	569
„ v. Russell, (1869) 10 B. & S. 111,		„ v. Smith, (1870) L.R. 1 C.C.R.	
117, .. .. .	224, 225	266, .. .. .	927
„ v. Ruxton, (1875) 1 Cox 71, .. ..	895	„ v. Smith, (1875) L.R. 10 Q.B.	
„ v. Rymer, (1877) 2 Q.B.D. 136,	565	604, .. .. .	49, 80, 308
„ v. Sadler, (1830) 4 C. & P. 218, 24,	286	„ v. Smith, (1896) Dears. C.C.	
„ v. Sadler, (1787) 2 Chitty 519, ..	88	494, .. .. .	928



	PAGE
R. v. Smith, (1896) 1 Q.B. 596,	280,
466, 468,	470
„ v. Smith, (1897) 18 Cox 470, ..	271
„ v. Smith, (1901) 17 T.L.R. 522,	270
„ v. Smith, (1909) W.N. 235, ..	904
„ v. Smith, (1909) 2 K.B. 756, ..	862
„ v. Smith, (1910) 26 T.L.R. 614,	256
„ v. Solomons, (1786) 1 T.R. 252,	65, 90
„ v. Somerset JJ., (1828) 7 B. & C.	
681, ..	133
„ v. Southampton JJ., (1907) 96	
L.T. 697; 71 J.P. 332, ..	24, 61
„ v. Southey, 4 F. & F. 878, ..	257
„ v. South Shields JJ., (1911) 27	
T.L.R. 330, ..	557, 567
„ v. Spanner, (1872) 12 Cox 155,	879
„ v. Sparks, (1909) 73 J.P. 485, ..	220
„ v. Sparrow, (1788) 2 T.R. 196,	229
„ v. Speed, (1701) 1 Ld. Raymond	
583, ..	84
„ v. Spedding, (1885) 49 J.P. 804,	216
„ v. Spencer, (1904) 20 Cox 692,	268
„ v. Spilsbury, (1898) 2 Q.B. 615,	25,
303	
„ v. Spratling, (1910) 27 T.L.R. 31,	
„ v. Spriggs, (1834) 1 Mood. & R.	
357, ..	879
„ v. St. Paul's, Covent Garden,	
(1845) 7 Q.B. 232, ..	320
„ v. St. Cuthbert Wells, (1834) 3	
N. & M. 100, ..	244
„ v. Stainford, (1847) 11 Q.B. 66,	13
„ v. Stanton, (1844) 1 C. & K.	
415, ..	896, 897
„ v. Steel, (1787) 1 Leach 451, ..	262
„ v. Steel, (1910) 5 Cr. Ap. Rep.	
289, ..	894
„ v. Stephenson, (1884) 13 Q.B.D.	
331, ..	886
„ v. Stephens, (1866) L.R. 1 Q.B.	
702, ..	292, 294
„ v. Stepney, Mayor of, (1902) 1	
K.B. 317, ..	247
„ v. Stevenson, (1861) 3 F. & F.	
106, ..	918
„ v. Stewart, (1840) 12 A. & E.	
778, ..	886
„ v. Stewart, (1896) 1 Q.B. 300,	
44, 370	
„ v. Stimpson (1863) 4 B. & S.	
301, ..	206, 211, 212
„ v. Stock, (1810) Ross & Ry. 185,	879
„ v. Stock, (1828) 8 A. & E. 405,	131
„ v. Stockport JJ., (1896) 60 J.P.	
552, ..	219
„ v. Stoddart, (1901) 1 Q.B. 177 ..	499
„ v. Stone, (1830) 4 C. & P. 379,	883
„ v. Stone, (1801) 1 East 639, ..	50, 96
„ v. Stone, (1908) 99 L.T. 88, ..	67, 92
„ v. Stormouth, (1897) 61 J.P. 729,	932
„ v. Stratford-on-Avon, Mayor of,	
(1811) 14 East 348, ..	20
„ v. Streeter, (1900) 1 K.B. 601,	531, 927
„ v. Stripp, (1850) Dears. 648, ..	23, 275
„ v. Suffolk, (1852) 18 Q.B. 416,	221
„ v. Sullivan, (1874) I.R. 8 C.L.	
404, ..	66, 921
„ v. Sunderland JJ., (1901) 2 Q.B.	
357, ..	215, 217, 228
„ v. Surrey JJ., (1870) L.R. 5 Q.B.	
466, ..	227, 229, 637

	PAGE
R. v. Surrey JJ., (1788) 2 T.R. 504,	131
„ v. Swallow, (1799) 8 T.R. 284,	87
„ v. Swallow, (1815) Russell 7th ed.	
1070, ..	879
„ v. Tabrum, (1907) 71 J.P. 325, ..	96
„ v. Tankard, (1894) 1 Q.B. 548,	889
„ v. Tate, (1908) 2 K.B. 680,	272, 286
„ v. Taylor, (1895) 59 J.P. 393, ..	19
„ v. Taylor, (1908) 2 K.B. 237;	
6 Cr. App. Rep. 12,	
906, 1140, 1142	
„ v. Teague, (1802) R. & R. 33, ..	901
„ v. Tempest, (1902) 18 I.L.R.,	
433; 86 L.T. 585; 66 J.P.	
472, ..	219, 221, 550
„ v. Tenant (1727) 2 Ld. R. 1423,	102
„ v. Tessington, (1843) 1 Cox 48,	269
„ v. Thanet, (1793) 27 How St. Tr.	
845, ..	219
„ v. Thomas, (1863) Le & Ca. 313,	933
„ v. Thompson, (1796) 2 Leac 771,	879
„ v. Thompson, (1863) 3 F. & F.	
824, ..	260
„ v. Thompson, (1869) 11 Cox 362,	905
„ v. Thompson, (1872) L.R. 1 C.	
C.R. 377, ..	54, 260
„ v. Thompson, (1893) 2 Q.B. 12,	272
273	
„ v. Thompson, (1909) 2 K.B.	
614, ..	47, 71, 229
„ v. Thompson, (1910) 1 K.B. 640,	271
„ v. Titterton, (1895) 2 Q.B. 61,	473
„ v. Tolley, (1803) 3 East 467, ..	52, 309
„ v. Tolson, (1864) 4 F. & F. 103,	914
„ v. Tolson, (1889) 23 Q.B.D. 168,	914
„ v. Tooke, (1884) 32 W.R. 753;	
48 J.P. 661, ..	218
„ v. Toole, (1867) I.R. 2 C.L. 36,	
933	
„ v. Torpey, (1871) 12 Cox 45, ..	299
„ v. Tott, (1861) 64 L.T. 306, ..	538
„ v. Towgood, (1871) 35 J.P. 791,	214
„ v. Truelove, (1880) 5 Q.B.D.	
336, ..	50, 59
„ v. Train, (1862) 31 L.J.M.C.	
N.S. 169, ..	882
„ v. Treadgold, (1878) 14 Cox	
220, ..	858
„ v. Tregoeing, (1899) 63 J.P. 504,	653
„ v. Trimble, (1877) 36 L.T. 508,	
698, 709	
„ v. Truman, (1795) 1 East D.C.	
470, ..	913
„ v. Truscott, (1899) 19 Cox 479,	813
„ v. Tucker, (1877) 2 Q.B. 417, ..	741
„ v. Tuddenham, (1841) 9 D.P.C.	
937, ..	502
„ v. Tunny, (1852) 6 Cox 477, ..	264
„ v. Tyrrell, (1894) 1 Q.B. 710, ..	255
„ v. Turner, (1839) 8 C. & P. 756,	877
„ v. Turner, (1910) 1 K.B. 346, 903, 904	
„ v. Tyrrell, (1894) 1 Q.B. 710, 898, 899	
„ v. Unkles, (1873) I.R. 8 C.L.	
50; 8 I.L.T.R. 38, ..	41, 58, 63,
131, 132, 275, 637	
„ v. Vamplew, (1862) 3 F. & F.	
520, ..	255
„ v. Vann, (1851) 2 Den 325, ..	886
„ v. Vantandillo, (1815) 4 M. & S.	
72, ..	726, 882
„ v. Villensky, (1892) 2 Q.B. 597,	928

## TABLE OF CASES.

XCI

	PAGE		PAGE
R. v. Vincent, (1839) 9 C. & P.	150, 874	R. v. Whitechurch, (1881) 7 Q.B.D.	66
91, 109, ..	572	534, ..	262
" v. Vine, (1875) L.R. 10 Q.B.	906	" v. Whitehead, (1866) L.R. 1 C.	602
" v. Wade, (1869) 11 Cox 549, ..	891	C.R. 33, ..	270
" v. Wagstaff, (1819) Russ. & Ry.	264	" v. Whiteman, (1854) 6 Cox 370,	485
398, ..	898	" v. Whitmarsh, (1898) 62 J.P. 711,	270
" v. Waineright, (1875) 13 Cox	870	" v. Whittaker, (1848) 2 C. & K.	382, ..
171, ..	870	636, ..	270
" v. Waite, (1892) 2 Q.B. 600, ..	149	" v. Whitworth, (1858) 1 F. & F.	379, 380
255, 896, 898	904	382, ..	107
" v. Wakefield, (1827) 2 Lew. 279,	664	" v. Wicklow JJ., (1892) 30 L.R. 1.	630, 641
" v. Walker, (1854) 23 L.J.M.C	931	633, ..	34
123, ..	903	" v. Wicklow JJ., (1863) 16 I.C.	232
" v. Walker, (1910) 27 T.L.R. 51,	893	L.R. 23, ..	869
904	289	" v. Wilbraham, (1907) 96 L.T.	260
" v. Wall, (1824) Sm. & B. 121,	929	712, ..	299
" v. Wallace, (1841) C. & Mar.	928	" v. Wild, (1835) 1 Mood. C.C. 452,	925
200, ..	272	" v. Wigan JJ., (1879) 43 J.P. 220,	34
" v. Waller, (1910) 1 K.B. 346, ..	132	" v. Wilkins, (1907) 2 K.B. 380,	877
904	85	35, 51, 63, 232	808
" v. Walne, (1870) 11 Cox 647,	710	" v. Wilkins, Smallwood, & Jones	255
" v. Walsh, (1850) 5 Cox 115, ..	228	(C.C.A.), (1910) 26 T.L.R.	896
" v. Walshe, (1876) I.R. 10 C.L.	882	581, ..	898
511, ..	22, 56	" v. Williams, (1838) 8 C. & F.	880
" v. Wardroper, (1860) 8 Cox 284	899	284, ..	1198
" v. Warringham, (1851) 2 Den.	48	" v. Williams, (1712) 10 Mod. 63,	918
C.C. 447n, ..	921	" v. Williams, (1762) 3 Burr. 1317,	246
" v. Warwickshire JJ., (1856) 6 E.	900	" v. Williams, (1836) 7 C. & P.	50
& B. 841, ..	913	321, 354, ..	913
" v. Waterford JJ., (1869) 18 W.	302	" v. Williams, (1871) 11 Cox 684,	901
R. 164, ..	887	" v. Williams, (1891) 55 J.P. 406,	256
" v. Waterhouse, (1872) L.R. 7	881	" v. Williams, (1893) 1 Q.B. 320,	862
Q.B. 545, ..	23	290; 4 Cr. App. Rep. 89,	273
" v. Waterman's Co., (1897) 1 Q.B.	290	185, ..	703
659, ..	88	" v. Wood, (1855) 5 E. & B. 49, ..	388
" v. Watson, (1705) 2 Ld. Raym.	630	" v. Wood, (1869) L.R. 4 Q.B. 559,	356, ..
856, ..	898	" v. Woodcock, (1789) 1 East P.C.	270, 289
" v. Watts, (1863) 33 L.J.M.C. 63;	918	356, ..	226,
9 Cox 395, ..	246	" v. Woodhouse, (1906) 2 K.B. 501,	228, 234
" v. Wealand, (1888) 20 Q.B.D.	893	" v. Woolley, (1850) 1 Den. 559,	893
827, ..	48	" v. Wright, (1808) 72 J.P. 23,	696
" v. Webb, (1896) 1 Q.B. 487, ..	921	" v. Wyatt, (1904) 1 K.B. 188, 267,	894
" v. Webster, (1859) 1 F. & F. 515,	900	" v. Wyton, (1910) 5 Cr. App. 287,	500
" v. Webster, (1885) 16 Q.B.D.	302	" v. Yates, (1841) Car. & Mar. 132,	921
134, ..	887	" v. Yorkshire JJ., (1827) 9 D. & R.	204, ..
" v. Weil, (1882) 9 Q.B.D. 701,	881	678, ..	233
" v. Wellard, (1884) 14 Q.B.D. 63,	887	" v. Yorkshire JJ., (1828) 7 B. & C.	133, 141
" v. Welch, (1851) 4 Cox 432, ..	23	108; 53 L.T. 728, ..	247
" v. Weller, (1846) 2 C. & K. 224,	290	" v. Yorkshire JJ., (1910) 1 K.B.	638
24, 289, 290	88	439, ..	260
" v. Wells, (1904) 20 Cox 671,	630	" v. Young, (1847) 2 Cox 291, ..	260
" v. West, (1808) 1 Q.B. 174, ..	898		
" v. Westmeath JJ., (1866) 11 I.J.	207		
N.E. 405; 15 W.R. 59, ..	9		
" v. Westmoreland JJ., (1868)	572		
L.R. 3 Q.B. 457, ..	929		
" v. West Riding JJ., (1888) 21	879		
Q.B.D. 258, ..	87, 709		
" v. Westropp, (1851) 2 I.C.L.R	284		
217, ..	907		
" v. Westwood, (1822) Russ. & Ry.	928		
495, ..	1198		
" v. Wheatley, (1885) 16 Q.B.D.	919		
54, ..			
" v. Whelan, (1881) 8 L.R.I. 314,			
" v. White, (1853) Dears. C.C. 203,			
" v. White, (1859) 1 F. & F. 655,			
" v. White, (1870) L.R. 1 C.C.R.			
311, ..			
" v. White, (1910) 2 K.B. 124, ..			

	PAGE		PAGE
R. v. Young, (1878) 14 Cox 114,	897	R. (Callaghan) v. Donegal JJ.,	
„ v. Young, (1883) 52 L.J.M.C. 55,	214,	(1892) 2 I.R. 652, ..	569
	525	„ (Campbell) v. Donegal JJ., (1890)	
„ v. Younger, (1793) 5 T.R. 449,	792	24 I.L.T.R. 47, ..	135
„ (Alton) v. M'Auliffe, (1894) 2 I.R.		„ (Canavan) v. Dublin JJ., (1895)	
127, ..	438	29 I.L.T.R. 125, ..	99
„ (Arnott) v. Cork JJ., (1898) 4		„ (Carroll) v. Westmeath JJ.,	
I.W.L.R. 183,	234	(1911), ..	1018
„ (Atkinson) v. Armagh JJ., (1883)		„ (Carroll) v. Westmeath JJ., un-	
18 I.L.T.R. 2, ..	54, 73, 285	reported, ..	<i>Add. et Cor.</i>
„ (Barry) v. Mahony, (1909) 2 I.R.		„ (Carty) v. Newry U.D.C., (1909)	
490; 43 I.L.T.R. 263, ..	468	43 I.L.T.R. 172, ..	247
„ (Barton) v. Donegal JJ., (1904)		„ (Cassidy) v. Galway JJ., (1903)	
39 I.L.T.R. 89, ..	117	3 N.I.J.R. 134, ..	213
„ (Beirne) v. Liston, (1910) 44		„ (Casey) v. Cork JJ., (1910), 44	
I.L.T.R. 82, ..	558, 570	I.L.T.R. 134, ..	178
„ (Belfast Street Tramway Co.) v.		„ (Casey) v. Louth JJ., (1896)	
Belfast JJ., (1902) 36 I.L.T.R.		31 I.L.T. & S.J. 241, ..	216
66, ..	61	„ (Christie) v. Londonderry JJ.,	
„ (Bentham) v. Dublin JJ., (1884)		(1902) 2 I.R. 66; 35 I.L.T.R.	
14 L.R.I. 443, ..	86, 170	127, ..	213, 525
„ (Bevine) v. Limerick JJ., (1911),	1157	„ (Cinnamon) v. Belfast JJ., (1909)	
„ (Bevine) v. Limerick JJ., un-		43 I.L.T.R. 187, ..	48
reported, ..	<i>Add. et Cor.</i>	„ (Clarke) v. Meath JJ., (1900) 34	
„ (Blackburn) v. Down JJ., (1905)		I.L.T.R. 47, ..	87, 709
2 I.R. 74; 38 I.L.T.R. 67, ..	113,	„ (Cleeland) v. Pharmaceutical Soc.	
	538, 570	of Ireland, (1896) 2 I.R. 368,	396
„ (Blakeney) v. Roscommon JJ.,		„ (Clitheroe) v. Recorder of Dublin,	
(1894) 2 I.R. 158, ..	26, 227	(1877) I.R.; 11 C.L. 412; 11	
„ (Bradshaw) v. Commissioners of		I.L.T.R. 85, ..	114
Valuation, (1906) 40 I.L.T.R.		„ (Coleman) v. Pettit, (1902) 2 I.L.	
174, ..	199	1, ..	438, 453
„ (Brady) v. Cavan JJ., (1907)		„ (Collins) v. Donegal JJ., (1903)	
2 I.R. 389, ..	86, 170	2 I.R. 533; 36 I.L.T.R. 229, ..	112
„ (Brannagan) v. Antrim JJ., (1878)		„ (Collins) v. Fermanagh JJ.,	
4 L.R.I. 230, ..	115	(1883) 14 L.R.I. 50, ..	525, 806
„ (Brennen) v. Armagh JJ., (1895)		„ (Collins) v. Waterford JJ., (1892)	
29 I.L.T.R. 137, ..	136	27 I.L.T.R. 54, ..	88, 226, 227, 234
„ (Bridges) v. Armagh JJ., (1897)		„ (Comm. of Public Works) v.	
2 I.R. 236, ..	62, 77, 126, 229, 482	Down JJ., (1902) 2 I.R. 220,	696
„ (Brown) v. Londonderry JJ.,		„ (Connolly) v. Tyrone JJ., (1902)	
(1900) 6 I.W.L.R. 134, ..	47, 57, 109	2 I.R. 78, ..	482, 483
„ (Booth) v. Meath JJ., (1898)		„ (Connell) v. Dublin JJ., (1861)	
4 I.W.L.R. 233, ..	170	13 I.C.L.R. 375, ..	45, 379
„ (Bourke) v. Dublin JJ., (1903)		„ (Connolly) v. Tyrone JJ., (1902)	
2 I.R. 429, ..	117, 121, 254	2 I.R. 78, ..	44
„ (Bulfin) v. Queen's Co. JJ., (1902)		„ (Connor) v. Londonderry JJ.,	
2 N.I.J.R. 82, ..	91	(1894) 28 I.L.T.R. 92, ..	188
„ (Bunting) v. Antrim JJ., (1905)		„ (Conroy) v. Dublin JJ., (1910)	
39 I.L.T.R. 82, ..	86, 226, 806	44 I.L.T.R. 231, ..	232
„ (Burke) v. Cork JJ., (1905) 2		„ (Conway) v. Tyrone JJ., (1906)	
I.R. 309; 39 I.L.T.R. 25, ..	63, 67,	2 I.R. 164; 39 I.L.T.R. 225;	
	99, 234, 310	5 N.I.J.R. 211, ..	91, 133, 136
„ (Burke) v. Galway JJ., (1897)		„ (Conyngham) v. Pharmaceutical	
31 I.L.T.R. 160, ..	221	Society of Ireland, (1899) 2	
„ (Burke) v. Galway JJ., (1906)		I.R. 132, ..	395
2 I.R. 446; 39 I.L.T.R. 160, ..	217,	„ (Corker) v. Cavan JJ., (1904)	
	225, 229, 234, 237	5 N.I.J.R. 94, ..	187, 191, 694
„ (Burton) v. Aulton, (1861) 3		„ (Cottingham) v. Cork JJ., (1906)	
E. & E. 568, ..	837	2 I.R. 415, ..	123
„ (Butler) v. Cork JJ., (1904) 5		„ (Coughlan) v. Cork JJ., (1892)	
N.I.J.R. 36, ..	112	30 L.R.I. 679; 27 I.L.T.R. 8, ..	135
„ (Byrne) v. Dublin JJ., (1903)		„ (Coulan) v. Monaghan JJ., (1911),	1064
37 I.L.T.R. 250; 4 N.I.J.R.		„ (Cox) v. Recorder of Dublin,	
48, ..	122	(1885) 16 L.R.I. 434, ..	119, 121
„ (Byrne) v. Knox, (1888) 22		„ (Coyle) v. Monaghan JJ., (1908)	
L.R.I. 599, ..	69, 191, 244	2 I.R. 1, ..	86, 170, 171
„ (Cabill) v. Dublin JJ., (1904)		„ (Coyle) v. Tyrone JJ., (1908)	
2 I.R. 698, ..	99, 310, 630, 631	42 I.L.T.R. 26, ..	88, 441
„ (Callaghan) v. Cork JJ., (1895)		„ (Crawford) v. Cinque Ports JJ.,	
2 I.R. 350, ..	116, 137	(1886) 17 Q.B.D. 191, ..	827



	PAGE		PAGE
R. (Creedon) <i>v.</i> Macroom Guardians, (1904) 4 N.I.J.R. 169, ..	247, 250	R. (Dunne) <i>v.</i> Cavan JJ., (1908) 42 I.L.T.R. 89, ..	212
„ (Crilly) <i>v.</i> Londonderry JJ., (1904) 38 I.L.T.R. 136; 4 N.I.J.R. 169, ..	90, 253, 604	„ (Eraut) <i>v.</i> Ross Bros., Ltd., (1910) 2 I.R. 591, ..	1123
„ (Croghan) <i>v.</i> Mayo JJ., (1907) 2 I.R. 474; 40 I.L.T.R. 227, 113, 114, 120		„ (Ewing) <i>v.</i> Down JJ., (1905) 2 I.R. 648, ..	64, 100, 695
„ (Cross) <i>v.</i> Tyrone JJ., (1908) 42 I.L.T.R. 112, ..	50, 227	„ (Farrell) <i>v.</i> Queen's Co. JJ., (1905) 39 I.L.T.R. 91, ..	247
„ (Crowley) <i>v.</i> Cork JJ., (1902) 2 I.R. 252; 1 N.I.J.R. 85, ..	62, 116	„ (Feehan) <i>v.</i> Queen's Co. JJ., (1882) 10 L.R. Ir. 294, ..	36, 37, 342
„ (Crumley) <i>v.</i> Cavan JJ., (1898) 4 I.W.L.R. 215, ..	50	„ (Ferris) <i>v.</i> Londonderry JJ., (1903) 2 I.R. 748; 3 N.I.J.R. 242, ..	45, 88, 156, 404, 531
„ (Cunningham) <i>v.</i> Tyrone JJ., 1902 36 I.L.T.R. 101, ..	224, 226	„ (Findlater) <i>v.</i> Dublin JJ., (1904) 2 I.R. 75; 37 I.L.T.R. 202; 3 N.I.J.R. 354, ..	115, 217, 219, 228, 327
„ (Cusack) <i>v.</i> O'Connell, (1888), 20 L.R.I. 625, ..	121	„ (Findlater) <i>v.</i> Quirke, (1903) 3 N.I.J.R. 165, ..	619
„ (Cust) <i>v.</i> Tipperary JJ., (1885), 17 I.C.L.R. 564, ..	86, 980, 981	„ (Findlay) <i>v.</i> Armagh JJ., (1898) 5 I.W.L.R. 4, ..	93
„ (Daly) <i>v.</i> Cork JJ., (1898) 2 I.R. 694, ..	69, 87, 91, 95, 96, 225, 359, 393	„ (Fitzgerald) <i>v.</i> Cork JJ., (1910) 44 I.L.T.R. 110, ..	213
„ (Deane) <i>v.</i> Galway JJ., (1901) 35 I.L.T.R. 156, ..	85, 380	„ (Fitzgerald) <i>v.</i> Kerry JJ., 44 I.L.T.R. 352, ..	330
„ (Deeny) <i>v.</i> Tyrone JJ., (1909) 2 I.R. 400, 43 I.L.T.R. 72, ..	247	„ (Fitzgerald) <i>v.</i> Limerick JJ., (1893) 27 I.L.T.R. 35, ..	86, 170
„ (Delaney) <i>v.</i> Queen's Co. JJ., (1877) 20 L.R.I. 167, ..	565	„ (Fleming) <i>v.</i> Armagh, unreported, 533	533
„ (Dempsey) <i>v.</i> Antrim JJ., 1875, 9 I.L.T.R. 156, ..	115	„ (Flynn) <i>v.</i> Cork JJ., (1909) 43 I.L.T.R. 154, ..	103
„ (Denny) <i>v.</i> Tyrone JJ., (1909) 2 I.R. 400; 43 I.L.T.R. 72, ..	61, 247	„ (Fleming) <i>v.</i> Londonderry JJ., (1908) 42 I.L.T.R. 205, ..	99, 229
„ (de Vesci) <i>v.</i> Queen's Co. JJ., (1908) 2 I.R. 306, ..	26, 77, 169, 170, 171, 172, 216, 217, 222, 234	„ (Forbes) <i>v.</i> Louth JJ., (1904) 38 I.L.T.R. 76, ..	50, 59, 63
„ (Dickie) <i>v.</i> Donegal JJ., (1910) 44 I.L.T.R. 222, ..	50, 225, 1008	„ (Gallagher) <i>v.</i> Martin, (1874) I.R. 8 C.L. 556, ..	45, 55, 73
„ (Dixon) <i>v.</i> Local Government Board, (1878) 2 L.R.I. 316, ..	801	„ (Gallagher) <i>v.</i> Mayo JJ., (1887) 20 L.R.I. 69, ..	451
„ (Donegan) <i>v.</i> Wicklow JJ., (1863) 16 I.C.L.R. 23, ..	67	„ (Gallagher) <i>v.</i> Tyrone JJ., (1901) 2 I.R. 497, 502; 35 I.L.T.R. 109; 1 N.I.J.R. 42, 89, ..	115
„ (Donnell) <i>v.</i> Londonderry JJ., (1910) 2 I.R. 458, ..	55, 100, 695	„ (Gallock) <i>v.</i> Cork JJ., (1857) 7 I.C.L.R. 224, ..	216, 221
„ (Donnelly) <i>v.</i> Kerry JJ., (1902) 2 N.I.J.R. 175, ..	213	„ (Geraghty) <i>v.</i> Dublin JJ., (1901) 35 I.L.T.R. 136; 1 N.I.J.R. 172, ..	234, 469
„ (Donnelly) <i>v.</i> Tyrone JJ., (1910) 44 I.L.T.R. 264, ..	219, 220	„ (Giant's Causeway Tram Co.) <i>v.</i> Antrim JJ., (1895) 2 I.R. 603, ..	220, 231
„ (Donoghue) <i>v.</i> Cork JJ., (1910) 2 I.R. 271, ..	216, 218, 222, 234	„ (Gibson) <i>v.</i> Fermanagh JJ., (1897) 2 I.R. 603, ..	132, 439
„ (Donohue) <i>v.</i> Longford JJ., (1864) 15 I.C.L.R., App. vii, ..	234	„ (Gilbey) <i>v.</i> Fermanagh JJ., (1897) 2 I.R. 559; 31 I.L. T.R. 133, ..	123
„ (Dorrian) <i>v.</i> Greer, (1903) 3 N.I.J.R. 302, ..	112	„ (Gilchrist) <i>v.</i> Tyrone JJ., (1899) 34 I.L.T.R. 9, ..	3
„ (Dove) <i>v.</i> Westmeath JJ., (1904) 4 N.I.J.R. 73, ..	171	„ (Gillen) <i>v.</i> Donegal JJ., (1860) 5 I.J.N.S. 185, ..	211
„ (Drohan) <i>v.</i> Waterford JJ., (1901) 2 I.R. 548; 33 I.L.T.R. 168, 105, 133, 135, 215, 243		„ (Gleeson) <i>v.</i> Tipperary JJ., un- reported, ..	75, 187, 229
„ (Dowd) <i>v.</i> Cavan JJ., (1900) 6 I.W.L.R. 33, ..	209	„ (Graham) <i>v.</i> Antrim JJ., (1862) 7 I.J.N.S. 237, ..	211
„ (Duane) <i>v.</i> Dublin JJ., (1891) 28 L.R.I. 516, ..	162	„ (Grant) <i>v.</i> Armagh JJ., (1902) 2 N.I.J.R. 175, ..	215
„ (Dublin C.C.) <i>v.</i> Keating, (1907) 41 I.L.T.R. 190, ..	68, 431	„ <i>v.</i> Great Yarmouth JJ., (1882) 8 Q.B.D. 525, ..	203
„ (Dublin Corporation) <i>v.</i> Dublin JJ., (1898) 2 I.R. 762, ..	185	„ (Guinness) <i>v.</i> Louth JJ., (1898) 2 I.R. 248; 33 I.L.T.R. 9, ..	86, 170
„ (Duggan) <i>v.</i> Fermanagh JJ., (1909) 2 I.R. 132, ..	114, 115, 119	„ (Hannon) <i>v.</i> Londonderry JJ., (1910) 44 I.L.T.R. 135, ..	63, 591

	PAGE		PAGE
R. (Hale) v. Down JJ., ..	170	R. (Kildare C.C.) v. Commissioners of Valuation, (1901) 2 I.R. 215,	195
„ (Hamilton) v. Leitrim JJ., (1900) 2 I.R. 397, ..	135	„ (Kinsella) v. Wicklow JJ., (1877) I.R. 11 C.L. 59, ..	115
„ (Harvey) v. Tyrone JJ., (1901) 36 I.L.T.R. 106; 2 N.I.J.R. 59, ..	3, 115	„ (Lalor) v. Queen's Co. JJ., (1858) 7 I.L.C.R. 438, ..	96
„ (Hastlett) v. Fermanagh JJ., (1903) 37 I.L.T.R. 120; 2 N.I.J.R. 109, ..	90, 543, 581	„ (Lambe) v. Armagh JJ., (1897) 2 I.R. 57; 30 I.L.T.R. 47,	114, 121
„ (Hastings) v. Galway JJ., (1909) 43 I.L.T.R. 185; (1907) 2 I.R. 18, ..	26, 50,	„ (Langtree) v. Dublin JJ., (1904) 4 N.I.J.R. 182, ..	83, 371
67, 105, 222, 227, 231, 244, 348		„ (Langtree) v. M'Carthy, (1903) 2 I.R. 146, ..	280, 282
„ (Hegarty) v. Dublin JJ., (1899) 2 I.R. 310, ..	131, 140, 311, 312, 402	„ (Lawlor) v. King's Co. JJ., (1907) 41 I.L.T.R. 77, ..	45, 48, 836
„ (Herbert) v. Kildare JJ., (1895) 2 I.R. 577, ..	67	„ (Leonard) v. Carlow JJ., (1911) 45 I.L.T.R. 48, ..	<i>Add. et Cor.</i>
„ (Henderson) v. Louth JJ., (1911) 2 I.R. 312, ..	<i>Add. et Cor.</i>	„ (Leslie) v. Monaghan JJ., (1901) 35 I.L.T.R. 37; 1 N.I.J.R. 68, ..	115
„ (Hickey) v. Clare JJ., (1857) 7 I.C.L.R. 211, ..	221	„ (L. G. B.) v. Kilmallock R.D.C., (1910), Dec., unreported, ..	372
„ (Hickey) v. Meath JJ., K.B.D. (Ir.) (1908) June 18, ..	225, 247	„ (Lock) v. Ryan, (1909) 43 I.L.T.R. 110, ..	559, 560, 564
„ (Higgins) v. Kildare JJ., (1911) 45 I.L.T.R. 76, ..	<i>Add. et Cor.</i>	„ (Lowry) v. Antrim JJ., (1901) 2 N.I.J. 6, ..	47, 57, 109
„ (Horan) v. Galway JJ., (1903) 3 N.I.J.R. 111, ..	109	„ (Lynch) v. Dublin JJ., (1871) I.R. 5 C.L. 548, ..	246
„ (Hore) v. Wexford JJ., (1904) 2 I.R. 51; 3 N.I.J.R. 151, ..	583	„ (Lyster) v. Queen's Co. JJ., (1901) 2 I.R. 132 n, ..	131, 696
„ (Hosford) v. Limerick JJ., (1908) 42 I.L.T.R. 105, ..	227, 231, 446	„ (M'Aleer) v. Tyrone JJ., (1897) 31 I.L.T.R. 81, ..	140, 545
„ (Houlihan) v. King's Co. JJ., (1900) 6 I.W.L.R. 56, ..	109, 190, 191	„ (M'Aneney) v. Tyrone JJ., (1910) 44 I.L.T.R. 147, ..	163
„ (Hynes) v. Clare JJ., (1911) 45 I.L.T.R. 76, ..	<i>Add. et Cor.</i>	„ (M'Ardle) v. Louth JJ., (1904) 2 I.R. 64; 3 N.I.J.R. 155, ..	97, 137, 229, 230
„ (Irish Industrial Assoc.) v. Mullins, (1910) 44 I.L.T. & S.J. 107, ..	620	„ (M'Barron) v. Fermanagh JJ., (1907) 40 I.L.T.R. 134, ..	84, 94
„ (Jackson) v. Sligo C.C., (1900) 34 I.L.T.R. 49, ..	55	„ (M'Carron) v. Donegal JJ., (1907) 2 I.R. 386; 40 I.L.T.R. 197,	85, 88, 483
„ (Jackson) v. Tipperary JJ., (1894) 28 I.L.T.R. 107, ..	3, 55, 579, 688	„ (M'Carthy) v. Cork JJ., (1910) 2 I.R. 421, ..	178
„ (Jennings) v. Lynham, (1902) 2 N.I.J.R. 292, ..	280	„ (M'Clinchy) v. Greer, (1904) 2 I.R. 494; 37 I.L.T.R. 156, ..	112, 121
„ (Jephson) v. Roscommon JJ., (1883) 12 L.R.I. 331, ..	175	„ (M'Connick) v. Clare JJ., (1882) 16 I.L.T.R. 91, ..	35
„ (Jones) v. Barry, (1888) Judgments of the Superior Courts 202; 23 I.L.T.R. 28, ..	130	„ (M'Cusker) v. Belfast Corporation, (1901) 35 I.L.T.R. 198; 1 N.I.J.R. 241, ..	199
„ (Johnson) v. Armagh JJ., (1909) 43 I.L.T.R. 112, ..	85, 380	„ (M'Elgun) v. Fermanagh JJ., (1883) 17 I.L.T.R. 105, ..	825
„ (Johnson) v. Coleraine Conservators, (1906) 2 I.R. 219, ..	441	„ (M'Erlean) v. Antrim JJ., (1902) 2 N.I.J.R. 256, ..	67
„ (Kane) v. Tyrone JJ., (1906) 40 I.L.T.R. 181, ..	134, 483, 485, 585, 802	„ (M'Evoy) v. Dublin Corporation, (1878) 2 L.R.I. 371, ..	228
„ (Kealy) v. Louth JJ., (1901) 35 I.L.T.R. 43, ..	212, 818	„ (M'Guinness) v. Dublin JJ., (1883) 12 L.R.I. 178, ..	655
„ (Kennedy) v. Antrim JJ., (1903) 2 I.R. 675; 37 I.L.T.R. 120, ..	10, 112, 136	„ (M'Grath) v. Clare JJ., (1905) 2 I.R. 510, 32, 41, 138, 231, 380	
„ (Kennedy) v. Dublin JJ., (1909) 43 I.L.T.R. 271, ..	86, 89, 173	„ (M'Grath) v. Wicklow JJ., (1901) 2 I.R. 130, ..	131, 584
„ (King) v. Antrim JJ., (1906) 2 I.R. 328, 30, 83, 227, 231, 237		„ (McIntyre) v. Donegal JJ., (1902) 2 I.R. 252, ..	116
„ (Kingston) v. Cork JJ., (1910) 2 I.R. 658; 44 I.L.T.R. 216, ..	218, 222	„ (MacKay) v. Limerick JJ., (1898) 2 I.R. 135, ..	42
		„ (McKenney) v. Antrim JJ., (1901) 2 I.R. 133, ..	121, 123, 248
		„ (McManus) v. Meath JJ., (1893) 27 I.L.T.R. 127, ..	103, 548



# TABLE OF CASES.

XCV

	PAGE
R. (McMonagle) v. Donegal JJ., (1905) 2 I.R. 644; 5 N.I.J.R. 36, .. .. .	83, 137
,, (McNally) v. Murphy, (1908) 42 I.L.T.R. 88, .. .. .	547
,, (McNarry) v. Down JJ., (1908) 42 I.L.T.R. 260, .. 231, 235, 243	
,, (McSwiggan) v. Londonderry JJ., 2 I.R. 318, .. .. .	227
,, (MacKey) v. Limerick JJ., (1898) 2 I.R. 135, .. .. .	452
,, (Madden) v. Galway JJ., (1879) 6 L.R.I. 1, .. .. .	96
,, (Madden) v. Roscommon JJ., (1906) 2 I.R. 173, .. .. .	596
,, (Maguire) v. Dublin JJ., (1885) 18 L.R.I. 111, .. .. .	67
,, (Maher) v. Kilkenny JJ., (1905) 5 N.I.J.R. 113, .. .. .	171
,, (Mahon) v. Antrim JJ., (1907) 41 I.L.T.R. 225, .. .. .	212
,, (Mahony) v. Cork JJ., (1908) 42 I.L.T.R. 237; (1910) 2 I.R. 38; 43 I.L.T.R. 194, .. .. .	191, 212, 818
,, (Malone) v. Tyrone JJ., (1903) 3 N.I.J.R. 177; 37 I.L.T.R. 55, .. .. .	6, 217
,, (Marshall) v. Tyrone JJ., (1892) 32 L.R.I. 201; 27 I.L.T.R. 50, .. .. .	227
,, (Marshall) v. Tyrone JJ., (1894) 2 I.R. 246, .. .. .	225
,, (Marshall) v. Tyrone JJ., (1895) 2 I.R. 174; 28 I.L.T.R. 133	123
,, (Martin) v. Dublin JJ., (1910) 2 I.R. 742, .. 223, 224, 225, 226	
,, (Martin) v. Mahony, (1910) 2 I.R. 695, .. .. .	34, 36, 224, 225, 227, 235
,, (Mathews) v. McCourt, (1911) 45 I.L.T.R. 145 .. <i>Add. et Cor.</i>	
,, (Mayo) v. Dublin JJ., (1884) 16 L.R.I. 11, .. .. .	86, 170
,, (May) v. Mayo JJ., 16 L.R.I. 11, .. .. .	170
,, (Meehan) v. Donegal JJ., (1904) 38 I.L.T.R. 183, .. .. .	91, 92
,, (Meehan) v. Louth JJ., (1905) 39 I.L.T.R. 23, .. .. .	86, 221
,, (Monaghan C.C.) v. Local Govt. Bd., (1900) 34 I.L.T.R. 196,	228
,, (Monahan) v. Tyrone JJ., (1901) 1 N.I.J.R. 171, .. .. .	214
,, (Mooney) v. Dublin JJ., (1881) 8 L.R.I. 274, .. .. .	563
,, (Moore) v. Dublin JJ., (1910) 2 I.R. 681, .. .. .	75, 203
,, (Moore) v. Wexford JJ., (1903) 37 I.L.T.R. 64; 3 N.I.J. 129, .. .. .	88, 544
,, (Morell) v. Antrim JJ., (1900) 2 I.R. 492, .. .. .	121
,, (Moriarty) v. Dublin JJ., (1903) 2 I.R. 420, 463, .. .. .	121
,, (Moriarty) v. Kerry JJ., (1883) 12 L.R.I. 384, .. .. .	450
,, (Morris) v. Derry JJ., (1900) 1 N.I.J.R. 66, .. .. .	124
,, (Mulcahy) v. Tipperary JJ., (1903) 2 I.R. 108, .. .. .	62, 116, 137

	PAGE
R. (Mulgrew) v. Commrs. of Inland Revenue, (1901) 35 I.L.T.R. 157; 1 N.I.J.R. 229, .. .. .	105
,, (Mulliner) v. Cork JJ., (1905) 39 I.L.T.R. 117, .. .. .	61, 247
,, (Murphy) v. Recorder of Cork, (1895) 2 I.R. 104, .. .. .	115
,, (Murphy) v. Donegal JJ., (1896) 30 I.L.T.R. 6, .. .. .	133, 115
,, (Murphy) v. Kilkenny JJ., (1908) 42 I.L.T.R. 135, .. .. .	220, 221, 550
,, (Murphy) v. McCarthy, (1888) 22 L.R.I. 18 .. .. .	120, 123
,, (Murphy) v. Wexford JJ., (1894) 2 I.R. 81; 27 I.L.T.R. 126; 28 I.L.T.R. 17, .. .. .	46, 64, 86, 89, 100, 169, 170, 171
,, (Neely) v. Down JJ., (1908) 42 I.L.T.R. 111, .. .. .	88
,, (Nugent) v. Tyrone JJ., (1909) 43 I.L.T.R. 261, .. .. .	70, 161
,, (O'Brien) v. Tipperary JJ., (1878) 4 L.R.I. 259; 6 L.R.I. 129; 14 I.L.T.R. 19, .. .. .	115
,, (O'Ferrall) v. Meath JJ., (1910) 44 I.L.T.R. 267, .. .. .	171
,, (O'Ferrall) v. Sheehan, (1898) 2 I.R. 683, .. .. .	228
,, (O'Donoghue) v. Cork JJ., (1911) 45 I.L.T.R. 37, <i>Add. et Cor.</i>	
,, (O'Grady) v. Cork JJ., (1905) 5 N.I.J.R. 191, .. .. .	32, 41, 83
,, (O'Hara) v. Conlan, (1909) 43 I.L.T.R. 173, .. .. .	54, 571
,, (O'Hara) v. Wicklow JJ., (1902) 36 I.L.T.R. 72; 2 N.I.L.R. 218, .. .. .	583
,, (O'Leary) v. Kerry JJ., (1903) 3 N.I.J.R. 251, .. .. .	116
,, (O'Leary) v. Cork JJ., (1883) 12 L.R.I. 167; 17 I.L.T.R. 106, .. .. .	583
,, (Orr) v. Londonderry JJ., (1891) 28 L.R.Ir. 440, .. .. .	36, 37, 226
,, (O'Reilly) v. Fermanagh JJ., (1904) 2 I.R. 18, .. .. .	161
,, (O'Sullivan) v. Kerry JJ., (1901) 1 N.I.J.R. 180, .. .. .	90, 440
,, (O'Toole) v. Drury, (1907) 41 I.L.T.R. 183, .. .. .	86
,, (Pawley) v. Local G. Bd., (1910) 2 I.R. 440, .. .. .	228
,, (Peazocke) v. Recorder of Dublin, (1903) 37 I.L.T.R. 145, .. .. .	117
,, (Perry) v. Tyrone JJ., (1903) 38 I.L.T.R. 26; 4 N.I.J.R. 53, .. .. .	115 219
,, (Poe) v. Cork JJ., (1906) 40 I.L. T.R. 121, .. .. .	216, 221, 222
,, (Porter) v. Tyrone JJ., (1860) 12 I.C.L.R. 91, .. .. .	216, 221
,, (Power) v. Tipperary JJ., (1895) 1 I.W.L.R. 173, .. .. .	191
,, (Prendergast) v. Waterford JJ., (1904) 4 N.I.J.R. 196, .. .. .	380
,, (Punch) v. Cork JJ., (1898) 32 I.L.T.R. 179, .. .. .	207, 525
,, (Quinnell) v. Kerry Co. C., (1905) 2 I.R. 299; 5 N.I. J.R. 95, .. .. .	228

	PAGE		PAGE
R. (Quinn) <i>v.</i> Tipperary JJ., (1883)		R. (Sheehy) <i>v.</i> Kerry JJ., (1896)	
12 L.R.I. 393 .. ..	191	30 I.L.T.R. 167, ..	61, 104, 211
„ (Quinn) <i>v.</i> Tyrone JJ., (1908)		„ (Sheeran) <i>v.</i> Dublin JJ., (1905)	
2 I.R. 124; 39 I.L.T. & S.J.		40 I.L.T.R. 22, ..	90, 582
169, .. .. 62, 120, 138, 439		„ (Sherlock) <i>v.</i> Cork JJ., (1908)	
„ (Redding) <i>v.</i> Swifte, (1909) 2 I.R.		42 I.L.T.R. 247 .. ..	50, 709
302, .. .. 8, 66, 302		„ (Shortall) <i>v.</i> Queen's Co. JJ.,	
307, 308, 532, 533, 535, 649		(1899) 5 I.W.L.R. 122, ..	104, 361
„ (Reddy) <i>v.</i> Sullivan, (1887) 20		„ Stafford <i>v.</i> Fermanagh JJ., (1908)	
L.R.I. 550; 16 Cox 347, ..	275, 280	42 I.L.T.R. 117, .. ..	246
„ (Reidy) <i>v.</i> Clare JJ., (1902) 2		„ (Steadman) <i>v.</i> Lowe, (1908) 42	
N.I.J.R. 132, .. ..	37	I.L.T.R. 149, .. ..	541
„ (Redmond) <i>v.</i> Armagh JJ., (1895)		„ (Sullivan) <i>v.</i> Cork JJ., (1885) 18	
30 I.L.T.R. 17, .. ..	153	I.L.T.R. 99; 19 I.L.T.R. 56, ..	61
„ (Regan) <i>v.</i> Cork JJ., (1911) 2		„ (Supple) <i>v.</i> Clare JJ., (1907)	
I.R. 235; 45 I.L.T.R. 7, ..	48, 1001	2 I.R. 299, 309; 40 I.L.T.	
„ (Regan) <i>v.</i> Monahan JJ., (1911)		238, 360, .. ..	113
45 I.L.T.R. 10, .. ..	61, 247	„ (Sweeney) <i>v.</i> Cork JJ., (1890)	
„ (Reynolds) <i>v.</i> Cork JJ., (1882)		24 I.L.T. & S.J. 586, ..	818
10 L.R.Ir. 1, .. .. 36, 37, 226, 342		„ (Thompson) <i>v.</i> Roscommon JJ.,	
„ (Rigg) <i>v.</i> Tipperary JJ., (1907)		(1900) 34 I.L.T.R. 203, ..	227, 236,
41 I.L.T.R. 152, .. ..	113	246	
„ (Robinson) <i>v.</i> Wicklow JJ.,		„ (Townley) <i>v.</i> Louth JJ., (1888)	
(1907) 2 I.R. 13, .. ..	67	23 I.L.T.R. 40, .. ..	217
„ (Robinson) <i>v.</i> Londonderry JJ.,		„ (Travener) <i>v.</i> Tyrone JJ., (1909)	
(1911) 45 I.L.T.R. 171, <i>Add. et Cor.</i>		2 I.R. 736; 43 I.L.T.R. 262,	
„ (Roe) <i>v.</i> Roscommon JJ., (1905)		67, 68, 91, 220	
2 I.R. 101, 112; 37 I.L.T.R.		„ (Turnbull) <i>v.</i> Glynn, (1910) 44	
252, .. ..	121	I.L.T.R. 233, .. ..	564
„ (Rogers) <i>v.</i> Antrim JJ., (1900)		„ (Tyacke) <i>v.</i> Owens, (1902)	
2 I.R. 388; 34 I.L.T.R. 8,		N.I.J.R. 138, .. ..	32
57, .. .. 115, 249		„ (Vaughy) <i>v.</i> Meath JJ., (1904)	
„ (Rogers) <i>v.</i> Duthie, Large, & Co.,		38 I.L.R. 12, .. ..	88
(1908) 42 I.L.T.R. 148, ..	508, 606	„ (Vint) <i>v.</i> Donegal JJ., (1904)	
„ (Ross) <i>v.</i> Cork JJ., (1908) 42		2 I.R. 1, .. .. 103, 826, 827, 828	
I.L.T.R. 230, .. ..	88	„ (Waldron) <i>v.</i> Dublin JJ., (1903)	
„ (Rowell) <i>v.</i> Registrar of Joint		3 N.I.J.R. 366, .. ..	535
Stock Cos. for Ireland, (1904)		„ (Wall) <i>v.</i> Gallagher, (1896) 31 I.L.	
2 I.R. 634, .. ..	416	T.R. 156, .. ..	544
„ (Roycroft) <i>v.</i> Cork JJ., (1910)		„ (Walsh) <i>v.</i> Dublin JJ., (1902)	
2 I.R. 601; 44 I.L.T.R. 99,		2 N.I.J.R. 41, .. ..	32, 41
120, .. .. 329, 330		„ (Walsh) <i>v.</i> Waterford JJ., (1869)	
„ (Ryan) <i>v.</i> Kilkenny JJ., (1903)		18 W.R. 164, .. ..	229
4 N.I.J.R. 4, .. .. 68, 91, 92, 95		„ (Waters) <i>v.</i> Kerry JJ., (1900)	
„ (Ryan) <i>v.</i> Limerick JJ., (1902)		35 I.L.T.R. 10, .. ..	294, 571
2 N.I.J.R. 2, .. ..	214	„ (Wexford C.C.) <i>v.</i> Local Govt.	
„ (Ryan) <i>v.</i> Wicklow JJ., (1892)		Bd., (1902) 2 I.R. 349, ..	228
30 L.R.I. 633; 27 I.L.T.		„ (Whitley) <i>v.</i> Cork JJ., (1909)	
& S.J. 9; (1900) 1 N.I.		43 I.L.T.R. 133, ..	247, 330
J.R. 6, .. .. 85, 207		„ (White) <i>v.</i> Wicklow JJ., (1900)	
„ (Sale) <i>v.</i> Fermanagh JJ., (1906)		1 N.I.J.R. 6, .. .. 206, 209, 213	
40 I.L.T.R. 75, .. ..	113	„ (Williams) <i>v.</i> Doherty, (1899)	
„ (Sands) <i>v.</i> Armagh JJ., (1895)		33 I.L.T.R. 170, .. ..	245, 559, 564
2 I.R. 503, .. ..	133	„ (Williams) <i>v.</i> King's Co. JJ.,	
„ (Sargent) <i>v.</i> Leitrim JJ., (1905)		(1901) 2 N.I.J.R. 22, ..	91, 605
39 I.L.T.R. 145, .. ..	113	„ (Winder) <i>v.</i> Kildare JJ., (1909)	
„ (Scott) <i>v.</i> Londonderry JJ.,		2 I.R. 686, .. .. 86, 173	
(1903) 2 I.R. 101; 3 N.I.		„ (Wright) <i>v.</i> Cork JJ., (1906)	
J.R. 1, .. ..	3	2 I.R. 349; 40 I.L.T.R. 103, ..	113
„ (Sides) <i>v.</i> McGarvey, (1891) 25		„ (Yeates) <i>v.</i> Donegal JJ., (1911)	
I.L.T.R. 25, .. ..	140	45 I.L.T.R. 158, <i>Add. et Cor.</i>	
„ (Shaw) <i>v.</i> Dwyer, (1890) 24 I.L.		„ (Yeldham) <i>v.</i> Wicklow JJ., 45	
T.R. 111, .. ..	266	I.L.T.R. 181, <i>Add. et Cor.</i>	
„ (Shannon) <i>v.</i> Carlow JJ., (1902)		Radcliffe <i>v.</i> Bartholemew, (1892)	
2 I.R. 142; 34 I.L.T.R. 186;		1 Q.B. 161, .. .. 51, 52, 469	
1 N.I.J.R. 20, .. ..	227	Raine <i>v.</i> Jobson, (1901) A.C. 404, ..	1130
„ (Shannon) <i>v.</i> Hollywood U.D.C.,		Ralph <i>v.</i> Hurrell, (1875) 44	
(1905) 2 I.R. 154, .. ..	234	L.J.M.C. 145; 32 L.T. 816, ..	94
„ (Sheahan) <i>v.</i> Cork JJ., (1907) 2		Ramsden, <i>Re</i> , (1846) 3 D. & L. 748, ..	793
I.R. 11; 40 I.L.T.R. 163, ..	84, 89,	Rasdall <i>v.</i> Coleman, (1909) 25 T.L.R.	
443		638, .. ..	423

	PAGE		PAGE
Ratt v. Parkinson, (1851) 20 L.J.		Rochford v. Rynd, (1881) 8 L.R.I.	
M.C. 208, .....	310, 324	204, .....	327
Rawlins v. Ellis, (1849) 16 M. & W.		Rogers v. Barlow, (1906) 94 L.T.	
172, .....	793	519, .....	1141
Rayson v. South London Tram Co.,		Rogers v. Hall, (1896) 60 J.P. 584,	670
(1893) 2 Q.B. 304, .....	66	Rogers v. Jones, (1824) 5 D. & R.	
Rea, <i>In re</i> , (1878) 2 L.R.I. 429;		268, .....	323
(1879) 4 L.R.I. 345, .....	72, 73	Rogers v. Pickersgill, (1910) 26	
Read v. Perrett, (1876) 1 Ex.D. 349,		T.L.R. 493, .....	362
803, 806		Rodgers v. Richards, (1892) 1 Q.B.	
Redfern v. Redfern, (1891) Prob.		555, .....	94
139, .....	54	Rook v. Hopley, (1878) 3 Ex.D.	
Redford v. Birley, (1822) 3 Stark 76,		209, .....	458, 464
Redgate v. Haynes, (1876) 1 Q.B.D.		Roots v. Beaumont, (1886) 50 J.P.	
89, .....	265, 294, 547	544; 51 J.P. 197, .....	718
Redgrave v. Kelly, (1890) T.L.R.		Roper v. Knott, (1898) 1 Q.B. 868,	602
477, .....	820	Rose v. College of Physicians, (1703)	
Redgrave v. Lloyd, (1895) 1 Q.B.		5 Bro. P.C. 553, .....	395
876, .....	1101	Rose v. Frogley, (1893) 17 Cox 685,	
Reece v. Miller, (1882) 8 Q.B.D.		120, 571	
626, .....	207, 211	Rossi v. Provost of Edinburgh, (1905)	
Reid, <i>Ex parte</i> , (1885) 49 J.P. 600, 27, 46		A.C. 21, .....	117
Reid v. Nutt, (1890) 24 Q.B.D. 669,		Rouch v. Hall, (1880) 6 Q.B.D. 17,	
58, 382		463, 467	
Reid v. Wilson, (1895) 1 Q.B. 315,		Routledge v. Hislop, (1860) 29 L.J.	
Reilly v. Keogh, (1903) 37 I.L.T.R.		M.C. 90, .....	157
179, .....	563	Rowan v. Culhane, (1910) 44	
Rendell v. Hemmingway, (1894) 14		I.L.T.R. 70, .....	1235
T.L.R. 436, .....	725	Rowan v. Downing, (1909) 2 I.R.	
Reynolds, <i>Ex parte</i> , (1882) 20 C.D.		626, .....	557, 564
298, .....	54, 285	Rowan v. Hamilton, (1909) 2 I.R.	
Reynolds v. Agar, (1906) 70 J.P. N.		626, .....	578
568, .....	500	Rowberry v. Morgan, (1854) 9 Ex.	
Reynolds v. McBride, (1904) 4		730, .....	794
N.I.J.R. 238, .....	460	Royal Aquarium Socy. v. Parkinson,	
Rice, <i>In re</i> , (1873) I.R. 7; C.L. 74,		(1892) 1 Q.B. 431, .....	327
Richardson v. Sweeney, (1908) 42		R.C.V.S. v. Collinson, (1908) 2 K.B.	
I.L.T.R. 174, .....	564	248, .....	832
Riddell v. Nelson, (1904) F. (J.C.)		Royal College of Surgeons v. Wallace	
57, .....	551	Bros. Ltd., (1901) 35 I.L.T.R. 209,	843
Roberts v. Garratt, (1842) 6 J.P. 154,	60	Rumball v. Schmidt, (1882) 8 Q.B.D.	
Roberts v. Harris, (1909) 25 T.L.R.		603, .....	695
700, .....	496	Russell, <i>Re</i> , (1888) 22 L.R.I. 487,	224
Roberts v. Humphreys, (1873) L.R.		Russell v. Russell, (1895) P. 315,	533
8 Q.B. 483, .....	561, 563	Russon v. Dutton, (1911) 27 T.L.R.	
Roberts v. Orchard, (1863) 2 H. & C.		(198), .....	542, 809
769, .....	149	Rust v. St. Botolph Churchwardens,	
Roberts v. Owens, (1890) 54 J.P.		(1906) 94 L.T. 575, .....	109, 239, 240
295; 6 T.L.R. 172, .....	326	Ruston's Case, (1786) Leach 408,	260
Roberts v. Woodward, (1890) 25		Rutter v. Norton, (1893) 57 J.P. 8,	827
Q.B.D. 412, .....	297, 845	Ryland's Case, Times, 9th April,	
Robertson v. Harris, (1900) 2 Q.B.		1909, .....	621
117, .....	464		
Robinson, <i>Re</i> , (1854) 23 L.J.Q.B. 286,	30		
Robinson v. Barton L.B., (1184) 8			
A.C. 798, .....	702, 704, 806		
Robinson v. Currey, (1881) 7 Q.B.D.			
465, .....	45, 694, 802		
Robinson v. Dixon, (1903) 2 K.B.			
701, .....	547, 548		
Robinson v. Golding, (1910) 103 L.T.			
248, .....	836		
Robinson v. Gregory, (1905) 1 K.B.			
534, .....	243, 278		
Robinson v. Hill, (1910) 1 K.B. 94,	400		
Robinson v. Melville, (1890) 17 Pettie			
(Just Cas.), .....	1106		
Robinson v. Mayor of Sunderland,			
(1899) 1 Q.B. 751, .....	731		
Robson v. Robson, (1904) 68 J.P.			
416, .....	516		



	PAGE		PAGE
Saunders v. Pitfield, (1888) 16 Cox	494	Simmons v. Millingen, (1846) 2 C.B.	149
369, .. .. .		532, .. .. .	
Saunders v. Thorney, (1898) 14		Simpkin, <i>Ex parte</i> , (1859) 2 E. & E.	52, 792
T.L.R. 346; 78 L.T. 627, ..	559, 858	392, .. .. .	
Saunders v. Wiel, (1892) 2 Q.B.	66	Simpson's Case, (1829) 1 Lew. 295,	30
321, .. .. .		Simpson v. Wells, (1872) L.R. 7	
Savoy Hotel Co. v. London C.C.,		Q.B. 214, .. .. .	207
(1900) 1 Q.B. 665, .. .. .	783	Sims v. Pay, (1889) 60 L.T. 602, ..	547
Sayers v. Collyer, (1884) 28 C.D.		Singleton v. Ellison, (1895) 1 Q.B.	
107, .. .. .	159, 341	608, .. .. .	390
Scannell v. French, (1860) 11 I.C.		Skelton v. Castle, (1837) 6 J.P. 154n.,	60
L.R. 275, .. .. .	980	Skinner v. Usher, (1872) L.R. 7 Q.B.	
Scarborough, Mayor of v. R.S.A. of		423, .. .. .	528
Scarborough, (1876) 1 Ex. D.		Skipworth's Case, (1873) L.R. 9 Q.B.	
344, .. .. .	108, 709	232, .. .. .	73
Scarth v. Gardener, (1831) 5 C. & P.		Slater v. Brewsters, Ltd., (1905)	
38, .. .. .	490	2 I.R. 258, .. .. .	387
Scatchard v. Johnson, (1888) 57		Small v. Bickley, (1875) 32 L.T. 726,	
L.J.M.C. 41, .. .. .	555	724, 725	
Schofield, <i>Ex parte</i> , (1891) 2 Q.B.		Small v. Warr, (1883) 47 J.P. 20,	359
428, .. .. .	66, 709	Small v. Whitmill, (1736) 2 Str.	
Schofield v. Schunk, (1855) 24 L.T.		1054, .. .. .	291
253, .. .. .	1100	Smart v. Watts, (1895) 1 Q.B. 219,	462
Scott v. Brookfield Linen Co., (1910)		Smith, <i>Ex parte</i> , (1823) 3 D. & Ry.	
2 I.R. 509, .. .. .	1101	461, .. .. .	85
Scott v. Matthew Brown & Co.,		Smith, <i>Ex parte</i> , (1878) 3 Q.B.D.	
(1881) 51 L.T. 746, .. .. .	901	374, .. .. .	115
Scott v. Crawford, (1910) 44 I.L.		Smith v. Associated Omnibus Co.,	
T.R. 19, .. .. .	159, 341	(1907) 1 K.B. 916, .. .. .	158
Scott v. Midland Ry. Co., (1901) 1		Smith v. Baker, (1891) A.C. 333, ..	98, 242
Q.B. 317, .. .. .	626	Smith & Belfast Corp., <i>Re.</i> , (1910)	
Scott v. Tilliner, (1904) 2 K.B. 855,	340	2 I.R. 285, .. .. .	733
Scott & Co. v. Solomon, (1905) 1		Smithies v. Bridge, (1902) 2 K.B.	
K.B. 577, .. .. .	513	13, .. .. .	460
Scott v. Wolverhampton J.J., (1868)		Smith v. Boon, (1901) 19 Cox 698,	630
32 J.P. 533, .. .. .	650	Smith v. Butler, (1885) 16 Q.B.D.	
Sealy v. Tandy, (1902) 1 K.B. 296,	565	349, .. .. .	244
Searle v. Reynolds, (1866) 7 B. & S.		Smith v. Ewen, (1875) 39 J.P. 724,	
704, .. .. .	296	49, 325	
Seddall v. Wilson, (1891) 25 I.L.		Smith v. Hunt, (1886) 16 Cox 54,	494
T.R. 63, .. .. .	654, 656, 661	Smith v. Kyle, (1902) 1 K.B. 286,	783
Selfe v. Isaacson, (1858) 1 F. & F.		Smith's Advt. Agency v. Leeds	
194, .. .. .	60	Laboratory Co., (1910) 26 T.L.R.	
Sewell v. Taylor, (1859) 7 C.B.N.S.		335, .. .. .	503
160, .. .. .	549	Smith v. M'Illdowney, (1886), 20	
Seymour & Davitt, <i>Ex parte</i> , (1882)		I.L.T.R. 12, .. .. .	169
12 L.R.Ir. 40, .. .. .	36	Smith v. Moody, (1903) 1 K.B. 56,	84,
Seymour v. Pickett, (1905) 1 K.B.		86, 612	
715, .. .. .	416	Smith v. Müller, (1894) 1 Q.B. 192,	386
Shanklin L. B. v. Miller, (1880)		Smith v. Savage, (1905) 2 K.B. 88,	463
5 C.P.D. 272, .. .. .	701	Smith v. Sibrary, Hall & Co., (1903)	
Sharpe v. Hughes, (1893) 57 J.P.		2 K.B. 707, .. .. .	1150
104, .. .. .	120	Smith v. Shirley, (1846) 3 C.B. 142;	
Sharpe v. Priestnall, (1897) 1 Q.B.		2 Bl. Com. 289, .. .. .	149
159, .. .. .	51	Smith v. Stace, (1881) 45 J.P.	
Shaw v. Morley, (1865) L.R. 3 Ex.		141, .. .. .	462
137, .. .. .	500	Smith v. Thomasson, (1890) 16 Cox	
Shea v. R., (1848) 12 I.L.R. 153,	87	740, .. .. .	611
(Sheehan) v. Tipperary J.J., (1903)		Smith v. Vaux, (1862) 6 L.T. 46, ..	558
37 I.L.T.R. 48; 3 N.I.J.R. 121,	86	Smith v. Walton, (1887) 3 C.P.D.	
Sherborne v. Wells, (1863) 5 B. & S.		109, .. .. .	820
784, .. .. .	392	Smith v. Webb, (1896) 12 T.L.R. 45	842
Sherras v. De Rutzen, (1895) 1 Q.B.		Smith v. Williams, (1892) 9 T.L.R.	
918, .. .. .	381, 548	9; 56 J.P. 840, .. .. .	209, 358, 604
Shiel v. McCarthy, (1895) 29 I.L.T.		Smith v. Wisden, (1901) 85 L.T.	
& S.J. 577, .. .. .	582	760, .. .. .	458
Shoppee v. Nathan & Co., (1892)		Smith v. Wood, (1889) 24 Q.B.D.	
1 Q.B. 245, .. .. .	925	23, .. .. .	844
Sickert v. Sickert, (1899) P. 278, ..	533	Smith's Dock Co., Ltd. v. Tynemouth	
Silles v. Fulham Borough Co., (1903)		Corporation, (1908) 1 K.B. 315-	
1 K.B. 829, .. .. .	696	948, .. .. .	242



	PAGE		PAGE
Soden v. Cray, (1862) 7 L.T. 324,	95	Stansfield v. Andrews, (1909) 25	
Somers v. Sullivan, (1859) 9		T.L.R. 259, .. .. .	570
I.C.L.R., App. xxxvii., .. .	64	Stanton v. Brown, (1900) 1 Q.B.	
Somerset v. Hart, (1884) 12 Q.B.D.		674, .. .. .	244
360, .. .. .	294, 295, 547	Starey v. Chilworth Gunpowder Co.,	
Somerset v. Miller, (1890) 54 J.P.		(1889) 24 Q.B.D. 90, .. .	620
614, .. .. .	463	Starey v. Grahame, (1899) 1 Q.B.	
Somerset v. Wade, (1894) 2 Q.B.		406, .. .. .	651
574, .. .. .	554	Star Omnibus Co. v. Tagg, (1907)	
South Dublin Guardians v. Egan,		23 T.L.R. 488 .. .. .	598, 630, 641
(1903) 4 N.I.J.R. 4, .. .. .	403	Starr v. Stringer, (1872) L.R. 7	
South Dublin Union, Guardians, of v.		C.P. 383, .. .. .	836, 840
Jones, (1883) 12 L.R.I. 358, 239, 241		Star Tea Co. v. Neale, (1909) 73	
S. Suburban Gas Co. v. Met. Water		J.P. 511, .. .. .	459
Board, 1910, 26 T.L.R. 12, .. .	167	Star Tea Co. v. Whitworth, (1904)	
S.W. Suburban Water Co. v. Maryle-		20 Cox 658, .. .. .	838
bone Guardians, (1904) 2 K.B. 184,	166,	Staunton v. Powell, (1867) I.R. 1	
167, 716		C.L. 182, .. .. .	202
Southend, Mayor of, &c. v. Davis,		Stead v. Aykroyd, (1910) 74 J.P.	
(1900) 16 T.L.R. 167, .. .. .	339	482, .. .. .	505
Southern Counties Deposit Bank v.		Steele v. Brannan, (1872) L.R. 7	
Boaler, (1895) 73 L.T. 155, 134, 238		C.P. 261, .. .. .	887
Soutwell v. Lewis, (1880) 45 J.P.		Steer v. Bennett, (1903) 67 J.P. 112,	
206, .. .. .	372	131, 639	
Soutar v. M'Auchinachie, (1909)		Steers v. Manton, (1893) 57 J.P.	
46 S.L.R. Court of Justice 243,	554	584, .. .. .	712
Souter v. M'Lean, (1903) 41 Sc.L.R.		Stenhouse v. Dykes, (1908) S.C. (J.)	
192, .. .. .	459	61, .. .. .	88, 505
Southcombe v. Yeovil Guardians,		Stephens, <i>Ex parte</i> , (1889) Judgments	
(1897) 1 Q.B. 343, .. .. .	827	of the Superior Courts 312, .. .	87
Spice v. Peacock, (1875) 39 J.P.		Stevens v. Clark, (1842) Car. & M.	
581, .. .. .	525	509; 2 M. & Rob. 435, .. .	323
Spilsbury v. Micklethwaite, (1808)		Stevens v. Emson, (1876) 1 Ex. D.	
1 Taunt. 146, .. .. .	147	100, .. .. .	572
Spokes v. Grosvenor Hotel Co.,		Stevens v. Wood, (1890) 54 J.P. 742,	543
(1897) 2 Q.B. 124, .. .. .	285	Stevenson v. Goldstraw, (1906) 2 K.B.	
Squire v. Bayer, (1901) 2 K.B. 299,	822	298, .. .. .	1121
Squire v. Midland Lace Co., (1905)		Stevenson v. O'Neill, (1877) I.R. 11	
1 K.B. 448, .. .. .	822	C.L. 134, .. .. .	2, 44, 236, 802, 805
Squire v. Stanley, (1901) 84 L.T.		Stephenson v. Rogers, (1899) 80 L.T.	
535, .. .. .	1122	193, .. .. .	570
Squire v. Sweeny, (1900) 6 I.W.		Steward v. Anderson, (1901) 35	
L.R. 210, .. .. .	244	I.L.T.R. 234, .. .. .	170
St. Alban's S.A. v. Barnett S.A.,		Stoddart v. Hawke, (1902) 1 K.B.	
(1876) 1 Q.B.D. 558, .. .. .	712	353, .. .. .	500
St. Helens, Mayor of v. Kirkham,		Stoddart v. Sagar, (1895) 2 Q.B.	
(1885) 16 Q.B.D. 403, .. .. .	701	474, .. .. .	503
St. Helen's District Tramway Co. v.		Stokes v. Buckley, (1876) I.R. 10	
Wood, (1891) 60 L.J.M.C. 141,	297	C.L. 158, .. .. .	172
St. Leonards, Guardians of v.		Stokes v. Mitcheson, (1902) 1 K.B.	
Franklin, (1878) 3 C.P.D. 377,	45	857, .. .. .	802
St. Leonards, Shoreditch v. Phelan,		Stone, <i>Ex parte</i> , (1909) 25 T.L.R.	
(1896) 1 Q.B. 533, .. .. .	696	787, .. .. .	631
St. Martin's Vestry v. Bird, (1895)		Stone v. Brown, (1910) 27 T.L.R. 6,	619
1 Q.B. 428, .. .. .	697	Stone v. Taylor, (1905) 1 K.B. 290,	839
St. Martin-in-the-Fields Vestry v.		Stowe v. Benstead, (1909) 2 K.B.	
Ward, (1897) 1 Q.B. 40, .. .. .	698	415, .. .. .	146, 488
Stacey v. Whitehurst, (1865) 18		Strick v. Swansen Tinplate Co.,	
C.B.N.S. 344, .. .. .	89	(1887) 36 Ch.D. 558, .. .. .	811
Stackemann v. Paton, (1906) 1 Ch.		Strickland v. Hayes, (1896) 1 Q.B.	
774, .. .. .	414	290; 60 J.P. 164, .. .. .	339, 807
Stallark v. Marks, (1878) 3 Q.B.D.		Strickland v. Whittaker, (1904) 20	
412, .. .. .	575	T.L.R. 224, .. .. .	570, 858
Stanbury v. Exeter Corp., (1905)		Stringer v. Huddersfield J.J., (1875)	
2 K.B. 838, .. .. .	370	40 J.P. 22; 33 L.T. 568, 114, 120, 569	
Stangoe v. Slatter, (1896) 12 T.L.R.		Stroud v. Wandsworth B. & W.,	
335, .. .. .	843	(1894) 2 Q.B. 1, .. .. .	701
Stanhope v. Stanhope, (1896) 11		Strutt v. Cliff, (1910) 27 T.L.R. 14,	
P.D. 103, .. .. .	913	295, 641	
Stanhope v. Thorsby, (1866) L.R. 1		Stuart v. Murray, (1884) 12 C. & S.	
C.P. 423, .. .. .	238	C. (Just.) 9, .. .. .	493

	PAGE		PAGE
Stuart v. Nixon, (1901), A.C. 79, ..	1130	Taylor v. Winsford U.D.C., (1907)	
Stuckberry v. Spencer, (1886) 55		2 K.B. 396, ..	117
L.J.M.C. 141, ..	575	Teale v. Harris, (1896) 60 J.P. 744, ..	339
Stuckey v. Hook, (1906) 2 K.B. 20, ..	1100	Teddington Urban Council v. Vile,	
Suffold C. Asylum v. Stow; 76		(1906) 70 J.P. 381, ..	241
L.T. 494, ..	229, 230	Telford v. Fyfe, (1908) S.C. [J.] 83, ..	106,
Sullivan, <i>In re</i> , (1888) 22 L.R.I. 98, ..	252	360, 462, 468	
Sullivan v. Collins, (1869), 3 I.L.T.		Templeman v. Trafford, (1881) 8	
& S.J. 638, ..	169	Q.B.D. 397, ..	673
Sumner v. Middleton, (1878) 15		Tenant v. Cumberland (1859) 1	
Scot. L.R. 594, ..	140	E. & E. 401, ..	558
Sutton v. Mayor of Norwich, (1858)		Terraz, <i>Ex parte</i> , (1878) 4 Ex.D. 638, ..	70
27 L.J.Ch. 739, ..	696	Terry v. Brighton Aquarium Co.,	
Sutton v. Sutton, (1883) 22 C.D.		(1875) L.R. 10 Q.B. 306, ..	549
573, ..	336	Theilbar v. Craigen, (1905) 21 Cox	
Swaine v. Wilson, (1889) 24 Q.B.D.		44, ..	357
252, ..	812	Thomas v. David, (1836) 7 C. & P.	
Swan v. Saunders, (1881) 14 Cox 566, ..	570	350, ..	291
Swan v. Sloan, (1894) 29 I.L.T.R.		Thomas v. Harries, 1 M. & G. 695, ..	929
109, Co. Court, ..	71, 203, 205	Thomas v. Powell, (1893) 57 J.P.	
Swanzy v. Drohan, (1909) 43 I.L.		329, ..	563
T.R. 281, ..	566, 567	Thomas v. Pritchard, (1903) 1 K.B.	
Sweetman v. Guest, (1868) L.R. 3		209, ..	78
Q.B. 262, ..	236	Thomas v. Van (Os), (1900) 2 Q.B.	
Swift, The, (1901) P. 168, ..	455	448, ..	51, 720, 724, 794
Switzer v. Com. of Valuation, (1902)		Thompson, <i>Ex parte</i> , (1860) 3 L.T.	
2 I.R. 275; 35 I.L.T.R. 235; ..		N.S. 318, ..	68, 250
2 N.I.J.R. 15, ..	195, 200, 201	Thompson v. Greig, (1870) 34 J.P.	
Sylvester, <i>Ex parte</i> , (1829) 9 B. & C.		214, ..	558
61, ..	489	Thompson v. Harvey, (1859) 4 H. & N.	
Symes, <i>Ex parte</i> , (1910) 27 T.L.R.		254, ..	572
21, ..	638	Thompson v. Mac Kenzie, (1908)	
Synge v. Synge, (1900) P. 180; ..		1 K.B. 905, ..	554, 565
(1901) P. 317, ..	533	Thomson v. Great N. of S. Ry. Co.,	
Syred v. Carruthers, (1858) E.B.		(1899) 37 Sc.L.R., ..	770
& E. 469, ..	240	Thorpe v. Priestnall, (1897) 1 Q.B.	
		159, ..	79, 90, 482
		Thwaites v. McEvilly, (1904) 1 I.R.	
		310, ..	618, 619
		Timothy v. Fenn, (1910) 74 J.P.	
		123, ..	279
		Timothy v. Simpson, (1835) 1 Cr.	
		M. & R. 757, ..	147
		Todd v. Cochrane, (1901) 38 Sc.L.R.	
		801, ..	470
		Todd v. Robinson, (1884) 14 Q.B.D.	
		739, ..	598
		Toft v. Rayner, (1847) 5 C.B. 162, ..	106
		Toller v. Spiers & Pond, (1903) 1 Ch.	
		862, ..	1102
		Tomkins v. Jolliffe, 21 I.L.T. & S.J.	
		256 (noted), ..	597
		Toppin v. Coleman, (1910) 2 I.R.	
		200; 44 I.L.T.R. 60, ..	564
		Toppin v. Ferron, (1909) 43 I.L.T.R.	
		190, ..	267
		Toppin v. Marcus, (1908) 2 I.R. 423, ..	510,
		657	
		Tong Street L.B. v. Seed, (1874)	
		38 J.P. 278, ..	706
		Tough v. Hopkins, (1904) 1 K.B. 804, ..	707
		Tracey v. McCabe, (1893) 32 L.R.I.	
		21, ..	170
		Tracey v. Pretty, (1901) 1 K.B. 444, ..	1099
		Trappe v. Egan, (1900) 34 I.L.T.R.	
		21, ..	570
		Travis v. Uttley, (1894) 1 Q.B. 233	
		696	
		Tregoning v. Attenborough, (1830)	
		9 L.J.C.P. (O.S.) 28, ..	653, 656
		Tromans v. Hodgkinson, (1903) 1 K.B.	
		30, ..	500

## T.

Taaffe v. Sheridan, K.B.D., 18th	
April, 1890. Not reported, ..	186
Tanner, <i>Ex parte</i> , (1899). Judg-	
ments of the Superior Courts, 351,	
34, 36, 37, 262	
Tassel v. Ovenden, (1877) 2 Q.B.D.	
383, ..	559, 564
Taylor v. Dawson, (1910) 103 L.T.	
508, ..	1102
Taylor v. Freeman, (1757) Sel. N.P.	
13th Ed. 850, ..	793
Taylor v. Goodwin, (1879) 4 Q.B.D.	
228, ..	807
Taylor v. Humphries, (1861) 10 C.B.	
N.S. 429; (1864) 17 C.B.N.S.	
539, ..	560
Taylor v. Newman, (1863) 9 Cox 314, ..	587
Taylor v. Nixon, (1910) 2 I.R. 94;	
44 I.L.T.R. 81, ..	296, 297, 468
Taylor v. Corporation of Oldham,	
(1876) 4 C.D. 395, ..	700, 702, 806
Taylor v. Oram, (1862) 1 H. & C. 370, ..	549
Taylor v. Pritchard, (1910) 2 K.B.	
520, ..	452
Taylor v. Rogers, (1881) 50 L.J.M.C.	
132, ..	851
Taylor v. Smetten, (1883) 11 Q.B.D.	
207, ..	503
Taylor v. Timson, (1888) 20 Q.B.D.	
671, ..	419

## TABLE OF CASES.

ci

	PAGE		PAGE
Troughton v. Manning, (1905) 20 Cox 861, .. .. .	631	Wakefield L. B. v. Lee, (1876) 1 Ex. D. 336 .. .. .	701
Tullamore R. D. C. v. Burke, (1902) 2 N.I.J.R. 55, .. .. .	187, 190	Wakefield, Mayor of, v. Cooke, (1904) A.C. 31, .. .. .	104
Tunbridge Wells Bd. v. Bishopp, (1877) 2 C.P.D. 187, .. .. .	726	Walker, <i>Ex parte</i> , in re Graves, (1869) L.R. 4 Q.B. 715, .. .. .	414
Tunnicliffe v. Tedd, (1848) 5 C.B. 553, .. .. .	57, 58, 59, 77, 382	Wallace, <i>Ex parte</i> , (1902) 2 K.B. 488, .. .. .	248
Turnbull v. Appleton, (1881) 45 J.P. 469, .. .. .	549	Walker v. Bailie, (1903) 37 I.L.T.R. 211, .. .. .	610
Turner, <i>In re</i> , (1846) 9 Q.B. 80, .. .. .	89	Walker v. Delacambo, (1894) 63 L.J.M.C. 77, .. .. .	238
Turner v. Morgan, (1875) L.R. 10 C.P. 587, .. .. .	487	Walker v. McGowan, (1911) 1 I.R. 1, .. .. .	179
Tyler v. Dairy Supply Co., (1908) 94 L.T. 867, .. .. .	467	Walker v. Walker, (1903) 20 Cox 594, .. .. .	570
Tyrrell v. Flanagan, (1901) 2 I.R. 423, .. .. .	242, 483	Walsall, Overseers of, v. L. & N.W. Ry. Co., (1878) 4 A.C. 40, .. .. .	224, 237
Tyler v. Ferris, (1906) 1 K.B. 94, .. .. .	847	Walsh v. Galvin. Unreported, .. .. .	559
Tyler v. Kingham, (1900) 2 Q.B. 413, .. .. .	466, 467, 470	Walsh v. Jordan, (1828) Sm. & B., 433, .. .. .	73
Tyler v. L. & S.W. Ry. Co., (1894) Cah. & El. 285, .. .. .	149	Walsh v. Somerville, (1888) 22 L.R.I. 314, .. .. .	243, 281, 337, 636
U.		Walshaw v. Mayor of Brighthouse, (1899) 2 Q.B. 286, .. .. .	733
Unfreville v. London C.C., (1897) 18 Cox 464, .. .. .	372	Walter v. Everard, (1891) 2 Q.B. 369, .. .. .	383
United States of America v. McRae, (1867) L.R. 3 Ch. 79, .. .. .	54	Walter v. Smith, (1822) 1 D. & R. 1, .. .. .	660
Unkles v. A. G., (1873) I.R. 7 C.L. 462, .. .. .	242	Walthamstow U.D.C. v. Sandell, (1904) 68 J.P. 509, .. .. .	700
Unwin v. Hanson, (1891) 2 Q.B. 115, .. .. .	173	Wandsworth B. W. v. United Telep. Co., (1884) 13 Q.B.D. 904, .. .. .	797
Urmston v. Whitelegg, (1890) 63 L.T. 455, .. .. .	811	Wanstead L.B. v. Hill, (1863) 13 C.B.N.S. 479, .. .. .	723
Usk U.D.C. v. Mortimer, (1903) 20 T.L.R. 96, .. .. .	243	Wanstead L.B. v. Wooster, (1873) 38 J.P. 21, .. .. .	706
V.		Warden v. Tye, (1877) 2 C.P.D. 74, .. .. .	553
V.V. Bread Co. v. Stubbs, (1896) 74 L.T. 704, .. .. .	388	Warner v. Brighton Aq. Co., (1875) L.R. 10 Ex. 291, .. .. .	549
Vallancey v. Fletcher, (1897) 1 Q.B. 265, .. .. .	419	Warnock v. Johnstone, (1881) 4 Coup 509, .. .. .	460
Vaughan, <i>Ex parte</i> , v., (1866) L.R. 2 Q.B. 114, .. .. .	213, 214	Warwick v. Graham, (1899) 2 Q.B. 191, .. .. .	726
Vaughton v. Bradshaw, (1860) 9 C.B.N.S. 103, .. .. .	57, 382	Washington v. Young, (1850) 5 Ex. 403, .. .. .	837
Vaux's Case, (1591) 4 Co. Rep. 44 2 Hale 248, .. .. .	105	Wason, <i>Ex parte</i> , (1869) L.R. 4 Q.B. 573, .. .. .	27
Venters v. Freedman, (1901) 20 Cox 98, .. .. .	60	Waterford Conservators v. Connolly, (1889) 4 I.L.T.R. 7, .. .. .	444
Verdin v. Wray, (1877) 2 Q.B.D. 608, .. .. .	694	Waters v. Phillips, (1910) 2 K.B. 465, .. .. .	494
Verney v. Fletcher, (1909) 1 K.B. 444, .. .. .	1,142	Watkins v. Major, (1875) L.R. 10, C.P. 662, .. .. .	207, 208, 210
Veterinary College v. Robinson, (1892) 1 Q.B. 557, .. .. .	832	Watson v. Christie, (1800) 2 B. & P. 224, .. .. .	383
Vines v. N. London Collegiate School, (1899) 63 J.P. 244, .. .. .	731	Watt v. Glenister, (1875) 32 L.T. 856, .. .. .	561
Vinter v. Hind, (1882) 10 Q.B.D. 63 .. .. .	51	Watts v. Stevens, (1906) 1 K.B. 323, .. .. .	464
Vyner v. Wirrall JJ., (1909) 73 J.P. 242, .. .. .	241	Waye v. Thomson, (1885) 15 Q.D. 342, .. .. .	725
W.		Weavings v. Kirk, (1904) 1 K.B. 213, .. .. .	1130
Wakefield Local Board v. West Riding and Grimsby Railway Co., (1866) 6 B. and S. 794; (1865) L.R. 1 Q.B. 84, .. .. .	221, 236	Webb v. Catchlove, (1886) 3 T.L.R. 159, 50 J.P. 798, .. .. .	56, 236, 287, 999
		Webb v. East, (1880) 5 Ex.D. 108, .. .. .	54
		Webb v. London JJ., (1910), 102 L.T. 70, .. .. .	121
		Webber v. Richards, (1840) 10 L.J. Q.B. 203, .. .. .	42
		Wedderburn v. Smith (No. I.), (1905) 20 Cox 355, .. .. .	842
		Weekes v. King, (1885) 53 L.T. 51, .. .. .	707
		Welch v. Cutler, (1905) 20 Cox 809, .. .. .	388

	PAGE		PAGE
Welton v. Tanbourne, (1908) 21 Cox	104, 630	Wilkinson v. Goffin, (1876) 33 L.T.	770
702, .. .. .		824, .. .. .	
Wemyss v. Hopkins, (1875) L.R. 10		Wilkinson v. Llandaff & Dinas Powis	
Q.B. 378, .. .. .	103	R.D.C., (1903) 2 Ch. 695, .. .. .	697
Wentworth v. Lloyd, (1864) 10 H. of		"William and John," The, (1863)	
L. Cas. 589, .. .. .	285	32 L.J. Adm. 102; 8 L.T. 56, .. .. .	176
West Riding & Grimsby Ry. Co. v.		Williams, <i>Ex parte</i> , (1851) 21 L.J.	
Wakefield Bd. of Health, (1864)		M.C. 46, .. .. .	49
5 B. & S. 478, .. .. .	183	Williams, <i>Ex parte</i> , (1903) 1 K.B.	
W. Riding Rivers Bd. v. Gaunt &		209, .. .. .	78
Sons, Ltd., (1902) 19 T.L.R. 140,	697	Williams, <i>Ex parte</i> , (1890) 7 T.L.R.	
W. Riding of Yorkshire Rivers Bd.		79, .. .. .	246
v. Preston, (1904) 92 L.T. 24, .. .. .	697	Williams v. Adams, (1862) 2 B. & S.	
Westbrook v. Field, (1887) 3 T.L.R.		312, .. .. .	214
465, .. .. .	357	Williams v. Baker, (1910) W.N. 280,	472
Westmeath, Mayor of, v. Gordon		Williams v. McDonald, (1899) 2 Q.B.	
Hotels, (1908) A.C. 142, .. .. .	237	308, .. .. .	563
Westminster, Mayor of, v. Gordon		William v. North Navigation Col-	
Hotels, Ltd., (1908) A.C. 142, 235, 705		lieries, (1906) A.C. 136, .. .. .	820
Westmore v. Pain, (1891) 1 Q.B.		Williams v. Richards, (1907) 2 K.B.	
482, .. .. .	238, 239	88, .. .. .	421
Westropp v. Com. of Public Works		Williams v. Wallasey L.B., (1886)	
in Ireland, (1896) 2 I.R. 93, .. .. .	51	16 Q.B.D. 718, .. .. .	702
Wheat v. Brown, (1892), 1 Q.B.		Williams v. Wandsworth B. of W.,	
418, .. .. .	472	(1884) 13 Q.B.D. 211, .. .. .	701
Wheatcroft v. Matlock L.B., (1885)		Willies v. Bridges, (1819) 2 B. &	
52 L.T. 356, .. .. .	697	Ald. 278, .. .. .	38
Wheeker v. Webb, (1887) 51 J.P.		Willis v. Young, (1907) 1 K.B. 448,	504
661, .. .. .	463	Wilmott v. Patton, (1902) 1 Q.B. 237,	1130
Wheeler & McCutcheon v. Com. of		Wilmott v. Southwell, (1908)	
Valuation, (1902) 2 N.I.J.R. 17,	200	25 T.L.R. 22, .. .. .	642
Wheeler v. Whiting, (1840), 9 C. &		Williamson v. Norris, (1899)	
P. 262, .. .. .	147	1 Q.B. 7, .. .. .	294, 298, 571
Whelan v. Fisher, (1809) 26 L.R.I.		Williamson v. Tierney, (1900)	
356, .. .. .	239	17 T.L.R. 174, .. .. .	620
Whitaker v. Derby S.A., (1885)		Wilmslow U.D.C. v. Sidebottom,	
55 L.J.M.C. 8, .. .. .	709	(1906) 70 J.P. 537, .. .. .	700
Whitaker v. Izod, (1809), 2 Taunt		Wilson v. Clonliffe, (1876) 38 J.P.	
115, .. .. .	285	251, .. .. .	803
Whitaker v. Pomfret Bros., (1902)		Wilson v. Cookson, (1863) 13 C.B.	
1 K.B. 661, .. .. .	467	N.S. 496, .. .. .	819
Whitaker v. Rhodes (1881), 46 J.P.		Wilson v. Crewe J.J., (1905) 1 K.B.	
182, .. .. .	525	491, .. .. .	121
White v. Hearne, (1900), 6 I.W.		Wilson v. Fearnley, (1905) 92 L.T.	
L.R. 101, .. .. .	242	647, .. .. .	815
White v. Redfern, (1879) 5 Q.B.D.		Wilson v. Glasgow Tram Co., (1878)	
15, .. .. .	51, 720	5 R. 981, .. .. .	157
White v. Feast, (1872) L.R. 7; Q.B.		Wilson v. Mayor of Halifax, (1868)	
353, .. .. .	206, 207, 209, 213	L.R. 3 Ex. 114, .. .. .	805
Whitechurch. <i>Ex parte</i> , (1881) 6		Wilson v. Ivors, (1875) 9 I.L.T. 83,	662
Q.B.D. 545, .. .. .	709	Wilson v. McPhee, (1903) 68 J.P.	
Whitechurch, <i>Ex parte</i> , (1749) 1		175, .. .. .	458, 459
Atk. 55, .. .. .	793	Wilson v. Moy Fishery Co., (1886)	
Whitehead v. R., (1845) 7 Q.B.		19 L.R.I. 270, .. .. .	444, 445
582, .. .. .	90	Wilson v. Playle, (1903) 88 L.T. 554,	465
Whitley v. Barley, (1888) 21 Q.B.D.		Wilson v. Renton, (1910) 47 S.L.R.	
154, .. .. .	597	209, .. .. .	89, 612
Whiteman v. Director of Public		Wilson v. Strugnell, (1881) 7 Q.B.D.	
Prosecutions, (1911) 1 K.B. 824,	627	548, .. .. .	31
Whiteman v. Sadler, (1910) A.C.		Wimbledon U.D.C. v. Hastings,	
514, .. .. .	627	(1902) 87 L.T. 118, .. .. .	707
Whitstone v. Smith, (1862) 7 Ir.		Windsor, <i>Ex parte</i> , (1865) 10 Cox.	
Jur. 1 N.S. 31, .. .. .	71	118, .. .. .	901
Whittle v. Frankland, (1862) 2		Windhill Local Board v. Vint, (1890)	
B. & S. 49, 26 J.P. 372, .. .. .	94	45 C.D. 351 .. .. .	51
Wieland v. Butler-Hogan, (1904)		Winfield v. Boothroyd, (1886)	
20 Cox 630, .. .. .	725	34 W.R. 501, .. .. .	159, 341
Wilder, <i>Ex parte</i> , (1902) 66 J.P. 761,	219	Wing v. Epsom U.D.C., (1904)	
Wilkins, <i>Ex parte</i> , (1895) 18 Cox 161,	85	1 K.B. 798, .. .. .	55, 694
612		Wing v. Urban Council, (1904)	
		1 K.B. 798, .. .. .	100



## ciii

	PAGE		PAGE
Winsborough v. London Joint Stock Bank, (1903) 2 Cox. 478,	808	Worthington v. Sudlow, (1862) 2 B. & S. 508,	701
Wise v. Dunning, (1902) 1 K.B. 167,	35, 36, 226, 235	Wray v. Reynolds, (1858) 1 E. & E. 165,	837
Withall v. Francis, (1878) 42 J.P. 612,	638	Wray v. Toke, (1848) 12 Q.B. 492,	70, 84, 555
Withington L.B. v. Manchester Corp., (1893) 2 Ch. 19,	723	Wrench v. O'Rourke, (1902) 37 L.T.R. 15,	156
Woburn S.A. v. Newport Pagnell S.A., (1887) 51 J.P. 694,	712	Wrigley v. Bagley, (1901) 1 K.B. 780,	1130
Wolfenden v. McCollock, (1905) 20 Cox 864,	460	Wright, Ex parte, (1875) 39 J.P. 85,	60
Wolton v. Gavin, (1850) 16 Q.B. 48,	792	Wright v. Clarke, (1870) 34 J.P. 661,	498
Wood v. Burgess, (1890) 24 Q.B.D. 162,	618, 619	Wright v. Court, (1825) 4 B. & C. 596,	19, 149
Woodard v. E.C. Ry. Co., (1861) 4 L.T. 336,	768	Wright, Crossley & Co. v. Dobbin, (1897) 15 R.P.C. 21,	623
Woodford U.D.C. v. Stark, (1902) 18 T.L.R. 439,	699	Wright v. London General Omnibus Co., (1877) 2 Q.B.D. 271; 25 W.R. 647; 41 J.P. 486,	103, 312, 529
Woodhall, Ex parte, (1888) 20 Q.B.D. 832,	253	Wright v. Mitchell, (1910) 2 Sc. L.T. 30,	632
Wooding v. Oxley, (1839) 9 C. & P. 1,	147	Wyne v. Ronaldson, (1865) 12 L.T. 711,	238
Woodward v. Ball, (1834) 6 C. & P. 577,	395		
Wooley v. Cork Co. C., (1909) 44 I.L.T.R. 5,	602	Y.	
Wooley v. Corbishley, (1860) 24 J.P. 773,	807	Yates v. Higgins, (1896) 1 Q.B. 166,	356
Woolfords Estate v. Levy, (1892) 1 Q.B. 772,	925	Yates v. Molony, (1906) 6 I.W.L.R. 175,	754
Woolridge, Ex parte, (1862) 31 L.J.Q.B. 122,	162	Yeatman v. Yeatman, (1868) L.R. 1 P. & D. 489,	533
Wordie & Co. v. Belfast Corporation, (1902) 36 I.L.T.R. 168,	528	Yorkshire Tire Co. v. Rotherham, (1858) 4 C.B.N.S. 362,	242
Workington Overseers of, Ex parte, (1894) 1 Q.B. 416,	216, 219	Young v. Grathbridge, (1868) L.R. 4 Q.B. 166,	724
Worth v. Brown, (1898) 62 J.P. 653, 40 S.J. 515,	265, 294, 515		



## ADDENDA ET CORRIGENDA.

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Page 7, line 1.—Under the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), s. 6 (3) and s. 38 (5), a justice of the peace who is reported by an election court as having been guilty of corrupt practices at an election becomes *ipso facto* incapable of acting as a justice for seven years; and if, after he has been reported, he purports to act as a justice, his adjudication is void (*R. (Mathews) v. M. Court*, (1911) 45 I.L.T.R. 145).

Page 13 n.<sup>4</sup>—For “noted under s. 14 of the Petty Sessions Act” read “printed *verbatim* in.”

Page 39, 2nd par.—The proposition submitted in the text, that imprisonment can be ordered on failure to pay the amount of a forfeited recognizance, has been laid down in *R. (Carroll) v. Westmeath JJ.*, K.B.D., 24th April, 1911, as yet unreported.

Page 46, line 11.—For “Summary Jurisdiction Act, 1849,” read “Indictable Offences Act, 1848,” which statute refers to the preliminary hearing of indictable offences. The English statute as to summary offences is the Summary Jurisdiction Act, 1848, 11 & 12 Vict. c. 43, s. 1, enacting that “it shall be lawful for such justice or justices of the peace to issue his or their summons.” The general proposition in the text, that justices can exercise a reasonable discretion as to the issue of a summons in case of an offence triable summarily, is, it is submitted, well founded (see *R. v. Bros*, (1901) 18 T.L.R. 39; *R. v. Kennedy*, (1902) 86 L.T. 753).

Page 48 n.<sup>1</sup>—An inspector under the Food and Drugs Acts, immediately after the purchase of a pound of butter in a grocer’s shop, asked the shopkeeper whether that was his private address, and the shopkeeper replied in the affirmative, but the fact was that the shopkeeper resided elsewhere. Two summonses were issued against him and were served by being left in his absence with the wife of the tenant of one of the flats of the building of which the shop formed the ground-floor. The shopkeeper did not know that any proceedings had been taken against him until he received a notice that he had been convicted. *Held*, that the shop was not the defendant’s place of abode, as he did not live there, and that, as there was no evidence that he made the statement to the inspector with the object of evading service, he was not estopped from alleging that the summonses were not properly served, and therefore the conviction must be quashed (*R. v. Lilley*, (1911) 75 J.P. 95).

Page 55, lines 25, 26, 27.—For the sentence beginning “The Dublin Police Act,” and ending “by two justices,” read “any one divisional justice of the D. M. P. district may do alone all things authorized to be done by two justices<sup>3</sup> (18 & 19 Vict. c. 126, s. 16; 22 & 23 Vict. c. 52, s. 11; 25 & 26 Vict. c. 50, s. 2).”

Page 60 n.<sup>1</sup>—For “106” read “VI.”

Page 69, line 13 from foot.—For “(s. 24)” read “(s. 23).”

Page 75, last line.—An order of justices directing the execution by the High Sheriff of a distress warrant for the recovery of poor rate was quashed with costs against the justices (*R. (Hynes) v. Clare JJ.*, (1911) 45 I.L.T.R. 76).

Page 89, line 21; page 483, line 27.—A charge of “looking for and taking game” is a charge of one offence only, as being a continuous operation, and a conviction thereon is good (*R. (Higgins) v. Kildare JJ.*, (1911) 45 I.L.T.R. 76).

Page 90, line 32.—Where the consent of the Attorney-General is made a condition precedent to a prosecution, a conviction will be quashed where such consent has not been obtained (*R. v. Bates*, (1911) 27 T.L.R. 314).

Page 112, line 14 from foot.—(*R. (Collins) v. Donegal JJ.*, (1903) 2 I.R. 533, has been approved by the Court of Appeal in *R. (Henderson) v. Louth JJ.*, (1911) 2 I.R. 312.

Page 114, line 17.—The proposition submitted in the text is not well founded. A new licence can be granted for a part only of licensed premises (*R. (Beirne) v. Limerick JJ.*, March, 1911, noted p. 1157, n.<sup>2</sup>); but a new licence cannot be granted in respect of each of two portions of the same licensed premises, so as to create two new licences in place of one (*R. (Croghan) v. Mayo JJ.*, (1907) 2 I.R. 474).

Page 115, line 18.—The district inspector of the district where the applicant resides must be served; service on the district inspector of the district where the premises are situate is not sufficient. *H.*, an applicant for a publican's licence, resided in police district K. She owned another house in police district B. The two houses were adjoining, though in different police districts. She sought the licence for the house in B police district. She had furnished and repaired the latter house, and her son and workmen had occasionally slept in it, but she had never slept in it. She served notice of application on the district inspector of B district, but not upon the district inspector of K district. *Held*, that the applicant's residence was not in district B, and that the service was bad (*R. (O'Donoghue) v. Cork JJ.*, (1911) 45 I.L.T.R. 37).

*Held*, also (*per* Lord O'Brien, L.C.J.) that the house being in the country, the notice was bad because it omitted to specify the townland and barony (*ib.*).

Page 123, line 5.—The proposition, submitted in the text, that a transfer or renewal of a spirit grocer's licence can be granted at sessions other than the annual licensing sessions, is now laid down in *R. (Robinson) v. Londonderry JJ.*, (1911) 45 I.L.T.R. 171. In the same case it was also laid down that the discretion vested in the justices to hear a renewal application at sessions other than the annual sessions is an absolute discretion, and that the existence of special circumstances is not essential to the exercise of such discretion in favour of the applicant for renewal.

Page 126, line 3.—In the town of Buncrana, on the shore of Lough Swilly, a large fish-curing industry was carried on, which, on Saturdays, was engaged in by several persons up till a late hour of the evening. In order to supply these persons on Saturdays, twelve publicans of the town applied to the magistrates for and obtained exemption orders under s. 11 of the Licensing Act, 1874. The principal fish-curing station was at the end of a pier, and the nearest of the licensed premises, in respect of which such order was granted, was about half a mile from the curing station. There were two licensed premises nearer, viz.: the railway refreshment room and the Lough Swilly Hotel,—but no exemption was applied for in respect of either of these premises, nor were the premises of a character likely to be resorted to or to supply the workers in the industry. Apparently there was no evidence of a direct nature of the necessity of the exemption order given on the application. *Held*, that the premises in respect of which the exemption orders were granted were in the "vicinity" of the industry, and that the magistrates had jurisdiction to make the orders (*R. (Yeates) v. Donegal JJ.*, (1911) 45 I.L.T.R. 158).

Page 148, lines 15 and 16.—For "(27 & 28 Vict. c. 47, s. 6)" read "(54 & 55 Vict. c. 69, s. 2)".

Page 148, line 10 from foot.—After "1854" insert "s. 72".

Page 152, line 3 from foot.—For "68" read "48".

Page 190, line 38.—See also *R. (Leonard) v. Carlow JJ.*, (1911) 45 I.L.T.R. 48.

Page 193, line 7 from foot.—For "s. 37 of the Act of 1860" read "s. 8 of the Act of 1856".

Page 207, line 7.—There may be a right of way over the property, including the railway line of a railway company, and if a claim to such right is honestly raised, the jurisdiction of the justices to decide a question of trespass is ousted (*Arnold v. Morgan*, (1911) 103 L.T. 763).

Page 229, line 11.—In *R. (Yeldham) v. Wicklow JJ.*, (1911) 45 I.L.T.R. 181, the K.B.D. held that they had no jurisdiction to quash a warrant issued by justices to enforce payment of town improvement rate, but the point was not argued, nor was the attention of the court called to *R. (Hynes) v. Clare JJ.*, (1911) 45 I.L.T.R. 76.



Page 261, lines 7 and 8.—For “46 & 47 Vict.” read “48 & 49 Vict.”

Page 280, lines 5 and 6.—For “Bankers’ Books Evidence Acts, 42 & 43 Vict. c. 11, 45 & 46 Vict. c. 72, s. 11, 56 & 57 Vict. c. 69, s. 6;” read “Bankers’ Books Evidence Act, 42 & 43 Vict. c. 11, s. 3; Revenue Friendly Societies, and National Debt Act, 1882, 45 & 46 Vict. c. 72, s. 11; Savings Bank Act, 1893, 56 & 57 Vict. c. 69, s. 6;”.

Page 311, line 7.—For “52” read “62”.

Page 309, line 10 from foot.—For “49” read “84”.

Page 352 n.<sup>2</sup>, line 2.—For “16” read “17”.

Page 361, line 8 from foot.—In *Henry v. Strahan*, 45 I. L. T. & S. J. 186, the King’s Bench Division (Palles, C.B., and Madden, J.) held that service of a summons under the Cruelty to Animals Act, 1849, could be effected by serving the summons in any county in Ireland (though not the county of the justice issuing the summons in the adjoining county), inasmuch as such service was expressly authorized by s. 15 of the statute. But there was no appearance for the defendant, and the attention of the court does not seem to have been directed to the fact that s. 15 has been repealed by the Statute Law Revision Act, 1892. The case, however, shows that as regards statutes passed prior to 1851, enacting a particular procedure, such procedure may be still in force notwithstanding the provisions of s. 10 of the Petty Sessions Act.

Page 392.—In first marginal note, for “61” read “41”.

Page 393.—For marginal note “14 & 15 Vict. c. 9, s. 20” read “14 & 15 Vict. c. 92, s. 20”.

Page 425, line 13.—For “181” read “182”.

Page 438 n.<sup>4</sup>, line 1.—Delete the words “under the Acts in Class I.”

Page 460, line 27.—The defendant sold a pint of milk which was found to be deficient in milk-fat to the extent of 8 per cent. The justices found (a) that the milk supplied was as demanded—a pint of new milk as produced by the proper and honest milking of healthy and well-fed cattle; (b) that there had been no tampering with the milk, and that it was sold in the same condition as it came from the cow, and was of the nature, substance, and quality of new milk; (c) that the defendant neglected no precaution to procure that the produce of the cattle should be of the highest standard. Held, that, having regard to these findings, the conviction of the defendant could not be supported (*O’Driscoll v. Dolan*, (1911) 45 I.L.T.R. 144).

Page 463, line 27.—After “s. 16,” read “as amended by s. 15 of the Act of 1879”.

Page 466, line 4 from foot.—A limited company can be guilty of the offence of giving a false warranty under s. 20 (6) of the Sale of Food and Drugs Act, 1899 (*Chuter v. Freeth and Pocock, Ltd.*, (1911) 27 T. L. R. 467).

Page 467, line 19.—The respondent, a milkman, sold to one Emma Bennett, in the street, at the doorstep of her house, some milk which purported to be pure milk from one cow, and poured it from a can into her jug. Bennett then went into her house and shut the door. The appellant, an inspector of weights and measures, who witnessed the transaction, immediately asked to be served with some milk from the same can, and was told by the respondent that it was diluted. The appellant immediately knocked at Bennett’s door, which was opened by her, she still having the jug in her hand. The appellant took a sample from the milk in her jug. On analysis it was found to contain thirty per cent. of added water. The respondent was accordingly summoned under sect. 3 of the Sale of Food and Drugs Act, 1879, which provides that an “inspector of weights and measures . . . may procure at the place of delivery any sample of any milk in course of delivery to the purchaser,” and that in the event of the milk proving on analysis to be adulterated, proceedings may be taken in the same manner as if the inspector had purchased it. The justices found that the milk was in the same condition when the sample was taken by the appellant as when it was poured into Bennett’s jug. They held, however, that at the time when the sample was taken the delivery to Bennett was complete and the milk was no longer “in course of delivery” to her within the meaning of sect. 3. They accordingly dismissed the information. Held (Pickford and Lush JJ., Lord Alverstone, C.J., dissenting), that there was evidence on which the justices could so find, and the appeal was accordingly dismissed (*Helliwell v. Haskins*, (1911) 27 T.L.R. 463).

Page 483, line 14.—After “860” insert “*Pratt v. Martin*, (1911) 27 T.L.T.R. 377.”

Page 494, line 12 from foot.—Delete the whole line and the marginal note “Dogs.”

Page 496 n.<sup>1</sup>, line 3.—For “17” read “2”.

Page 497, line 7.—In *Derby v. Bloomfield*, (1904) 68 J.P. 391, a person who bought the bank at an unlawful game was held to have been rightly convicted of assisting in the management.

Page 497, line 7.—The defendant carried on a sale of goods by means of a “wheel of fortune” in a house open to the public. *Held*, that the “wheel of fortune” was a lottery, and was a game, and that the defendant was guilty of having used the premises as a common gaming-house, contrary to 8 & 9 Vict. c. 109, s. 2 (*Munro v. Kelly*, (1911) 45 I.L.T.R. 179).

Page 500, line 6 from foot.—See also *Quin v. Maguire*, (1911) 45 I.L.T.R. 77.

Page 506 n.<sup>1</sup>.—Delete the whole note, and substitute “See also s. 77 of the Public Health (Ir.) Act, 1878.”

Page 508, line 2.—For “LXII” read “LXI”.

Page 529 n.<sup>3</sup>, line 2.—For “1849” read “1879”.

Page 530, line 14 from foot.—For “57” read “75”.

Page 538 n.<sup>1</sup>, line 12.—For “572” read “573”.

Page 542, line 9.—For “Licensing Acts, 1828 to 1906,” read “Licensing (Ir.) Acts, 1833 to 1905.”

Page 572, line 3 from foot; page 581, line 6 from foot.—The appellant, who held an off-licence for the sale of beer, was summoned under s. 3 of the Licensing Act, 1872, for two offences, viz., for having sold beer where he was not authorized to sell it, and also for having, at the same time and place, exposed beer for sale. The two summonses were heard together, and, as the evidence on each was the same, the appellant’s counsel consented to their being dealt with simultaneously. The appellant was convicted and fined on each summons. At the next general licensing sessions the appellant applied for a renewal of his licence, which, however, the justices refused on the ground that the licence had, under s. 3 of the Act of 1872, been forfeited, inasmuch as the appellant had been convicted twice for offences against the section. *Held*, that the justices were wrong in so holding, inasmuch as a “second offence” within the section means an offence committed after a previous conviction (*R. v. South Shields JJ.*, (1911) 27 T.L.R. 330. *Quære*, was the second conviction good, having regard to the first conviction on the same facts (*ib.*).

Page 577.—In first line of col. 2 of “PROCEDURE” for “1862” read “1872”.

Page 585, line 2 from foot.—For “128” read “126.”

Page 591, line 34.—For “CHILDREN, p. 406” read “pp. 978–9, 994.”

Page 640, line 6 from foot.—A cab proprietor who has in reserve in his yard a number of spare cabs ready for use and intended to be used if and when occasion requires does not “keep” them within s. 27 of the Inland Revenue Act, 1869, until he in fact begins to use them (*London County Council v. Fairbank*, (1911) 2 K.B. 32).

Page 660, line 12 from foot.—Delete the sentence “See also under PUBLIC STORES.”

Page 661, line 34.—For “49” read “43”.

Page 675, line 9.—The defendant, who was not a registered pharmaceutical chemist, or chemist and druggist, was duly licensed by a local authority under s. 2 of the Poisons and Pharmacy Act, 1908, to sell poisonous substances to be used exclusively in agriculture or horticulture. The defendant failed to conform to the regulations made under the Act of 1908, in that he sold a poisonous substance in a bottle which was not labelled with his name and address. The plaintiffs sued the defendant for the recovery of a penalty under s. 15 of the Pharmacy Act, 1868, which provides that any person who shall sell poisons, not being a registered pharmaceutical chemist, or chemist and druggist, shall be liable to pay a penalty which may be sued for. *Held*, that the defendant was liable to pay a penalty under s. 15, and none the less so because the facts showed that he had also committed an offence under s. 15 of the Act of 1868 (*Pharmaceutical Society v. Jacks*, (1911) 2 K.B. 115).

Page 676, line 4 from foot.—For “93” read “90”.

Page 690, line 2 from foot.— For “11” read “74”.

Page 691, line 18.—For “111” read “11”.

Page 691, line 27.—For “155” read “153”.

Page 721, line 10.—After “Classes” insert “(Ir)” and for “39” read “61”.

Page 725, 2nd paragraph.—On the 8th of October, 1910, the appellant sold at her shop to one Kershaw three pounds of veal. On the 9th of October, the veal, when in the possession of Kershaw, was seized by the respondent, an inspector of nuisances, on the ground that it was unsound and unfit for food. On the 10th of October it was condemned by a justice of the peace and destroyed. The veal was in fact unsound and unfit for the food of man at the time of its sale and seizure. The appellant was charged with an offence under s. 117 of the Public Health Act, 1875, as amended by s. 28 of the Act of 1890, corresponding to s. 133 of the Irish Act of 1878. On behalf of the appellant it was contended that as the veal at the time of the seizure was not the property of nor in the possession of the appellant, nor on her premises, no offence had been committed. *Held*, that, by virtue of s. 28 of the Public Health Acts Amendment Act, 1890, the conviction was right, although the seizure of the meat was elsewhere than on the premises of the appellant (*Salt v. Tomlinson*, (1911) 27 T.L.R. 427).

Page 731, line 12.—For “Board” read “ground”.

Page 747, line 13 from foot.—The defendant was the owner of a narrow strip of land adjoining a highway, and one side of the strip was a deep chalk pit. The defendant was not the owner of the pit, but the edge of his land by exposure and erosion had worn away, and now formed part of the top of the pit. From the lie of the land the existence of the pit was a danger to persons lawfully using the highway. *Held*, that the local authority were entitled, under s. 30 of the Public Health Acts Amendment Act, 1907, to require the defendant to fence the pit in order to prevent danger therefrom (*Carshalton U.D.C. v. Burrage*, (1911) 27 T.L.R. 280).

Page 831, line 16.—“Found in or upon any dwellinghouse . . . for any unlawful purpose.” To constitute this offence the accused must be discovered upon the premises doing the acts or things which of themselves constitute the unlawful purpose, but actual apprehension upon the premises is not necessary (*Moran v. Jones*, (1911) 27 T.L.R. 421).

Page 883, line 9.—Delete the words “**FORGERY** and”.

Page 892, line 10 from foot.—For “263” read “266”.

Page 927, line 7.—The appellant was charged with having received a horse knowing it to have been stolen. It appeared that at the time he received it he did not know that it had been stolen, but that subsequently, on being told the fact, he refused to give it up unless he was repaid the amount he had paid to the person from whom he got it. The appellant was convicted. *Held*, that the conviction must be quashed (*R. v. Johnson*, (1911) 27 T.L.R. 489).

Page 915.—In line 5 of “**MERCHANDISE MARKS**” for “78” read “28”.

Page 1032.—In first line of note, for “19” read “9”, and in second line insert “526” after “p.”





# CHAPTER I.

## JURISDICTION AND APPOINTMENT OF JUSTICES OF THE PEACE.

	PAGE		PAGE
Jurisdiction, . . . . .	1	Fees payable on appointment, . . . . .	6
Creation of the office, . . . . .	1	Disqualification, . . . . .	6
Appointment—		Property qualification not necessary, . . . . .	7
(1) By statute, . . . . .	2	Determination of office, . . . . .	7
(2) By the Lord Chancellor, . . . . .	3	Application for commission, . . . . .	7
Form of Commission, . . . . .	3	Not to act as jurors, . . . . .	7
Oath of allegiance, . . . . .	5	<i>Custos Rotulorum</i> and County Lieu-	
Judicial oath, . . . . .	5	tenant, . . . . .	7
Boroughs having separate commissions		“ Stipendiary magistrate,” . . . . .	8
of the peace, . . . . .	6		

THE various matters within the jurisdiction of a justice of the peace in Ireland may be classified as follows :—

- (A) Jurisdiction out of sessions ;<sup>1</sup>
- (B) Criminal jurisdiction at general or quarter sessions in cases tried therein with a jury ;<sup>2</sup>
- (C) Jurisdiction at petty sessions :—(1) to determine certain criminal or quasi-criminal cases in a summary way,<sup>3</sup> (2) to determine certain matters of a civil nature, e.g. under the Small Debts Act,<sup>4</sup> and (3) to grant certain licensing certificates ;<sup>5</sup>
- (D) Jurisdiction at quarter sessions to determine certain appeals<sup>6</sup> and in connection with certain other licensing certificates, &c.<sup>7</sup>

Before the reign of Edward 3, persons called conservators of the peace were chosen by the freeholders of the county, but by 1 Ed. 3, st. 2, c. 16, it was enacted that thenceforth in every county certain persons should be assigned, that is, by commission, to keep the peace. The statute 34 Ed. 3, c. 1, gave them power to hear and determine felonies and trespasses done in their county, and in the 36 Ed. 3, c. 12, they are styled justices of the peace. “ The power of justices of the peace is traced to a statute of Edward 3, which was made the foundation of the commission of the peace, though some have thought it did not warrant the crown in granting so large an authority. We cannot question the validity of the commission, which has been in operation for centuries ” (*per* Lord Denman in *R. v. Dunn*, (1840) 12 A. & E., at p. 617).

Justices of the peace are of two classes, according as they are appointed by (a) statute, or (b) the Lord Chancellor.

<sup>1</sup> See p. 12.

<sup>2</sup> See p. 9.

<sup>3</sup> See p. 40.

<sup>4</sup> See p. 155.

<sup>5</sup> See p. 119.

<sup>6</sup> See p. 130.

<sup>7</sup> See p. 110.

Justices by  
statute.

By section 3 (4) of the Local Government (Ireland) Act, 1898, the chairman of every county council shall, during the term of and by virtue of his office, be a justice of the peace for the county. By section 26 (1), where an urban or rural county district in any county contains a population, according to the last published census for the time being, exceeding five thousand, the chairman of the council for the district shall, unless a woman or personally disqualified by any Act, be during the term of and by virtue of his office a justice of the peace for the county; but, except when sitting in quarter or general sessions, shall act only within the petty sessional district or districts comprising the county district, or any part of the county district.<sup>1</sup> By section 26 (2), the chairman of the council of any urban county district who is not a justice of the peace under section 26 (1), and also the chairman of the commissioners of any town, shall, if not a woman or personally disqualified by any Act, be a justice of the peace in like manner as if he had been appointed by the Lord Chancellor under section 29 of the Towns Improvement (Ireland) Act, 1854. By subsection 4, the power of the Lord Chancellor under section 29 of the Towns Improvement Act, 1854, to select a commissioner to act as justice of the peace shall cease. By subsection 5 it is declared that this section shall apply to a borough not having a separate commission of the peace, with the substitution of mayor for chairman, but shall not apply to any other borough.<sup>2</sup> Section 29 of the Towns Improvement (Ireland) Act, 1854, enacted that a justice appointed pursuant to the provisions of that section should have the jurisdiction and authority of and be a justice of the peace within the boundaries of the town as specified for the purposes of the Act, and for such purposes only provided such town be not situate within the Dublin metropolitan police district.<sup>3</sup> The purposes of the Act are the determination of the offences set forth in section 72 of the Act, comprising a number of offences against good order in the streets of towns within the statute, besides other miscellaneous minor offences (see *Stevenson v. O'Neill*, (1877) I.R. 11 C.L. 134, 140).

A chairman of a council who is a justice by virtue of the Local Government Act must, if he has not already done so, take the oaths required by law to be taken by a justice of the peace ('s. 3 (4), s. 26 (3)), that is, the oath of allegiance and the judicial oath (see 31 & 32 Vict. c. 72, s. 6). On re-election, the oaths need not be retaken ('s. 95 (1)). Every such chairman in his capacity of justice, but not otherwise, is subject to the same restrictions, qualifications, and power of removal

<sup>1</sup> As to limits of jurisdiction, see p. 74.

<sup>2</sup> The Mayor of Wexford is a justice of the peace under the section.

<sup>3</sup> The following are the towns having Commissioners under the Towns Improvement (Ireland) Act, 1854:—Antrim, Ardee, Arklow, Armagh, Athlone, Athy, Aughnacloy, Bagenalstown, Balbriggan, Ballina, Ballinasloe, Ballybay, Ballymena, Ballymoney, Ballyshannon, Banbridge, Bandon, Bangor, Belturbet, Birr, Bantry, Boyle, Callan, Carlow, Carrickfergus, Carrickmacross, Carrick-on-Suir, Cashel, Castlebar, Castleblayney, Cavan, Clonakilty, Clones, Coleraine, Cookstown, Cootehill, Downpatrick, Dromore, Dundalk, Dungannon, Dungarvan, Ennis, Enniscorthy, Fermoy, Fethard, Giltford, Gorey, Granard, Holywood, Keady, Kells, Killarney, Kiliney and Ballybrack, Kilrush, Kinsale, Larne, Letterkenny, Limavady, Lisburn, Lismore, Listowel, Longford, Loughrea, Lurgan, Macroom, Mallow, Maryborough, Middleton, Monaghan, Mountmellick, Mullingar, Naas, Navan, Nenagh, Newbridge, Newcastle (Co. Limerick), New Ross, Newtownards, Omagh, Portadown, Portrush, Queenstown, Rathkeale, Roscommon, Skibbereen, Strabane, Tandragee, Templemore, Thurles, Tipperary, Tralee, Trim, Tuam, Tuillamore, Warrenpoint, Westport, Wicklow, Youghal (Vanston's Law of Municipal Towns, p. 6). Since 1900, the following have been added:—Ballyclare, Donaghadee, Edenderry, Kilkee, Newcastle (Co. Down), Tullow.

by the Lord Chancellor as any other justice of the peace (s. 95 (2)). Justices by He need not renew the oaths upon the demise of the Crown (*R. statute. (Harvey) v. Tyrone JJ.*, (1901) 36 I.L.T.R. 106, 2 N.I.J.R. 59),<sup>1</sup> and is entitled to act as a justice until his successor has accepted office and subscribed the declaration required by Article 37 of the Application of Enactments Order of 22nd December, 1898 (*R. (Scott) v. Londonderry JJ.*, (1903) 2 I.R. 101, 3 N.I.J.R. 1). A chairman of town commissioners who is a justice of the peace by virtue of section 26 (2) is not qualified to take part in licensing business at quarter sessions (*R. (Gilchrist) v. Tyrone JJ.*, (1899) 34 I.L.T.R. 9), or, it is submitted, in adjudicating upon such applications for licensing certificates as come before justices at petty sessions.

The inspector-general of the Royal Irish constabulary and deputy inspectors-general are justices of the peace by virtue of their office (6 & 7 Wm. 4, c. 13, ss. 5 & 7). A county court judge is a justice of the peace for the county or riding to which he is appointed (14 & 15 Vict. c. 57, s. 2). Under the Municipal Corporations (Ireland) Act, 1840, 3 & 4 Vict. c. 108, the mayor of a borough is a justice of the peace for the borough, and has precedence in all places within the borough<sup>2</sup> (s. 84).

A divisional justice of the city of Dublin is a justice of the peace for the counties of Dublin, Wicklow, Kildare, and Meath (5 Geo. 4, c. 102, s. 9).

Resident Magistrates are appointed by the Lord Lieutenant, and hold office during his pleasure (6 & 7 Wm. 4, c. 13, ss. 31–33), and are styled “Resident Magistrates” (see 16 & 17 Vict. c. 60, 37 & 38 Vict. c. 23). A Resident Magistrate is a justice of the county<sup>3</sup> or counties for which he is appointed, and must take the oaths required to be taken by a justice of the peace (6 & 7 Wm. 4, c. 13, s. 31).

The salaries and allowances of Resident Magistrates are fixed by 37 & 38 Vict. c. 23, as follows:—Class I, consisting of twenty, £625; Class II, consisting of thirty-two, £550; Class III, consisting of the remainder, £425; and each is in addition entitled to £100 a year for travelling within his district, and to such allowances for absence from home and for other travelling as the Treasury sanctions.

Justices are also appointed by the Lord Chancellor under his seal, and the instrument giving them their authority is called the Commission. Justices for the city of Dublin receive their appointment from the Lord Lieutenant, on receipt of whose warrant the commission is issued to them. No commission is issued to the persons who are justices by virtue of their office.

Appointment  
by the Lord  
Chancellor.

The form of the Commission is as follows:—

George V, by the Grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, and so forth, to A. B., C. D., &c. [*the names of the members of the Privy Council, the Judges, and King's Counsel*],<sup>4</sup> are first inserted in every commission, and after them the justices of the county]. Greeting.

Form of  
Commission.

<sup>1</sup> See also Demise of the Crown Act, 1901, noted, p. 7.

<sup>2</sup> This apparently means social and not magisterial precedence (see *Ex parte Mayor of Birmingham*, (1860) 30 L.J.Q.B. 2).

<sup>3</sup> A Resident Magistrate is not a “Stipendiary Magistrate” within s. 51 (1) of the Licensing Act, 1872, and cannot try licensing cases sitting alone (*R. (Jackson) v. Tipperary JJ.*, (1894) 28 I.L.T.R. 107): see further, p. 8, *post*.

<sup>4</sup> Every King's Counsel is mentioned, and is entitled to act as justice for any county on taking the necessary oaths. The Recorder of every borough is a justice of the borough (Municipal Corporations (Ir.) Act, 1840, s. 166).



Form of  
Commission.

Know ye, that we, reposing special trust and confidence in your fidelity, prudence, and care, have appointed, and by these presents do appoint you and every of you, jointly and severally, our justices to keep our peace in our county of \_\_\_\_\_, and to keep and cause to be kept all ordinances and statutes made for the good of our peace, and for the conservation of the same, and for the quiet rule and government of our people, in all and every the articles thereof in our said county (as well within the liberties as without) according to the force, form, and effect thereof; and to chastise and punish all persons offending against the form of those ordinances and statutes or any of them in the county aforesaid, as according to the form of those ordinances and statutes shall be fit to be done, and to cause to come before you or any of you all those persons who shall threaten any of our people in their person, or with burning their houses, to find sufficient security for the peace, or for their good behaviour towards us and our people; and if they shall refuse to find such security, then to cause them to be safely kept in our prison until they have found such security.

We have also assigned, and by these presents do assign you or every two or more of you, of whom the aforesaid A. B., C. D., &c., we will shall be one, our justices in and throughout the county aforesaid (as well within the liberties as without) to inquire by the oath of good and lawful men of our county aforesaid, and by all other lawful ways and means) by whom the truth of the matter may be better known, of all and all manner of treasons,<sup>1</sup> murders, manslaughters, burnings, unlawful assemblies, felonies, robberies, witchcrafts, enchantments, sorceries, magic arts, trespasses, forestallings, regratings, engrossings, and extortions whatsoever, and of all and singular other misdeeds and offences of which the justices of our peace can or ought lawfully to inquire by whomsoever or howsoever done or committed, or that hereafter shall happen howsoever to be done or committed in the county aforesaid, and also of all those who presume by unlawful assemblies to be disturbers of our peace and of our people within our said county, and also of all those who in the county aforesaid have either gone or ridden, or that hereafter shall presume to go or ride in companies with armed force against our peace to the disturbance of our peace, and also of all those who in like manner have lain in wait, or hereafter shall presume to lie in wait to maim or kill our people, and also of all inn-holders, and of all and singular other persons who have offended, or attempted or hereafter shall presume to offend, or attempt in the abuse of weights and measures, or in the sale of victuals against the form of the ordinances and statutes or any of them in that behalf, made for the common good of our kingdom of Ireland and of our people thereof in the county aforesaid; as also of all sheriffs, bailiffs, seneschals, constables, gaolers, and other officers whatsoever who in the execution of their offices about the premises or any of them have unlawfully demeaned themselves, or that hereafter shall presume unlawfully to demean themselves, or have been or hereafter shall be careless, remiss, or negligent in the county aforesaid, and of all and singular articles and circumstances, and all other things whatsoever by whomsoever, and howsoever done or perpetrated in the county aforesaid, or that shall hereafter there happen howsoever to be done or attempted in anywise more fully concerning the truth of the premises or any of them, and to inspect all indictments whatsoever so before you or any of you taken, or to be taken or made before others late justices of the peace in the county aforesaid, and not as yet determined, and to make and continue the process thereupon against all and singular persons so indicted, or which hereafter shall happen to be indicted before you until they be apprehended, render themselves or be outlawed; and to hear and determine all and singular the matters aforesaid (treason excepted) according to the laws and statutes of our Kingdom of Ireland as in the like case has been used and ought to be done; and to chastise and punish the said persons offending and every of them for their offences, by fines, ransoms, amerciments, forfeitures, or otherwise as ought and hath been used to be done according to the laws and customs of our Kingdom of Ireland, or the form of the ordinances or statutes aforesaid, and to discharge our gaols of all prisoners therein detained and imprisoned for felony.

Provided always that if a case of difficulty upon the determination of any of the premises shall happen to arise before you or any two or more of you, then

<sup>1</sup> A bill for treason is never sent before quarter sessions, and if found should be removed by certiorari into the K.B.D.: Hayes (Cr. L. 728); see exception of treason (lower down) from matters that may be heard and determined.



do not you or any two or more of you proceed to give judgment thereon, except Form of Commission.  
it be in the presence of one of our justices, of one or other bench, or one of the barons of our Exchequer, or of one of our counsel learned in the law.

And we therefore command you and every of you that you diligently attend the keeping of the peace, ordinances, and statutes, and all and singular other the premises; and at certain days and places which you or any two or more of you as aforesaid shall in that behalf appoint, you make inquiries upon the premises; and hear and determine all and singular the premises (except as before excepted), and perform and fulfil the same in form aforesaid, doing therein that which to justice appertaineth according to the laws and customs of our said Kingdom of Ireland, saving to us the amerciments and other things to us thereof belonging.

We also command by virtue of these presents our sheriff of our county aforesaid, that at certain days and places which you or any two or more of you shall make known to him as aforesaid, he cause to come before you or any two or more of you as aforesaid, such and so many good and lawful men of his bailiwick (as well within liberties as without), by whom the truth of the matter in the premises may be better known and inquired of.

Lastly we have assigned you the aforesaid (*here the name of the person appointed Custos Rotulorum*) keeper of the rolls of our peace in our said county; and therefore you shall cause to be brought before you and your said companions at the said days and places the writs, precepts, processes, and indictments aforesaid, that the same may be inspected, and by a due course of law determined as aforesaid. Witness our Lieutenant-General and General Governor of our said Kingdom of Ireland, at Dublin, the

Each justice of the peace is required to take an oath of allegiance and the judicial oath (31 & 32 Vict. c. 72).<sup>1</sup>

#### FORM OF OATH OF ALLEGIANCE.

I, \_\_\_\_\_, do swear by Almighty God that I will be faithful and Oath of  
bear true allegiance to His Majesty King George V, his heirs and successors, allegiance.  
according to law.

#### FORM OF JUDICIAL OATH.

I, \_\_\_\_\_, do swear by Almighty God that I will well and truly Judicial  
serve our Sovereign Lord, King George V, in the office of justice of the oath.  
peace for the county of \_\_\_\_\_, and I will do right to all manner  
of people after the laws and usages of the realm without fear or favour, affection  
or ill will.

<sup>1</sup> Formerly, the oaths were usually taken before one or other of three county justices named in a document called the *dedimus*. But now a *dedimus* is rarely issued, and the oaths are taken in one of the following methods. Under the Promissory Oaths Act, 34 & 35 Vict. c. 48, s. 2, the oaths may be taken:—before such person as His Majesty may appoint; or, before the Lord Chancellor, or the Court of Chancery, or the King's Bench, in open Court, before one or more of the Judges of such Court; at the quarter sessions for the county in which the person taking the oath acts as justice. In pursuance of said section 2, His Majesty has directed that the following persons be appointed to administer the oaths:—the inspector-general; the deputy inspector-general; the assistant inspectors-general of the Royal Irish Constabulary, and the Clerk of the Crown and Hanaper in Ireland, in respect of all Ireland; the Lieutenant of each county, in respect of his said county; the divisional justices in and for the police district of Dublin Metropolis when sitting in court, in respect of the county and city of Dublin; Resident Magistrates, sitting at petty sessions, in respect of the several counties and boroughs in which they are authorized and empowered to act as justices of the peace. This includes all the counties and boroughs adjoining the particular county in which such Resident Magistrate may be stationed.

New magistrates, appointed by ordinary commission of the peace, can be sworn in before the persons authorized as above mentioned on production of their commission.

The chairman of county and district councils and chairman of town commissioners, who become magistrates under the Local Government Act for the term of and by virtue of their office, and who are not named in the ordinary commissions of the peace, can also be sworn in as magistrates before the persons authorized as above mentioned, on production of a certificate from the secretary or clerk of the council that such person has been elected chairman, and has made the declaration accepting office. Such certificate, save in the case of the chairman of a county council, should also state whether the population of the district according to the last published census is above or below 5000. The certificate and signed copy of the oath should be transmitted at the earliest opportunity to the Clerk of the Crown and Hanaper, Four Courts, Dublin.

Boroughs  
having separ-  
ate commis-  
sions of the  
peace.

By section 157 of the Municipal Corporations (Ireland) Act, 1840 (3 & 4 Vict. c. 108), justices of the peace may be appointed for each borough mentioned in Schedule A. to that Act to which a commission of the peace shall be granted, and also for the towns of Galway and Carrickfergus, such justices to reside in the borough or within seven miles thereof. A separate commission of the peace was granted previous to the statute to Galway and Carrickfergus, and since the statute to Belfast, Clonmel, Cork, Drogheda, Dublin, Kilkenny, Limerick, Londonderry, Sligo, Waterford. The Local Government (Ireland) Act, 1898, s. 17, abolishes the separate commission of the peace for Galway and Carrickfergus, and provides that the borough justices of these towns shall be justices for the counties of Galway and Antrim respectively. Every county justice is a justice for any borough within the county to which a separate court of sessions of the peace has not been assigned (Municipal Corporations Act, 1840, s. 173; ; but in boroughs to which a separate court of quarter sessions has been assigned, the borough justices have exclusive jurisdiction as to matters arising within the borough (*ib.*). Separate courts of quarter sessions were assigned to Belfast, Cork, Drogheda, Dublin, Kilkenny, Limerick, Londonderry, Waterford, Galway, and Carrickfergus. Drogheda and Kilkenny are now urban county districts (Local Government Act, 1898, s. 40), and by Order in Council of 22nd December, 1899, they became quarter sessions districts; and consequently they are no longer boroughs within section 173, and the county justices have jurisdiction therein.

In a borough which has no separate court of quarter sessions, the borough justices and county justices have co-ordinate jurisdiction at petty sessions in respect of matters arising within the borough; and it is submitted that the mayor has no right of precedence at petty sessions (see *Lawson v. Reynolds*, (1904) 1 Ch. 718; *Ex parte Mayor of Birmingham*, (1860) 30 L.J.Q.B. 2).

Fees.

A fee of £2 is payable by a justice newly appointed by commission: no fees are payable by justices deriving their authority from statute.

Disqualifica-  
tion.

Certain persons are disqualified, wholly or partially, from acting as justices. A bankrupt or arranging debtor is disqualified from acting until he has been newly assigned<sup>1</sup> (Debtors Act (Ireland), 1872, s. 21). A bankrupt is disqualified from being appointed or acting until his adjudication is annulled, or he obtains his discharge and a certificate that his bankruptcy was caused by misfortune without any misconduct on his part (Bankruptcy Act, 1883, 46 & 47 Vict. c. 52, s. 32 (1), see also s. 32 (3)).<sup>2</sup> Other persons disqualified are—sheriff or under-sheriff during tenure of office (7 Wm. 3, c. 13, s. 3, Ir.); clerk of crown and peace (40 & 41 Vict. c. 56, s. 13). A justice is not disqualified by being appointed coroner (*Davis v. Pembroke-shire JJ.*, (1881) 7 Q.B.D. 513). A person who is convicted on indictment or information of any corrupt practice at a parliamentary election is disqualified from holding any public or judicial office for seven years from the date of his conviction (Corrupt and Illegal

<sup>1</sup> A justice who had made an arrangement with his creditors, but who at the death of Queen Victoria had received a request from the Crown and Hanaper Office to retake the oath of office on the accession of Edward VII., and who did take such oath, was newly assigned (*per Andrews, J.*, in *R. (Malone) v. Tyrone JJ.*, (1903) 3 N. I. J. R. 177).

<sup>2</sup> This is an English statute, but the section is expressly extended to the United Kingdom by sub-sect. (3).

Practices Prevention Act, 1883, s. 6). "Judicial office" includes the office of justice of the peace (*ib.*, s. 64). Every person who is reported by an election court or election commissioners to have been guilty of any corrupt or illegal practice at an election<sup>1</sup> shall be subject to the same incapacity as he would be subject to if he had at the date of such election been convicted of the offence of which he is reported to have been guilty (*ib.*, s. 38 (5)), and where such person is a justice of the peace he shall be reported by the Attorney-General to the Lord Chancellor, who shall have the same right, in case of a person acting as a justice of the peace by virtue of being a mayor of a borough, to remove him as if he were named in a commission of the peace (*ib.*, s. 38 (6), s. 69 (7, 8)). Where upon the trial of a municipal election petition, it is reported by the election court that any corrupt practice, other than treating and undue influence, has been proved to have been committed by or with the knowledge and consent of any candidate, or that the offence of treating or undue influence has been proved to have been committed by any candidate, that candidate shall be subject to the same incapacities as if at the date of the said report he had been convicted of a corrupt practice at a parliamentary election (Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 3).<sup>2</sup>

Disqualifica-  
tion.

Section 23 of the last-mentioned statute makes the provisions of s. 38 (5), (6) of the Corrupt and Illegal Practices Prevention Act, 1883, *ante*, applicable to municipal elections.

No property qualification for the office of justice of the peace is required.

Property  
qualification  
not necessary.  
Determination  
of the office.

The office of justice of the peace subsists only during the pleasure of the King, and is determinable (*a*) by express writ under the great seal discharging the justice from his office; (*b*) by writ of *supersedeas*, which suspends the power of the justices, but does not totally destroy it, as it may be revived again by writ of *procedendo*; (*c*) by a new commission which virtually, though silently, discharges all the former justices that are not included therein, for the two commissions cannot subsist at once (Nun and Walsh, 2nd ed, p. 8); or (*d*) as stated in the preceding paragraph. The office is not vacated on the demise of the Crown, and the oaths need not be retaken to the new Sovereign (Demise of the Crown Act, 1901, 1 Ed. 7, c. 5; opinion of the judicial committee of the Privy Council, noted, 74 J. P. 389 (Aug. 13, 1910)).

The usual practice to obtain a commission is to apply through the lieutenant of the county, who forwards particulars of the application to the Lord Chancellor, in whose absolute discretion the appointment rests. In the city of Dublin, application should be made (through the Under Secretary) to the Lord Lieutenant, with whom the appointment rests.

Application  
for a commis-  
sion.

A justice of the peace cannot act as a juror at any sessions of the peace, or in any civil bill court, or recorder's court, within the jurisdiction of which he is a justice (Juries (Ir.) Act, 1871, s. 29).

Not to act as  
jurors.

The Custos Rotulorum, as the name signifies, is the titular keeper of the rolls, or records of the county. The office is granted by the Lord Lieutenant (1 & 2 Wm. 4, c. 17, s. 3), usually to the Lieutenant of the county; and always to one of the commission of the peace for

Custos Rotu-  
lorum and  
County Lieu-  
tenant.

<sup>1</sup> That is a parliamentary election; see s. 64.

<sup>2</sup> Applied by Art. 5 (3) of the Schedule to the Application of Enactments Order of 22nd December, 1898.



Custos Rotu-  
lorum and  
County Lieu-  
tenant.

the county. Formerly the appointment to the clerkship of the peace was in the gift of the Custos Rotulorum (*Forbes v. Lloyd*, (1876) I.R. 10 C.L., at p. 559). Now, by 40 & 41 Vict. c. 56, s. 8, the offices of the Clerk of the Crown and Clerk of the Peace are united, and the appointment is in the gift of the Lord Lieutenant.

The Lord Lieutenants of counties in England were originally appointed, about the time of Henry VIII, to keep the counties in military order. In Ireland power was given by 1 & 2 Wm. 4, c. 17,<sup>1</sup> to the Lord Lieutenant to appoint Lieutenants of counties to have the same powers as governors of counties theretofore had (raising militia, &c.), and also such powers as are prescribed in the patent of appointment. The appointment is vested in the Lord Lieutenant under the Militia Act, 1882 (45 & 46 Vict. c. 49, ss. 29, 53); and the Lieutenant of the county may appoint deputies, subject to the sanction of the Lord Lieutenant (*ib.*, ss. 30, 53). The jurisdiction and power of the Lieutenants over the militia, yeomanry, and volunteers, save as to militia ballots, are taken from them and vested in the Crown (Militia Act, 1882, ss. 5, 54), and the only powers now vested in them are those prescribed by the letters patent, including the same powers as are vested in sheriffs for the preservation of the peace, e.g., raising the *posse comitatus*. The qualifications of a deputy lieutenant are:—being a resident peer or heir-apparent of a peer, or possession of or being heir-apparent to landed property value £200 a year, or possession of income of £200 a year (s. 33). Under the Militia Act, 1882 (ss. 29, 53), and the Local Government (Ireland) Act, 1898, s. 69, Lieutenants are appointed for the Cities of Dublin, Cork, Limerick, Waterford, Belfast, and Londonderry.

“Stipendiary  
magistrate.”

The term “stipendiary magistrate” is an English term, meaning a paid magistrate appointed for any city, town, liberty, borough, or place in England, outside the London metropolitan police district (11 & 12 Vict. c. 42, s. 29). It sometimes occurs in statutes common to England and Ireland, and, when it does so, it apparently will not include a Resident Magistrate unless the statute contains a definition to that effect, or the construction of the statute clearly requires such an extended meaning. Thus a Resident Magistrate is not a stipendiary magistrate within section 5 of the Licensing Act, 1872 (*R. (Jackson) v. Tipperary JJ.*, (1894) 28 I.L.T.R. 107); and it is submitted that the same remark applies to section 16 of the Criminal Justice Act, 1855, and section 547 of the Merchant Shipping Act, 1894. It has been held that the expression includes a Dublin divisional justice for the purpose of the Married Women (Maintenance in case of Desertion) Act, 1886 (*R. (Redding) v. Swift*, (1909) 2 I.R. 302), and it is submitted that it includes, and means only, a Resident Magistrate within section 17 of the Prevention of Crime Act, 1871, and within section 2 of the Summary Jurisdiction (Ir.) Act, 1862. “Stipendiary magistrate” is expressly defined by section 610 of the Merchant Shipping Act, 1894 (*for the purposes of that section*), to mean a Resident Magistrate, and a similar definition is given by section 77 of the Coal Mines Regulation Act, 1887, for the purposes of that Act. As to use of the term in the Extradition Act, 1870, see p. 302.

<sup>1</sup> Repealed (38 & 39 Vict. c. 69, s. 98).



## CHAPTER II.

### CRIMINAL JURISDICTION OF JUSTICES AT QUARTER SESSIONS.

	PAGE		PAGE
Classes of jurisdiction at quarter sessions, . . . . .	9	Binding over to come up for sentence, . . . . .	10
Quarter sessions, a court of record, . . . . .	9	Reserving case, . . . . .	11
Criminal jurisdiction, . . . . .	9	Time of holding quarter sessions, . . . . .	11
		Clerk of Crown and Peace, . . . . .	11

THE jurisdiction of justices at quarter sessions comprises—  
 (a) criminal jurisdiction in cases tried with a jury; (b) the hearing of appeals from justices at petty sessions, including appeals from summary convictions,<sup>1</sup> and from refusals of licensing certificates;<sup>1</sup> (c) the determination of applications for certain licences, e.g., to sell intoxicating liquors, to keep private lunatic asylums, music halls,<sup>2</sup> &c.; (d) the hearing of valuation and rating appeals;<sup>3</sup> and (e) original jurisdiction as to estreating certain recognizances.<sup>4</sup>

The court of quarter sessions is an inferior court of record, and has power to imprison for contempt committed in the face of the court (*Ex parte Pater*, (1864) 5 B. & S. 299; *R. v. Lefroy*, (1873) L.R. 8 Q.B. 134; and has an inherent power of adjournment (*Keen v. R.*, (1847) 10 Q.B. 928; *R. v. Westmoreland JJ.*, (1868) L.R. 3 Q.B. 457).<sup>5</sup>

Justices assembled at quarter sessions have power, derived from their commission, to try, with the assistance of a jury, criminal causes sent forward to the sessions. The words of the commission are “do assign you . . . our justices in and throughout the county aforesaid to inquire by the oath of good and lawful men of our county aforesaid . . . all and all manner of treasons, murders, manslaughters, burnings, unlawful assemblies, felonies,” &c., and to “hear and determine all and singular the matters aforesaid, treason excepted.”<sup>6</sup>

<sup>1</sup> As to which, see APPEALS TO QUARTER SESSIONS, p. 130.

<sup>2</sup> As to which, see LICENSING JURISDICTION AT QUARTER SESSIONS, p. 110.

<sup>3</sup> As to which, see RATING AND VALUATION, p. 194.

<sup>4</sup> See p. 37.

<sup>5</sup> In *Keen v. R.* the defendant pleaded guilty to a misdemeanour at the quarter sessions, and was bound by recognizances to appear for judgment at the next quarter sessions, and judgment was respited. At the next April sessions judgment was further respited until the June sessions, when judgment was given. *Held*, that the court had power to respite cases from one session to another. “The sessions may adjourn the case, although the sessions itself is not adjourned” (*ib.*, per Erle, J.). In *R. v. Westmoreland JJ.*, a presentment in respect of certain prisons came before the court of quarter sessions, in pursuance of advertisements duly published, as required by the statute in that behalf. The presentment was considered, and it was resolved that the matter should be referred to a select committee, to report to the next ensuing sessions. At the next ensuing sessions an order was made, no fresh notice having been given. *Held*, that a fresh notice was not necessary, as it was competent for the justices to adjourn the matter. As to adjourning licensing applications, see p. 116.

<sup>6</sup> As regards treason, an indictment for treason may be found by a sessional grand jury, but the quarter sessions have no power to hear the case. The jurisdiction is to inquire, but not to hear and determine (*Hayes*, 728).

Criminal  
jurisdiction  
at quarter  
sessions.

But while the quarter sessions have, in terms, powers almost as wide as those of the assizes, in practice, cases of murder and other cases of great gravity or difficulty are sent forward to the assizes; and in any case proper to be sent to the assizes, but, *per incuriam*, returned to quarter sessions, the chairman of quarter sessions will adjourn the case to the assizes on the application of the Crown solicitor.

By statute, the following offences are not triable at quarter sessions:—poaching at night by bodies of armed men (9 Geo. 4, c. 69, s. 9); frauds by agents, bankers, or factors under ss. 75 to 86 of the Larceny Act, 1861 (24 & 25 Vict. c. 96, s. 87); offences of personation in order to obtain property against the False Personation Act, 1874 (37 & 38 Vict. c. 36, s. 3); corrupt practices at parliamentary elections (17 & 18 Vict. c. 102, s. 10; 46 & 47 Vict. c. 51, s. 53); offences against the Official Secrets Act, 1889, Prevention of Corruption Act, 1906 (6 Ed. 7, c. 34), and Punishment of Incest Act, 1908, 8 Ed. 7, c. 45, s. 4 (2). In cases which are triable as properly at quarter sessions as at assizes it is the duty of the justice to return the cases for the earliest trial. If a bill be found at quarter sessions, and for one reason or another (e.g., the disagreement of a jury) the case is sent forward to the assizes, there is an authority to the effect that, at assizes, a fresh bill must be found (*R. v. McCabe*, (1841) 2 C. & D. 235, Perrin, J.); but this decision, it is submitted, is not sound, and in a case tried at Waterford spring assizes (1909) the prisoner was tried before Palles, C.B., on a bill found by a grand jury at the preceding quarter sessions (*R. v. James Breen*, unreported).

If there is no other justice of the peace present, the county court judge may himself proceed with the criminal and other business of the quarter sessions. He is, by virtue of his office, chairman of the justices at quarter sessions (14 & 15 Vict. c. 57, s. 2); but his position gives him, strictly speaking, no greater right than any other justice (see remarks of Palles, C.B., in *R. (Kennedy) v. Antrim JJ.*, (1903) 2 I.R., at p. 675, 37 I.L.T.R. 130). In cities which have Recorders, the quarter sessions are held before the Recorder sitting as sole judge (3 & 4 Vict. c. 108, ss. 164, 168).

Binding over  
accused to  
come up for  
sentence.

The appellant was convicted at quarter sessions on an indictment for larceny, and was required to enter into a recognizance under the Probation of Offenders Act, 1907, to appear for sentence when called upon. The recognizance contained conditions, and for a breach of one of these the appellant was subsequently called upon to appear before the quarter sessions for sentence. It was contended on behalf of the appellant that s. 6 (5) of the Probation of Offenders Act, 1907, only applied to persons bound over to appear for conviction and sentence, and did not apply to a person bound over to appear for sentence only, and therefore that there was no jurisdiction to pass sentence upon the appellant. *Held*, that, apart from any statutory provisions, the quarter sessions had power to bind over the appellant to appear for sentence when called upon, and that that court had jurisdiction to pass sentence upon the appellant quite apart from the provisions of s. 6 (5) of the Act of 1907 (*R. v. Spratling*, (1910) 27 T.L.R. 31). "To bind a convicted prisoner over to appear for sentence when called upon is only to postpone sentence, and in the meantime release the prisoner on bail. This power has constantly been acted upon, and we see no reason to doubt that it exists; and

that the jurisdiction to pass sentence still remains in the court. We must not, however, be taken to decide that the court can postpone sentence *sine die* against the will of the prisoner" (*ib.*, per Pickford, J.; see also *Keen v. R.*, p. 9 n., *supra*).

A case may be reserved by the quarter sessions for the Court of Crown Cases Reserved (11 & 12 Vict. c. 78, s. 1).<sup>1</sup>

In each year the general quarter sessions of the peace (save for the city of Dublin and the county of Cork) shall be held as follows:—the Easter Sessions on any of the fourteen days next after March 25th; Summer Sessions on any day between the fourth day and the twelfth day next after the last day of Trinity Term, both days inclusive; the October Sessions on any of the fourteen days next after October 8th; the Hilary Sessions on any of the fourteen days next after December 26th (14 & 15 Vict. c. 57, s. 21). Special provision is made for the county of Cork by ss. 23, 24 of the same statute, and for the city of Dublin by 3 & 4 Vict. c. 108, s. 164.

The Clerkship of the Crown and Clerkship of the Peace were formerly distinct offices. The Clerk of the Peace held the same position towards the court of quarter sessions as the Clerk of the Crown held to the assizes. The two offices were united by 40 & 41 Vict. c. 56, s. 8, but the offices are still held separately by the officers who occupied the offices before the date of the passing of 40 & 41 Vict. c. 56.

The chief duties of the Clerk of the Crown and the Peace are:—

(1) At assizes and quarter sessions, the calling over of the panels, swearing of the juries, arraignment of the accused and receiving the verdict.

(2) Charge of the county records, which he has as representative of the Custos Rotulorum, and also of documents deposited pursuant to standing orders of Parliament (7 Wm. 4 and 1 Vict. c. 83, s. 8 & 9 Vict. c. 20, s. 9), Fishery Bye-Laws (5 & 6 Vict. c. 106, s. 92), and of Acts and documents deposited pursuant to the Lands Clauses and other Acts.

(3) Duties as clerk to chairman of quarter sessions and registrar of civil bill court, and in civil bill proceedings, including taking accounts in equity and other matters.

(4) Duties regarding licences to private asylums, and publican's licences.

(5) Duties as to jury lists, parliamentary registration and fines, forfeitures and recognizances.

(6) Registration of ejectment decrees.

<sup>1</sup> Applied to a conviction for being a habitual criminal, 8 Ed. 7, c. 59, s. 18 (*f*). As to stating case from a decision of quarter sessions upon appeal, see CASE STATED.



## CHAPTER III.

### PRELIMINARY INVESTIGATION OF INDICTABLE OFFENCES.

	PAGE		PAGE
Jurisdiction out of sessions, . . .	12	Remand, . . . . .	24
What is an indictable offence, . . .	12	Disposal of the prisoner, . . . . .	25
Place of preliminary investigation not a court, . . . . .	13	Decision must be majority decision, . .	26
Limits of jurisdiction, . . . . .	13	Effect of discharge of accused, . . .	27
Securing attendance of defendant, . .	17	Disposal of the informations, . . . .	28
Issue and contents of warrant, . .	17	Admitting to bail, . . . . .	29
Execution of warrant, . . . . .	18	Bail motions, . . . . .	31
Indictment of corporations, . . .	20	Warrant to arrest where indictment found, . . . . .	31
Habeas Corpus sometimes necessary, . . . . .	21	Indictable offence cannot be disposed of summarily, . . . . .	32
Securing attendance of witnesses, . .	21	Newspaper comment on pending charge, . . . . .	32
The hearing, . . . . .	21	Attending at witness's house to take depositions, . . . . .	32
Prisoner entitled to copy depositions, .	24		
Evidence to supplement deposition, . .	24		
Amendment, . . . . .	24		

Jurisdiction out of sessions.

THE jurisdiction of justices out of sessions may be classified as follows:—(1) the examination of persons charged with indictable offences, the taking of informations, and returning for trial or the refusal of informations and discharge of the person charged, with which alone this chapter is concerned; (2) the binding over to keep the peace and be of good behaviour, dealt with in a separate chapter (p. 33); (3) power to determine cases not within the Petty Sessions Act (see p. 41), and a very limited class of cases within that Act as to which, see p. 45; (4) miscellaneous powers and duties, such as visiting prisons, powers of arrest, in case of riot, &c. (dealt with in a separate chapter, p. 144).

What is an indictable offence.

Offences are divided into (a) treasons, (b) felonies, (c) misdemeanours. The distinction between felonies and misdemeanours is very ancient. The list of felonies at common law comprised the more serious offences, which in olden times were punishable by death; and to this list have been added certain felonies by statute. Some of the chief distinctions, for practical purposes, between felony and misdemeanour are:— 1, powers of arrest are wider in case of felony than misdemeanour;<sup>1</sup> (2) in felonies the prisoner has twenty peremptory challenges, in misdemeanours, only six; (3) more than one distinct felony cannot, subject to certain statutory exceptions, be joined in the same indictment, whereas in misdemeanour any number of charges may be made in the same indictment; (4) differences as to bail;<sup>2</sup> (5) a conviction of felony, with a sentence of imprisonment with hard labour, or imprisonment without hard labour, exceeding twelve months, works a forfeiture of any public office (33 & 34 Vict. c. 23, s. 2); (6) to compound a felony is itself a criminal offence; it is doubtful if compounding a misdemeanour is criminal (Russell, 7th ed., 580, *Dillon v. O'Brien*, (1887) 20 L.R.I. 317). All felonies are

<sup>1</sup> See p. 147.

<sup>2</sup> See p. 29.



punishable on indictment.<sup>1</sup> A misdemeanour is any offence less than a felony, and all such offences are punishable by indictment, unless where the statute otherwise declares, or makes the offence punishable merely in a summary manner.<sup>2</sup> The general rule is that where an Act of Parliament creates an offence and prescribes no remedy for it, the offence is an indictable misdemeanour (per Charles, J., in *R. v. Hall*, (1891) 1 Q.B. 767), which will be punishable either by fine, or by imprisonment without hard labour, or both, within the discretion of the court; and the offender may also be required to find sureties to keep the peace or be of good behaviour (Russell, 7th ed., 249).<sup>3</sup>

What is an indictable offence.

The steps in connection with the preliminary investigation of indictable offences outside of Dublin metropolitan police district (as to which see p. 319) are now regulated by the Petty Sessions Act, 1851, 14 & 15 Vict. c. 93. Such investigation usually takes place in open court and at petty sessions. But there is nothing whatever to compel a justice to hold such inquiry at petty sessions, and the statute expressly enacts that the place where the investigation of indictable offences is held is not to be deemed an open court, and gives the justice power to exclude the public (s. 9 (2)). Any one justice may conduct the inquiry.<sup>4</sup> The justices may meet privately in their chamber, when a crime of a serious character has been committed, to consider the proper course they should pursue; and an application for a writ of prohibition to prevent their doing so will not be granted (*R. v. Dublin JJ.*, (1875) I.R. 9 C.L. 85).

Place of preliminary investigation not a court.

Speaking generally, two matters must concur to give a justice jurisdiction: (a) the offence must be committed within the county (or borough) for which the justice is in commission; (b) the jurisdiction must be exercised within the county (or borough), so that both the justice and the offender must be within the county (or borough).<sup>5</sup>

Limits of jurisdiction.

A justice has jurisdiction throughout the entire county for which he is in commission<sup>6</sup> and not merely in the district for which he

<sup>1</sup> Some felonies are made punishable either by indictment or, at the option of the accused, summarily, e.g., petty larceny of property under five shillings in value (18 & 19 Vict. c. 126, ss. 1, 2).

<sup>2</sup> There are certain breaches of statute not punishable either by indictment or summarily. For instance, a breach of duty by an overseer within section 51 of the Parliamentary Registration Act, 1843, 6 & 7 Vict. c. 18, was held not to be punishable as an indictable misdemeanour, but to subject the offender to a fine by the revising barrister, or a right of action by the person aggrieved (*R. v. Hall*, (1891) 1 Q.B. 747). "It seems to be a good general ground that, wherever a statute prohibits a matter of public grievance to the liberties and securities of a subject, or commands a matter of public convenience, as the repairing of common streets of a town, an offender against such statute is punishable, not only at the suit of the party aggrieved, but also by way of indictment for this contempt of the statute, unless such method of proceeding do manifestly appear to be excluded by it. Where a statute makes a new offence which was no way prohibited by the common law, and appoints a peculiar manner of proceeding against the offender, as by commitment, or action of debt, or information, &c., without mentioning an indictment, it seems to be settled to this day that it would not maintain an indictment, because the mentioning the other methods of proceeding seems impliedly to exclude that of indictment" (Hawk., B. 2, c. 25, s. 4, referred to by Charles, J., in *R. v. Hall*, *supra*, at p. 753).

<sup>3</sup> In the CATALOGUE OF INDICTABLE OFFENCES each offence will be stated to be a felony, or misdemeanour, as the case may be. Save as provided by statute, there is no limitation of time to a criminal prosecution on indictment.

<sup>4</sup> But in doubtful cases of felony one justice alone should not act: see 9 Geo. 4, c. 54, s. 1, APPENDIX OF STATUTES.

<sup>5</sup> The above statement does not apply to ministerial, as distinguished from judicial, acts. Thus, it is laid down that recognizances and informations, voluntarily taken by magistrates out of their county, etc., are good (Paley, 8th ed., 20; *R. v. Stainforth*, (1847) 11 Q.B. 66).

<sup>6</sup> As to justices by virtue of the Local Government Act, see p. 74.

Limits of  
jurisdiction.

usually acts or is appointed; he can, therefore, while acting in one petty sessions district, commit for trial on a charge arising in another district (*R. v. Beckley*, (1887) 20 Q.B.D. 187).

The limits of a justice's jurisdiction, however, have been enlarged by various statutes. Thus, a justice has jurisdiction whenever information shall be given to him that any person has committed, or is suspected to have committed, any offence within the limits of jurisdiction of such justice, or that any person has committed, or is suspected to have committed, any offence out of the jurisdiction of the justice, either in Great Britain or Ireland, or the Channel Isles or Isle of Man, and that such person is residing, or being, or is suspected to reside, or be, within the limits of jurisdiction of such justice; or that any person has committed, or is suspected to have committed, any offence whatsoever on the high seas or in any creek, harbour, haven, or other place in which the Admiralty of England or Ireland have or claim to have jurisdiction,<sup>1</sup> or on land beyond the seas for which an indictment can be legally preferred in the United Kingdom of England and Ireland,<sup>2</sup> and such person is residing, or being, or is suspected to reside, or be, within the limits of the jurisdiction of such justice (Petty Sessions Act, 1851, s. 10).<sup>3</sup> As to proceeding against an offender in a foreign country, see the Extradition Acts, 1870 to 1906; and as to persons found in one part of His Majesty's dominions and accused of an offence in another part, see the Fugitive Offenders Act, 1881, 44 & 45 Vict. c. 69; both noted in the chapter, FUGITIVE CRIMINALS.

Moreover, a justice for any county may act as such in all matters arising within such county, although he may at the time happen to be in an adjoining county, provided he shall be also a justice for such adjoining county (Petty Sessions Act, 1851, s. 7 (1)). A justice for any county may in like manner act as such in all matters arising within such county, although he may at the time happen to be in any city, town, or place, being a county of itself, situated within or adjoining to such first-mentioned county, whether he shall be a justice of such city, town, or place, or not; but nothing herein contained shall extend to empower any justice for any county, not being also a justice for any such city, town, or place as aforesaid, or any person

<sup>1</sup> The Admiralty has criminal jurisdiction, exclusive or concurrent, in the following cases (Russell, 7th ed., 31, 32):—(1) in the case of piracy *jure gentium*, over all vessels and persons, of whatever nationality; (2) over all British ships, public or private, on the high seas outside the territorial waters of any state; (3) over all vessels, British or foreign, within British territorial waters, including all ports, havens, and rivers, below bridges where great ships go. British territorial waters mean the sea within a marine league of the coast, measured from low-water mark (41 & 42 Vict. c. 73, s. 7); (4) over all British vessels in foreign territorial waters. The beach between high- and low-water mark forms part of the adjoining county (*Embleton v. Brown*, (1860) 3 E. & E. 234).

<sup>2</sup> Apart from statute, there is no jurisdiction in an Irish court to take cognizance of any crime committed on land outside Ireland, whether by a British subject or an alien. By statute, jurisdiction has been given to try in England or Ireland the following offences, committed out of the United Kingdom:—Treason (33 Geo. 3, c. 45 (Ir.)); murder or manslaughter by a British subject on land out of the United Kingdom (24 & 25 Vict. c. 100, s. 9); offences against the Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90, ss. 16, 17); the Explosive Substances Act, 1883 (46 & 47 Vict. c. 3, s. 7); the Official Secrets Act, 1889 (52 & 53 Vict. c. 52, s. 6); the Commissioner of Oaths Act, 1889 (52 & 53 Vict. c. 10, s. 9); bigamy by British subject outside England and Ireland (24 & 25 Vict. c. 100, s. 57). See Russell, 7th ed., 27.

<sup>3</sup> This statute does not apply to prosecutions for offences concerning the excise, customs, stamps, taxes, post office, or the preservation of game (s. 42), or to Dublin, save so far as relates to the backing or execution of warrants (s. 41).

acting under him, to act, or intermeddle in any matters arising within any such city, town, or place (*ib.*, s. 7 (2)).<sup>1</sup> Limits of jurisdiction.

Whenever any townland belonging to one county shall be included in any petty sessions district of the adjoining county under the provisions of this Act, any justice having jurisdiction in such petty sessions district shall have the like jurisdiction in such townland, although he may not be a justice of the county to which such townland belongs; and any committal to any gaol or bridewell of such last-mentioned county, or any other magisterial act done by any such justice, in any case in which the offence or cause of complaint shall have arisen in such townland, shall have the like force and effect as if such justice was also a justice of such last-mentioned county. And all constables or other persons apprehending any person whom they lawfully may and ought to apprehend by virtue of their office or otherwise in any such county or place as aforesaid, may lawfully convey such person before any justice for such county or place whilst such justice shall be in such adjoining county or place as aforesaid, and such constables or other persons are hereby authorized and required in all such cases to act in all things as if such justice were within the county or place for which he shall so act (Petty Sessions Act, 1851, s. 7 (4)).

The following are additional statutes dealing with the limits of jurisdiction<sup>2</sup>:—

The Whiteboy Act, 15 & 16 Geo. 3, c. 21, s. 24, provides that if any justice of the county where any offence is committed happens to be in another county, he, or any justice of such foreign county, may, upon proper information, issue his or their warrant to arrest any person offending against the Act; and the person arrested shall be brought before such justice, who upon examination may commit, bail, or discharge him, as the case shall require, and shall return the examinations and recognizances to the next assizes for the county in which such offence is alleged to have been committed. *Whiteboy (Ir.) Act, 1776.*

The 50 Geo. 3, c. 102, enacting penalties on persons administering or taking oaths for seditious purposes, empowers (s. 8) all magistrates of the adjacent counties at large, respectively, to execute the Act within the several counties of cities or counties of towns in Ireland, except the county of the city of Dublin; and authorizes the magistrates of such counties of cities and counties of towns to execute the Act in the adjacent counties at large. *Unlawful Oaths (Ir.) Act, 1810.*

By 3 & 4 Vict. c. 108, s. 173, the justices of the peace for the county in which any borough is situated to which a separate court of sessions of the peace has not been assigned, shall exercise the jurisdiction of justices of the peace in and for such borough as fully as for the said county; and no part of any borough, in and for which a separate court of sessions of the peace is holden, shall be within the jurisdiction of the justices of any county from which such borough, before the passing of that Act, was exempt. By 5 & 6 Vict. c. 46, s. 4, justices of a county at large to which any part or district of any county of a city or county of a town shall have been added, shall exercise the jurisdiction of justices of the peace in and for such part as fully as for such county at large. *Municipal Corporation (Ir.) Act, 1840.*

Where any felony or misdemeanour shall be committed on the boundary or boundaries of two or more counties, or within the distance of five hundred yards of any such boundary or boundaries, or shall be begun in one county and completed in another, every such felony or misdemeanour may be dealt with, inquired of, tried, determined, and punished in any of the said counties, in the *Justices (Ir.) Act, 1842.*

<sup>1</sup> The inspector-general, or either of the deputy inspectors-general of constabulary, being a justice of any county, may act in all matters arising within such county, wherever he may happen to be at the time (s. 7 (3)).

<sup>2</sup> As to Excise offences, see SUMMARY CASES NOT WITHIN PETTY SESSIONS ACT, p. 76; as to offences as to game, fisheries, and post office, see CATALOGUE OF SUMMARY OFFENCES, "GAME," "FISHERIES," and "POST OFFICE."



Limits of  
jurisdiction.  
*Offences on  
journey or  
voyage.*

same manner as if it had been actually and wholly committed therein 9 Geo. 4, c. 54, s. 26).

Where any felony or misdemeanour shall be committed on any person, or on or in respect of any property, in or upon any coach, waggon, cart, or other carriage whatever, employed in any journey, or shall be committed on any person, or on or in respect of any property, on board any vessel whatever, employed in any voyage or journey upon any navigable river, canal, or inland navigation, such felony or misdemeanour may be dealt with, inquired of, tried, determined, and punished in any county through any part whereof such coach, waggon, cart, carriage, or vessel shall have passed in the course of the journey or voyage during which such felony or misdemeanour shall have been committed, in the same manner as if it had been actually committed in such county; and in all cases where the side, centre, or other part of any highway, or the side, bank, centre, or other part of any such river, canal, or navigation shall constitute the boundary of any two counties, such felony or misdemeanour may be dealt with, inquired of, tried, determined, and punished in either of such counties through or adjoining to or by the boundary of any part whereof such coach, cart, waggon, carriage, or vessel shall have passed in the course of the journey or voyage during which such felony or misdemeanour shall have been committed in the same manner as if it had been actually committed in such county (s. 27).

*Merchant  
Shipping Act,  
1894.*

For the purpose of giving jurisdiction under this Act, every offence shall be deemed to have been committed, and every cause of complaint to have arisen, either in the place in which the same actually was committed or arose, or in any place in which the offender or person complained against may be (Merchant Shipping Act, 1894, 57 & 58 Vict. c. 60, s. 684).

Where any district within which any court, justice of the peace, or other magistrate has jurisdiction either under this Act or under any other Act or at common law for any purpose whatever is situate on the coast of any sea, or abutting on or projecting into any bay, channel, lake, river, or other navigable water, every such court, justice, or magistrate shall have jurisdiction over any vessel being on, or lying or passing off, that coast, or being in or near that bay, channel, lake, river, or navigable water, and over all persons on board that vessel or for the time being belonging thereto, in the same manner as if the vessel or person were within the limits of the original jurisdiction of the court, justice, or magistrate. The jurisdiction under this section shall be in addition to and not in derogation of any jurisdiction or power of a court under the Summary Jurisdiction Acts<sup>1</sup> Merchant Shipping Act, 1894, 57 & 58 Vict. c. 60, s. 685.

Where any person, being a British subject, is charged with having committed any offence on board any British ship on the high seas or in any foreign port or harbour or on board any foreign ship to which he does not belong, or, not being a British subject, is charged with having committed any offence on board any British ship on the high seas, and that person is found within the jurisdiction of any court in His Majesty's dominions, which would have had cognizance of the offence if it had been committed on board a British ship within the limits of its ordinary jurisdiction, that court shall have jurisdiction to try the offence as if it had been so committed (Merchant Shipping Act, 1894, 57 & 58 Vict. c. 60, s. 686).<sup>2</sup>

All offences against property or person committed in or at any place either ashore or afloat out of His Majesty's dominions by any master, seaman, or apprentice who at the time when the offence is committed is, or within three months previously has been, employed in any British ship shall be deemed to be offences of the same nature respectively, and be liable to the same punishments respectively, and be inquired of, heard, tried, determined, and adjudged in the same manner and by the same courts and in the same places as if those offences had been committed within the jurisdiction of the Admiralty of England (s. 687).

*Criminal Law  
Consolidation  
Acts, 1861.*

All indictable offences mentioned in this Act which shall be committed within the jurisdiction of the Admiralty of England or Ireland shall be deemed to be offences of the same nature and liable to the same punishments as if they had been committed upon the land in England or Ireland, and may be dealt with,

<sup>1</sup> This term means, as regards Ireland, the Summary Jurisdiction (Ireland) Acts, 52 & 53 Vict. c. 63 (Interpretation Act, 1889, s. 13 (9)), as to the meaning of which latter term, see p. 41.

<sup>2</sup> Sections 684, 685, and 686 of the Act are applied by the Wireless Telegraphy Act, 1904 (4 Ed. 7, c. 24, s. 1 (5)), and by the Aliens Act, 1905 (5 Ed. 7, c. 13, s. 7 (2)), to certain jurisdiction given by those Acts respectively.



inquired of, tried, and determined in any county or place in England or Ireland in which the offender shall be apprehended or be in custody, in the same manner in all respects as if they had been actually committed in that county or place; and in any indictment for any such offence, or for being an accessory to such an offence, the venue in the margin shall be the same as if the offence had been committed in such county or place, and the offence shall be averred to have been committed "on the high seas" (Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 115; Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 72; Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 50; Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), s. 36; Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 68). Limits of jurisdiction

If any person without lawful excuse receives or has in his possession any property stolen outside the United Kingdom, knowing such property to have been stolen, he shall be liable to be indicted in any county or place in which he has, or has had, the property (Larceny Act, 1896 (59 & 60 Vict. c. 52), s. 1). Larceny Act, 1896.

Generally speaking, any member of the public may prosecute (see p. 43, where the question is discussed). The first step is to secure the attendance of the party charged. The justice may, in the case of an indictable offence, either issue a summons, or, if an information has been made in writing and on oath that the party has committed the offence, may issue a warrant for arrest (Petty Sessions Act, s. 11). It is submitted that the expression "indictable offence" comprises offences which may be tried either summarily or by indictment as well as offences which can be tried only by indictment. Where a summons will be equally effectual, a warrant should not be issued in the first instance, unless when the offence charged is of a very serious nature (*O'Brien v. Brabner*, (1885) 49 J.P. 227). The High Court refused to interfere where a magistrate, in the reasonable and *bona fide* exercise of his discretion, refused to issue a summons on the ground that the information did not disclose an indictable offence (*Ex parte Lewis*, (1888) 21 Q.B.D. 191). If a warrant is to be issued, an information in writing and on oath must previously be made (s. 10 (2)); but if it is intended that a summons only is to issue, the information or complaint may be made either with or without oath, and either in writing or not, according as the justice shall see fit (s. 10 (1)). The justice should himself hear the complaint before signing the summons (*Dixon v. Wells*, (1890) 25 Q.B.D. 249, and see p. 46). Though a summons only has been issued in the first instance, the justice may, before the time limited in the summons for the defendant's appearance has expired, the information being in writing and on oath, issue a warrant<sup>1</sup> (s. 11 (1)). If the information is taken upon oath and in writing, the justice may bind the informant by recognizance to appear at the court or place where the defendant is to be tried to prosecute or give evidence (s. 10 (3)). The written information should clearly charge an indictable offence, as otherwise the issuing of the warrant will be an act done without jurisdiction, and will render the justice signing it liable to an action, even though parol evidence may have been given before the justice of facts constituting an indictable offence (*Lawrenson v. Hill*, (1860) 10 I.C.L.R. 177, *McDonald v. Bulwer*, (1862) 13 I.C.L.R. 549; see also *Cave v. Mountain*, (1840) 1 M. and G. 257). But if the matters deposed to in the information disclose an indictable offence, the justice is under no liability should the information be false in fact. If there is any doubt as to

Securing attendance of defendant.

Issue and contents of warrant.

<sup>1</sup> As to the power of the High Court to order a justice to withdraw, and as to the power of a justice to himself withdraw, a warrant improperly issued by such justice, see pp. 70, 71.

Securing  
attendance of  
defendant.  
Issue and  
contents of  
warrant.

whether the facts complained of constitute an indictable offence, it is safer for the justice to issue a summons merely. A police officer is under no liability for executing the warrant if it is good upon its face and within the jurisdiction of the justice issuing it (Russell, 7th ed., 738). The warrant should state that there has been an information in writing and on oath (*Caudle v. Seymour*, (1841) 1 Q.B. 889). The warrant is bad if the name of the person to be taken is omitted in the body thereof, though stated in the heading, (*Hodgens v. Poe*, (1866) 17 I.C.L.R. 383, I.R. 2 C.L. 52). The Christian name as well as the surname should appear (*R. v. Hood*, (1830) 1 M.C.C.R. 281. Where R. H. was arrested under a warrant, intended for R. H., but containing the name J. H., the arrest was held unlawful (*Hoye v. Bush*, (1840) 1 M. & G. 775, see *Kelly v. Lawrence*, (1864) 3 H. & C. 1). If the name is unknown, the offender may be referred to by description as well as the circumstances will permit, the warrant stating that the name is unknown (4 Chit., C.L. 10a.). But even if the warrant is void, the justice has jurisdiction to deal with the charge when the offender is brought before him under it (*R. v. Hughes*, (1879) 4 Q.B.D. 614). The warrant must be signed by the justice, cannot be signed in blank (Petty Sessions Act, 1851, s. 11, and need not be sealed /s. 36. Material alterations in the warrant by any person other than the justice, and after it has been signed by him, invalidate it (1 Hale, 577; see *Housin v. Barrow*, (1794) 6 T.R. 122). A warrant remains in force until it is fully executed, unless, as in the case of a warrant under s. 380 of the Merchant Shipping Act, 1894, it is expressly provided that the warrant is to be in force only for a limited period (Paley, 8th ed., 371), provided the justice who signed it so long live (per Lord Kenyon, C.J., *Dickenson v. Brown*, (1795) 1 Peak N.P.C. 307).

In England a warrant is not avoided by reason of the justice who signed the same dying, or ceasing to hold office (42 & 43 Vict. c. 49, s. 37), but there is no corresponding enactment in Ireland.

Execution of  
warrant.

Such warrant may be issued or executed on Sunday<sup>1</sup> Petty Sessions Act, 1851, s. 11), and may be executed either by day or night (*Davis v. Russell*, (1829) 5 Bing. 354). A constable may arrest a person on a warrant wherever he may be met with, and it would appear that for the purpose of effecting the arrest the constable may break open doors of a house, even when the house is the house of a third party; but before doing so, he should inform those in the house of the cause of his coming and demand admittance (2 Hawk, c. 14, s. 1), at all events in case of a misdemeanour (*Launock v. Brown*, 1819, 2 B. & Ald. 592). Upon an attachment for contempt in non-compliance with an order for the delivery of deeds, it was held that, the contempt being of a criminal nature, a sheriff was entitled to break open the doors of defendant's house to arrest the defendant (*Harvey v. Harvey*, (1884) 26 C.D. 644). When an officer has lawfully broken an outer door, he may also break any inner door where necessary to effect the arrest (1 Hale 458, *Lee v. Gansel*, (1774) 1 Cowp. 1). If a constable breaks into the house of a third person, to effect the arrest of an offender upon a warrant, he will be a trespasser if the offender is not within the house (2 Hale 117, *Johnson v. Leigh*, (1815) 6 Taunt 246). A constable should not handcuff a person arrested on a suspicion of felony, unless he has attempted to escape, or it is a necessary

<sup>1</sup> As to what acts can be done by justices on Sunday, see CATALOGUE OF SUMMARY OFFENCES, "SUNDAY."



precaution to prevent him from escaping (*Wright v. Court*, (1825) 4 B. & C. 596); and it has been said that a person who is handcuffed without necessity has a right of action (*R. v. Taylor*, (1895) 59 J.P. 393, per Lord Russell of Killowen).

The warrant is addressed to the district inspector or head constable of the petty sessions district (Petty Sessions Act, s. 25); and he or any other constable to be appointed by him may execute same where the offender is within his district (s. 26).<sup>1</sup> Provisions are made for the execution of the warrant in cases where the offender is not within the district inspector's district, but is within the same county (s. 26 (2)),<sup>1</sup> and for certifying the warrant for execution out of the county (s. 26 (3)).<sup>1</sup> In case of emergency the warrant may be addressed to any constable of the county, who may execute it within the county, or in case of fresh pursuit of the offender, at any place in the next adjoining county (s. 26).<sup>1</sup> Warrants may also be backed or certified for execution in Dublin, in England, Scotland, Isle of Man, or Channel Islands, in manner set forth in sections 27 & 28 (see also supplementary provisions in 31 & 32 Vict. c. 107, s. 4, as to the Channel Islands). A warrant which requires backing, and is not properly backed for execution, cannot legally be executed (see *R. v. Crompton*, (1880) 5 Q.B.D. 341).

The constable must inform the person whom he is about to arrest under a warrant of the substance of it (*Curtis's case*, (1756) Fost 137). It seems doubtful if he is obliged to produce the warrant (2 Hale 116; 2 Bac. Abr. 172, *Hall v. Roche*, (1799) 8 T.R. 187), though it is "safe and advisable" that he should do so if required (Nun & Walsh, 2nd ed., p. 202); but a constable need not hand over the warrant, and may retake it by force from the party arrested should such party have got possession and refuse to give it up (*R. v. Mitton*, (1827) 3 C. & P. 31, see *Gowing v. Walsh*, (1859) 10 I.C.L.R. 431).

In the case of an arrest for any offence less than a felony, the officer should have the warrant in his possession at the time of the arrest (*Galliard v. Laxton*, (1862) 9 Cox. 127, *R. v. Chapman*, (1871) 12 Cox. 4); and otherwise the arrest is illegal, even though the party arrested should not demand to see the warrant (*Codd v. Cabe*, (1876) 1 Ex. D. 352). In the case of a felony,<sup>2</sup> inasmuch as a constable has at common law power to arrest on suspicion of a felony, an officer who knows of the issue of the warrant is justified in effecting the arrest (*Creagh v. Gamble*, (1888) 24 L.R.I. 458). In all cases where persons having authority to arrest or imprison and using the proper means for that purpose are resisted in so doing, they may repel force with force, and need not give back, and if the party making resistance is unavoidably killed in the struggle this homicide is justifiable (Russell, 7th ed., 813). Where a felon flying from justice is killed by an officer of justice in pursuit, the homicide is justifiable if the felon could not be otherwise overtaken; but if he may be taken without such severity, it is at least manslaughter in him who kills him, and the jury ought to inquire whether it were done of necessity or not. But where a party is accused of misdemeanour only, and flies from the arrest, the officer must not kill him, though there is a warrant to apprehend him and though he cannot otherwise be overtaken, and if he does kill him it will in general be murder, but it

<sup>1</sup> See statute, APPENDIX OF STATUTES.

<sup>2</sup> See p. 147.

Securing  
attendance of  
defendant.

Execution of  
Warrant.

may amount to manslaughter if it appears that death was not intended (*ib.* 763; see also judgment of Bushe, C.J., in *R. v. Finnerty*, (1830) 1 Cr. & D.C.C. 166 n.). Any person who resists or wilfully obstructs a peace officer<sup>1</sup> in executing a warrant is guilty of a misdemeanour (1 Chit. Cri. L. 61), apparently not triable summarily (25 & 26 Vict. c. 50, s. 10; *R. v. Kilkenny JJ.*, (1871) I.R. 5 C.L. 394). If the warrant is bad, or the arrest otherwise unlawful, the party will be justified in resisting arrest (Russell, 7th ed., 738).

The constable has a right in every case of arrest, whether for felony or misdemeanour, to seize and retain property or documents found in the possession of the accused which will form material evidence (*Dillon v. O'Brien*, (1887) 20 L.R.I. 300). A constable should not take property not in any way connected with the offence charged (*R. v. O'Donnell*, (1835) 7 C. & P. 138; *R. v. Kinsey*, (1836) 7 C. & P. 447; *R. v. Bass*, (1849) 2 C. & K. 822); and orders have sometimes been made, before trial, directing that property found on a prisoner be restored or made available for him (*R. v. Barnett*, (1829) 3 C. & P. 600, *R. v. Rooney*, (1836) 7 C. & P. 515; but see *R. v. Pierce*, (1852) 6 Cox C.C. 117). If the constable is unable to effect the arrest under the warrant, he is to return same to the justice issuing it with a certificate of the reason why it has not been executed, and the justice may examine him upon oath touching the non-execution of the warrant, and reissue it, or other warrants for the same purpose from time to time (Petty Sessions Act, s. 33). The only right of searching the person of a prisoner seems to be the implied right to search for weapons, &c., where the doing so is reasonable for the protection both of the prisoner and of others, having regard to the nature of the prisoner's conduct and language (*Leigh v. Cole*, (1853) 6 Cox 332). If a justice makes an order directing a medical examination to be made of the person of a prisoner, both he and the party executing the order will, unless the examination is made with the consent of the person examined, be guilty of assault (*R. v. Boulton*, (1871) 12 Cox 87; *Agnew v. Jobson*, (1877) 13 Cox 625).

Indictment of  
corporation.

A corporation can be indicted at common law,<sup>2</sup> both for non-feasance (*R. v. Mayor, &c., of Liverpool*, (1802) 3 East 86, and *R. v. Mayor, &c., of Stratford-on-Avon*, (1811) 14 East 348, breaches of statutory duty to repair highways; *R. v. Birmingham & Gloucester Ry. Co.*, (1842) 3 Q.B. 223, breach of an order directing accommodation works to be built) and for misfeasance (*R. v. Gt. Northern of England Ry. Co.*, (1846) 9 Q.B. 315, nuisance on the highway).<sup>3</sup> The Petty Sessions Act, 1851, s. 14, contemplates that the preliminary investigation of an indictable offence shall take place in the physical presence of the accused, and, as this is impossible in the case of a corporation, the opinion is expressed in Lord Halsbury's "Laws of England" (vol. ix., p. 313, n. (g)) that the proper course in a case where a corporation is charged with an indictable offence is to send up a bill to the grand jury in the first instance. It is, however, submitted that in cases in which the defendant has the option to be tried either summarily or by indictment (e.g., under the Merchandise Marks Act), a summons should be issued in the first instance. As to

<sup>1</sup> Refusing to aid a constable is a misdemeanour at common law (see *R. v. Sherlock*, (1866) L.R. 1 C.C.R. 20).

<sup>2</sup> As to the provisions of the Interpretation Act, 1889, see p. 83.

<sup>3</sup> See also *R. v. Produce Brokers Co., Ltd.*, (1910) 45 L.J. 288.



service of such summons, and procedure against a corporation in respect of summary offences, see p. 48. As a corporation cannot appear in person, and at assizes and quarter sessions appearance by attorney is not allowed, an indictment against a corporation must be removed into the King's Bench by writ of certiorari, when the appearance will be compelled, if necessary, by appropriate proceedings (formerly by distress infinite, or by attachment in the nature of a *pone*, Grant on Corporations, 284).<sup>1</sup>

If the party against whom a warrant is to be executed is already in prison, resort must be had to a writ of habeas corpus, under which he will be brought up from day to day to appear on the investigation of the charge (*Ex parte Griffiths*, (1822) 5 B. & Ald. 730).

*Habeas corpus*  
sometimes  
necessary.

The power of justices to enforce the attendance of witnesses is limited, in case of indictable offences, to witnesses for the prosecution (Petty Sessions Act, 1851, s. 13), and apparently a prisoner has no strict right to examine witnesses on his behalf (see p. 23, *post*). The provisions as to securing the attendance of witnesses by summons are the same as in the case of summary offences (as to which see p. 53), except that in the case of an indictable offence, where the justice is satisfied by information in writing and on oath that it is probable the witness will not attend without being compelled to do so, he may issue a warrant for the witness in the first instance (s. 13).<sup>2</sup> A writ of habeas corpus *ad testificandum* is required where the witness is in custody. The witness may be required to produce documents (s. 13 (1)). A justice has power under section 7 of the Bankers' Books Evidence Act, 1879, to make an order for the prosecutor to inspect and take copies of entries in the books of a bank at which the defendant keeps an account (*R. v. Kinghorn*, (1908) 2 K.B. 949).

Securing  
attendance of  
witnesses.

Where a statute (e.g., Merchandise Marks Act, 1887, s. 2 (6)) directs that on the hearing of a charge the defendant shall be informed of his right to be tried on indictment, a summary conviction, even on a plea of guilty, is bad if the defendant is not so informed (*R. v. Cockshott*, (1898) 1 Q.B. 582).

The hearing.

When the accused person is brought before the justice, the deposition<sup>3</sup> of each witness shall be taken in writing and on oath in presence of the accused, who shall be at liberty to cross-examine, and

<sup>1</sup> The distress infinite was part of the procedure on a *distringas*, which issued to the sheriff, commanding him to distrain the land, goods, and chattels of the corporation, so that they might not possess them till the court ordered to the contrary. On the return of the writ without obedience, an *alias distringas* issued, and then a *pluries distringas*, after which a writ of sequestration might be resorted to (Grant, 286). The *pone* seems to have been a writ attaching the goods by way of pledge, *per vadium* (Bouvier's Law Dictionary). As to contempt of court by a corporation, see p. 32.

<sup>2</sup> As "any" warrant may be backed for execution to any place in Ireland, or to England, Scotland, the Channel Isles, or the Isle of Man (Petty Sessions Act, 1851, s. 27), it would seem that, in indictable offences, the attendance of a witness can be secured under a warrant, though the witness lives out of the jurisdiction of the justice issuing the warrant. The attendance of such witness can also be secured by subpoena issuing out of the Crown Office, disobedience to which is punishable by attachment (*R. v. Greenaway*, (1845) 7 Q.B. 126). The issue of a Crown office subpoena is the course commonly adopted. Three names may be inserted in one subpoena. A copy should be made and delivered personally to each witness, at the same time showing him the original (Archbold, 24th ed., p. 478, and cases there cited). As to the difficulty, in summary cases, of enforcing the attendance of witnesses residing out of the county, see p. 53.

<sup>3</sup> The term "information" is applied to the statement grounding the charge, taken in the absence of the accused; the term "deposition" means each written and sworn statement taken at the inquiry in the presence of the accused. The deposition should be taken as nearly as possible in the words of the witness (*Cohen v. Morgan*, (1825) 6 D. & R. 8).

The hearing.

such deposition shall be read over to and signed by the witness and by the justice or one of the justices, who shall take the same (Petty Sessions Act, s. 14). It is submitted that the deposition of each witness must be signed by the justice<sup>1</sup> (see *R. v. London Corporation*, (1844) 5 Q.B. 555; *R. v. Johnson*, (1847) 2 C. & K. 354). If a witness refuse to be examined, the accused may be remanded for a period not exceeding eight clear days, and the witness may be committed from time to time, so that the entire amount of his imprisonment shall not exceed one month (s. 13 (5)). Witnesses may be bound over by recognizance to appear at the trial and give evidence<sup>2</sup> (s. 13 (6)). The deposition of a witness who dies before the trial is admissible in evidence at the trial (s. 14 (1)); but this, it is submitted, applies only to witnesses examined on behalf of the prosecution, when the Crown desire to put in the deposition at the trial.<sup>3</sup> The deposition should be taken in the presence of the accused, so that he may have an opportunity of cross-examining the witnesses. It is irregular for any part of the deposition to be taken in the absence of the justice and prisoner, although they be subsequently read over to the witness in presence of the justice and prisoner (*R. v. Christopher*, (1850) 4 Cox 76; *R. v. Watts*, (1863) 9 Cox 395). A police sergeant took a statement from a dying man, which he subsequently dictated out of a note-book to the petty sessions clerk, who wrote it down, and then went to the residence of the dying man and read it out for him in the presence of the accused, a justice and the police, and the witness said, "every word is true," and signed the deposition, the accused exercising their rights of cross-examination. The witness having died, Andrews, J., rejected the deposition<sup>4</sup> (*R. v. Healy*, (1901) 2 N.I.J.R. 73). One magistrate should not take up an inquiry commenced before another<sup>5</sup> (*In re Guerin*, (1888) 16 Cox 596). If a justice arrives late, and it is wished he should take part in the hearing, the witness should be resworn and the evidence given afresh. But where a magistrate fell ill, and in consequence the hearing had to be recommenced before another magistrate, the King's Bench Division refused to interfere with the discretion of the second magistrate, who proposed to allow counsel for the prosecution to recall some of the witnesses at the first hearing, reswear them, read their depositions already taken, directing them to correct the evidence if and where it was inaccurate, and to ask them any additional questions that might be thought advisable, and then to tender the witnesses for cross-examination (*Ex parte Bottomley*, (1909) 2 K.B. 14). The course commonly adopted of having the information read aloud to the witness, and then a new deposition

<sup>1</sup> In England it has been held sufficient, on the construction of 11 & 12 Vict. c. 42. if a number of depositions are fastened together, and the justice signs at the end of the last of the series, but this decision turns upon Form M in the schedule to 11 & 12 Vict. c. 42, "the above depositions of C. D. and E. F. were taken and sworn before me," &c. (*R. v. Parker*, (1870). L. R., 1 C. C. R. 225). An earlier decision (*R. v. Richards*, (1866) 4 F. and F. 860) to the contrary effect was given without the form of the schedule having been brought to the notice of Cockburn, C.J., who decided both cases (*per* Cockburn, C.J., at p. 227 of *R. v. Parker*, *supra*).

<sup>2</sup> But cannot, it is submitted, be compelled to find sureties; see notes to s. 13 (6), APPENDIX OF STATUTES.

<sup>3</sup> See also p. 24. In England, the deposition of a witness who has died may be put in evidence at the trial on behalf of, as well as against, the accused; see 30 & 31 Vict. c. 35, s. 6.

<sup>4</sup> See further EVIDENCE, p. 288.

<sup>5</sup> Or if he does so, should take the depositions anew.



taken verifying its truth, and amplifying or correcting it where necessary, and identifying the accused, is certainly not illegal, and is, as a general rule, free from objection. The only possible ground of objection seems to be that the reading of the information is, in effect, putting a long leading question; and if an application is made on behalf of the prisoner that the evidence should be taken entirely *de novo*, it would be as well to comply with the request, as the expenditure of a little time is of small concern when compared with the necessity of having the investigation free from any suspicion of unfairness. When the examination on the part of the prosecution shall have been completed, the justice or one of the justices shall read or cause to be read to the accused the several depositions, and then take down in writing the statement of the accused, having first cautioned him that he is not obliged to say anything unless he desires to do so, but that whatever he does say will be taken down in writing and may be given in evidence against him on his trial, and whatever statement the accused shall then make shall be taken down and read over to him and signed by the justice, and may be given in evidence against the prisoner on his trial (s. 14 (2)). If the accused voluntarily interposes a statement during the hearing, it should be taken down, and, if so taken down, is admissible in evidence at the trial (*R. v. Weller*, (1846) 2 C. & K. 224; *R. v. Stripp*, (1850) Dears, 648); but, if not so taken down, it is not admissible (*R. v. Weller*, *supra*). A statement made by the accused in answer to a question put to him by a justice, without previous caution, is not admissible (*R. v. Pettit*, (1850) 4 Cox 164.<sup>1</sup> The accused has an opportunity if he so desires of cross-examining each witness, either by himself or by his solicitor or counsel (see s. 9 2)). The accused is, however, not entitled as of right to have the case adjourned so as to enable him to have the benefit of professional assistance, even though he has had no previous opportunity of procuring it (*R. v. Biggins*, (1862) 5 L.T. (N S) 605). There is no absolute obligation on the justices to take the depositions of any witness whom the accused may tender;<sup>2</sup> but the justices should certainly examine, and take the depositions of, any witness whom the accused may wish to examine. In his charge to the Grand Jury of Somersetshire, at the spring assizes in 1849, Lord Denman, C.J., said: "In all cases in which prisoners charged with felony have witnesses, and those witnesses are in attendance at the time of the examination before the magistrate, I should recommend that the magistrate should hear the evidence of such witnesses as the prisoner, on being asked, wishes to be examined in his defence. If such witnesses merely explain what has been proved in support of the charge, they will actually have made out a defence for the accused, and there would of course be no necessity for any further proceedings; but if the witnesses so called contradict those for the prosecution in material points, then the case would properly be sent to a jury to ascertain the truth of the statements of each party; and the depositions of the prisoner's witnesses, being taken and signed by them,

<sup>1</sup> See further EVIDENCE, p. 275.

<sup>2</sup> The justices are bound to admit evidence for the defence in charges under the Newspaper Libel and Registration Act, 1881, 44 & 45 Vict. c. 60, s. 4, and under the Debtors Act, 1872, 35 & 36 Vict. c. 57, s. 18. In England, in all indictable cases, the accused is entitled as of right to examine his witnesses (Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35), s. 6).

The hearing.

should be transmitted, together with the depositions in support of the charge" (2 C. & K. 845).<sup>1</sup> When these words were spoken, justices in England, as well as justices in Ireland, were under no legal obligation to hear evidence for the defence when taking depositions; and it is submitted that these words exactly describe the course that justices in Ireland should adopt. The same considerations that apply to charges of felony also apply to charges of misdemeanour. The suggestion is made in Nun and Walsh's "Justice of the Peace" (2nd ed., p. 359), that the production of the defendant's witnesses might also lead to the perpetuation of testimony should any of the accused's witnesses die before the trial, and the practice is to admit such depositions in evidence.<sup>2</sup> But it must not be forgotten that the inquiry is not a trial of the issue in any sense; its object is merely to ascertain if a *prima facie* case is made out, and to commit or hold to bail the accused, should the facts deposed to warrant an investigation before a jury. A justice, on the hearing of an indictable offence, has no business to weigh the evidence for or against a prisoner, for that is the function of the jury (see *per* Cockburn, C.J., in *R. v. Carden*, (1879) 5 Q.B.D. 6).

A person who is in court, though not summoned, may be called and compelled to give evidence (Petty Sessions Act, s. 13 (5); and see *R. v. Sadler*, (1830) 4 C. & P. 218, *R. v. Flavell*, (1884) 14 Q.B.D. 364). If a witness refuse to sign his deposition, apparently the justice may commit him for contempt, but the non-signing will not render the deposition inadmissible or nugatory (*R. v. Flemming*, (1799) 2 Leach C.C. 854). Where a witness was a marksman, and by mistake the clerk of petty sessions had attached his name instead of the mark; it was held, the witness having died, that the deposition was admissible (*R. v. Mullen*, (1862) 7 Ir. Jur. N.S. 304).

Prisoner entitled to copy depositions.

The accused is entitled to a copy of the depositions or copies of depositions taken at a coroner's inquest in case of murder or manslaughter, on payment of a reasonable sum, not exceeding three halfpence per folio of ninety words (Petty Sessions Act, 1851, s. 14).<sup>3</sup>

Evidence to supplement a deposition.

If a deposition is regularly taken, it has been held, that evidence to prove that it does not contain everything that it could and should contain is not admissible (*R. v. Weller*, 1846) 2 C. & K. 223; but see, *contra*, *R. v. Moore*, (1869) 20 L.T. 987). See, further, EVIDENCE, p. 289.

Amendment.

As to variance between information, &c., and the evidence, see p. 93, *et seq.*

Remanding.

If from the absence of any witness, or for any other reasonable cause, it shall become necessary or advisable to defer the examination or further examination of the witnesses for any time, the justice may either admit the accused to bail or by warrant remand him to jail for such time as he shall deem expedient, not exceeding eight clear days.<sup>4</sup> But any such justice may order the accused to be

<sup>1</sup> See also *R. v. Nicholson*, (1909) 73 J.P. 347; *R. v. Hendry*, (1909) 25 T.L.R. 635; *R. v. M'Nair*, (1909) 25 T.L.R. 228.

<sup>2</sup> In England, the depositions of defendant's witnesses dying before the trial, are admissible by virtue of 30 & 31 Vict. c. 35, s. 6.

<sup>3</sup> A stranger to the proceedings (even if a party injured by the happening of the facts under the investigation) is not entitled to a copy of the depositions. Apart from statute, the accused had no right to a copy of the depositions (2 Burns (Chit.), 122).

<sup>4</sup> In reckoning the eight days, the day of going to prison and leaving it are included (Opinion of Home Office, cited "Stone's Justices' Manual," 42nd ed., p. 8). It is submitted that the limit of eight days does not apply where the accused is admitted to bail, though in England the matter seems to be very doubtful (*ib.*, p. 8; Douglas, 9th ed., 357; *R. v. Southampton JJ.*, (1907) 71 J.P. 332).



brought before him or some other justice of the county at any time before the expiration of the period for which he shall have been remanded (Petty Sessions Act, s. 14). If the justices remand, without bail, it seems that the King's Bench Division usually decline to interfere (Short & Mellor, 2nd ed., 280), and it has even been said that in such cases the discretion of justices is absolute, and cannot be reviewed (Oke's Mag. Synopsis, 13th ed., 979). But in *R. v. Spilsbury*. (1898) 2 Q.B. 615, the power of the King's Bench Division to admit to bail any person in custody, whether on remand or otherwise, for any offence whatsoever, was expressly affirmed, though in that case the Court, in view of the terms of the Fugitive Offenders Act, 1881, under which the prisoner was charged, did not grant bail. In *R. v. Bennett*, (1870) L.T. Newspaper, 387, Nash, J., held that the King's Bench Division was not only entitled, but bound, to admit to bail a prisoner remanded on a charge of misdemeanour. Brett, J., in *R. v. Attkins*, (1870) *ib.*, p. 421, took the same view. From a reference at p. 281 of Short & Mellor (*supra*) to an unreported case of *R. v. Mullins* (24 Jan., 1884), it seems that the Court (Pollock, B., and Lopes, J.) held that a prisoner remanded for misdemeanour was not absolutely entitled to bail, and that, if in such a case the Court had a discretion, they should be very careful not to interfere with the discretion of the magistrate. In *R. v. Manning*, (1888) 5 T.L.R. 139, the Court (Coleridge, C.J., and Manisty, J.) directed a magistrate to admit to bail, instead of remanding in custody, a person charged with misdemeanour, and this was done because it appeared that the magistrate, on refusing bail, had been influenced by the fact that there were "other charges" against the prisoner.

Remanding.

After the evidence has been taken, in cases where the offence has been committed within the jurisdiction of the justice or justices, and he or they are of opinion that the evidence is not sufficient to put the accused on his trial, he or they shall order him to be discharged; but if in the opinion of such justice or justices, such evidence is sufficient to put such person upon his trial, or if it raises a strong or probable presumption of guilt, the justice or justices shall return the accused for trial, either committing or bailing him (Petty Sessions Act, s. 15 (1)). If any person shall be brought before a justice charged with any offence alleged to have been committed by him in any county or place in Ireland wherein such justice shall not have jurisdiction, then the justice shall receive the evidence, and if in his opinion the evidence shall be sufficient proof of said charge, he shall by warrant commit the accused to the gaol of the county where the offence was committed, or shall admit him to bail as such justice shall see fit (s. 15 (2)). If in the justice's opinion such evidence shall not be sufficient to put the accused on his trial, then such justice shall bind over the prosecutor and the witnesses, and by warrant shall order the accused to be brought before some justice of the county in which and near the place where the offence is alleged to have been committed, and shall at the same time deliver to the person having the execution of such warrant the information, depositions, and recognizances (if any), to be delivered to the justice before whom the accused shall be taken in obedience to such warrant, and such information, depositions, and recognizances shall be treated to all intents as if they had been taken before such last-mentioned justice; and if such last-mentioned justice shall not think the evidence sufficient to put the accused on his trial

Disposal of the prisoner.

Disposal of  
the prisoner.

and shall discharge him, any recognizance taken before the first-mentioned justice shall be null and void (s. 15 (2)). Generally speaking, the accused should be returned for trial to whichever court, the assizes or quarter sessions, shall first sit. But the justices should reserve exclusively for the assizes cases which, from the magnitude of the punishment, the peculiar character of the offence, or the difficulties of investigation, seem more proper for the assizes, such as treason, murder, or other capital felony, felony punishable by penal servitude for life, and felonies and misdemeanours of a political and insurrectionary character.<sup>1</sup> If an offender be apprehended, and suffered to go at large, upon an offer to find security, which is not fulfilled, it seems that he may be apprehended again upon the same warrant (Paley, 8th ed., 371). The warrant of commitment should show jurisdiction, and specify the charge, though apparently a warrant committing for safe custody before trial is not construed so strictly as a warrant of commitment in execution (*R. v. Gourlay*, (1828) 7 B. & C. 669).

The decision of the justices committing a defendant for trial or admitting him to bail cannot be brought up by certiorari (*R. (Blakeney) v. Roscommon JJ.*, (1894) 2 I.R. 158).<sup>2</sup> The decision to send forward the case for trial or to discharge the accused is a judicial act, but is an unrecorded judicial act and a decision not intended by the statute to be recorded (*ib.*, per Lord O'Brien, C.J., 172). "The code of regulations for reducing to writing and preserving the orders and decisions of magistrates where they exercise summary jurisdiction does not apply where they investigate an indictable offence. In the latter case there are the written depositions; if the accused is sent to jail to await his trial, there is the warrant of commitment. If he is admitted to bail, there is the recognizance; but there is no order declaring the determination of the justices. In the case before us the memorandum in the order book merely directs the transmission of the depositions, and as far as I can see there is nothing in the statute to require even this entry. No doubt some written memorandum of what was done by the committing magistrates would be a useful precaution,<sup>3</sup> but the inference I draw from the fact of its not being prescribed is that it was intended by the legislature that an absolute discretion should be given to the justices" (*ib.*, per Holmes, L.J., 179).

Decision must  
be by majority  
of court.

As has been seen, one justice may conduct the inquiry, but, even in cases where one justice may act alone, if several justices adjudicate, the order must be the order of the majority (see judgment of Gibson, J., in *R. (de Vesci) v. Queen's Co. JJ.*, (1908) 2 I.R. 306; *R. v. O'Connell*, (1888) 20 L.R.I. 625). It is, therefore, submitted that it is not competent for one of several justices engaged in the investigation of an indictable offence to return the accused for trial against the wishes of the majority of the court. If informations are refused, the High Court will not compel another bench of magistrates to hear the case afresh, at all events in the absence of fresh evidence (*R. v.*

<sup>1</sup> Government circular. The 5 & 6 Vict. c. 38, enacting that certain offences shall not be triable at quarter sessions, does not apply to Ireland (see *Re Armstrong*, (1861) 14 I.C.L.R. 97). For offences not triable at quarter sessions, see pp. 9 n., 10, *ante*.

<sup>2</sup> Followed in *R. (Hastings) v. Galway JJ.*, (1909) 43 I.L.T.R. 185.

<sup>3</sup> The practice is to enter indictable cases in the order book (see Circular, 10 February, 1903).



*Bather*, (1880) 42 L.T. 532. The refusal of informations, however, will not prevent the prosecution from sending up a bill to the grand jury on complying with the provisions of the Vexatious Indictments Act, 1859, 22 & 23 Vict. c. 17. in the cases to which that Act is applicable (see *infra*). If the court are evenly divided in opinion, it is submitted no order can be made, even to adjourn, unless the concurrence of the majority is obtained; and in such a case no doubt the accused could be brought before an entirely different bench.

Apart from statute, the discharge by the justice of the accused, or, as it is commonly termed, the refusing of informations, does not prevent an indictment being laid in respect of the same matter, for at common law any person may prefer a bill of indictment before the grand jury against any person whom he accuses of an indictable crime, even without any notice or inquiry, and this still is the law in cases to which the Vexatious Indictments Act, 1859 (22 & 23 Vict. c. 17), does not apply. In cases to which that statute applies, no bill of indictment can be presented to or found by the grand jury unless (1) the prosecutor or other person presenting such indictment has been bound by recognizance to prosecute or give evidence against the accused; or (2) unless the person accused has been committed to or detained in custody, or has been bound by recognizance to answer to an indictment to be preferred against him for such offence; or (3) unless such indictment is preferred by the direction or with the consent in writing of a judge of the High Court or the Attorney-General, or Solicitor-General, or, in the case of an indictment for perjury, by the direction of any court, judge, or public functionary authorized by 14 & 15 Vict. c. 100,<sup>1</sup> to direct a prosecution for perjury. If the justices refuse informations, and the prosecutor desires to prefer an indictment, they are bound, if required to do so by the prosecutor, to take his recognizance and to transmit same with the depositions in the same manner as if the accused had been returned for trial (s. 2). An application to take recognizance does not lie unless a summons or warrant is issued (*Ex parte Reid*, (1885) 49 J.P. 600). Where a prosecutor *bona fide* prefers before a justice a charge or complaint in respect of an offence within the statute, and the justice dismisses it for want of evidence, such dismissal is equivalent to a refusal to commit, and the prosecutor is entitled to require the justice to take his recognizance to prosecute the charge or complaint by way of indictment; and the justice will be ordered by mandamus to take the recognizance (*R. v. Lord Mayor of London*, (1886) 16 Cox 77). But when no indictable offence is disclosed in the information, the justices should not take the recognizance, and cannot be compelled to do so (*Ex parte Wason*, (1869) L.R. 4 Q.B. 573.). Where a prosecution for perjury was dismissed by the justices, and the prosecutor made no application to be bound over, the

Effect of  
discharging  
accused.

<sup>1</sup> Any judge of the superior courts, any commissioner of assize, nisi prius, oyer and terminer, or gaol delivery; any justice of the peace, recorder, deputy recorder, chairman, or other judge, holding any general or quarter sessions; any commissioner of bankruptcy or insolvency; or any judge or deputy judge of any county court or any court of record; or any justice of the peace in special or petty sessions; any sheriff or deputy holding an inquiry under a writ of inquiry, may direct a prosecution for perjury (14 & 15 Vict. c. 100, s. 19). Such direction or consent can be given after the lapse of an interval after the trial, and no previous notice or summons to the accused is necessary (*R. v. Bray*, (1862) 3 B. & S. 255).

Effect of  
discharging  
accused.

justices were held to be within their rights in refusing to entertain a second information and a request that they should take the prosecutor's recognizance (*R. v. Bather*, (1880) 42 L.T. 532). It has been held by the Common Sergeant of London that if a prosecutor who is bound over does not prefer the indictment to the grand jury of the court at which he is bound over to prosecute, the recognizance lapses, and cannot be extended, and an indictment cannot be preferred to a subsequent court (*R. v. Eayres*, (1900) 64 J.P. 217). If the justices refuse informations, and no application to take the prosecutor's recognizance is made, an indictment can be preferred by the direction of a judge, the Attorney-General, or Solicitor-General (*R. v. Rogers*, (1902) 66 J.P. 825). Offences to which the statute applies are:— perjury and subornation of perjury, conspiracy, obtaining money or other property by false pretences, keeping a gambling house or a disorderly house, and indecent assault (22 & 23 Vict. c. 17, s. 1); criminal libel (Newspaper Libel and Registration Act, 1881, 44 & 45 Vict. c. 60, s. 6); misdemeanours under Part II. of the Debtors (Ireland) Act, 1872, (s. 18); misdemeanours under the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69, s. 17); indictable offences under the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28, s. 13); offences under the Prevention of Corruption Act, 1906 (6 Ed. 7, c. 34, s. 2); offences under the Punishment of Incest Act, 1908 (8 Ed. 7, c. 45, s. 4); and misdemeanours under Part II. of the Children Act, 1908 (8 Ed. 7, c. 67, s. 35). The offence of attempting to obtain money or other property by false pretences is not within the Act (*R. v. Burton*, (1875) 13 Cox 71). In *R. v. Brown*, (1895) 1 Q.B. 119, the defendant was charged on summons before justices with keeping a house for the purpose of betting with persons resorting thereto, and contrary to section 1 of the Betting House Act, 1853 16 & 17 Vict. c. 119). The accused claimed, under the English Summary Jurisdiction Act, 1879, s. 17, the right to be tried by a jury. Depositions were then taken, which disclosed evidence of two offences against section 1 of the Betting House Act, 1853, namely, (a) keeping a house for the purpose of betting with persons resorting thereto, and (b) of keeping it for the purpose of receiving money as a consideration for making bets. The defendant was returned for trial, and the indictment charged offences (a) and (b). The defendant objected to the indictment, on the ground that it contained an offence different from the offence charged before the magistrates. *Held*, that, assuming that charges other than that contained in the summons were included in the indictment, the case was concluded by the provisions of section 1 of the Criminal Law (England) Act, 1867 (30 & 31 Vict. c. 35), enacting that the provisions of the Vexatious Indictments Act should not extend or be applicable to prevent the presentment to or finding by a grand jury of any bill of indictment containing a count or counts for any of the offences mentioned in the Vexatious Indictments Act, if they were such as might then be lawfully joined with the rest of such bill of indictment, and if they were founded (in the opinion of the court in or before which the bill of indictment was preferred) upon the facts or evidence disclosed in any examination or deposition taken before a justice of the peace. It is, however, to be noted that, in Ireland, there is no corresponding provision to 30 & 31 Vict. c. 35, s. 1, and the decision therefore, only serves to illustrate a difficulty of, perhaps, not infrequent occurrence.



The disposal of the informations, examinations, statements, and recognizances in proceedings for indictable offences is regulated by section 19 of the Petty Sessions Act. If taken out of petty sessions, these documents are to be transmitted to the justices at the next petty sessions, except in cases where the accused shall not have been committed or shall not be amenable, and the justice shall deem it expedient to retain such documents for a longer period. If taken in petty sessions, or if taken out of sessions, but transmitted to petty sessions, they are to be sent to the clerk of the Crown where the matter is to be tried at assizes, or to the clerk of the peace where the case is to be tried at quarter sessions, at latest within seven days from the holding of the petty sessions where the party shall have been committed or shall be amenable (or at least seven days before the assizes or quarter sessions where the party shall not have been committed or shall not be amenable, except in cases where the party shall not have been committed or shall not be amenable, and the justices shall deem it expedient to retain such documents for a longer period. Where any documents are retained by the justice for a longer period than provided by the section, the reason for the retention is to be endorsed upon the documents.

Disposal of the informations, &c.

As regards the question of admitting to bail, offences may be divided into three classes: (1) those in which the justice cannot admit to bail, (2) those in which the justice may or may not, in his discretion, admit to bail, and (3) those in which the justice is bound to admit to bail. The power to admit to bail is regulated by sections 16 to 18 of the Petty Sessions Act.<sup>1</sup>

Admitting to bail.

A justice cannot admit to bail any person charged with treason or treason felony under 11 & 12 Vict. c. 12, which are bailable only by order of the Lord Lieutenant, Chief Secretary, or of the King's Bench Division or a judge thereof in vacation (Petty Sessions Act, s. 16 (1)).

The justice in his discretion may or may not admit to bail in the following offences:—Any felony with the exceptions above stated, assault with intent to commit a felony, attempt to commit a felony, any offence against 1 & 2 Wm. 4, c. 44 (Whiteboy Act), obtaining or attempting to obtain property by false pretences, misdemeanour in receiving property stolen or obtained by false pretences, perjury or subornation of perjury, concealing the birth of a child by secret burying or otherwise, indecent exposure of the person, riot, assault in pursuance of a conspiracy to raise wages, assault upon a peace officer in the execution of his duty, or upon any person acting in his aid, neglect or breach of duty as peace officer, any misdemeanour for the prosecution of which the costs may be allowed out of the county rate or funds' (s. 16 (1)).

<sup>1</sup> A justice has no power to admit to bail a person in custody under a coroner's warrant. The coroner, or the two justices holding the inquest, can admit to bail such person in a case of manslaughter (44 & 45 Vict. c. 35, ss. 7, 8).

<sup>2</sup> The following are instances where the costs of a prosecution may be allowed out of the county rate or funds. The Grand Jury Act (6 & 7 Wm. 4, c. 116, s. 105) gives power to raise the costs of a prosecution for felony out of the county funds. The Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 121, The Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 77, The Forgery Act, 1861 (24 & 25 Vict. c. 98), s. 54, The Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 77, enable the court before which indictable misdemeanours under these Acts are tried or prosecuted to allow the costs of the prosecution in the same manner as in cases of felony. The Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 18, enables the court before which any indictable misdemeanour under that Act, or any case of indecent assault, is tried or prosecuted, to allow the costs of the prosecution in the same manner as in cases of felony. The Public Bodies Corrupt Practices Act, 1889 (52 & 53 Vict. c. 69), s. 5, authorizes the expenses of the prosecution

Admitting  
to bail.

In exercising his discretion, the justice should have regard to the gravity of the charge, the cogency of the evidence produced in support of it, the character or behaviour of the accused, and the seriousness of the punishment (*R. v. Scarfe*, (1841) 9 Dowl. 553; *R. v. Barronet*, (1852) Dears C.C. 51; *Re Robinson*, (1854) 23 L.J.Q.B. 286; *R. v. Barthelemy*, (1852) Dears C.C. 60; *R. v. Porter*, 1854) 18 J.P. 772; see also *R. v. McCartie*, (1859) 11 L.C.L.R. 188; *R. v. McCormick*, (1864) 17 L.C.L.R. 411; *R. v. Rose*, (1898) 18 Cox 717; *R. v. Ford*, 1899) 5 I.W.L.R. 97). In a doubtful case it is better that the justice should not take the responsibility of admitting to bail, but should leave the accused to apply to the King's Bench Division.

In every case in which a person shall be charged with any indictable misdemeanour other than those before mentioned, the accused is, as of right, entitled to be admitted to bail, upon the justice being satisfied as to the sufficiency of the bail offered (s. 16 (1)).

In any of the cases in which the justice may, but is not obliged to, admit to bail, if he is of opinion that accused should be admitted to bail, but the accused shall at the time be unable to obtain bail, the justice shall certify in the warrant of commitment his consent to the accused being bailed, and the amount of bail; and any justice of the county may, on attending at the jail, admit the accused to bail (s. 16 (1)). In any case in which the accused is entitled to bail as of right and has been committed, the accused may apply to any justice of the county to admit to bail, and such justice shall admit him to bail (s. 16 (2)). The recognizance of the accused may be with one or more sufficient sureties conditioned to appear and take his trial (s. 16 (1)). The surety must apparently be a householder.<sup>1</sup> There is no legal obstacle to the solicitor for the prisoner going bail (*R. v. Bowes*, (1787) 2 Dougl. 466 n.).<sup>2</sup> A peer may (Hayes 94), but a person under twenty-one cannot (*ib.* 93, *R. v. Hooper*, (1819) 1 Chit. Cr.L. 491), be a surety. Apparently, before the Married Women's Property Act, 1882, a married woman could not enter into a recognizance (*Bennett v. Watson*, (1819) 3 M. & S. 1; *Lee v. Lady Baltinglass*, (1655) Styles, 475; *Elsy v. Mawdit*, (1650) Styles, 226; but see *Simpson's Case*, (1829) 1 Lew, 295), the reason being that the recognizances of a married woman could not be estreated (1 Chit. Cr. L. 100); but now a woman married since 31st December, 1881, can enter into a recognizance (Russell, 7th ed. 219; but see observations of Palles, C. B., in *R. King v. Antrim J.J.*, (1906) 2 I.R. 328).

The amount of bail (unless where fixed by statute) is in the discretion of the justice, who is to be guided by the ability to give bail, the quality of the prisoner, and the nature of the offence

of any offence under that Act to be defrayed in like manner as in the case of a felony. The Dublin Grand Jury Act (7 & 8 Vict. c. 106), s. 40, gives power in case of felonies or misdemeanours committed in the county of Dublin to defray the expenses of the prosecution out of the county fund. By the Criminal Justice Act, 1855 (18 & 19 Vict. c. 126), s. 14, justices have power to order payment of expenses of prosecutor and witnesses in larceny offences triable summarily, such expenses to be paid out of the county fund.

<sup>1</sup> The following oath is prescribed by 57 Geo. 3, c. 56, s. 2:—"I, A. B., do swear that I am a householder and have a house where I usually reside at \_\_\_\_\_ in the parish of \_\_\_\_\_, Barony of \_\_\_\_\_, and county of \_\_\_\_\_, and that I support and maintain myself by \_\_\_\_\_, and that I am worth the sum of £ \_\_\_\_\_ over and above all my just debts, so help me God.

<sup>2</sup> But such a course is "inexpedient" and ought not to be adopted (*per Cockburn, L.C.J.*, in *R. v. Scott-Lewis*, reported in *Times* newspaper of November 20, 1876).

(2 Hawk. c. 15 s. 4).<sup>1</sup> There should be at least two sureties in a serious case (*ib.*). Admitting to bail.

If an accused has been admitted to bail, any justice may, on the application of his surety, and on information being made, in writing and on oath, by such surety or some person on his behalf, that the accused is about to abscond for the purpose of evading justice, issue a warrant for the arrest of the accused, and afterwards, upon being satisfied that the ends of justice would otherwise be defeated, commit the accused when so arrested to jail until his trial, or until he shall produce another sufficient surety or sureties (Petty Sessions Act, s. 17).

If it is not convenient for the surety or sureties to attend at the gaol, the committing justice or any justice by whom the accused can be admitted to bail, shall make a duplicate of the certificate of his consent to bail and the amount thereof, and any justice of the same county, on presentation of such certificate, may take the recognizance of the surety or sureties. When the surety will not attend in the county in which a prisoner is confined, but will attend in Dublin, the Court will grant a writ of habeas corpus to bring up the prisoner, in order that the bail may be taken in his presence (*R. v. Hussey*, (1860) 11 I.C.L.R., App. XX.).

A contract by a prisoner (*Wilson v. Strugnell*, (1881) 7 Q.B.D. 548; *Hermann v. Jeuchner*, (1885) 15 Q.B.D. 561), or by a third party (*Consolidation Exploration and Finance Co. v. Musgrave*, (1900) 1 Ch. 37), to indemnify the surety is contrary to public policy, and void; and the giving of such an indemnity is a criminal offence, though no intent to defeat the ends of justice is proved (*R. v. Porter*, (1910) 1 K.B. 369).

In cases where bail has been refused the accused may apply to the King's Bench Division for an order to grant bail. The first step is to obtain an order, which is made up in the Crown Office, *ex parte*, without any application to the Court, the order being to return informations, examinations, depositions, inquisitions, and indictments touching the commitment with a view to bail (Order 84, r. 206 (f)). This order is obtained on an affidavit made by the accused, or by his solicitor on his behalf, and is served upon the clerk of the Crown or clerk of the peace, as the case may be. When the return thereto is made, a motion is made to the Divisional Court or to the Vacation Judge in the vacation, on notice to the Crown solicitor of the county or county of a city or town, in which the commitment was made, to show cause why the defendant should not be admitted to bail (Order 84, Rule 90). No appeal lies from an order on a bail motion. (Judicature Act, s. 25, *R. v. Foote*, (1884) 10 Q.B.D. 378). In case of a misdemeanour the accused has, under the Habeas Corpus Act (21 & 22 Geo. 3, c. 11, s. 2 (Ir.)), corresponding to 31 Car. 2, c. 2, s. 2 (E.), an absolute right to be admitted to bail (*Re Frost*, (1888) 4 T.L.R. 757, Stephen's "History of the Criminal Law," vol. i., 243, Short and Mellor, 2nd ed., 282).<sup>2</sup> There is jurisdiction to grant bail even in cases of murder, but this is rarely done, and the circumstances must be

Bail motions.

<sup>1</sup> The Bill of Rights, 1 W. & M., sess. 2, c. 2, provides that excessive bail shall not be required.

<sup>2</sup> In *R. v. Butler*, (1881) 8 L.R.I. 39, the Court of Queen's Bench in Ireland (May, C.J., and Fitzgerald, J., O'Brien, J., dissenting) refused to grant bail in case of a misdemeanour, on the ground that the accused belonged to an organization known as the Land League which would probably indemnify the bailsmen if the accused did not appear to take their trial; but the attention of the Court does not seem to have been directed to the provisions of the Habeas Corpus Act.



very exceptional (see *R. v. Ford*, (1899) 5 I.W.L.R. 97; Short & Mellor, 2nd ed. 282).

Warrant to arrest where indictment found.

If an indictment is found by a grand jury at assizes or quarter sessions against any person who shall then be at large, and who shall not have appeared and pleaded to the indictment, the clerk of the Crown or the clerk of the peace shall, upon application of the prosecutor, deliver to him a certificate of the indictment having been found, and a justice of the peace for the county in which the offence has been committed or in which the accused is, or is suspected to be, shall upon the production of such certificate, issue a warrant for the arrest of the accused, and shall commit for trial or admit him to bail (Petty Sessions Act, 1851, s. 18).

Indictable offences cannot be disposed of summarily.

An offence which is triable only on indictment cannot be disposed of summarily. The defendant was charged with intimidation (an indictable offence), and an order was made, "*convicted*, and ordered to give sureties to keep the peace": *held*, that the order was void (*R. (O'Grady) v. Cork JJ.*, (1905) 5 N.I.J.R. 191). The defendant was charged with an indictable offence, unlawfully wounding, on a police charge-sheet, and evidence was given supporting that charge. The justice summarily convicted the defendant of a common assault, without calling on him to plead to that charge, or informing him that he was being tried for an offence other than that stated in the charge-sheet: *held*, that the conviction should be quashed (*R. (Walsh) v. Dublin JJ.*, (1902) 2 N.I.J.R. 41; see also *R. v. Kilkenny JJ.*, (1871) 1 R. 5 C.L. 394, *ex p. Clarke*, (1890) 26 L.R.I. 1, and cf. *R. (McGrath) v. Clare JJ.*, (1905) 2 I.R. 510, *R. (Tyacke) v. Owens*, (1902) 2 N.I.J.R. 138).

Newspaper comment on pending charge.

The High Court has jurisdiction to commit for contempt the publisher of matter tending to prejudice the fair trial of a person charged with an indictable offence, even though at the time of the publication the accused has not been committed for trial (*R. v. Parke*, (1903) 2 K.B. 432), or brought before a magistrate (*R. v. Clarke*, (1910) 27 T.L.R. 32). Where the jury had disagreed, and it was intended (though not formally stated) that a new jury would be empanelled, it was held that the proceeding was still a "pending one," and that it was a contempt of court for a journal to criticize the proceeding (*R. v. Freeman's Journal, Ltd.*, (1902) 2 I.R. 82). An application for alleged contempt of court committed by an incorporated company should be by motion, not for attachment, but to attend and answer in respect of such contempt (*ib.*).

Attending witness's house to take deposition.

Where a person is brought before a magistrate charged with any indictable offence, it is the duty of such magistrate, under s. 17 of the Indictable Offences (Eng.) Act, 1848 (corresponding to s. 14 of the Petty Sessions (Ir.), Act 1851), if it is practicable for him to do so, to take the deposition of a witness who is dangerously ill, and is therefore unable to attend the courthouse, at the place where the witness is (*R. v. Bros*, (1910) 27 T.L.R. 41).



## CHAPTER IV.

### SURETIES OF THE PEACE AND GOOD BEHAVIOUR.

	PAGE		PAGE
Jurisdiction by statute, . . . . .	33	No power to award costs, . . . . .	38
Jurisdiction from the commission, . . . . .	33	Limit of time, . . . . .	38
Differences between sureties of the peace and of good behaviour, . . . . .	33	Recognizances—	
What tribunals may bind over, . . . . .	34	Transmission of, . . . . .	38
Under what circumstances persons may be bound over, . . . . .	34	Limit of time, . . . . .	28
No appeal, . . . . .	36	Forfeiture of, . . . . .	38
Evidence for defendant not allowable, . . . . .	37	Estreating, . . . . .	38
Imprisonment in default, . . . . .	37	Can imprisonment be ordered in default of payment of, . . . . .	39
Form of order, . . . . .	37	Demise of Crown, . . . . .	39

THE jurisdiction to require sureties of the peace or good behaviour is exercisable out of sessions,<sup>1</sup> and is derived (*a*) from statute, (*b*) from the authority of the justice's commission. The statute 34 Edw. 3, c. 1 (1360), provides:—

“That in every county in England<sup>2</sup> shall be assigned for the keeping of the peace, one Lord, and with him three or four of the most worthy in the county, with some learned in the law, and they shall have power . . . . to take of all them that be not of good fame where they shall be found, sufficient surety and mainprise<sup>3</sup> of their good behaviour towards the king and his people, and the other duly to punish.”

The words of the Commission conferring the jurisdiction to bind to the peace or to be of good behaviour are as follows:—

“Do appoint you and every of you jointly and severally our justices to keep our peace in our County of . . . . , and to cause to come before you or any of you all those persons who shall threaten any of our people in their person, or with burning their houses, to find sufficient security for the peace, or for their good behaviour towards us and our people.”

The following seem to be the differences between sureties to keep the peace and sureties to be of good behaviour.

(1) “Security for good behaviour comprehended security for the peace, but was much more comprehensive, extending to ill-fame and misbehaviour of a character which, though not criminal, was likely to be dangerous to the peace and order of the community, including words disparaging and insulting magistrates, or lewdness of life” (*per* Gibson, J., in *Hulpin v. Rice*, (1901) 2 I.R. 593, at p. 604,

<sup>1</sup> Taking sureties of the peace, being a judicial act, cannot be done on Sunday (*R. v. Ramsay*, (1867) 16 W.R. 191). Cf. *Johnson v. Collson*, (1678) Sir T. Raym. 250, noted CATALOGUE OF SUMMARY OFFENCES, “SUNDAY,” p. 794.

<sup>2</sup> The statute applies to Ireland by virtue of Poynings’ Act: see p. 334.

<sup>3</sup> “Mainprise is when a man is arrested by *Capias*, that the judge may deliver his body to certain men for to keep and bring him before him at a certain day, and these be called mainpernors; and if the party appeare not at the day assigned, the mainpernors shall be amerced” (Termes de la Ley). “Mainpernors differ from bail in that a man’s bail may imprison or surrender him up before the stipulated day of appearance; mainpernors can do neither, but are barely sureties for his appearance at the day; bail are only sureties that the party be answerable for the special matter for which they stipulate; mainpernors are bound to produce him to answer all charges whatsoever” (3 Bl. Com. 128; see also *In re Nottingham Corporation*, (1897) 2 Q.B. 502, 510).

Differences between sureties of the peace and sureties for good behaviour.

citing *Claxton's Case*, (1701) 12 Mod. 566; see also 5 Burns, 30th ed., 754).

(2) A person who is bound to be of good behaviour is more strictly bound than to the peace, for the peace is not broken without an actual affray, battery, &c., but this may be forfeited by the number of a man's company or his weapons (Crompt. Just. 119, 120, *Termes de la Ley*, "Good abearing"; see also pp. 341, 342, *post*).

(3) Applications for sureties for good behaviour were usually, though not necessarily, made at sessions, or if out of sessions, before two or more justices, while peace applications were commonly made to a single justice (*Halpin v. Rice*, (1901) 2 I.R., at p. 605).

(4) It was formerly thought requisite, on an application to bind to the peace, that the applicant should prove on oath that he was actually under fear of bodily harm from the defendant, and had just cause to be so (1 Hawk, 8th ed., c. 28, s. 6; 5 Burns, 30th ed., 743); but this was never deemed necessary in an application for sureties for good behaviour. Whether such averment would at present be deemed necessary seems doubtful. In *R. v. Wilkins*, (1907) 2 K.B. 380, an order binding to the peace was held good on its face, though it failed to aver that the applicant went in fear of the defendant; and Lord Alverstone, C.J., without wishing to lay down a general rule, said that his impression was that it was only necessary to allege that the party goes in fear when an *ex parte* application is made for an order that one person should be bound over to keep the peace towards another. Though there is no express enactment or provision that the party against whom the order is sought shall have notice of the application, it is not easy to conceive circumstances under which a justice's order obtained behind a person's back could be supported, and in the same case Lord Alverstone seems to limit the jurisdiction to cases where "the person bound over has had a reasonable opportunity of knowing the nature of the charge brought against him and making his answer to it"<sup>1</sup> (p. 384).

An order can be made both to keep the peace and be of good behaviour (*R. v. Barry*, (1889) 26 L.R.I. 40).

What tribunals may bind over.

A person may be bound over by justices or by the High Court (5 Burns, 745). The jurisdiction is incident to every justice and every judge who has power to hear and determine a criminal case, without any enabling statute, unless restrained by express statutable words (*per Palles, C.B.*, in *Ex parte Tanner*, (1899) Judgments of the Superior Courts, 351, *Ex parte Harken*, *ib.* 316). The order may be made over and above any punishment awarded (*Ex parte Harken*, at p. 320).

Under what circumstances persons may be bound over.

A person may be bound over by justices of their own motion or on the complaint of others (5 Burns, 745; Dalton, c. 116). "The jurisdiction to bind to the peace has been applied to cases in which the defendant was acquitted, . . . to cases in which the party had no opportunity of saying a word to object to it, . . . in cases where there was no information that a repetition of the offence was likely or was apprehended, . . . and lastly, it has been applied in cases of statutable misdemeanour, over and above the maximum penalty

<sup>1</sup> The expression "*ex parte*" in reference to such application is used by Gibson, J., in *R. (Martin) v. Mahony*, noted p. 224, *post*, but probably in the sense that the defendant cannot be heard.

imposed by the statute, all showing that it is something ordered by way of prevention and not as punishment. . . . The jurisdiction to require persons to enter into recognizances for good behaviour was by way of preventive justice, and not of punishment. My view is that the jurisdiction attaches if there has been what amounts to a breach of good behaviour, in the same way as the jurisdiction to require sureties to keep the peace attaches if there has been a breach of the peace, but that justices can also hold a party to good behaviour or the peace, as the case may be, although there has been no act which amounted, in legal parlance, to misbehaviour or breach of the peace, if the circumstances are of such a character as to lead to the reasonable probability of the party doing an act which would amount to such misbehaviour or breach of the peace" (per Palles, C.B., in *Ex parte Tanner*, *supra*; see also *Ex parte Harken*, *supra*; *R. (McCormick) v. Clare JJ.*, (1882) 16 I.L.T.R. 91).

Under what circumstances persons may be bound over.

Justices can of their own initiative make an order binding over a person who is before them if they are satisfied that he has used threats calculated to produce a breach of the peace, although no formal charge has been made against him (*R. v. Wilkins*, (1907) 2 K.B. 380; see also *Ex parte Davis*, (1871) 24 L.T. 547); and such an order is not bad merely because it does not state that the person threatened goes in fear of bodily injury (*R. v. Wilkins*, *supra*). Justices have apparently power to bind over a person who, in addressing meetings in public places, although he does not directly incite to the commission of breaches of the peace, uses language, the natural consequence of which is that breaches of the peace will be committed by others, and who intends to hold similar meetings and use similar language in the future (*Wise v. Dunning*, (1902) 1 K.B. 167); see also, *Humphries v. Connor*, (1864) 17 I.C.L.R. 1). A successful complainant can be bound over (*R. v. Wilkins*, *supra*).

The same Mr. Wise was called upon on June 26th, 1909, at the instance of the chief constable of Liverpool to show cause why he should not be ordered to find sureties to keep the peace and to be of good behaviour. The information of the chief constable stated that the appellant had informed him that he intended to lead a parade of his Bible class through certain streets of Liverpool on Sunday, June 27th, and that the chief constable apprehended and believed that if the appellant did so the natural consequence would be a breach of the peace, riot, and disorder. Upon the appellant undertaking at the hearing not to hold a procession on Sunday, June 27th, he was released on bail. At the adjourned hearing on July 1st, the chief constable expressed his willingness to withdraw the proceedings, as the proposed object had been attained, namely, the prevention of the procession on June 27th; but the magistrate refused to allow this, unless the appellant would enter into his own recognizances to keep the peace and be of good behaviour; and he made an order accordingly, or, in the alternative, that the appellant should go to prison for four months. The appellant refused to enter into the recognizances. A rule nisi having been obtained calling upon the magistrate to show cause why he should not state a case, the magistrate filed an affidavit in which he stated that the appellant had been twice previously directed to find sureties to keep the peace; that serious sectarian riots had taken place in Liverpool on June 5th and 20th in connection with the



Under what  
circumstances  
persons may  
be bound  
over.

processions of the appellant's Bible class; that the chief constable had reasonable grounds for anticipating a breach of the peace if the procession had taken place on June 27th; that a few days previously the appellant had, in addressing a meeting, used insulting language in reference to Roman Catholics; that between the date of granting the warrant against the appellant and his decision he had had to hear charges against numbers of rioters animated by sectarian animosities; and that he could not use any discretion in favour of a person who had acted as the appellant had done:—*Held*, that the rule nisi must be discharged; that the magistrate had ample grounds for saying that he would not be satisfied with anything less than the appellant entering into his recognizances to be of good behaviour; and that he was justified in refusing to state a case (*R. v. Little, Ex parte Wise*, (1910) 26 T.L.R. 8). But where a meeting is, as regards both its object and the conduct of the persons at it, perfectly lawful, justices are not entitled to require the persons taking part in it to give sureties for their good behaviour merely because such a meeting may possibly or probably cause persons who object to it to commit a breach of the peace (*R. (Orr) v. Londonderry JJ.*, (1891) 28 L.R.I. 440). But "an unnecessary and unreasonable persistence in language or conduct calculated to provoke violence or tumult may afford good ground for the exercise of this jurisdiction against a person who is himself free from any criminal or evil motive" (*ib.* at p. 462, *per* Holmes, L.J.)—a dictum which shows that there is no distinction between this case and *Wise v. Dunning*, or *R. v. Little, supra*.

A person may come within the words "not of good fame" within the statute of Ed. 3 if he publishes a libel calculated to provoke a breach of the peace (*Haylock v. Sparks*, (1853) 1 E. & B. 471), or is guilty of insulting language towards the court (*Ex parte Tanner, supra*).<sup>1</sup> When the prosecutor, who alleged a threat by defendant, prayed an order binding him to the peace, and at the hearing it appeared there had been an assault, it was held that the justices could not fine for the assault, against the wish of the prosecutor, who wished to preserve his civil rights in respect of the assault (*R. v. Denny*, (1851) 20 L.J.M.C. 189). But where a summons setting forth that the defendant had assaulted the complainant commanded the defendant to show cause why he should not be bound over to keep the peace, and the justice held that his jurisdiction to deal with the assault was not curtailed by the form of the summons, and, without any objection being made by the complainant, sentenced the defendant to imprisonment, it was held that the conviction was right (*Kennington v. Daniel*, (1888) 22 L.R.I. 667).

The King's Bench Division, as conservators of the peace, have original jurisdiction, independently of the statute of Edward 3, to require sureties for good behaviour from persons whose acts or language are shown to be likely to endanger the public peace (*Ex parte Seymour & Davitt*, (1882) 12 L.R.I. 46).

No appeal lies from an order requiring sureties (*In re Hurley*, Q.B.D. (Ir.) 19th Dec., 1888),<sup>2</sup> but an order can be the subject of a case stated<sup>3</sup> (*R. v. Barry*, (1889) 26 L.R.I. 40), or be questioned on certiorari or habeas corpus.

<sup>1</sup> For other instances of the exercise of the jurisdiction, see *R. (Reynolds) v. Cork JJ.*, (1882) 10 L.R.I. 1, and *R. (Feehan) v. Queen's Co. JJ.*, (1882) 10 L.R.I. 294.

<sup>2</sup> Unreported.

<sup>3</sup> But see remarks of Gibson, J., in *R. (Martin) v. Mahony*, noted at p. 226, *post*.

No appeal from  
order.



On the hearing of a motion for certiorari to bring up for the purpose of quashing an order binding to the peace, the King's Bench Division has jurisdiction on certiorari (*R. (Orr) v. Londonderry JJ.*, (1891) 28 L.R.I. 440) or habeas corpus (*R. v. Dunn*, (1840) 12 A. & E. 599) to examine into the evidence given before the justices, and if there is no evidence to support the order, to grant the writ. The court will, however, not interfere with the discretion of the justice, unless in a clear case of misuse of the magisterial authority (*R. (Reynolds) v. Cork JJ.*, (1882) 10 L.R.I. 1; *R. v. Little, Ex parte Wise*, (1910) 26 T.L.R. 8).

No appeal from order.

On an application to bind over a defendant to be of good behaviour or give sureties for the peace, the defendant is not a competent witness, nor is it competent for him to go into evidence at all (*R. (Feehan) v. Queen's Co. JJ.*, (1882) 10 L.R.I. 294, *Lort v. Hutton*, (1876) 33 L.T. 730; *Ex parte Tanner*, Judgments of the Superior Courts, (1899) 340; *Halpin v. Rice*, (1901) 2 I.R. 593).<sup>1</sup> Justices are entitled to take into consideration the general course of conduct of a person against whom an application is made to give sureties of the peace (*ib.*; Dalton, 293; *R. (Feehan) v. Queen's Co. JJ.*, (1882) 10 L.R.I. 294; *R. v. Dunn*, (1840) 12 A. & E. 599; *R. v. Little, Ex parte Wise*, (1910) 26 T.L.R. 8).

Evidence for defendant not allowable.

In default of finding sureties to keep the peace or to be of good behaviour, the justice may order the person ordered to be bound over to be imprisoned for such reasonable period as he may think fit until he finds bail (*Ex parte Harken*, Judgments of Superior Court (1889) 319).<sup>2</sup> The order to find sureties, and the order that in default of finding sureties the person bound over be imprisoned, must be made at the one time by the one justice or the one court (*Re Ashton*, (1845) 7 Q.B. 169). In charges under the Criminal Law Consolidation Acts,<sup>3</sup> the term of imprisonment in lieu of finding sureties, is limited to one year. The warrant should contain a statement of a previous demand and refusal to find sureties, or else show on its face that the person bound over was present when the committal was made out, and that its contents were communicated to him (*Atkinson v. Carty*, (1838) 1 J. & S. 369; but it is not necessary that the person bound over should have been called on and have refused to find sureties before the order is made out (*R. v. Barry*, (1889) 26 L.R.I. 40).

Imprisonment in default.

On an appeal from a court of summary jurisdiction, the county court judge has jurisdiction, while varying the term of imprisonment, to order defendant to enter into sureties for good behaviour or in default to be further imprisoned (*Ex parte Harken, supra*).

The order will be bad if it directs the defendant to be imprisoned (without mentioning any specific period) until he shall give the required sureties (*Prickett v. Gratrex*, (1846) 8 Q.B. 1020; *Grady v. Hunt*, (1855) 5 I.C.L.R. 445).

In *R. (Reidy) v. Clare JJ.*, (1902) 2 N.I.J.R. 132, the order was, "The defendant is hereby ordered to enter into bail to keep the peace, and in default of entering into such security as aforesaid, the said defendant to be imprisoned for three calendar months without hard labour." The validity of the order was questioned, on the ground that the order for the imprisonment was absolute, and

Form of order

<sup>1</sup> In the last case Lord O'Brien, L.C.J., suggested that the law on the subject should be altered by legislative enactment.

<sup>2</sup> Also reported 24 L.R.I. 427.

<sup>3</sup> That is the 24 & 25 Vict. cc. 96-100.

did not contain a clause that imprisonment should determine if and when the security was given. It was held (Gibson, J., dissenting) that the warrant (which contained such a clause and the order should be read together, and that, so read, they were valid.

No power to  
award costs.

It is submitted that justices when making an order to bind to the peace or be of good behaviour *simpliciter*, have no power to award costs, such order not being within s. 21 of the Petty Sessions Act, enabling justices to award costs. But the fact that in making an order within s. 21, justices also order a party to find sureties, will not, it is submitted, prevent the Court from awarding costs in pursuance of s. 21.

Recogniz-  
ances.

The following statements as to recognizances will, save where it otherwise appears, apply to recognizances generally (for form, see Petty Sessions Act, Form C, s. 34). The recognizance may be taken by the justice or clerk of petty sessions repeating to the defendant and his sureties :—

*You A. B. acknowledge yourself bound to our Sovereign Lord the King in the sum of                      and you, C. D. and E. F., also acknowledge yourselves severally bound to owe to our Sovereign Lord the King the sum of                      each, to be respectively made and levied upon your goods and chattels, lands and tenements, to the King's use, if you, A. B., shall make default in the condition of this recognizance, which is that you, A. B., shall well and truly keep the peace (or keep the peace and be of good behaviour, or as the case may be, towards the King and all his subjects, and especially towards M. N., for the space of                      from this day. Are you severally content to be bound ?*

Transmission  
of recog-  
nizance.

When the recognizance relates to a matter to be tried at assizes or at quarter sessions, the recognizance is to be forwarded to the clerk of the Crown or peace (Petty Sessions Act, 1851, ss. 19, 24 (4)). When the condition of the recognizance is to *keep the peace*, or to appear before any justice out of quarter sessions, the recognizance shall be deposited with the clerk of petty sessions of the district by the justice by whom it shall have been taken (s. 34).

Limit of time.

The recognizance may be for a limited time (*Willes v. Bridges*, (1819) 2 B. & Ald. 278, in which the recognizance was for two years).<sup>1</sup>

Forfeiture of  
recognizances.

A condition to keep the peace is forfeited by any breach of the peace, as to which see p. 147 (see also 5 Burns (Chitty), p. 904). A condition to be of good behaviour is broken, not only by any breach of the peace, for which a recognizance for the peace may be forfeited, but also for some others, for which a peace recognizance cannot be forfeited, as, for going armed with great numbers to the terror of the people, or speaking words tending to sedition; and also for all such actual misbehaviours which are intended to be prevented by such a recognizance, but not for barely giving cause of suspicion of what, perhaps, may never actually happen (1 Hawk, c. 61, s. 6).

Estreating  
recognizances.

Recognizances may be estreated (*a*) at petty sessions in the case of recognizances transmitted to petty sessions (see *supra*), (Petty Sessions Act, 1851, s. 34), and (*b*) at quarter sessions<sup>2</sup> in case of breach of a condition in a recognizance to keep the peace, or to appear to give evidence in case of an indictable offence, or to appear to answer to an indictable offence, or to perform the duties of petty

<sup>1</sup> Formerly it was usual to bind over to the quarter sessions.

<sup>2</sup> The High Court has no jurisdiction to reduce or remit the amount payable at foot of a recognizance ordered by justices to be estreated (*R. v. Dillon*, (1891) 28 L.R.I. 276).

sessions clerk (Fines Act, 1851, s. 10). As to estreating at petty sessions upon non-performance of the condition of the recognizance, any justice who may then be there present<sup>1</sup> may certify on the recognizance the non-performance of the condition; and the justices at petty sessions may, upon proof of the breach, make an order to estreat to such amount as they shall see fit, and may thereupon issue a distress warrant to enforce payment: proof must be first made upon oath that notice in writing (stating the general grounds on which it is intended to sustain the application) was left at the usual place of abode<sup>2</sup> of the party, or each of the parties, seven days at least before the date of the application (Petty Sessions Act, 1851, s. 34). The order to estreat at quarter sessions is made by the county court judge or Recorder to such amount as he shall think fit, upon conviction of an offence which is a breach,<sup>3</sup> or upon the production<sup>4</sup> of a certificate of breach signed by the proper officer (Fines Act, 1851, s. 10). Seven days' previous notice in writing, stating in substance the cause or matter on which it is intended to sustain the application, must be given to, or left at the usual place of abode of, the parties (*ib.*). Such order may be made against a surety as well as a principal party (see 37 & 38 Vict. c. 72, s. 2).

Recognizances.  
Estreating.

It is clear, it is submitted, that, in case of recognizances estreated at quarter sessions, the warrant may order imprisonment in default (see Fines Act, 1851, ss. 3, 10) for "the like period for which any person might be imprisoned in any like case in default of distress under the provisions of the Petty Sessions Act."<sup>5</sup> But the matter is by no means clear so far as concerns recognizances estreated at petty sessions; for though a forfeited recognizance is a "penal sum" within section 8 of the Fines Act, yet section 34 of the Petty Sessions Act, which gives the right to justices at petty sessions to estreat recognizances, expressly enacts that the amount estreated shall be recovered by a warrant "to levy such amount by distress and sale of the goods." But, in principle, there seems no reason why recognizances estreated at petty sessions should not be enforceable in the same manner as similar recognizances estreated at quarter sessions; and it would appear that the opinion of the law officers in 1876 was that all recognizances could be enforced by imprisonment in default of payment (Stoker's "Duties of Clerks of Petty Sessions," p. 143).

Can imprisonment be ordered on failure to pay amount of forfeited recognizances?

It is said that the death of the Sovereign discharges a surety of the peace, for the recognizance is to keep the peace of the King (then being), and when he is dead, it is not his peace (Brooks' Abridgment, p. 130; Dalton, p. 281; 1 Hawk. c. 28, s. 17); but as to Crown debts generally, see Grant on Corporations, p. 629; *R. v. Bradford*, (1714) 2 L. & R. 1327.

Demise of Crown.

<sup>1</sup> This would apply to a breach of a condition to appear, or where a condition to keep the peace is broken by conduct the subject of a conviction before such justice.

<sup>2</sup> The method of service prescribed should be strictly followed, though obviously the omission of a provision as to *personal service elsewhere* is a *casus omissus*; cf. Fines Act, s. 10.

<sup>3</sup> That is, in case of a recognizance to keep the peace.

<sup>4</sup> That is, in case of recognizances to appear, &c.

<sup>5</sup> This seems to apply the scale of imprisonment laid down by section 22 of the Petty Sessions Act, noted p. 64, *post*.



## CHAPTER V.

### SUMMARY CASES WITHIN PETTY SESSIONS ACT.

	PAGE		PAGE
Jurisdiction at petty sessions, . . .	40	Penalty—	64-69
Application of Petty Sessions Act, . . .	41	Scale of imprisonment in default, . . .	64
Local limits of jurisdiction, . . .	41	No power to mitigate, . . .	65
Who can be complainant, . . .	43	What is an "offence," . . .	65
Cases triable out of petty sessions, . . .	45	What term of imprisonment, . . .	66
Enforcing appearance of deft.—	45-50	When distress must be ordered, . . .	67
Summons or warrant, . . .	45	"Unless said sum be sooner paid," . . .	67
Non-appearance of defendant, . . .	46	Increased penalty for second	
Joint offences, . . .	47	offence, . . .	67
Service of summons, . . .	48	Fine or Imprisonment Act, 1899, . . .	68
Waiver of irregularity, . . .	50	Imprisonment with or without	
Express statutory provisions as		hard labour, . . .	68
to service, . . .	50	Award of compensation, . . .	68
Withdrawal of charge; death of		Application of fines and penalties, . . .	68
complainant, . . .	50	Costs, . . .	68
Order for forfeiture or destruction of		Enforcing orders—	69-71
property, . . .	51	Warrants of execution, . . .	69
Time limit, . . .	51	Stay of execution pending appeal, . . .	69
Computation of time, . . .	52	To whom warrants addressed, . . .	69
Witnesses, . . .	53	Backing warrants for execution, . . .	70
Number of justices necessary, . . .	54	Levy, distress, and sale, . . .	70
Place of hearing, . . .	55	Warrant to show jurisdiction, . . .	70
The hearing—	56-61	Can justice withdraw warrant? . . .	71
Generally, . . .	56	General powers under warrant, . . .	71
Non-appearance of defendant, . . .	57	What goods may be taken, . . .	71
Non-appearance of complainant, . . .	57	Impounding animals, . . .	71
Withdrawal or death of prosecu-		Recognizances, . . .	71
tor, . . .	59	Forms, . . .	72
Non-appearance of either party, . . .	59	Definition of terms, . . .	72
Dismissal of trivial charge, . . .	59	Amendment, . . .	72
Parties may require evidence to		Dublin Metropolitan Police District, . . .	72
be taken in writing, . . .	60	Contempt of court, . . .	72
Ordering witnesses out of court, . . .	60	Days and places for holding petty	
Alleged irregularity in summons, . . .	60	sessions, . . .	73
Adjournment, . . .	61	Appeal, . . .	73
Non-attendance of justices, . . .	61	Provisions as to children and young	
Justices equally divided, . . .	62	persons, . . .	73
The adjudication—	62-64	Chairman of district council, . . .	74
The order, . . .	62	Duty of constabulary to execute war-	
Order-book, . . .	63	rant, . . .	75
Certificate of order, . . .	64		

Jurisdiction of justices at petty sessions.

THE jurisdiction of justices at petty sessions has to do with— (1) the hearing and determination of certain criminal, quasi-criminal, or civil cases, in a summary way; (2) the granting of certain certificates or licences to sell intoxicating liquor, game, &c. (as to which see appropriate titles, LICENSING JURISDICTION, GAME, &c.). Civil jurisdiction is dealt with separately. This chapter is concerned with the criminal and quasi-criminal jurisdiction of justices in petty sessions.

The summary jurisdiction of justices is derived entirely from statute. If a statute creates an offence, and does not expressly make it subject to the summary jurisdiction of justices, it will not be triable



summarily, but will be an indictable misdemeanour (see Russell, *Jurisdiction of justices at petty sessions*, 7th ed., p. 11; *R. v. Hall*, (1891) 1 Q.B., at p. 767), and punishable, if no penalty is awarded by the statute, with fine or imprisonment within the discretion of the court (Russell, 249). There are, however, instances where, having regard to the plain and obvious intention of the statute, summary jurisdiction has been held to apply, notwithstanding the absence of an express provision to that effect (*Cullen v. Trimble*, (1872) L.R. 7 Q.B. 416; *Johnson v. Colam*, (1875) L.R. 10 Q.B. 544). In some cases an offence is triable either summarily or by indictment, either at the option of the accused (e.g., Merchandise Marks Act, 1887, see s. 2) or at the option of the justices (e.g., 24 & 25 Vict. c. 100, s. 46).

As the power to hear and determine cases in a summary way is entirely the creation of statute, regard must be had in each case to the provisions of the particular statute under which the proceedings are brought. The Petty Sessions Act, 1851 (14 & 15 Vict. c. 93), contains general provisions which are applicable to all offences triable summarily, whether created by statutes passed before or after the Petty Sessions Act, save where otherwise expressly provided (Fines Act (Ir.), 1874, 37 & 38 Vict. c. 72, s. 5), or where it appears the Act was not intended to apply (*R. v. Unkles*, (1873) I.R. 8 C.L. 50, at pp. 52, 56; *Glasgow v. Henry*, (1907) 41 I.L.T.R. 245). The Act does not extend to Dublin metropolis, save so far as relates to the backing or executing of warrants (s. 41), nor to proceedings under the Acts relating to His Majesty's revenue of excise or customs, stamps, taxes, or post office, or relating to the preservation of game, except that all proceedings as to the same may be in the forms of procedure required by the Act, or as near thereto as the circumstances of the case will admit (s. 42). Where a defendant was charged with an indictable offence, to wit, intimidation, and the justices at the hearing made an order, "defendant convicted and ordered to give sureties to keep the peace," the order was set aside as being a conviction of an offence which the justices had no power to dispose of summarily (*R. (O'Grady) v. Cork JJ.*, (1905) 5 N.I.J.R. 191). Justices have power to summarily determine a complaint of assault, which in fact includes or was accompanied by wounding (*R. (McGrath) v. Clare JJ.*, (1905) 2 I.R. 510; *R. v. Elrington*, (1861) 1 B. & S. 688); but where the defendant, a boy of fourteen years of age, was charged, on the police charge-sheet, with unlawfully wounding, and evidence was given in court in support of that charge, and the justices, without informing the defendant that he was being tried for a common assault, or asking the defendant, or his parents on his behalf, to plead, convicted the defendant of common assault, the conviction was quashed (*R. (Walsh) v. Dublin JJ.*, (1902) 2 N.I.J.R. 41).

Many statutes enact that the penalties shall be recovered in manner prescribed by the Summary Jurisdiction (Ireland) Acts. By the Interpretation Act, 1889, s. 13 (9), the expression "the Summary Jurisdiction (Ireland) Acts" means, as regards Dublin, the Acts regulating the powers and duties of justices of the peace or of the police of that district, and as respects any other part of Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act, past or future, amending the same.

Generally speaking, three things must concur to ground the jurisdiction of a justice of the peace: (a) that the subject-matter of the

Application of Petty Sessions Act to cases of summary jurisdiction.

Local limits of jurisdiction.

Local limits of jurisdiction.

proceedings shall have arisen within the place or county for which he is in commission; (b) that the justice shall be in said county at the time of the exercise of his jurisdiction; and (c) that the defendant is amenable within the county.<sup>1</sup> But several extensions have been added to the jurisdiction by statute—(1) as to *matters arising within the justice's county*,<sup>2</sup> where the justice is himself outside the county; and (2) as to *matters not arising within his county*, though the justice is within his county.

A justice for any county may act as such in all matters arising within such county, although he may at the time happen to be in an adjoining county, provided he be also a justice for such adjoining county; and a justice for any county may act as such in all matters arising within that county, although he may at the time happen to be in any city, town, or place, being a county of itself, situated within or adjoining to the justice's said county, whether he shall be a justice of such city, town, or place, or not (Petty Sessions Act, 1851, s. 7). Wherever any townland of one county shall be included in a petty sessions district of an adjoining county, a justice of such petty sessions district, though not a justice of the county in which the townland is situate, shall have jurisdiction over the townland (*ib.*)<sup>3</sup>

By section 10 of the Petty Sessions Act, 1851, a justice of the peace may receive an information or complaint, and proceed in respect of the same in the following cases:—

(A) Where *information* shall be given (1) that any person has committed or is suspected to have committed any treason, felony, misdemeanour, or other offence within the limits of the jurisdiction of such justice, for which such person shall be punishable either by indictment or upon summary conviction; or (2) that any person has committed or is suspected to have committed any such crime or offence elsewhere out of the jurisdiction of such justice, either in Great Britain or Ireland, or in the Isle of Man or Channel Islands, and such person is residing or being, or is suspected to reside or be, within the limits of the jurisdiction of such justice; or (3) that any person has committed or is suspected to have committed any crime or offence whatsoever on the high seas, or in any creek, harbour, haven, or other place in which the Admiralty of England or Ireland have or claim to have jurisdiction,<sup>4</sup> or on land beyond the seas for which an indictment can be legally preferred in the United Kingdom of England and Ireland,<sup>4</sup> and such person is residing or being, or is suspected to reside or be, within the limits of the jurisdiction of such justice; or

(B) Whenever a *complaint* has been made to any justice as to any other matter arising within the limits of his jurisdiction, upon which he shall have power to make a summary order. This clause

<sup>1</sup> As to chairman of councils, see p. 74, *post*. Apparently merely ministerial acts, voluntarily done, can be performed by a justice outside his county. As to whether recognizances and informations voluntarily entered into or given are within the rule or exception, *quære*, see Nun and Walsh, 2nd ed., p. 46.

<sup>2</sup> That part of the sea-shore which lies between high- and low-water mark, and the sea covering such part of the shore when the tide is in, are part of the county (*Embleton v. Brown*, (1863) 3 E. & E. 234). High- and low-water mark means medium high- and low-water mark, i.e. half-way between spring and neap high- and low-water marks respectively (*Webber v. Richards*, (1840) 10 L.J.Q.B. 203).

<sup>3</sup> As to jurisdiction in fishery cases, see *R. (Mackay) v. Limerick JJ.*, (1898) 2 I.R. 135, noted FISHERY OFFENCES; and as to cases not within Petty Sessions Act, see Chapter VI., SUMMARY CASES NOT WITHIN PETTY SESSIONS ACT.

<sup>4</sup> As to which, see p. 14 n.

refers to *civil* matters. The terms "complaint" and "information" mean, respectively, the initiatory steps in proceedings of a civil and criminal nature (*In re Dillon*, (1859) 11 I.C.L.R. 232). Local limits of jurisdiction.

By section 11, where the offence shall have occurred or the cause of complaint shall have arisen within the petty sessions district for which the justice issuing the summons shall act, but the defendant shall reside in an adjoining county, it shall be lawful for the justice to compel the appearance of such defendant in like manner as if he resided within the district, although such justice may not be a justice of such adjoining county.

All felonies and misdemeanours committed on the boundary or boundaries of two or more counties, or within 500 yards of any such boundary, or begun in one county and completed in another, may be dealt with in any of the said counties as if they had been actually committed therein (9 Geo. 4, c. 54, s. 26). When any felony or misdemeanour is committed on any person, or on, or in respect of, any property in or upon any coach or other carriage employed in any journey, or on board any vessel employed on any voyage on river, canal, &c., it may be dealt with, &c., in any county through any part of which such carriage or vessel passed, as if actually committed in such county: if the side, centre, bank, or any part of such road, river, canal, or navigation, constitute the boundary of any two counties, the offence may also be dealt with, &c., as if actually committed in either of such two counties (s. 27).<sup>1</sup>

As to other statutes affecting the local limits of jurisdiction, see p. 15; as to justices under L. G. Act, see p. 74.

Generally any person may be informer or complainant, but sometimes the statute allows only particular persons to inform (Paley, 8th ed. 80), and this may be done impliedly, as by s. 11 of the Sea Fisheries Act, 1883, which enacts that the provisions of the Act are to "be enforced by sea-fishery officers," which words have been held to exclude all other persons (*R. v. Cubitt*, (1889) 22 Q.B.D. 622). The question as to the right of a member of the public to lay a complaint was discussed by Palles, C.B., in *Kenealy v. O'Keefe*, (1901) 2 I.R. 39.—"In cases of indictable offences the title of a prosecutor to prefer a bill of indictment does not depend upon pecuniary interest. The prosecutor, as one of the public, puts the criminal law in motion, not for his own private profit, but to procure the infliction of punishment for an offence against the public of which he is one. In the absence of any decisions or practice to the contrary, it would seem reasonable to infer from these premises that when justices acquired a jurisdiction to dispose summarily of particular new offences created by statute, *prima facie*, any member of the public might lay an information in respect thereof. This *prima facie* inference might necessarily be rebutted in either of two ways: first, by that which was constituted an offence, instead of being a matter which affected the public generally, being no more than a grievance to a particular person; secondly, by the statute creating the offence negating or limiting the general right. But if the offence was one

Who can be complainant.

<sup>1</sup> These sections are given *verbatim*, pp. 15-16. The statute of 9 Geo. 4, c. 54, applies to felonies and misdemeanours. Strictly, every offence, whether at common law or statute, less than a felony, however punishable, is a misdemeanour, and in this sense the above sections would apply, as it is submitted they do, to offences triable summarily. But frequently the term misdemeanour is synonymous with offences (less than felony) triable by indictment (see Russell, 7th ed., 10; 6th ed., 193, 194).



Who can be complainant.

against the public generally, then the mere circumstance that a member of the public had no pecuniary interest in a conviction would appear to be insufficient to rebut the inference, because it was not upon any such pecuniary interest that his *prima facie* right to proceed depended. The fact that the entire penalty is by the statute appropriated to a particular party may, *inter alia*, be relied on to show that the offence created by the statute was one against the individual only, and not against the public generally. If, however, upon the true construction of the statute, the offence is one against the public, and not against a particular individual only, then I am of opinion as well upon principle as upon the authority of *Cole v. Coulton* (2 E. & E. 695), and uniform usage, that the mere circumstance of the entire penalty being appropriated to a person other than the informer does not take the case out of the general rule." Accordingly, it has been held that a member of the public can prosecute in the following cases:—trespass in pursuit of game (*Midleton v. Gale*, (1838) 8 A. & E. 155; *Morden v. Porter*, (1860) 29 L.J.M.C. 213; *R. (Connolly) v. Tyrone J.J.*, (1902) 2 I.R. 78); a prosecution under the Diseases of Animals Act, 1894, and orders made thereunder (*R. v. Stewart*, (1896) 1 Q.B. 300); under the penal clauses of the English Highway Act, 1835, 5 & 6 Wm. 4, c. 50; (*Back v. Holmes*, (1887) 57 L.J.M.C. 37; suffering prostitutes to assemble at defendant's house (*Cole v. Coulton*, (1860) 2 E. & E. 695); recovery of penalties under the Local Government Act for acting as a district councillor when disqualified (*Kenealy v. O'Keeffe*, (1901) 2 I.R. 39); breach by a tramway company of a bye-law forbidding overcrowding (*Badeock v. Sankey*, (1890) 6 T.L.R. 170); wrongfully assuming a medical title contrary to section 40 of the Medical Act, 1858, 21 & 22 Vict. c. 90 (*Clark v. McGuire*, (1909) 2 I.R. 681, 43 I.L.T.R. 52); selling poisons contrary to Sale of Poisons (Ireland) Act, 1870, 33 & 34 Vict. c. 26, s. 2 (*Lawler v. Egan*, (1901) 2 I.R. 589); throwing stones to the annoyance of passengers contrary to section 28 of the Towns (England) Police Clauses Act, 1847 (*Jobson v. Henderson*, (1900) 19 Cox 477). But the fact that the entire penalty is to go to a particular person is a strong indication that the person to whom the penalty is to go is the only person to sue for it (*per* Lord Coleridge, C.J., in *Anderson v. Hamlin*, (1890) 25 Q.B.D. 224; see also *R. v. Corden*, (1769) 4 Burr 2279; *R. v. Hicks*, (1855) 4 E. & B. 633). A constable can proceed against a defendant for being drunk on the public highway contrary to the Towns Improvement Act, 1854, s. 72 (*Coulter v. Martin*, (1887) I.R. 11 C.L. 477; *Stevenson v. O'Neill*, (1877) I.R. 11 C.L. 134). In some cases of injury to private property, where the penalty is intended as a compensation to the owner, and in which the dissent of the owner is essential to constitute the offence, it is requisite that either the information should be laid on behalf of the owner, or that some other proof of his dissent should be adduced along with the charge, although the statute itself may not profess in terms to make that a condition, for, unless it appears that the owner dissented from the act, it does not amount to an offence (Paley, 8th ed. 81). As in olden times an informer had to inform orally, a corporation cannot

<sup>1</sup> As to the right of the Department of Agriculture to prosecute under the Fertilisers and Feeding Stuffs Act, 1906, see *Department of Agriculture & Marchbank v. Porter*, (1910) 44 I.L.T.R. 13. See also *Hennessey v. Ryall*, (1911) 44 I.L.T.R. 4, and *M'Cormack v. Carroll*, (1911) 44 I.L.T.R. 7, noted CATALOGUE OF SUMMARY OFFENCES, "Game" and "Fisheries" respectively.



sue, in a civil action at all events, for a penalty as a common informer, unless expressly authorized so to do (*Guardians of St. Leonards v. Franklin*, (1878) 3 C.P.D. 377, Chitty's Archbold's Practice, 14th ed. 1050); as to whether this applies to criminal proceedings, *quære*, see *R. (Ferris) v. Londonderry JJ.*, (1903) 2 I.R. 748. A police constable, as a rule, prosecutes merely as a common informer (see observations of Palles, C.B., in *R. (Lawlor) v. King's Co. JJ.*, (1907) 41 I.L.T.R. 77). A board of guardians prosecuting a defendant for wilfully neglecting to maintain his wife are not common informers, but parties aggrieved (*R. (Ferris) v. Londonderry JJ.*, (1903) 2 I.R. 747; cf. *Robinson v. Currey*, (1881) 7 Q.B.D. 465). Under the Food and Drugs Act, 1899 (62 & 63 Vict. c. 51, s. 2), the inspector of food and drugs may prosecute in his own name, without any antecedent resolution of the local authority (*Connor v. Butler*, (1902) 2 I.R. 569). A prosecution will fail if the provisions of a particular statute making a consent of an official necessary before its institution be not strictly followed. The Sunday Observation Prosecution Act, 1871 (E.), enacts that a prosecution under the Act shall not be instituted without the written consent of the chief officer of police of the district; *held*, that the consent of the superintendent of police who was in charge of the district during the temporary absence of the chief constable was not sufficient (*R. v. Halkett*, (1910) 1 K.B. 50). Where a statute provides that a prosecution shall not be instituted except with a certain consent, such consent must be obtained before the summons is issued (*Department of Agriculture and Marchbank v. Porter*, (1910) 44 I.L.T.R. 13).

By the Petty Sessions Act, 1851, s. 8 (2), it shall not be lawful for justices to hear and determine any cases of summary jurisdiction<sup>1</sup> out of petty sessions, with the following exceptions:—(1) drunkenness, vagrancy, fraud in the sale of goods, disputes as to sales in fairs or markets, which may be determined by one justice out of sessions; (2) any complaint as to any offence when the offender shall be unable to give bail for his appearance at petty sessions. Where the offender is unable to give bail, two justices are required (see also Summary Jurisdiction Act, 14 & 15 Vict. c. 92, s. 1). and they have no jurisdiction to make a summary conviction out of petty sessions, without first requiring the defendant to find bail for his appearance at next petty sessions (*R. (Gallagher) v. Martin*, (1874) I.R. 8 C.L. 556), and the fact that the defendant was unable to give bail should appear on the face of the conviction (*R. (Connell) v. Dublin JJ.*, (1861) 13 I.C.L.R. 375).<sup>2</sup>

In the case of offences not punishable on indictment, a summons only can be issued in the first instance (s. 11 (2)). In every case where the offence shall have occurred or the cause of complaint shall have arisen within the petty sessions district for which the justice shall act, but the defendant shall reside in an adjoining county, the justice may compel the appearance of the defendant in like manner as if he resided within the county (s. 11). But justices of a county, within which an offence punishable on summary conviction is alleged to have been committed, have no power to issue a summons for service on a defendant who is outside the county and not within an adjoining county (*G. S. & W. R. Co. v. Leyden*, (1907) 2 I.R. 160). A single

Who can be complainant.

Cases triable out of sessions.

Enforcing appearance of defendant. Summons or warrant.

<sup>1</sup> This will not apply to summary cases not within Petty Sessions Act; see p. 76.

<sup>2</sup> By the Summary Jurisdiction (Ir.) Act, 1862, all offences punishable summarily under that Act, or under the Larceny Act, 1861, the Malicious Damage Act, 1861, the Coinage Offences Act, 1861, or the Offences against the Person Act, 1861, may be tried by two justices out of petty sessions, should the accused be unable to procure bail for his appearance at petty sessions.

Enforcing  
appearance of  
defendant.  
Summons or  
warrant.

justice may receive an information or complaint (s. 10), and may, of course, receive it and issue his summons thereon out of Petty Sessions, unless in the rare cases where the statute (e.g. recovery of tenements under 23 & 24 Vict. c. 154, s. 85) expressly requires that the complaint shall be made at petty sessions. The summons shall be signed by the justice or one of the justices issuing the same, shall state shortly the cause of complaint, and shall not be signed in blank (s. 11). Though there are no express words in the Irish statute giving a justice a discretion as to issuing a summons, yet it is submitted that a justice has a discretion just as much as in England, where the words of the Summary Jurisdiction Act, 1849, 11 & 12 Vict. c. 42, s. 9, are that the justices are to issue a summons "if they shall think fit." But the justices must consider the case upon its merits, apart from extraneous considerations, and must exercise their discretion reasonably (see *R. v. Adamson*, (1876) 1 Q.B.D. 201; *R. v. Byrde*, (1890) 63 L.T. 645; *Ex parte MacMahon*, (1883) 48 J.P. 70; *Ex parte Reid*, (1885) 49 J.P. 600; *R. v. Gravesend JJ.*, (1891) 55 J.P. 277; *R. v. Botvler*, (1884) 33 L.J.M.C. 101; *R. v. Bros*, (1901) 18 T.L.R. 39; *R. v. Kennedy*, (1902) 86 L.T. 753; *R. v. Bennett*, (1908) 24 T.L.R. 681). It has been held in England, on the construction of 11 & 12 Vict. s. 1, that the summons must be signed by a justice to whom the complaint has been made (*Dixon v. Wells*, (1890) 25 Q.B.D. 249). The point was raised, but not decided, in *R. (Murphy) v. Wexford JJ.*, (1892) 27 L.L.T.R. 126: but there seems to be no difference material to this question between the English and Irish sections; and by circular dated November, 1893, justices were directed to hear complaints before signing a summons. It is not necessary that the justice issuing the summons shall be one of the justices by whom the case shall be afterwards determined (s. 11 (2)). The information or complaint may be either with or without oath, and either in writing or not, according as the justice shall see fit (s. 10 (1)). If the information is in writing, the defendant is entitled to a copy of it on payment of a fee of sixpence to the Petty Sessions Clerk (s. 10). Every summons, whether to a defendant or a witness, must be stamped (21 & 22 Vict. c. 100, s. 14), but need not be sealed (Petty Sessions Act, s. 36).

The summons may contain any number of charges (see p. 87); as to the statement of the offence in the summons and conviction, see p. 84; as to powers of amendment, see p. 93.

Non-appearance of defendant.

If the defendant shall not appear, two courses are open—(a) *in all cases of summary jurisdiction, civil or criminal, wherever the defendant or his agent shall not appear*, if it shall be proved that the summons was served a reasonable time<sup>1</sup> before the time appointed for the hearing, the justices may hear and adjudicate on the complaint in the absence of defendant (s. 20); (b) *in the case of offences*,<sup>2</sup> if the defendant shall not appear, if it shall be proved that he was personally served, or is keeping out of the way of such service, the complaint being in writing and on oath, the justices may issue a warrant for his arrest, and when the defendant is brought before them may either commit him pending the hearing, or discharge him, having taken his recognizance with or without sureties to appear (s. 11 (2)), and may bind over the complainant to prosecute (s. 10 (3)). The word "agent" includes the father, son, husband, wife, or brother of the party; provided that any such person be thereunto authorized in writing by the

<sup>1</sup> As to what is a reasonable time, see p. 49.

<sup>2</sup> As to what is a criminal matter or offence, see p. 65.

party, and receive no remuneration therefor, and have the leave of the court to appear and be heard, and that the court is satisfied that such complainant or defendant is from infirmity or other unavoidable cause unable to appear (45 & 46 Vict. c. 24, s. 1).

Enforcing  
appearance.  
Non-appear-  
ance of  
defendant.

On the construction of the English statute,<sup>1</sup> it has been held that there is no obligation on the defendant to appear personally, and if he appears by counsel or solicitor, the justices have no jurisdiction to issue a warrant to compel his personal appearance (*Bessell v. Wilson*, (1853) 1 E. & B. 489; *R. v. Thompson*, (1909) 2 K.B. 614; *R. v. Montgomery*, (1910) 26 T.L.R. 225). Sections 9 and 10 of the Irish Petty Sessions Act seem to contemplate an appearance either personally "or by counsel or attorney," and, on the whole, where the defendant or his "agent," as above defined, does not appear, but he is represented by counsel or solicitor, it would be unsafe to grant a warrant in case of a summary offence, to enforce his appearance.

The court will set aside a conviction where the non-appearance of the defendant arose by reason of an arrangement to that effect between the parties (*R. (Brown) v. Londonderry JJ.*, (1900) 6 I.W.L.R. 134), or through a misunderstanding, caused by negotiations between the plaintiff and the defendant (*R. (Lowry) v. Antrim JJ.*, (1901) 2 N.I.J. 6; see also *R. v. Hendry*, (1909) 25 T.L.R. 635).

If the case has been determined in the absence of the defendant, who subsequently appears before the bench has separated, and before the order book has been signed, it is submitted that the justices have a discretion to re-open the matter if the complainant be also present (see *R. v. Robson*, (1893) 57 J.P. 133).

Where several persons join in the commission of an indictable offence, all or any number of them may be jointly indicted for it, or each of them may be indicted separately (Archbold's Pleading and Evidence in Criminal Cases, 24th ed., p. 80). The same rule applies to summary proceedings (*Morgan v. Brown*, (1836) 4 A. & E. 515). Thus, persons may be jointly charged with an assault (*In re Stipendiary Magistrate at Brighton*, (1893) 9 T.L.R. 522), or with trespassing in pursuit of game (*R. v. Littlechild*, (1871) L.R. 6 Q.B. 293); and if they are so charged, they cannot, *as of right*, claim that the cases shall be tried separately, so that each may be a competent witness for the other, the matter being one for the discretion of the justices (*R. v. Littlechild*, *supra*); and a separate conviction may (*ib.*) and apparently should (*Morgan v. Brown*, *supra*) be drawn up against each, awarding separate penalties to be paid by each. An application to be tried separately should be granted if the defence is likely to be prejudiced by a joint trial (*R. v. Dibble*, (1908) 1 Cr. App. R. 155). Where partners commit a joint offence, each is liable to the penalties imposed by statute (*R. v. Dean*, (1843) 12 M. & W. 39). Where several persons join in an offence and do injury to the complainant, each of the offenders may be amerced in the amount of the injury, though only one sum will be paid as amends to the complainant, the other sums being applicable as penalties awarded to the Crown (Petty Sessions Act, s. 22 (7)).

Joint offence.

<sup>1</sup> Section 2 of the English Act, 11 & 12 Vict. c. 43, provides that if the defendant shall not appear and upon proof of service, the justices may issue their warrant. Section 13 gives the same power or the alternative of proceeding *ex parte*, and also provides that if both parties appear either personally or by their respective counsel or attorney, then the said justice or justices shall proceed to hear and determine the case. Section 12 provides that the party against whom any complaint or information is made shall be admitted to make his full answer and defence thereto, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf.



Enforcing  
appearance.  
Service of  
summons.

The procedure as to service of a summons is regulated by section 12. The summons may be served, in constabulary prosecutions, by any constable. A prosecution under the Food and Drugs Act, at the instance of a constable who is a duly appointed inspector under that statute, is not a constabulary prosecution (*Hannam v. Morrissey*, (1906) 40 I.L.T.R. 222). Such a prosecution is a county prosecution, as it is at the expense of the local authority, and the penalty will go to such authority (*per* Palles, C.B., in *R. (Lawlor) v. King's Co. JJ.*, (1907) 41 I.L.T.R. 77). But where a constable prosecutes as a common informer, that is a constabulary prosecution, and so a prosecution under the Weights and Measures Act, 1878, by a constable who has been appointed inspector of weights and measures, is a constabulary prosecution (*ib.*). In all other cases the summons may be served by the summons-server of the district, or, if the justice issuing the same shall so direct or permit, by any other person whom the complainant shall employ, and who shall be able to read and write, but in no case by the complainant himself. The justices may appoint some one or more persons, able to read and write, to act as summons-servers. The summons may be served by delivering a copy to the defendant, or, if he cannot be conveniently met with, by leaving such copy for him at his last or most usual place of abode, or at his office, warehouse, counting-house, shop, factory, or place of business, with an inmate not being under sixteen years old, a reasonable time before the hearing of the complaint, and such service shall be deemed sufficient service of such summons in every case except where personal service shall be specially required by the Act. Nothing in the section shall affect the provisions of any Act authorizing the substitution of service in particular cases. The section would seem to dispense with the necessity for personal service imposed by any earlier statute, but it is submitted that in case of a later statute, the mode of service prescribed by such later statute must be followed; for instance, under the Food and Drugs Act, 1899, fourteen days must elapse between the date of service and the hearing (*per* *Queen v. Jackson*, (1903) 2 K.B. 163). It is not good service to leave the summons at the defendant's last place of abode, unless he cannot be conveniently met with (*R. (Cinnamon) v. Belfast JJ.*, (1909) 43 I.L.T.R. 187; see also *Blue v. Fullerton*, (1876) I.R. 10 C.L. 233). "The expression 'last place of abode' does not necessarily mean the place where the person is living at the time; but in order that a place may be properly described as his last place of abode, he must not have some other present abode, for that would make the former his last place of abode but one" (*per* Kay, L.J., in *R. v. Farmer*, (1892) 1 Q.B. 637, at p. 640). If a person leaves the country under such circumstances as justify the inference that he has not really abandoned his home, then such home still remains his "last place of abode" (*ib.*; *R. v. Evans*, (1850) 19 L.J.M.C. 151; *R. v. Webb*, (1896) 1 Q.B. 487; *cf. R. (Regan) v. Cork JJ.*, (1911) 45 I.L.T.R. 7). It has been held that service at a shop of the defendants, a limited company, not being the registered address of the company, is not good service, and that service must be effected under section 62 of the Companies Act, 1862 (now replaced by section 116 of the Companies Consolidation Act, 1908), by leaving the summons at or sending same to the registered address (*Pearks v. Richardson*, (1902) 1 K.B. 91).



As to when a company may be made amenable, see p. 83. A notice of default, posted in an open envelope, stamped with a halfpenny stamp, and addressed to the last known place of business of an industrial assurance company, and which was returned marked "not known," was held well served under the Collecting Societies and Industrial Assurance Companies Act, 1896, 59 & 60 Vict. c. 26, s. 16 (*Morgan v. McClure*, (1898) 4 I.W.L.R. 199).<sup>1</sup>

Enforcing  
appearance.  
Service of  
summons.

Section 12 provides that the summons shall be served a reasonable time before the hearing of the complaint.<sup>2</sup> The defendant, a fisherman, went to sea on the 9th March; a summons was left for him at his residence on the 10th March, requiring him to attend at petty sessions on the 12th March, at which proof was given that the summons was left as aforesaid, and defendant was convicted and sentenced to a term of imprisonment. The defendant did not return till the 9th April, when he was arrested and imprisoned. It was held that there was no evidence that the summons had been served in reasonable time, and that the conviction should be quashed (*R. v. Smith*, (1875) L.R. 10 Q.B. 604); and the justices were subsequently held liable in an action for false imprisonment (*Smith v. Ewen*, (1875) 39 J.P. 724). A summons was served at eight in the morning, requiring the defendant to appear at petty sessions, eight miles distant, on the following day. The defendant was not at home when the summons was served, and did not return till eleven o'clock that night: held, that the summons was served within a reasonable time (*Ex parte Williams*, (1851) 21 L.J.M.C. 46). The justices are the judges whether the summons was served a reasonable time before the hearing (*ib.*). A summons was left at defendant's house in Cambridge on the 6th September (Saturday), requiring him to appear on the 10th. The defendant had gone to Jersey, and the summons was sent by post, and reached him in Jersey on the morning of the 10th, when he telegraphed an explanation to the justices, and his foreman applied for an adjournment. The justices having convicted, a certiorari was refused, as the justices were satisfied that there was a reasonable time to instruct a solicitor if so inclined (*R. v. Cambridgeshire J.J.*, (1880) 44 J.P. 168). This decision, however, seems hardly consistent with *R. v. Smith* (*supra*); and it is difficult to see how the defendant, under the circumstances, could have instructed a solicitor as to the merits of the case. On April 30th a constable told C., a chauffeur, that he would be summoned for driving a motor car contrary to the Motor Car Act, 1903, on that date. On May 2nd C. left his lodgings at Newtown, taking his motor car to Coventry on his master's business. Before leaving he told his landlady to take in the summons if it came for him. On May 4th the summons, returnable for May 7th, was left with his landlady, and on May 7th he was convicted in his absence and without his knowledge. On May 9th he returned to Newtown. It appeared that the justices were under the impression

<sup>1</sup> A document may be served on a company by leaving it at or sending it by post to the registered office of the company (Companies Consolidation Act, 1908, s. 116). Where an Act passed after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or the expression "give" or "send," or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document; and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post (Interpretation Act, 1889, s. 26).

<sup>2</sup> As to waiver, see pp. 50, 109.

Enforcing  
appearance.  
Service of  
summons.

that the summons had actually reached C. It was held that his conviction should be quashed, apparently on the ground that if the justices had known that the summons had not reached C., they would probably have concluded that a reasonable time had not elapsed (*R. v. Anwyl*, (1909) 73 J.P. 485).<sup>1</sup> A defendant applied for an adjournment on the ground that the summons had been served on him only the day before. There were circumstances in the case which warranted the justices in believing that the application was frivolous, and they refused the application: *held*, that the Court would not interfere with the justices' discretion (*R. (Cross) v. Tyrone JJ.*, (1908) 42 I.L.T.R. 112). A summons was served on X while being conveyed to prison, and the matter came on for hearing while he was still in prison, and he was convicted. The affidavits contained the statement that the defendant's wife attended and asked for an adjournment, but this was denied. The conviction was quashed (*R. (Crumley) v. Cavan JJ.*, (1898) 4 I.W.L.R. 215). On a case stated by justices the Court adjudged that the justices were wrong in dismissing the complaint, and remitted the case to the justices with a direction to convict. Thereupon the complainant served the order on both justices and defendant, and served notice upon the defendant that an application would, on a particular day, be made to the justices to rehear the complaint: *held*, that such services were sufficient to bring the defendant again before the justices, and that a conviction following thereon was good (*R. (Hastings) v. Galway JJ.*, (1907) 2 I.R. 18).

Waiver of  
irregularity

A defendant, by appearing, may waive any irregularity in the service of a summons or the want of one (*R. v. Stone*, (1801) 1 East 639). But where a solicitor appeared on behalf of a limited company to raise a point as to service, and then took no further part in the proceedings, this was held not to be a waiver (*Pearks v. Richardson*, (1902) 1 K.B. 91). In *R. v. Galway JJ.*, (1879) 6 L.R.I. 1, it was held that the defendant waived an irregularity in a complaint brought by "The Queen at the prosecution of the Royal Irish Constabulary" v. *M.* It is submitted that, to make a point successfully as to service, the defendant should not take any part in the proceedings beyond objecting to the service. It is a contradiction in terms to say he objects to the service and yet to take part in the discussion of the merits (see *Palmer v. Balrothery Guardians*, (1895) 2 I.R. 586, cf. *Dixon v. Wells*, (1890) 25 Q.B.D. 249, p. 96, *post*). For further cases as to waiver of irregularity, see *R. (Sherlock) v. Cork JJ.*, (1908) 42 I.L.T.R. 247, noted under PUBLIC HEALTH ACTS and cases noted, p. 109, *post*. As to power to amend, see p. 93.

Express statu-  
tory provisions  
as to service.

Express provisions as to service are contained in various statutes, e.g., the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25, s. 94 (4)); the statutes conferring jurisdiction to order the recovery of small tenements (14 & 15 Vict. c. 92, s. 15 (2); 23 & 24 Vict. c. 154, s. 87).

Withdrawal of  
charge; death  
of complain-  
ant.

When a complaint has been made and a summons issued, the justices are seised of the complaint, and have jurisdiction to proceed therein, even though the prosecutor wishes to drop the proceedings (*R. v. Wiltshire JJ.*, (1863) 8 L.T.N.S. 242; *per* Andrews, J., in *R. (Forbes) v. Louth JJ.*, (1904) 38 I.L.T.R. 76). In *R. v. Truelove*, (1880) 5 Q.B.D. 336, a complaint having been duly made under 20 & 21 Vict. c. 83, that obscene books were kept by the defendant in his

<sup>1</sup> See also *R. (Dickie) v. Donegal JJ.*, (1910) 44 I.L.T.R. 222, noted under s. 12 of the statute, APPENDIX OF STATUTES.

shop for sale, a warrant for the seizure of such books was issued, and after they had been seized the defendant was summoned to show cause why they should not be destroyed. Upon the hearing of the summons an order was made for the destruction of the books. After the issuing of the summons, but before the hearing, the complainant died, and no application to substitute another complainant was made: *held*, that the proceedings against defendant did not lapse upon the death of the complainant, and that the order was valid. It may here be noted that an agreement to compromise a felony is not alone void, but is itself an indictable offence (Russell, 7th ed., 579). As to misdemeanours, the law permits the compromise of offences, although made the subject of criminal prosecution, for which the injured party might sue and recover damages in an action (*Keir v. Leeman*, (1844) 6 Q.B. 308, 9 Q.B. 371), e.g., the infringement of a trade mark (*Fisher v. Apollinaris Co.*, (1875) L.R. 10 Ch. 297). But where the matter is one of public concern, an agreement to compromise a misdemeanour is not alone void (*Windhill Local Board v. Vint*, (1890) 45 C.D. 351), but is probably an indictable offence (see dictum of Palles, C. B., in *Dillon v. O'Brien*, (1887) 20 L.R.I. 317; Russell, 7th ed., 580).

Withdrawal of charge; death of complainant.

Where a party, either complainant or defendant, is before the court, and the circumstances warrant it, the justices may bind him to the peace, although no formal proceedings by way of information or otherwise have been instituted against him (see *R. v. Wilkins*, (1907) 2 K.B. 380, and other cases noted, p. 35).

Where a statute gives power to justices to order the forfeiture or destruction of property, this should only be done on notice, by summons, to the party interested (*Ex parte Francis*, (1903) 1 K.B. 275; *Gill v. Bright*, (1871) 41 L.J.M.C. 22), the only exceptions to the rule, such as the destruction of unsound food (*White v. Redfern*, (1879) 5 Q.B.D. 15; *Thomas v. Van Os*, (1900) 2 Q.B. 448), being based on the paramount necessity in the public interest of an immediate order (Lord Alverstone, C.J., in *Ex parte Francis*, *supra*).

Orders for forfeiture or destruction of property.

Section 10(4) enacts a time limit<sup>1</sup> in respect of the bringing of the complaint, as follows:—Non-payment of poor rate, county rate, or other public tax, at any time after the date of the warrant authorizing the collection of same; non-payment of wages, hire, or tuition, within one year from the termination of the term or period in respect of which same is payable; trespass, two months; in other cases of summary jurisdiction, six months. The day on which the offence is committed is not reckoned (*Rudcliffe v. Bartholomew*, (1892) 1 Q.B. 161). But this limit will not apply where a later particular statute, e.g. the Sale of Food and Drugs Act, 1899 (which by s. 19 provides that proceedings shall not be instituted in respect of any article purchased for test purposes after the expiration of twenty-eight days from the time of purchase) enacts a different limit. Where the offence is a continuing offence, e.g. continuing a building contrary to the provisions of a statute (*London County Council v. Worley*, (1894) 2 Q.B. 826), or keeping a brothel (*Ex parte Burnby*, (1901) 2 K.B. 458), or neglecting to make a free gap in a weir as required by the Fishery Acts (*Westropp v. Commissioners of Public Works in Ireland*, (1896) 2 I.R. 93), penalties may be recovered in respect of the period of six

Time limit for complaints.

<sup>1</sup> The laying of the information, and not the service of the summons, is the institution of the prosecution (*Sharpe v. Priestnall*, (1897) 1 Q.B. 159; *Beardsley v. Giddings*, (1904) 1 K.B. 847).



Time limit for  
complaints.

months before the issue of the summons, though the act originally constituting the offence may have been committed before the beginning of such period. Where the justices imposed a conviction of so much per day, for a period exceeding six months, for acting contrary to a closing order obtained under the Public Health Act, it was held that the penalty could not be segregated, and that the conviction should be quashed (*R. v. Slade*, (1895) 2 Q.B. 247). Where a three months' notice is necessary to found the complaint, the time runs from the expiration of the notice (*Jacomb v. Dodgson*, (1863) 3 B. & S. 461). On a charge of conspiracy under the Criminal Law and Procedure (Ireland) Act, 1887, there was evidence of the continuance of the conspiracy to a date within six months from the inception of the proceedings, but no evidence of any overt act by the defendants within that time; *held*, that the proceedings were in time (*Ex parte O'Brien Dalton*, (1890) 28 L.R.1. 36).

The section enacts that the "complaint shall be made . . . within six months from the time when the cause of complaint shall have arisen," so that if the complaint is made within six months, the proceedings will be in time even though the adjudication does not take place until after the expiration of the six months.<sup>1</sup>

The Dublin Police Act, 5 & 6 Vict. c. 24, s. 70, provides that an offence may be heard *and determined* within six months from the commission of the offence; and under that statute, there is no jurisdiction to determine the matter after the period of six months has expired, even though the complaint was made within the six months, and the expiry of that period has been due to adjournments with the consent of the parties (see *R. v. Tolley*, (1803) 3 East 467, *R. v. Bellamy*, (1823) 1 B. & C. 500).

Computation  
of time.

The general rule for computing periods of time is that where a statute or instrument fixes a period, the day from or after which the time is fixed is excluded from the period, and the day on which the act is to be done, or "until" which some act is prohibited, is included therein. For instance, where a complaint is to be made within a month from the commission of the offence, the date of the offence is to be excluded (*Radclyffe v. Bartholomew*, (1892) 1 Q.B. 161). The case of imprisonment is, however, an exception, for the day when the imprisonment commences is counted, and is reckoned as a whole day, though the prisoner was taken late in the day (*Migotti v. Colville*, (1879) 4 C.P.D. 233), so that the term of a prisoner sentenced and imprisoned on the 2nd January, to twelve months' imprisonment, would expire at midnight on the 1st January of the following year, unless the statute otherwise provides. Sunday is counted even where it is the last day for doing an act, for instance, it is counted in the three days within which the notice necessary to have a case stated must be served (*Peacock v. R.*, (1858) 4 C.B.N.S. 264; see also *Ex parte Simpkin*, (1859) 2 E. & E. 392; *R. v. Middlesex JJ.*, (1843) 7 Jur. 396).<sup>2</sup> In every Act passed after the year 1850, the expression "month" shall, unless the contrary intention appears, mean calendar month (Interpretation Act, 1889, 52 & 53 Vict. c. 63, s. 3). Prior to 1850, the word "month,"

<sup>1</sup> As to the effect where a statute passed subsequent to the Petty Sessions Act enacts that penalties may be "recovered" in a summary manner within six months, see *Morris v. Duncan*, (1899) 1 Q.B. 4, noted under "FOOD AND DRUGS."

<sup>2</sup> For instances in which Sunday, when the last day for doing a thing, is not counted, see *Milch v. Frankau* (1909) 2 K.B. 160, noted in CATALOGUE OF SUMMARY OFFENCES—"SUNDAY."



without the addition of "calendar," meant a lunar month of twenty-eight days (*Franco v. Alvares*, (1746) 3 Atk. 346). In the case of imprisonment of a month or several months, if there is no day in the month corresponding to the day from which the sentence is to run, the sentence expires on the last day of the month. Whenever any expression of time occurs in any Act of Parliament, deed, or other legal instrument, the time referred to shall, unless it is otherwise specifically stated, be held to be Dublin mean time (Statutes (Definition of Time) Act, 1880, 43 & 44 Vict. c. 9).

Computation  
of time.

A witness within the jurisdiction of the justice may be summoned to appear and to produce documents; should he neglect or refuse, the information or complaint being in writing and on oath, and on proof of personal service, or that the witness is evading service, and that he is able to give material evidence, the justice may issue a warrant to arrest him and to bring him and such documents before him (Petty Sessions Act, s. 13). A justice before whom criminal proceedings are pending is a "court" within the definition of that expression in section 10 of the Bankers' Book Evidence Act, 1879, and can, therefore, make an order under section 7 of that Act, on the application of one of the parties to such proceedings, that such party be at liberty to inspect and take copies of entries in a banker's book for the purposes of the proceedings (*R. v. Kinghorn*, (1908) 2 K.B. 949). There seems no power to issue a summons or warrant directed to a witness outside the justice's county. The words "or witness" in section 11 seem to have been inserted by a clerical error; and at all events their inclusion confers no power to issue the summons or warrant. A summons may be taken out in the Crown Office for a witness who is outside the justice's jurisdiction.<sup>1</sup> The King's Bench Division has jurisdiction to set aside a subpoena issued in a criminal proceeding, where it has been issued not *bona fide*, and not for the purpose of obtaining relevant evidence (*R. v. Baines*, (1909) 1 K.B. 258). By 14 & 15 Vict. c. 99, s. 2, either party in a civil matter is a competent and compellable witness. In criminal cases the law still is in Ireland that the defendant or the wife or husband of defendant is not a competent witness unless where the statute so provides (as to what is a criminal matter, see p. 65). Provisions enabling a defendant, or the wife or husband of a defendant, to give evidence are contained in the Licensing Act, 1872 (s. 51); Sale of Food and Drugs Act, 1875 (s. 21); Conspiracy and Protection of Property Act, 1875 (s. 11); Army Act, 1881, s. 156 (3); Explosives Act, 1883 (s. 4); Corrupt and Illegal Practices Act, 1883 (s. 53); Criminal Law Amendment Act, 1885 (s. 20); Merchandise Marks Act, 1887 (s. 10); Motor Car Act, 1903 (s. 19). The defendant is a competent witness in prosecutions under the Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57, s. 57 (3)).<sup>2</sup>

Witnesses.

In all cases of personal injuries committed by the husband or wife against each other, the injured party is an admissible witness (East P.C. 455; see also Married Women's Property Act, 1884, 47 & 48 Vict. c. 14, s. 1). A person who is jointly charged with others in criminal cases is not a competent witness on behalf of the other defendants (*R. v. Payne*, (1872) L.R. 1 C.C.R., 349); nor is the wife of

<sup>1</sup> As to practice, see p. 21 n.

<sup>2</sup> This section does not expressly make the husband or wife of a defendant a competent witness. As to whether, in a prosecution under a statute which makes the accused a competent witness, a person jointly charged with others, and the wife or husband of the defendant, or such person jointly charged, are competent witnesses, see EVIDENCE, p. 261 n.

Witnesses.

one of such defendants a competent witness for the others (*R. v. Thompson*, (1872) L.R. 1 C.C.R. 377). All witnesses shall be examined either on oath (Petty Sessions Act, s. 13), or by affirmation, in the cases mentioned in the Oaths Act, 1888, 51 & 52 Vict. c. 46.<sup>1</sup> If a person appears as a witness in obedience either to a summons or warrant, or shall be present and verbally required by the justices to give evidence, and he shall refuse, without just cause, to give evidence or to produce documents, the hearing may be adjourned for a period not exceeding eight clear days, and the witness may be committed to prison; and if he again refuses, there may be another adjournment and another committal, and so on, provided that a witness cannot be imprisoned for more than a month in all (s. 13). A witness cannot be compelled to give any evidence which would subject him to any punishment, penalty, or forfeiture (*Redfern v. Redfern*, (1891) Prob. 139, *U. S. of America v. McRae*, (1867) L.R. 3 Ch. 79). The claim to privilege must be stated upon oath (*Webb v. East*, (1880) 5 Ex. D. 108). A merely remote and naked possibility of legal peril to a witness from answering a question, does not entitle him to the privilege; it is for the judge to say whether the privilege is warranted by the circumstances (*R. v. Boyes*, (1861) 1 B. and S. 311), and unless the judge is satisfied that the answer will tend to put the witness in peril, he should compel the witness to answer (*Ex parte Reynolds*, (1882) 20 C.D. 294). On the hearing of a charge against a spirit grocer for selling spirits for consumption on the highway adjoining his premises, contrary to section 5 of the Licensing Act, 1872, the prosecutor called the purchaser of the spirits as a witness. She refused to give evidence, on the ground that so doing would tend to incriminate herself, and persisted in her refusal owing to the intervention of the defendant's solicitor. Having been committed, a writ of certiorari was refused, apparently upon two grounds, (1) that the refusal was not bona fide; and (2) that her answering would not have exposed her to a criminal charge (*R. (Atkinson) v. Armagh J.J.*, (1883) 18 I.L.T.R. 2).<sup>2</sup>

As to what evidence is admissible and compellable, see further Chapter on EVIDENCE, p. 258. In cases of summary jurisdiction the justices by whom any order for payment of money not being in the nature of a penalty for an offence shall be made, may order the party at whose instance a witness has been summoned to pay to the witness a sum not exceeding two shillings and sixpence for each day of attendance, and in default to issue a warrant for the levying of same by distress (s. 13).

Number of  
justices  
necessary.

To determine whether the complaint can be determined by one justice, regard must be had to the particular statute under which the complaint is brought. Unless the particular statute otherwise enacts, one justice may hear and determine matters of summary jurisdiction at petty sessions (see s. 10, which gives one justice power to receive an information or complaint, and to proceed in respect of the same). Further, it is expressly provided that all proceedings under the Summary Jurisdiction Act, 14 & 15 Vict. c. 92, may be determined by one or more justices at petty sessions (14 & 15 Vict. c. 92, s. 1). These proceedings are concerned with:—stealing by juvenile offenders,

<sup>1</sup> See p. 259.

<sup>2</sup> The charge is wrongly stated in the report as one of selling during prohibited hours. It is submitted that the second ground of the decision is probably wrong, for the witness could have been prosecuted for having aided and abetted the publican (see Petty Sessions Act, s. 22, *R. (O'Hara) v. Conlon*, (1909) 43 I.L.T.R. 173; *Du Cros v. Lambourne*, (1907) 1 K.B. 40).

certain frauds as to provisions, trespass, injuries to public roads, nuisances on public roads, certain offences as to public stage carriages, carts and cars, road offences, possession of small tenements, disputes between master and servant, or in fairs and markets. By the Summary Jurisdiction (Ir.) Act, 1862 (25 & 26 Vict. c. 50, s. 2), it is provided that every offence punishable summarily under that Act,<sup>1</sup> or under the Larceny Act, 1861 (24 & 25 Vict. c. 96), or under the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), the Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), or the Offences against the Person Act, 1861 (24 & 25 Vict., c. 100), may be prosecuted before any one justice in petty sessions. Any one justice out of petty sessions may determine cases of simple drunkenness, vagrancy, fraud in the sale of goods, or disputes as to sales in fairs and markets (Petty Sessions Act, s. 8).

But many statutes provide that two justices are necessary: for instance, the Licensing Acts (Licensing Act, 1872, s. 5 (1)), for the purposes of which section a resident magistrate sitting alone is not a stipendiary magistrate (*R. (Jackson v. Tipperary J.J.*, (1894) 28 I.L.T.R. 107); the Criminal Law and Procedure (Ir.) Act, 1887 (50 & 51 Vict., c. 20), under which two resident magistrates are necessary, one of them to be a person of the sufficiency of whose legal knowledge the Lord Lieutenant shall be satisfied; the Public Health (Ir.) Act, 1878 (41 & 42 Vict. c. 52, s. 249), an order made under s. 112 of which Act must be signed by at least two justices (*Wing v. Epsom U.D.C.*,<sup>2</sup> (1904) 1 K.B. 798); and the Landlord and Tenant Law Amendment (Ir.) Act, 1860 (23 & 24 Vict. c. 154), s. 86. The Dublin Police Act, 5 & 6 Vict. c. 24, s. 47, enables a divisional justice to act alone, even though the statute requires the act to be done by two justices.<sup>3</sup>

With regard to matters other than a conviction or adjudication on a complaint, the Petty Sessions Act, s. 8, provides that nothing in the Act shall prevent any justice or justices acting out of petty sessions from making any order which a justice or justices may be authorized or required by law to make; this section applies, for instance, to orders to enter a quarry for the purpose of obtaining road material.

With the exception of the cases in which there is express power to hear out of sessions,<sup>4</sup> the hearing of matters of summary jurisdiction shall take place in the public courthouse, or, if there is none, or it is inconvenient to the public, in a public justice room to be provided<sup>5</sup> (s. 8). A conviction was made by two justices sitting in the petty sessions courthouse on a day specially fixed by themselves, but which was not one of the days upon which the petty sessions of the district were usually held; held, that they were acting out of sessions and that their order was void (*R. (Gallagher) v. Martin*, (1874) I.R. 8 C.L. 556). Justices sitting in the dayroom of a police barrack on an occasion fixed by themselves are not sitting in petty sessions or a court of summary jurisdiction (*Quinn v. Pratt*, (1908) 2 I.R. 69.) The place of hearing is an open court to which the public generally may have access so far as the same can conveniently contain them (s. 9).

<sup>1</sup> These offences include certain cases of petty larceny, unlawful possession of property, workman destroying tools.

<sup>2</sup> This case was decided under ss. 96 & 251 and Schedule IV (Form C) of the Public Health Act, 1875 (38 & 39 Vict. c. 55), corresponding respectively to ss. 112 & 249 and Schedule B (Form C) of the Public Health (Ir.) Act, 1878; see also *R. (Donnell) v. Londonderry J.J.*, (1910) 2 I.R. 458, noted *post*, p. 100.

<sup>3</sup> Save under the Game Licences (Ir.) Act, 1865, 28 Vict. c. 2.

<sup>4</sup> And also, of course, of cases not within the Petty Sessions Act, see p. 76. *post*.

<sup>5</sup> The control of the courthouse is still in the Sheriff (*R. (Jackson) v. Sligo C.C.*, (1900) 4 I.L.T.R. 49).



Place of  
hearing.

But the justices have full power to order the removal of any persons causing a disturbance (*R. v. Currick-on-Suir J.J.*, (1889) 16 Cox 571). Probably also, the justices have inherent power to order the removal of women and children in cases requiring evidence of acts of indecent character; and now, by section 115 of the Children Act, 1908, children (that is, persons under fourteen—s. 131), save infants in arms, are not permitted to be present during the hearing of any charge, unless their presence is required for the purposes of justice; and where a child or young person (that is, between fourteen and sixteen, s. 131) is called to testify to any proceedings contrary to decency, the Court may order the court to be cleared of all persons during the hearing of such evidence, excepting the press and persons connected with the case (s. 114).

The hearing.  
Generally.

If a statute prescribes that the defendant shall have the right, if he so chooses, to have his case tried before a jury, and that he shall be informed of such right before the charge is gone into, the omission so to inform him will invalidate the conviction, even though the defendant pleads guilty (*R. v. Corkshott*, (1898) 1 Q.B. 582; *R. v. Beesby*, (1909) 1 K.B. 849). Sections 9, 13, and 20 of the Petty Sessions Act regulate the procedure on the hearing. All witnesses must be examined on oath (s. 13 (4)). A justice cannot convict or commit on evidence not taken before himself (*In re Guerin*, (1888) 16 Cox. 596; *Cuddey v. Seymour*, (1841) 1 Q.B. 889; *R. v. Watts*, (1863) 33 L.J.M.C. 63; *Goodall v. Bilisland*, (1909) S.C. 1152). If a justice enters late and wishes to adjudicate, the witness should be resworn and give his evidence over again; it is not sufficient that the evidence already given should be read over to such justice: this, however, is only an irregularity which may be waived by the parties (*R. v. Jeffreys*, (1870) 22 L.T. 786). During the hearing of an indictable offence depositions were taken before a justice who fell ill, and the proceedings had to be commenced before another justice. At the commencement of the rehearing, counsel for the prosecution proposed to recall some of the witnesses who had made depositions, to reswear them, to read to them their depositions, directing them to correct the evidence if and where it was inaccurate, to ask them any additional questions that might be thought advisable, then to tender these witnesses for cross-examination with liberty for the prosecution to re-examine them where necessary, and then to proceed with the oral examination of those witnesses whom the prosecution intended to call but had not called on the first hearing: *Held*, that there was nothing illegal in the course proposed, and that to accede to the proposal, if he thought it expedient in the interest of justice to do so, was within the discretion of the justice with which the court would not interfere (*Ex parte Bottomley*, (1909) 2 K.B. 14).<sup>1</sup> The parties are entitled to make their cases respectively, and to have the witnesses examined and cross-examined by themselves or by counsel or attorney on their behalf (s. 9). An inspector of the Society for the Prevention of Cruelty to Animals, who has preferred a charge in his own name as complainant, is entitled to examine and cross-examine the witnesses (*Duncan v. Toms*, (1887) 16 Cox. 267).<sup>2</sup> The right to cross-examine is

<sup>1</sup> This was an indictable offence, in which the duty of the justice was merely to see if a *prima facie* case was made out; and, the procedure is certainly not to be followed in summary cases, which are finally disposable by the justices.

<sup>2</sup> The English courts have strongly reprobated the practice of policemen who are witnesses conducting a prosecution (see *Webb v. Catchpole*, (1886) 50 J.P. 795, noted fully on this point in notes to s. 9 of Petty Sessions Act in APPENDIX OF STATUTES).



an absolute right (*R. v. Griffiths*, (1887) 16 Cox. 46). By section 20, if the defendant does not admit the charge, the justices shall hear the evidence on behalf of the complainant and the defendant respectively, and also such evidence as the complainant may adduce in reply if the defendant shall have given any evidence other than as to his general character. If the defendant at the close of the complainant's case objects that the case has failed for want of necessary formal proof, the justices may, and apparently should, allow the omission to be rectified (*per* Cave, J., in *Hargreaves v. Hilliam*, (1894) 58 J.P. 655). Where a solicitor, without any authority from the defendant, but acting on instructions from the defendant's father, pleaded guilty, the conviction was held bad (*R. v. Aves*, (1871) 24 L.T.N.S. 64. The complainant or his agent (as to the meaning of which see p. 46, *ante*) shall have no right to make observations in reply upon the defendant's case, nor shall the defendant or his agent have the right to make any observations upon the plaintiff's case in reply (s. 20). If the defendant has examined witnesses, or given any evidence other than as to his general character, the prosecutor may examine witnesses in reply (Petty Sessions Act, 1881, s. 20, (1)). The burden of proving any exemption, proviso, or exception is cast upon the defendant (Petty Sessions Act, s. 20). As to the necessity of negating exemptions in the summons or conviction see p. 89. The justices have, it is submitted, the right to call for and examine as a witness anyone who is in court (see Petty Sessions Act, s. 13 (5)).

If the defendant or his agent shall not appear, and it shall appear to the justices on oath that the summons was duly served a reasonable time before the hearing, the justices may proceed *ex parte* or may adjourn (s. 20 (2)). As to power to compel defendant's appearance by warrant, see p. 46, *ante*. But where the non-appearance of the defendants was caused by negotiations, in the course of which an impression was conveyed to the defendants that the case would not be proceeded with, the conviction was set aside (*R. (Loury) v. Antrim J.J.*, (1901) 2 N.I.J. 6; see also *R. (Brown) v. Londonderry J.J.*, (1900) 6 i.W.L.R. 134). See also, *R. v. Robson*, 57 J.P. 133, noted p. 47.

If the defendant or his agent shall appear, but the complainant do not appear by himself or his agent, the justices may dismiss the complaint or may adjourn the hearing (s. 20 (3)).<sup>1</sup> This section, unlike section 21, dealing with a determination after a hearing, does not expressly specify whether the order made in the case of non-appearance by the complainant should be "dismissed on the merits" or "dismissed without prejudice," or "dismissed" simply.<sup>2</sup> It would be a hardship on a defendant to be again brought before the justices upon the same charge which he had already appeared to meet, and this would be the result if "dismissed without prejudice" were held to be the proper order. The English statutes give no assistance on the point, as they contemplate only one order of dismissal, namely "dismissed" simply; but it has been held that if the complainant offers no evidence in support of the charge, it should be dismissed (*Tunncliffe v. Tedd*,<sup>3</sup> (1848) 5 C.B. 553;

The hearing.  
Generally.

Non-appearance of  
defendant.

Non-appearance of  
complainant.

<sup>1</sup> As to waiver by a defendant of an objection on the score of non-attendance of complainant, see *May v. Beeley*, (1910) 2 K.B. 722, noted p. 109, *post*.

<sup>2</sup> In the county court, under the 14 & 15 Vict. c. 57, s. 111, if the plaintiff in a civil bill shall not proceed with the same, or shall fail to establish his case, the county court judge can dismiss the civil bill either without prejudice or on the merits, as he shall think just.

<sup>3</sup> In *Tunncliffe v. Tedd*, Coltman, J., said:—"It appears to me that the proceeding in this case is analogous to the ordinary case of an indictment. Where a true bill is found by

The hearing  
Non-appearance of  
complainant.

*Vaughton v. Bradshaw*, (1860) 9 C.B.N.S. 103). *Tunncliffe v. Tedd* and *Vaughton v. Bradshaw* were cases of assault, and dealt with the construction of an old statute (9 Geo. 4, c. 31, s. 27) which provided that if the justices, upon the hearing of any case of assault, should deem the offence not to be proved, or should find the assault to have been justified, or so trifling as not to merit any punishment, and should accordingly dismiss the complaint, they should make out a certificate accordingly, which certificate (s. 28) would be a bar to any other proceedings, civil or criminal, for the same cause. That statute was repealed, and 24 & 25 Vict. c. 100, was passed, which, by section 44, enabled a like certificate to be given "upon the hearing of any such case of assault or battery upon the merits." The prosecutor took out a summons for assault, but gave notice to the defendant that he would not attend, and did not attend or offer evidence: *Held*, that there had been no hearing upon the merits, and that the justices were wrong in having given such certificate (*Reed v. Nutt* (1890) 24 Q.B.D. 669). In *R. v. Unkles*, (1874) 1 R. 8 C.L. 50, R. took out a summons against U. alleging a charge of violation of the secrecy of the ballot, contrary to the Ballot Act, 1872. The summons came on for hearing on the 10th December, 1872, when the complainant did not appear, but the defendant appeared and the order made was "dismissed without prejudice." R. then took out a second summons against U. for the same offence, which came on for hearing on the 31st December, 1872, when complainant did not appear, but the defendant appeared, and an order was made as follows: "Complainant did not appear, defendant appeared in person and by counsel; complaint dismissed without prejudice." R. then took out a third summons against U. for the same offence: and same came on for hearing on the 10th April, 1873, when U. was convicted. The Queen's Bench, by a majority (Barry, Fitz Gerald, and O'Brien, J.J., Whiteside, C.J., dissenting), upheld the conviction. The judgments of the majority of the court are, however, it is submitted, by no means conclusive as to what order should be made in the case. It appears to have been conceded by the defendant's counsel (see judgment of Barry, J., at p. 52, and Fitz Gerald, J., at p. 54) that if the Petty Sessions Act applied (the main argument on defendant's behalf was that it did not apply), a "dismiss without prejudice" was the proper order, and would be no bar. Whiteside, C.J., however, did not accept the admission that a "dismiss without prejudice" was the proper order, and thought (see pp. 62, 63) that such form of order was applicable only where there had been a hearing within section 21, and that the proper order would have been "dismissed" simply, which order, in the Chief Justice's view, would have been a bar. As

the grand jury, and the defendant appears to take his trial, although no evidence is offered by the prosecutor, that is still a hearing. So, here, the complaint having been lodged, and the defendant having appeared and pleaded, I do not see what right the complainant had to withdraw the charge." Maule, J., said.—"When the complaint is ripe for hearing, and the defendant is ready to take his trial, if the prosecutor alleges nothing against him, or merely something that is unsubstantial, then the magistrates are bound to find the charge not proved, and to give a certificate accordingly. In criminal proceedings the prosecutor, having once put the law into motion, cannot be allowed to withdraw." And Creswell, J., said:—"It appears to me there was a hearing in this case. As soon as the defendant appeared to the information and pleaded, there was an issue joined, which the magistrates were bound to hear and determine. The complainant being asked what he had to say, told the magistrates that he declined to go any further with the prosecution, as he meant to bring an action. The magistrates having heard all the man had to say dismissed the complaint. The defendant was clearly entitled to have the benefit of that state of things."

against this, the form of certificate (Form I) in the schedule to the Petty Sessions Act seems to contemplate either a "dismiss without prejudice," or a "dismiss on the merits." A possible alternative (for which *Tunncliffe v. Tedd*, and the express provisions of section 111 of the Civil Bill Courts (Ir.) Act, 1851, 14 & 15 Vict., c. 57, afford some support)<sup>1</sup> is that the terms "dismiss without prejudice," and "dismiss on the merits," are merely terms of art, the former implying that the case can be brought on again, the latter that it cannot, and that, in a case in which the complainant does not appear, the justices can, in their discretion, adopt either form of order. At all events, enough has been said to show that *R. v. Unkles* is not conclusive on the point.

The hearing.  
Non-appearance of  
complainant.

Where a complaint has been made, and the summons thereon is not duly served, this does not prevent the same justice issuing another summons, or a series of summonses, if necessary, on the same complaint (*Ex parte Fielding*, (1861) 25 J.P. 759; *Brooks v. Bagshawe*, (1904) 2 K.B. 798).

When a summons has been issued, the justices are seised of the case, and they may convict on sufficient evidence, even though the prosecutor withdraws from the case (*Ex parte Bryant*, (1863) 27 J.P. 277), and apparently the proceedings do not lapse upon the death of the prosecutor (*R. v. Truelove*, (1880) 5 Q.B.D. 336). See also p. 50, *ante*.

Withdrawal  
or death of  
prosecutor.

In *R. (Forbes) v. Louth JJ.*, (1903) 38 I.L.T.R. 76, the solicitors for the prosecutor and the defendant agreed to have a case adjourned, and wrote to that effect to the clerk of petty sessions and the justices. The justices, however, refused to adjourn, and, in the absence of both parties, dismissed the case without prejudice. *Held*, that the justices had power to make the order.

Non-appearance of either  
party.

In England the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49, s. 16) authorizes the justices, where a charge of a "trivial offence" is proved, if they think fit, to dismiss the information; but up to 1907 there was no corresponding Irish provision (save in cases of trifling assault, 24 & 25 Vict. c. 100, ss. 44, 45),<sup>2</sup> and accordingly the justices had no power to dismiss a mere trifling or technical offence (*Carden v. McPharlane*, K.B.D. (Ir.), 18 Nov., 1898; *Pollock v. Cumberton*, (1903) 3 N.I.J.R. 299; *Dawson v. Mackay*, (1904) 38 I.L.T.R. 163). Now, by the Probation of Offenders Act, 1907 (7 Ed. 7, c. 17),<sup>3</sup> where any person is charged before a court of summary jurisdiction with an offence punishable by such court, and the court thinks that the charge is proved, but is of opinion that, having regard to the character, antecedents, age, health, or mental condition of the person charged or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the court may, without proceeding to a conviction, make an order (1) dismissing the information or charge, or (2) discharging the offender conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period not exceeding three years as may be specified in the order (s. 1). In addition to any such order, the court

Dismissal of  
trivial charge.

<sup>1</sup> See p. 57 n.

<sup>2</sup> Under the Summary Jurisdiction (Ir.) Act, 1851, s. 21, in the case of a first conviction against that Act, the justice may discharge the offender upon payment of damages and costs or either of them. See also as to children and young persons, 47 & 48 Vict., c. 19, s. 8, noted *post* p. 74.

<sup>3</sup> *Verbatim*, APPENDIX OF STATUTES.



The hearing.  
Dismissal of  
trivial charge.

may order the offender to pay damages not exceeding £10, or any higher limit fixed by any Act relating to the offence, and to pay such costs as the court thinks reasonable. The portion of the section enabling the court to order payment of damages and costs by the parent or guardian of a person under sixteen, has been repealed, and substituted provisions enacted by the Children Act, 1908, 8 Ed. 7, c. 67, s. 99 (see APPENDIX OF STATUTES). The court may order the restitution or delivery up of stolen property (s. 1 (4)). The statute contains provisions as to the conditions of recognizances, supervision by probation officers, and apprehension of an offender who fails to observe the condition of his recognizance. See APPENDIX OF STATUTES.

On the construction of the Summary Jurisdiction (England) Act, 1879, s. 16, it has been held that justices can dismiss a charge,<sup>1</sup> as being of a trivial nature, even though it is a second offence (*Venters v. Freedman*, (1901) 20 Cox 98); and that a charge under section 3 of the Licensing Act, 1872, of selling liquor without a licence is not (*Barnard v. Barton*, (1906) 1 K.B. 357), but that a charge against a licensed person of suffering gaming may be (*Ex parte Marshall*, (1907) 71 J.P. 501), an offence of a trifling nature.<sup>2</sup> A refusal to comply with a vaccination order is not an offence of a trifling nature (*Nisbet v. Lloyd*, (1904) 68 J.P. 396). On an information laid by the police against the respondent for placing a stall on the footway of a certain street contrary to the provisions of a local Act, it was proved that the stall projected over the footway about 16 inches; that in the same street there were other stalls projecting over the footpath, causing more obstruction than the respondent's stall, and that no proceedings had been instituted in respect of these other stalls. The justices dismissed the information under section 1 (1) of the Probation of Offenders Act, 1907, owing to the extenuating circumstances under which the offence was committed. *Held*, that there were extenuating circumstances, and the justices were therefore justified in dismissing the information (*Dunning v. Trainer*, (1909) 25 T.L.R. 658; for other cases, see p. 101).

Parties may  
require evi-  
dence to be  
taken in  
writing.

Ordering  
witness out of  
Court.

Either party or his agent may require a note of the evidence to be taken in writing, in a book to be kept for that purpose by the clerk of petty sessions, which book is to be signed by one of the justices on the day that the case is decided (Petty Sessions Act, s. 20 (4)).

Justices may, but cannot be obliged to, order witnesses out of court; but this power does not extend to the complainant or defendant (see *Selge v. Isaacson*, (1858) 1 F. and F. 194). If a witness ordered out of court has nevertheless contrived to remain in court, his evidence cannot be rejected (*Cook v. Nethercote*, (1835) 6 C. & P. 741; *Roberts v. Garratt*, (1842) 6 J.P. 154; *Skelton v. Castle*, (1837) 6 J.P. 154 n.; *Chandler v. Horne*, (1842) 2 M. and Rob. 423; but in *Ex parte Wright*, (1875) 39 J.P. 85, the Queen's Bench Division refused an application to compel justices to rehear a case based upon the ground that they had refused to hear witnesses who had not complied with an order to leave court.

Alleged irreg-  
ularity in  
summons.

"The justices should not decline to proceed merely on the ground that the summons is irregular in form, or is open to objection on the ground of an alleged defect. They should hear the evidence, but when it has been given they must make up their minds whether an offence under the summons has been proved, and at that stage it is

<sup>1</sup> A charge of baking bread on Sunday in contravention of 3 Geo. 4, c. 106, s. 16.

<sup>2</sup> See also supplemental note, p. 101, *post*.



not placing too great a burden on the prosecutor to ask him to specify the offence which he alleges the evidence supports" (*per* Lord Alverstone, L.C.J., in *Johnson v. Needham*, (1909) 1 K B. 626). In that case the summons, contrary to the English Summary Jurisdiction Act, 1848, s. 10, alleged more than one offence in the same summons.

Whenever all the cases shall have not been heard on any court day, the justices may adjourn the remaining cases either to the next court day or such other day as they shall see fit; and whenever, either before or during the hearing of any complaint, it shall appear advisable, the justices present may, in their discretion, adjourn the hearing to a time and place to be then appointed; and summonses and recognizances enure for the adjourned hearing (s. 20).

If the justices adjourn and refuse to give their decision, there being no real reason for that course, the court will compel them by mandamus to adjudicate (*R. (Mulliner) v. Cork JJ.*, (1905) 39 I.L.T.R. 117); and it is no good ground for adjournment in a complaint for assault that civil proceedings are pending in respect of the same matter (*R. v. Evans*, 1890) 54 J.P. 471; *R. (Deeny) v. Tyrone JJ.*, (1909) 2 I.R. 400; 43 I.L.T.R. 72).<sup>1</sup> But in a prosecution for criminal libel it was held that the justices were acting within their jurisdiction in adjourning the case for three months, there being, in their opinion, a strong probability of settlement (*R. v. Southampton JJ.*, (1907) 96 L.T. 697). Apart from the statute, the justices, like all other courts, have an inherent power of adjournment (*R. v. Mayor of Clonmel*, (1858) 9 I.C.L.R. 267; *R. (Sullivan) v. Cork JJ.*, (1885) 18 L.R.I. 99; 19 I.L.T.R. 56). If the justices, without hearing the case, adjourn to a subsequent day, the complaint may be heard by a bench differently constituted, even if only one justice attend at the adjourned hearing<sup>2</sup> (*R. (Sheehy) v. Kerry JJ.*, (1896) 30 I.L.T.R. 167). But if four justices fully hear a complaint and merely adjourn for the purpose of giving their decision, they must all be present and concur in such decision when pronounced (*R. (Sullivan) v. Cork JJ.*, *supra*).

If no justice attend within one hour after the time appointed for opening the court, the clerk may adjourn all the cases to the next petty sessions day, in which case summonses and recognizances enure to such next day (Petty Sessions Clerk (Ir.) Act, 1858, 21 & 22 Vict. c. 100, s. 8). In cases of adjournment the justices may, in offence cases, either allow the defendant to go at large, or if there be an information in writing and on oath that he is guilty of the offence may commit him, or may discharge him upon his entering into recognizance, with or without sureties, to appear at the adjourned hearing (Petty Sessions Act, s. 20). The section puts no limit to the period of adjournment, so that, if a defendant be committed pending an adjourned hearing, he can, so far as the section is concerned, be imprisoned at all events till the next ordinary court day, which in some parts of the country may not be for a month. It is probable that the King's Bench Division, upon habeas corpus, would

Adjournment.

Non-attendance of justices

<sup>1</sup> In *R. (Belfast Street Tramway Co.) v. Belfast JJ.*, (1902) 36 I.L.T.R. 66, it was indeed held, upon the special facts of that case and the form of the summons, that justices had exercised a proper discretion in adjourning a summons for non-payment of a tram fare pending the hearing of a civil action in respect of the same matter between the same parties; but Lord O'Brien, L.C.J., is reported to have said that the decision was to be cited as an authority only in a case where the facts were precisely similar. See also *R. (Regan) v. Monaghan JJ.*, (1911) 45 I.L.T.R. 10.

<sup>2</sup> That is, of course, in a case capable of being decided by one justice.

Non-attend-  
ances of  
justices.

interfere in the event of any unreasonable exercise of discretion by the justices. In the case of charges of larceny triable summarily, the justices may remand the accused for further examination to the next petty sessions in the manner in which justices are authorized by the Petty Sessions Act, 1851, s. 14,<sup>1</sup> to remand persons charged with indictable offences (18 & 19 Vict. c. 126, s. 5). Where the statute requires the case to be heard by two justices, and only one justice attends, an adjournment may be directed, and when the justice directs the adjournment, which is carried out by the clerk, this will be considered to be the act of the clerk within 21 & 22 Vict. c. 100, s. 8 (*Ex parte Mulcahy*, (1898) 4 I.W.L.R. 186).

Justices  
equally di-  
vided.

If the justices are equally divided in opinion, the proper course to adopt is to adjourn so that other justices may attend (*Kinnis v. Graves*, (1898) 67 L.J.Q.B. 583), and on the adjourned hearing the case should be heard *de novo*, by a bench which may comprise the justices who adjudicated on the previous occasion (*Bagg v. Colquhoun*, (1904) 1 K.B. 554). In an English case it was apparently laid down that when justices are equally divided and do not concur in adjourning, the proper course is to dismiss the complaint (*R. v. Ashplant*, (1888) 52 J.P. 474), and that such a dismissal will be a bar to a second information upon the same subject-matter (*Kinnis v. Graves*, (1898) 67 L.J.Q.B. 583). But it is submitted that no dismissal can be pronounced unless a majority of the justices concur (see *R. (Crowley) v. Cork JJ.*, (1902) 2 I.R. 252, 1 N.I.J.R. 85; *R. (Mulcahy) v. Tipperary JJ.*, (1903) 2 I.R. 108); and if a majority do not concur either in adjourning or dismissing, the proceedings fall to the ground; but there is nothing to prevent the prosecutor from bringing on the case by a fresh summons to be heard on another day. The chairman has no casting vote (*R. v. Fladbury*, (1841) 10 A. & E. 706); but in case of an equal division, one of the justices is at liberty, if he so chooses, to withdraw his opinion (*Ex parte Evans*, (1894) A.C. 16). If the chairman announces the result, without protest from the other justices, the King's Bench Division will not entertain an allegation that the decision was not the decision of the majority (*Ex parte Attorney-General*, (1877) 41 J.P. 118; *R. v. Middlesex JJ.*, (1877) 41 J.P. 261; and see *R. (Quinn) v. Tyrone JJ.*, (1908) 2 I.R. 124). A defendant has no absolute right to have a case adjourned to procure professional assistance, even though he has had no opportunity of procuring it, the matter being one within the discretion of the justices (*R. v. Biggins*, (1862) 5 L.T.N.S. 605).

The adjudica-  
tion.  
Order.

The justices, after hearing the parties, shall either make such order as is authorized by the statute, or shall dismiss the complaint either upon the merits or without prejudice to the complaint being again made (s. 21).<sup>2</sup> If an order be made "dismissed," without stating whether it is on the merits or without prejudice, it is invalid, and is no bar to subsequent criminal proceedings in respect of the same offence (*R. (Bridges) v. Armagh JJ.*, (1897) 2 I.R. 236; *G.S. & W.R. Co. v. Darby*, (1892) 27 I.L.T.R. 45), or to civil proceedings (*Donnelly v. Ingram*, (1897) 31 I.L.T.R. 139). But where a statute, subsequent to 14 & 15 Vict. c. 93, gives power to justices, in a criminal matter (e.g. in a charge of larceny under 18 & 19 Vict., c. 126, s. 1), to "dismiss" the charge, the words "without prejudice," added to an order of dismissal, are

<sup>1</sup> As to which see p. 24.

<sup>2</sup> See p. 102 n. as to when the complaint should be dismissed "without prejudice."

superfluous, and a dismiss so framed is a bar to a second charge (*G.S. & W.R. v. Gooding*, (1908) 2 I.R. 429). By virtue of 20 & 21 Vict. c. 40, s. 6, the procedure under the Petty Sessions Act is applicable to a charge under the Illicit Distillation Act, 1 & 2 Wm. 4, c. 55, and therefore an order "dismiss without prejudice" is a valid order (*Lawless v. Mc Aleer*, (1897) 2 I.R. 248). The justices may also, if they see fit, and circumstances warranting it are proved, bind the defendant (*Ex parte Davis*, (1871) 35 J.P. 551, or even the complainant, to keep the peace (*R. v. Wilkins*, (1907) 2 K.B. 380). If neither party attend, the justices may dismiss the case without prejudice (*R. (Forbes) v. Louth JJ.*, (1904) 38 I.L.T.R. 76; see *ante*, p. 59). A dismiss without prejudice is no bar to a second charge for the same offence (*R. v. Unkles*, (1873) I.R. 8 C.L. 50, 8 I.L.T.R. 38; *R. v. Dublin JJ.*, (1873) 8 I.L.T.R. 134). In *Pickavance v. Pickavance*, (1901) P. 60, Sir Francis Jeune was of opinion that the withdrawal, without a hearing, of any summons operated in all cases as a *res judicata*; but the dictum was unnecessary for the decision, and, it is submitted, is too broad. As to when a conviction is a bar to a second charge on the same facts, see p. 102. On a charge of larceny, justices have no jurisdiction, under the Summary Jurisdiction (Ir.) Act, 1862 (25 & 26 Vict. c. 50), to make an order for the delivery up of the stolen goods; and, unless the property has come into the hands of the police, they have no such jurisdiction under the Police Property Act, 60 & 61 Vict. c. 30 (*R. (Hannon) v. Londonderry JJ.*, (1910) 44 I.L.T.R. 135; see also *Quinn v. Pratt*, (1908) 2 I.R. 69, noted p. 146).

The adjudication.  
Order.

Particulars of the order shall be entered in the order-book kept for the purpose, and the entry when signed by one of the justices shall be deemed to be a conviction or order (s. 21 (1)). If the order be made, in the permitted cases, out of sessions, the justice shall enter the order in the order-book, or shall enter the substance of the decision in the specified form of certificate, which he shall forthwith, or at furthest before the next petty sessions day, forward to the clerk of the petty sessions, who shall enter same in the order-book, with a special note that he has so done, and shall submit such entry for signature to the justice or one of the justices by whom the order shall have been made upon the next day of his attendance at petty sessions, and in case such justice shall not sign the same, the clerk shall make a special entry to that effect in the order-book, and shall preserve the original certificate as a record of the proceedings (s. 21 (2)). It is no longer necessary to return to quarter sessions copies of summary convictions made at petty sessions (s. 21 (3)).<sup>1</sup> The district inspector of constabulary shall make a return to the justices at each petty sessions of the particulars of any case of summary jurisdiction determined out of petty sessions, and in which any police constable shall have been engaged (s. 21 (3)). After the justices have separated, it appears that they have no power to amend the entry in the order-book (*R. (Burke) v. Cork JJ.*, (1905) 2 I.R. 309; 39 I.L.T.R. 25). The High Court will not compel justices to sign an erroneous order in the order-book (*R. v. Creagh*, (1852) 5 Ir. Jur. O.S. 109). As to power to withdraw a spoken judgment, see p. 108.

Order-book.

Where justices make an order for the abatement of a nuisance under section 112 of the Public Health (Ir.) Act, 1878, the order of the

<sup>1</sup> Formerly a copy of every conviction had to be returned to Quarter Sessions, whether there was an appeal or not; see p. 101, where exceptions to the rule are noted.



The adjudication.  
Order-book.

justices is not the entry in the order-book, but the document drawn up in accordance with the form in the schedule to the Act; and if the order so drawn up is good in form, its validity is not affected by the fact that the entry in the order-book would be bad on its face as an order (*R. (Ewing) v. Down JJ.*, (1905) 2 I.R. 648). And similarly, the document authorizing a road contractor to enter for the purpose of obtaining road material is the order, and not the entry in the order-book (*R. (Murphy) v. Weaford JJ.*, (1894) 2 I.R. 81).

Certificate of order.

Either party may require a certificate of the order, which shall operate to all intents as a good form of conviction or order; and in case of a dismissal, where the same shall be stated therein to have been a dismissal upon the merits, or that any assault was of a trivial or justifiable nature, such certificate shall be a bar to any subsequent information or complaint for the same matter; and the certificate, upon proof of the signature of the justice, shall be good evidence of the conviction or order (s. 21). The words "information or complaint" do not refer to civil proceedings (*Somers v. Sullivan*, (1859) 9 I.C.L.R. App. xxxvii). By 24 & 25 Vict. c. 100, ss. 42, 43, 44, 45, in a prosecution for assault by a party aggrieved, if the justices shall deem the offence not proved or shall find the assault justified or so trifling as not to merit any punishment, and shall accordingly dismiss the complaint, the certificate of dismissal is a bar to all proceedings, whether civil or criminal;<sup>1</sup> and if the defendant in any complaint for assault under section 42 or 43 of the same statute is convicted, and pays the fine or endures the imprisonment, he shall be released from all proceedings, civil or criminal, in respect of the matter. Where a complainant alleged an assault merely, but wished to preserve his civil rights, and therefore prayed that the defendant be bound over, it was held, on an application on the part of the complainant for a certiorari, that the justices had no power to convict of the assault against his wish (*R. v. Deny*, (1851) 20 L.J.M.C. 189); but where the summons set out that an assault had been committed, and instead of commanding the defendant to appear "to answer the said complaint," commanded her to appear "to show why she should not be bound to keep the peace," it was held (on an application for certiorari by the defendant) that a conviction for the assault, made without objection by the complainant, was good (*Kennington v. Daniel*, (1888) 22 L.R.I. 667).

The penalty.  
Scale of imprisonment in default.

Section 22 of the Petty Sessions Act directs how penalties may be enforced. Its provisions as to imprisonment in default of payment of a fine have been modified by the Small Penalties (Ir.) Act, 1873 (36 & 37 Vict. c. 82), and the combined effect of that statute and the Petty Sessions Act is to apply the following scale of imprisonment:<sup>2</sup>

FOR ANY SUM		THE IMPRISONMENT NOT TO EXCEED	
Not exceeding 10s., . . . . .	.	Seven days.	.
Exceeding 10s. and not exceeding £1, . . . . .	.	Fourteen days.	.
" £1 " " £2, . . . . .	.	One month.	.
" £2 " " £5, . . . . .	.	Two months.	.
" £5 " " £10, . . . . .	.	Three "	.
" £10 " " £30, . . . . .	.	Four "	.
" £30 " " £50, . . . . .	.	Six "	.
" £50, . . . . .	.	One year.	.

<sup>1</sup> The hearing must be on the merits. See p. 58.

<sup>2</sup> If a statute creates an offence, but imposes no penalty, the offence is not punishable summarily, but on indictment (*Kavanagh v. Glorney*, (1876) I.R. 10 C.L. 210); see also p. 13.



An order imposing a penalty in Irish currency was held bad The penalty. Scale of imprisonment in default.  
(*Noble v. Hughes*, (1896) 2 I.W.L.R. 90).

The justices have the following powers in reference to any penal or other sum directed by them to be paid (s. 22).

- (1) To order payment of same forthwith or at such time as they shall see fit.<sup>1</sup>
- (2) In civil cases to order payment by instalments.
- (3) To order distress in default of payment, the distress to include costs of distress.
- (4) *In every case of an offence* where a distress has been ordered, to order that, in default of payment as directed, the defendant be imprisoned, the imprisonment to be according to the foregoing scale. The imprisonment may be directed in the same warrant as the distress.
- (5) *In every case of an offence* if the defendant admits, or it shall otherwise be proved on oath, that the defendant has no goods, or that a distress would be ruinous to him or his family, they may order imprisonment in default according to the scale, without ordering a distress.
- (6) *In every case of an offence*, where the order has only directed distress in default of payment of a penal sum, and it shall afterwards be found impossible to execute a warrant of distress, to issue a warrant of committal for such period as might have been directed by the original order.
- (7) Where imprisonment only has been ordered, and it has been found impossible to execute a warrant of committal, to issue a warrant for the levy of such distress as might have been awarded by the original order.

There is no power to mitigate penalties save that provided by statute (Paley, 8th ed. 298). A judgment for too little is as faulty as a judgment for too much (*R. v. Salomons* (1786), 1 T.R. 252; see also p. 90). The Dublin Police Act. 5 Vict. c. 24, s. 63, contains a special provision enabling justices to mitigate penalties in all offences against any Act then in force, or thereafter to be passed, provided that in prosecutions relating to the customs, excise, stamps, or taxes, the penalty shall not be reduced below the minimum, save with the consent of the commissioners. There is no such general provision applicable in petty sessions districts. No power to mitigate.

It will be noted that the power to imprison is given only in case of an "offence" (see also distinction between "offences" and "cases" of a "civil nature" in s. 23). What is an offence? What is an offence?

*Prima facie*, an "offence" is equivalent to a crime (per Collins, J., *Derbyshire County Council v. Derby*, (1896) 2 Q. B. 57, 58, 297). The word "offender" may be used in the statute as a convenient expression, and in no way meant to designate a criminal (*Adams v. Batley*, (1887) 18 Q.B.D. 625, per Day, J.). It may be that the use of the word "forfeit" or the words "forfeit for every offence" is not

<sup>1</sup> This clause does not extend to charges under the Illicit Distillation (Ir.) Act, 1831 (30 & 31 Vict. c. 90, s. 14).

<sup>2</sup> In *R. v. Paget*, (1881) 8 Q.B.D. 151, at p. 156, Field, J., said that the test whether a sum of money was a civil debt or a penalty was whether there was, at the hearing, a sum of money due to anybody or not.

The penalty.  
What is an  
offence?

conclusive, but the use of such expressions affords evidence of what the intention of the legislature was; and one would say *prima facie* that the action was for a penalty (*Saunders v. Wiel*, 1892 2 Q.B. 321, per Lord Esher, M.R.). The following were held to be criminal matters or offences:—keeping a dog without a licence (*R. v. Sullivan*, (1874) 1 R. 8 C.L. 404); disobedience of the bye-laws of a school constituted under the Elementary Education Act, 1874 (*Mellor v. Denham*, (1880) 5 Q.B. 11. 467); disobedience of an order directing defendant to abate a nuisance (*R. v. Whitechurch*, 1881 7 Q.B.D. 534; *Ex parte Schofield*, (1891) 2 Q.B. 428; cf. *Derby, Mayor of, v. Derbyshire C.C.* (1897 A.C. 550); infringement of a copyright in registered designs, contrary to s. 58 of the Patents, Designs, and Trade Marks Act, 1883 (*Saunders v. Wiel*, 1892, 2 Q.B. 321); a charge of using an engine for the purpose of taking game contrary to 1 & 2 Wm. 4, c. 32, s. 23 (*Cattell v. Ireson*, (1858) El. Bl. and El. 91); permitting persons of notoriously bad character to assemble and meet together in licensed premises contrary to the repealed statute, 9 Geo. 4, c. 61 (*Parler v. Green*, (1862) 9 Ex. 169); acting as a member of a public board without qualification (*Martin v. Treacher*, (1886) 16 Q.B. 11. 507); travelling on a tramway with intent to avoid payment of the fare (*Rayson v. South London Tram Co.*, (1893) 2 Q.B. 304). But the following are not offences:—breach of 3 & 4 Wm. 4, c. 15, s. 2, forbidding the representation of a dramatic piece without the consent of the author (*Adams v. Batley*, (1887) 18 Q.B. 11. 625); a breach of s. 3 of the Rivers Pollution Act, 1876 (39 & 40 Vict., c. 75), forbidding any person to knowingly permit sewage matter to flow into any stream (*Derby, Mayor of, v. Derbyshire C.C.*, (1897) A.C. 550); a breach of a statute prohibiting a member of Parliament from voting without having taken the oath of allegiance (*A.-G. v. Bradlaugh*, (1885) 14 Q.B.D. 667).<sup>1</sup> The Court were evenly divided in opinion as to whether an information in the Court of Exchequer for a breach of the customs laws was a criminal proceeding (*A.-G. v. Radloff*, (1854) 10 Ex. 84).<sup>2</sup> It seems that proceedings under the Married Women Maintenance in case of Desertion Act, 1886, are civil proceedings (*R. (Redding) v. Swift*, (1909) 2 I.R. 302).<sup>3</sup>

What term of  
imprisonment.

Some important, and by no means easy, questions arise upon the powers of justices in reference to imprisonment and distress. The first is this: Where a statute enacts a pecuniary penalty or a certain term of imprisonment and the justices impose a penalty, what term of imprisonment should they impose in default of payment, the term mentioned in the section, or the term according to the default scale laid down by the combined effect of the Petty Sessions Act and Small Penalties Act, or sometimes by the statute itself? For instance, section 3 of the Licensing Act, 1872, subjects the defendant to a penalty not exceeding £50 or "to imprisonment with or without hard labour for a term not exceeding one month." The justices fine defendant £50; the question arises, What is their power of imprisonment in default of payment? Section 3 mentions one month, but under the sections above quoted, as well as under section 51 (2)

<sup>1</sup> See also *R. v. Hausmann*, (1909) W.N. 198.

<sup>2</sup> See now Crown Suits Act, 1865, 28 & 29 Vict. c. 104, s. 34. Proceedings under the Musical Copyright Act, 1902 (*Mabe v. Connor*, (1909) 1 Q.B. 515), under the Bastardy Acts (*R. v. Barry*, (1859) 23 J.P. 86), to enforce an auditor's surcharge (*R. v. Master*, (1869) L.R. 4 Q.B. 285), or a cabman's fare (*R. v. Kerswill*, (1895) 1 Q.B. 1), are not criminal within the English statutes.

<sup>3</sup> See, as to England, *R. v. Richardson*, (1909) 2 K.B. 851.

of the Licensing Act, 1872, power is given to impose a term not exceeding six months in default of payment of a pecuniary penalty exceeding £30 but not exceeding £50. The answer is—if the justices decide to imprison without the option of a fine, then they are limited to the term mentioned in the section (that is, in the specific case given, one month), but if they order payment of the pecuniary penalty, then, in default, they may resort to the default scale mentioned above (that is, in the specific case, they may order imprisonment in default for six months) (*In re Clew*, (1881) 8 Q.B.D. 511, per Grove, J., at p. 513; *R. v. Hopkins*, (1893) 1 Q.B. 621, *re Brown*, (1894) 2 I.R. 363).

The penalty.  
What term of imprisonment.

The next question is—When must distress be ordered in default of payment, as a condition precedent to imprisonment? If the penalty does not exceed £5, it is not necessary to order distress (Small Penalties Act, s. 4). If the penalty exceeds £5, then distress must be ordered, and apparently levied and a return thereto made before the defendant can be imprisoned (*Re Brown*, (1878) 3 Q.B.D. 545; *Re Clew*, (1881) 8 Q.B.D. 511, *R. (Donegan) v. Wicklow JJ.*, (1863) 16 I.C. L.R. 23), except in the cases mentioned in section 22, namely, where the defendant admits, or it is otherwise proved on oath, that the defendant has no goods or that a distress would be ruinous to himself or his family, and in such a case the circumstances found by the justices as bringing the case within the exception should, it is submitted, appear on the face of the warrant or order. The fact that the solicitor for the defendant applied for time for payment of the fine, and stated defendant had nothing except his weekly wage, was held to be evidence that the defendant had no goods whereon to levy a distress (*R. v. Mortimer*, (1906) 70 J.P. 542).<sup>1</sup> In estimating what is “a penalty not exceeding £5” within the meaning of these words in the Small Penalties Act, it must now be taken to be settled that the costs must be reckoned, so that if the defendant be fined £5 and 1s. costs, distress must be ordered (*R. (Robinson) v. Wicklow JJ.*, (1907) 2 I.R. 13; *R. (Hastings) v. Galway JJ.*, (1907) 2 I.R. 18, disapproving of *R. (Herbert) v. Kildare JJ.*, (1895) 2 I.R. 577).

When distress must be ordered.

In *R. (M'Erlean) v. Antrim JJ.*, (1902) 2 N.I.J.R. 256, it was held that the order was bad, because after imposing the imprisonment “in default” it failed to add “unless said sum be sooner paid.”<sup>2</sup>

“Unless said sum be sooner paid.”

Where a statute subjects a defendant to an increased penalty for a second offence, this, in the absence of provision to the contrary such as that in the Malicious Damage Act, 1861, means a second offence under the statute, and does not include a case of a similar offence under a different statute (*Re Authers*, (1889) 22 Q.B.D. 345; *R. v. Stone*, (1908) 99 L.T. 88). Justices cannot treat as a first offence what is a second offence, even though such previous conviction is not

Increased penalty for second offence.

<sup>1</sup> In *R. (Maguire) v. Dublin JJ.*, (1885) 18 L.R.I. 111, the entry in the order-book was: “Fined £25, and costs £1, or in default one month's imprisonment, warrant to issue.” A certiorari was refused, apparently on the ground that the words “warrant to issue” meant warrant to issue according to the statute (i.e., after a previous distress), but this decision is not consonant with the other authorities and cannot be relied on.

<sup>2</sup> The point was also the subject of mention in *R. (Burke) v. Cork JJ.*, (1905) 2 I.R. 309, and in *R. (Taverner) v. Tyrone JJ.*, (1909) 2 I.R. 763; 43 I.L.T.R. 262. See also Form E (warrant of commitment) in schedule to Petty Sessions Act. Section 22 expressly provides that “such imprisonment shall be determinable upon payment of the said sum and costs.” Section 22 (3) specifies that where the justices shall order a distress in default of payment of any penal sum, they may order that in default of the said sum being paid as directed, the party may be imprisoned. See p. 68, as to effect of the Fine or Imprisonment (Scotland and Ireland) Act, 1899, 62 & 63 Vict. c. 11, s. 1.



The penalty. mentioned in the information or summons (*Murray v. Thompson*, (1888) 22 Q.B.D. 142; *R. v. Beesby*, (1909) 1 K.B. 849; *R. (Ryan) v. Kilkenny JJ.*, (1903) 4 N.I.J.R. 4). See also p. 91, *post*.

Fine or  
Imprisonment  
Act, 1899.

The imprisonment is determinable upon payment of the penal sum and costs of distress (s. 22). Under the Fine or Imprisonment (Scotland and Ireland) Act, 1899 (62 & 63 Vict. c. 11), on payment to the governor of the prison of a portion of the fine, the term of imprisonment shall be reduced by a proportionate number of days.

Imprisonment  
with or with-  
out hard  
labour.

Where the Act under which the charge is brought authorizes the justices to order imprisonment, they may order imprisonment with or without hard labour<sup>1</sup> (s. 22 (5)). There is no decision, as to whether this applies to imprisonment in default of payment of a penalty; but it is submitted that there is no power to award hard labour in default of payment, unless where such power is expressly given by the particular statute (see Small Penalties Act, 1873, 36 & 37 Vict. c. 82, s. 5).<sup>2</sup> If the defendant is already in prison, the imprisonment imposed may be ordered to commence from the expiration of the previous sentence (s. 22 (6)). If a defendant is convicted at one time of several distinct offences, the justices may order that the imprisonment under one or more of the sentences shall commence at the expiration of the terms of imprisonment previously ordered (*R. v. Cuthbush*, (1867) L.R. 2 Q.B. 379). Where the imprisonment is to be without hard labour, the conviction or warrant need not contain the words "without hard labour," for that is implied (*R. (Taverner) v. Tyrone JJ.*, (1909) 2 I.R. 763, 43 I.L.T.R. 262; *Ex parte Thompson*, (1860) 3 L.T.N.S. 318).

Award of  
compensation.

In cases where the statute awards compensation for damage, same is to be paid to the party aggrieved, but if he is not known, same is to be paid in like manner as any penalties awarded to the Crown; and where several persons join in an offence, and are severally punished each in the amount of the injury done, no more than one of such sums shall be paid to the party aggrieved, and the rest shall be applied as other penalties awarded to the Crown (s. 22 (7)).

Application of  
fines and  
penalties.

In every case where a penal sum is ordered to be paid as a penalty, and no sum is awarded to the complainant as compensation for damages, one-third of the penalty may be directed to be paid to the prosecutor or informer, the balance to be paid to the Crown (s. 22 (8); see also Fines Act (Ireland), 14 & 15 Vict. c. 90, s. 13). Where a fine is imposed for non-attendance at a school in a prosecution at the instance of a county council, one-third only of the fine can be paid to complainants, the expression "revenue from penalties" in the Irish Education Act, 1892, s. 3 (5) not being sufficient to capture the entire penalty (*R. (Dublin County Council) v. Keating*, (1907) 41 I.L.T.R. 190). The justices cannot award a third of the penalty to a person who is a mere witness, and is not the prosecutor (*Powell v. Castletown*, (1891) 30 L.R.I. 93).

Costs.

The justices have power in any case to award either party<sup>3</sup> costs<sup>4</sup> not

<sup>1</sup> As to where the statute directs imprisonment *with* hard labour, see *Re Byrne*, (1848) 11 I.L.R. 538, noted p. 90 n., *post*.

<sup>2</sup> In England the Summary Jurisdiction Act, 1879, s. 5, provides that imprisonment in default of payment shall be without hard labour, unless where hard labour is expressly authorized by the particular statute.

<sup>3</sup> In the majority of cases in which the constabulary are merely common informers (see p. 45), the justices can grant costs to or against them. As to costs to or against the Crown, see p. 78, *post*.

<sup>4</sup> The sum awarded must be ascertained by the justices (*R. v. Hampshire JJ.*, (1862) 32 L.J.M.C. 46), and specified in the order (*R. v. Payne*, (1824) 4 D. & R. 72).



to exceed twenty shillings, to be recoverable in the same manner as any penalty or other sum adjudged to be paid by the justices (s. 22 (9)). The general provisions of the Petty Sessions Act do not apply to application for attendance orders under section 4 of the Irish Education Act, 1892, and consequently no costs can be awarded (*Glasgow v. Henry*, (1907) 41 I.L.T.R. 245). One summons was brought alleging eight trespasses on different days. The justices imposed fines in respect of each trespass, and made up eight distinct orders with 5s. costs in each. *Held*, that the orders were bad, that though the summons comprised eight charges there was only one case within the meaning of s. 22 (9), and that there should have been one order only thereon with costs not exceeding 20s. (*R. (Daly) v. Cork JJ.*, (1898) 2 I.R. 694).<sup>1</sup> "Where one summons contains several charges there ought to be a distinct adjudication on each just as in the case of an indictment; but such adjudications, though several for some purposes, form part of one order or conviction" (*ib.*, *per* Gibson, J. 696). The general provisions of the Petty Sessions Act, s. 22, do not repeal or limit the wide power of justices under the Fishery Acts, 5 & 6 Vict. c. 106, s. 94, and 13 & 14 Vict. c. 88, s. 54, of awarding to the complainant the costs, charges, and expenses of and incidental to the proceedings (*Hosford v. Devine*, (1894) 2 I.R. 28). A later general statute does not repeal a prior particular statute where there is no express repeal and no necessary inconsistency (*ib.*, *per* Palles, C.B., p. 33). As to costs against Crown, see p. 79, *post*; against police, p. 68 n., *ante*.

The penalty.  
Costs.

The enforcement of the order of justices by the issuing and execution of warrants is provided for by s. 23. In case of a conviction for an offence the justices shall issue the warrant for its execution forthwith when the imprisonment is to take place immediately, or at the time fixed by the order for the imprisonment to take place, where it is not to be immediate, or directly upon the non-payment of any penal sums or the non-performance of any condition at the time and in the manner fixed by the order for that purpose, or at furthest upon the next court day after the expiration of the time so fixed for the imprisonment, payment, or performance of a condition, as the case may be. In cases of a *civil nature*, the warrant is to be issued at any time after the time fixed for compliance with the order. Forms of warrant are provided for by the Act (Schedule E). Where there has been an adjudication, subject to the result of a case stated, which is abandoned, the justices are bound to issue the warrant (*R. (Byrne) v. Knox*, 22 L.R.I. 599).

Enforcing  
orders.  
Warrants of  
execution.

It is not necessary that the warrant shall be signed by a justice who is a member of the court which adjudicated (s. 24), nor, it is submitted, that the warrant should be signed by a justice in petty sessions.<sup>2</sup>

In case notice of appeal is given and recognizance entered into, the order shall not be executed until the appeal is decided (except where the particular statute otherwise directs), and the defendant if in custody is entitled to be liberated pending the appeal (s. 23).

Stay of execution pending appeal.

By s. 25 all warrants in cases of offences are to be addressed to the district inspector or head constable, and in other cases to the district inspector, head constable, or such other person (not being the complainant or a party interested) as the justices shall see fit. An order that two justices, A and B, make arrangements with H to execute all warrants in connection with the plaintiff societies (certain Loan Fund Societies) was held bad, as justices have no power to

To whom  
warrants  
addressed.

<sup>1</sup> See *R. v. Rawson*, (1909) 2 K.B. 748, noted p. 106.

<sup>2</sup> In cases for the recovery of tenements, see 23 & 24 Vict. c. 154, ss. 84-87.

Enforcing  
orders.  
*Backing  
warrants for  
execution.*

delegate their functions to two of their number (*R. (Nugent) v. Tyrone JJ.*, (1909) 43 I.L.T.R. 261; see also p. 75, *post*).

Whenever, in case of a warrant for committal, the defendant or, in case of a distress warrant, the defendant's goods, cannot be found in that part of the county for which the district inspector or head constable acts, the district inspector or head constable shall certify upon the warrant the place where he believes the defendant or his goods may be found, and that he believes the signature to the warrant to be genuine, and shall transmit the warrant to the district inspector or head constable for such place, who shall execute same in like manner as if it had been addressed to him in the first instance. Where the defendant or his goods are out of the county, the warrant with the certificate is to be sent to the inspector-general (s. 26), and the inspector-general or deputy inspector-general may back same for execution in any constabulary district in Ireland, or in the Dublin metropolitan police district, or in England, Scotland, the Isle of Man, or Channel Isles (s. 27). Warrants addressed to persons other than the constabulary may be backed by a justice, district inspector, or head constable for execution in like manner as any warrant backed by the inspector-general (s. 28). Unexecuted warrants are to be returned to the justices with a certificate of the reasons for the non-execution (s. 33).

*Levy, distress,  
and sale.*

The sums levied under any warrant addressed to the constabulary are to be accounted for according to the Fines Act (Ireland), 1851. Sums levied under other warrants are to be paid over to the person appearing by such warrant to be entitled to same. Any distress seized may be sold within such period as shall be fixed by the warrant, or, if no period is fixed, then within three days from the making of the distress, the surplus after retaining all charges to be paid to the owner. The distress may be sold by any head constable or by any member of the metropolitan police force, by auction, without a licence. If the penalty and charges are paid, the distress shall not be executed (s. 32). As to what can be taken, see p. 71.

*Warrant to  
show  
jurisdiction.*

All the facts necessary to show jurisdiction to issue the warrant should appear therein (1<sup>st</sup>aley, 8th ed., 335). A warrant founded upon and reciting a defective order or conviction is bad, and trespass lies for acts done under it (*Day v. King*, (1836) 5 A. & E. 359). It was held no objection to a warrant of distress that it ordered the money levied to be paid to the justices, in order that they might dispose of the same as directed by the conviction (*Wray v. Toke*, (1848) 12 Q.B. 492). A warrant is bad if, in the body of it, the name (*Hodgins v. Poe*, (1867) I.R. 2 C.L. 52) or the Christian name (*R. v. Hood*, (1830) 1 Mood C.C. 281) of the person to be taken under it is omitted.<sup>1</sup> Warrants in execution require considerable strictness, but warrants for apprehension or safe custody of a prisoner pending investigation may be in general terms (per Huddleston, B., in *Ex parte Terraz*, (1878) 4 Ex.D. 638). If a prisoner has been lodged in jail under a bad warrant, a good warrant of commitment may be made out before a rule for a writ of habeas corpus has been obtained; and such warrant will be an answer to the rule (*R. v. Richards*, (1844) 5 Q.B. 926, *Ex parte Cross*, (1857) 2 H. & N. 354). The High Court can set aside a warrant issued without jurisdiction

<sup>1</sup> That is unless the warrant assigns some reason for the omission and gives distinguishing particulars which will enable the person executing the warrant to know with certainty the person against whom it is directed (*R. v. Hood*, *supra*, at p. 289).



(see *R. v. Thompson*, (1900) 2 K.B. 614; *R. v. Montgomery*, (1910) 26 T.L.R. 225; *R. v. Doherty*, 1910) 74 J.P. 304), and probably the High Court has power to order a justice to withdraw a warrant to arrest issued upon an information charging some act which is clearly not a criminal offence (*R. v. Crossman*, (1908) 24 T.L.R. 517).

Enforcing orders.

In the last case the question was raised, but not decided, as to whether the justice who issued such a warrant could withdraw it. It is, however, submitted that such withdrawal is clearly permissible, and that a justice may withdraw any warrant issued by him other than a warrant issued to enforce an order (see *Baron v. Luscombe*, (1835) 3 A. & E. 589 at p. 596).

Can justice withdraw warrant?

A warrant for committal in default of a penalty cannot be executed on Sunday (Paley, 8th ed., 367). Upon a warrant of a justice for levying a forfeiture, where the whole or any part thereof belongs to the King, the officer is justified in breaking open outer doors for the execution of the warrant, but there seems to be no such power by law in other cases where no part of the penalty is vested in the Crown. The constable distraining has no power to impound the goods on the premises, and ought not to remain longer than a reasonable time for the purpose of removing them (Paley, 8th ed., 339).

General powers under warrant.

It seems that all defendant's chattels (save growing crops, trees, shrubs, plants, or vegetable matter, not severed from the soil, which are exempt under 26 & 27 Vict. c. 62, s. 2) can be taken in execution under a warrant of distress (Nun & Walsh, 2nd ed., 615).<sup>1</sup>

What goods may be taken?

In the case of a distress under the small debts jurisdiction, the wearing apparel, bedding, tools, and implements of trade, not exceeding five pounds in value, are exempt (51 & 52 Vict. c. 47, s. 5).

Provisions as to impounding animals distrained are contained in 14 & 15 Vict. c. 92, s. 19. Pounds are established and keepers appointed by the justices of each petty sessions district; and the fees are fixed by the statute, and the rates of sustenance fixed by the justices of the district.

Impounding animals.

Distresses are to be impounded in a licensed pound (14 & 15 Vict. c. 92, s. 19). A warrant of distress does not bind the defendant's goods till actual seizure under it (*Whitestone v. Smith*, (1862) 7 Ir. Jur. N.S. 31). As to obligation on persons impounding animals to provide them with food and water, see CATALOGUE OF SUMMARY OFFENCES. "ANIMALS, CRUELTY TO."

Whenever any person shall be bound to appear, or to keep the peace, it shall be done by a separate recognizance; but whenever any person shall be bound to prosecute or to give evidence as a witness, it may be done either by recognizance at the foot of his deposition or by a separate recognizance in the discretion of the justice. The recognizance shall, except in cases of appeal, be in such amount as the justices shall deem expedient and be in the form in the schedule, and specify the occupation and residence of the person entering into the same. If the recognizance is to appear at assizes or quarter sessions, or at any place other than before the justice before whom it is taken, it shall be forwarded to the clerk of the crown or peace, and may be estreated by the court before whom the principal party shall be bound to appear. Whenever the recognizance is to keep the peace, or to appear before any justice out of quarter sessions, it shall be deposited with the clerk of petty sessions of the district, and upon

Recognizances.

<sup>1</sup> See *Swan v. Sloan*, (1895) 29 I.L.T.R. 109, and CATALOGUE OF SUMMARY OFFENCES, "DISTRESS."

**Recogni-  
zances.**

non-performance of its condition any justice present may certify on the recognizance the non-performance of the condition, and the justices in petty sessions in open court upon proof of the non-performance of the condition may make an order to estreat such recognizance to such amount as they shall see fit, and to issue a distress warrant to levy such amount. Seven days' previous notice of an application to estreat a recognizance must be served at the usual place of abode of the party against whom the order is sought (s. 34). As to estreating recognizances, and power to imprison in default of payment of sums estreated, see pp. 38, 39, *ante*.

**Forms.**

Forms for use under the Petty Sessions Act are provided by the schedule, and can be used even where the particular Act under which the information or complaint is made provides a special form. But rigid observance of the form is not necessary if the form used be sufficient in substance and effect, and the words used clearly express the intention of the person who shall use the same (s. 36). Sealing by justices is not necessary (*ib.*).

**Definition of  
terms.**

The prosecutor or party at whose instance the proceedings shall take place may be termed the "complainant," whether he shall be an informant, or prosecutor, or otherwise, and the proceedings may be termed a "complaint," whether founded upon information or otherwise, and the decision in summary proceedings shall be called an "order," whether the same shall be a conviction or otherwise (s. 37).

**Amendment.**

As to variance between the information or complaint and the evidence in support thereof, as to amendment, and as to substituting fresh charge, see p. 93.

**D. M. P.  
district.**

The Petty Sessions Act does not extend to Dublin metropolitan police district, save as to the backing or executing of warrants (s. 41).

**Contempt of  
court.**

If any person shall wilfully insult any justice or justices sitting in court, or shall commit any other contempt of such court, the justice or justices may, by verbal order, direct him to be removed, or to be taken into custody at any time before the rising of the court, and may commit him for any period not exceeding seven days, or fine him any sum not exceeding 40s. (Petty Sessions Act, s. 9). In *re Rea*, (1878) 2 L.R.I. 429, it was held (*a*) that a warrant committing for contempt was not defective for omitting to state the title of the case pending at the time the alleged contempt was committed; (*b*) that professional persons engaged in a case are liable to be committed as being within the section; (*c*) that the warrant, having been signed by the chairman of the court, was not defective for omitting to state that it was made by a justice or justices sitting in court; (*d*) that it being stated in the warrant that the court directed the defendant to be imprisoned for contempt, it was unnecessary to repeat the statement of the offence in the committing part; (*e*) that the warrant being dated, its clear construction was that the time of the imprisonment should be computed from the date. Though, in general, a person previously to his committal should get the opportunity of showing cause against the intended order (*Re Pollard*, (1868) L.R. 2 P.C.C. 106), yet where an admitted contempt has been offered to a court in the face of a court, it is not necessary for the presiding justice to formally call upon the offender to show cause why he should not be committed (*In re Rea*, (1879) 4 L.R.I. 345; *Ex parte Pater*, (1864) 5 B. & S. 299). Where the justices ordered a person to be taken into custody, the mere fact that the order so made is carried out after the offender, in order to evade arrest, has left the court, is not sufficient



to render his arrest illegal (*Mitchell v. Smyth*, (1894) 2 I.R. 351). The jurisdiction of the High Court to commit for contempt of a court of summary jurisdiction seems open to question; but the assizes are a branch of the High Court, and therefore, where a person is charged before the petty sessions with an indictable offence triable only at the assizes, and matter is published in a newspaper tending to interfere with the fair trial of the charge, the High Court has jurisdiction to attach the publisher of such matter for contempt of court, though at the time of the publication the person charged has not been committed for trial (*R. v. Parke*, (1903) 2 K. B. 432).<sup>1</sup> An inferior court of record cannot commit for contempt not committed in the face of the court (*R. v. Lefroy*, (1873) L.R. 8 Q.B. 134).

Proceedings for contempt of court are not limited to process taken for the purpose of vindicating the personal dignity of the judges and protecting them from personal insults, but extend to all cases where there is an attempt to interfere with the ordinary course of justice (see observations of Blackburne, J., in *Skipworth's Case*, (1873) L.R. 9 Q.B. at p. 232). A witness who refuses to answer a question on the ground that the answer would tend to incriminate himself notwithstanding that he is told by the judge that he sees no ground to apprehend danger from an answer to the question, is guilty of contempt of court (*Ex parte Fernandez*, (1861) 10 C.B.N.S. 3; *R. (Atkinson) v. Armagh J.J.*, (1883) 18 I.L.T.R. 2); or if the witness refuses to be examined (*Walsh v. Jordan*, (1828) Sm. & B. 433; *R. v. Charlesworth*, (1860) 2 F. & F. 326).<sup>2</sup> The High Court has jurisdiction to interfere in case of an improper exercise of the power of an inferior court to commit for contempt (*Ex parte Pater, supra*; *In re Rea, supra*).

By section 1 of the Petty Sessions Act it was enacted that the several petty sessions districts into which the counties were divided at the date of the Act, and the places and times at which petty sessions were appointed to be held, should continue until altered in manner thereby provided. Whenever the justices at quarter sessions shall consider that an alteration is required, or when they shall be required by the Lord Lieutenant or by a requisition signed by at least seven justices, they shall proceed at the next quarter sessions to revise the said districts, times, and places, and they are given power to alter such districts, times, and places. Justices who take it upon themselves, in a case triable at petty sessions, to sit in the petty sessions courthouse, on a day other than that appointed for holding the petty sessions, are not sitting in petty sessions, and their orders are without jurisdiction (*R. (Gallagher) v. Martin*, (1874) I.R. 8 C.L. 556; see also *Quinn v. Pratt*, (1908) 2 I.R. 69). An application by a justice for a certiorari to quash an order of quarter sessions changing the place of holding petty sessions on the ground that the proceedings had partly been conducted in the justices' private room and not in open court was refused on the ground that the applicant had been a party to the irregularity complained of (*Ex parte Beecher*, (1876) 12 I.L.T.R. 167).

As to appeal, see APPEAL TO QUARTER SESSIONS, p. 130.

Appeal.

By the Summary Jurisdiction Over Children (Ir.) Act, 1884

Provisions as to children and young persons.

<sup>1</sup> Or brought before a magistrate (*R. v. Clarke*, (1910) 27 T.L.R. 32).

<sup>2</sup> The Petty Sessions Act, 1851, s. 13 (5), authorizes justices to commit a witness who refuses to be examined or to take the oath, or refuses to answer any question or to produce any papers.

Provision as to children and young persons.

(47 & 48 Vict. c. 19).<sup>1</sup> where a child meaning a person who is, in the opinion of the court before whom he is brought, under the age of fourteen years, s. 9)<sup>2</sup> is charged before a court of summary jurisdiction with any indictable offence other than homicide, the court, if they think it expedient to do so, and if the parent or guardian (guardian includes any person who, in the opinion of the court, has for the time being the charge or control of the child, s. 9) of the child so charged does not object, may deal summarily with the offence, and may inflict the same punishment as might have been inflicted had the case been tried on indictment, subject to the limitations in the section mentioned s. 4 (1)). Where the parent or guardian is not present when the child is charged, the court may either remand the child for the purpose of notice being served on the parent or guardian, or, if it thinks it expedient to do so, may deal with the case summarily (s. 4 (3)). A child, on summary conviction for an offence punishable on summary conviction under the Act or under any other Act, whether past or future, shall not be fined a larger sum than 40s. (s. 6). Section 4 (2) prescribes the procedure, and the statute will be found in the APPENDIX OF STATUTES.

By the same statute, where a young person (meaning a person who, in the opinion of the court before whom he is brought, is of the age of fourteen years and under the age of sixteen years, s. 9)<sup>1</sup> is charged before a court of summary jurisdiction with any offence other than homicide, the court, if they think it expedient to do so, having regard to the character and antecedents of the persons charged, the nature of the offence and all the circumstances of the case, and if the young person when informed by the court that he may elect to be tried by a jury, consents to be tried summarily, may deal summarily with the offence, and in their discretion adjudge such person to pay a fine not exceeding £10, or to be imprisoned with or without hard labour for any term not exceeding three months (s. 5).

Power is also given in the case of charges against children and young persons to discharge the accused without punishment where the offence is of a trivial nature, either unconditionally, or on his entering into security to appear for judgment when called on, or to be of good behaviour, and without payment of costs and damages or upon payment thereof (s. 7). The provisions of the Petty Sessions Act and the Dublin Police Acts as to appeals are made applicable (s. 8 (a)). The conviction must contain a statement in the case of a child as to the consent or otherwise of the parent or guardian, and in the case of a young person, of the consent of the young person to be tried by a court of summary conviction (s. 8 (b)).

The power conferred by s. 5 (1) to order a young person to be whipped has been repealed by the Children Act, 1908, s. 107 of which, however, contains substituted provisions; and by the same statute s. 111. all cases against children and young persons must now be heard in a juvenile court. See CATALOGUE OF SUMMARY OFFENCES, "CHILDREN"; and Children Act, 1908, *verbatim*, APPENDIX OF STATUTES.

As already pointed out (p. 2, *ante*) the chairman of an urban or rural county district containing a population exceeding 5,000 is a chairman of the county, but, except at quarter sessions, shall act

Jurisdiction of chairman of district council.

<sup>1</sup> As amended by the Children Act, 1908 (8 Ed. 7, c. 67, ss. 128, 133 (6), (7), 134 (3), sch. 3).

<sup>2</sup> The age as amended by the Children Act, 1908, s. 128 (see also s. 133 (6), (7)).

only within the petty sessions district comprising the urban or rural district or part thereof (Local Government (Ir.) Act, 1898, s. 26 (1)). It is submitted that such chairmen can (a) sign summonses to compel the appearance of a defendant who is within the district, though the offence has not been committed within the district, and (b) can adjudicate, in such district, upon offences committed outside of such district (cf. *R. v. Brodhurst*, (1863) 32 L.J.M.C. 168).

Jurisdiction  
of chairman  
of district  
council.

In the recent case of *R. (Moore) v. Dublin JJ.*, (1910) 2 I.R. 681, the complainant, a rate-collector, having obtained a decree at petty sessions for rates, applied to the justices to issue a warrant to levy the amount by distress,<sup>1</sup> and requested them to address the warrant to the district inspector of police or head constable, in compliance with s. 25 (2) of the Petty Sessions Act, 1851. The justices refused to address the warrant to the constabulary, but offered to address it to any person nominated by the complainant or to issue it in blank. The complainant refused to nominate any person or to accept the warrant in blank. The rate-collector having applied for a rule to the King's Bench Division, the constabulary, represented by counsel on behalf of the Crown, contended that they were under no duty to execute warrants of the kind; and that the applicant for the warrant should name persons other than the constabulary to whom the warrant might be entrusted, so as to afford the justices an opportunity of exercising their discretion. *Held*, that it was not incumbent on the applicant for the warrant to do so. "The matter is for the magistrates exclusively. The responsibility rests with them, though, no doubt, the applicant for the warrant might make an assistful suggestion. If the applicant for the warrant named a person to whom, in his opinion, the warrant might be addressed, the magistrates could nevertheless reject the person so named, and, if they did not in the exercise of their discretion name the district inspector, or head constable, they might name a person to execute the warrant other than the person named or suggested by the applicant. As a practical matter, if I were a magistrate, and knew of no person I considered fit to be entrusted with the execution of the warrant, or if the name of no such person was submitted to me, I would have no difficulty in naming the district inspector or head constable. But, even if I did know of a person fit to be entrusted with the execution of the warrant, I would still have a discretion as to whether I would appoint the police or that person. In the case before us the magistrates have not exercised the discretion reposed in them by the statute. It is mandatory on them to do so; there is a statutory obligation in them to do so. They must name either the district inspector or head constable, or such other person as they think fit, other than the complainant or person interested. They have not done so. The mandamus asked for must be accordingly granted" (*ib.*, per Lord O'Brien, L.C.J.). It is not a proper exercise of the justices' discretion to address the warrant to the High Sheriff of the county as a special bailiff under the statute relating to the recovery of the possession of small tenements (*R. (Gleeson) v. Tipperary JJ.*, 16 November, 1910, unreported<sup>2</sup>).

Duty of  
constabulary  
to execute  
warrant.

<sup>1</sup> The duty of justices in issuing a warrant is not necessarily ministerial (*Fourth City Building Society v. Churchwardens of Eastham*, (1892) 1 Q.B. 661).

<sup>2</sup> At time of going to press, but see Index of Cases.



## CHAPTER VI.

### SUMMARY CASES NOT WITHIN PETTY SESSIONS ACT.

	PAGE		PAGE
Cases excluded from Petty Sessions Act, . . . . .	76	Costs against Crown? . . . . .	78
Differences between cases within, and cases not within, Petty Sessions Act, . . . . .	76	Particular cases—	
Information or complaint, . . . . .	77	I. Excise prosecutions—	
Service, . . . . .	77	Procedure, . . . . .	79
Non-appearance of defendant, . . . . .	77	Appeal, . . . . .	80
Time limit, . . . . .	77	II. Stamps, . . . . .	80
Witnesses, . . . . .	78	III. Customs—	
Penalty, . . . . .	78	Procedure, . . . . .	80
Appeal, . . . . .	78	Penalty, . . . . .	81
Certiorari, . . . . .	78	Appeal, certiorari, . . . . .	81
		IV. Game, } See CATALOGUE	
		V. Post office, } OF OFFENCES.	

Cases excluded from Petty Sessions Act. THE Petty Sessions Act, 1851, does not apply to the Dublin metropolitan police district, save so far as relates to the backing or executing of warrants (s. 41).<sup>1</sup> By section 42 of the Petty Sessions Act, nothing in the Act shall extend or be construed to extend to any information or complaint or other proceeding under or by virtue of any of the Acts relating to His Majesty's revenue of excise<sup>2</sup> or customs, stamps, taxes, or post office, or relating to the preservation of game, except that all proceedings as to the same may be in the forms of procedure required by the Petty Sessions Act, or as near thereto as the circumstances of the case will admit. It becomes necessary to refer shortly to the procedure (outside Dublin) in summary cases not within the Petty Sessions Act. In each case, however, the particular statute,<sup>3</sup> which usually contains special provisions as to procedure and forms, should be consulted.

Differences between cases within and cases not within Petty Sessions Act. The following are the points of difference between summary cases within, and summary cases not within, the Petty Sessions Act :—(1) cases within the Petty Sessions Act, with a few exceptions, must be tried at petty sessions;<sup>4</sup> whereas it is not essential, unless where the particular statute so directs, that cases not within the Petty Sessions Act should be tried at petty sessions;<sup>5</sup> (2) in most cases within the Petty Sessions Act, any person may prosecute, but prosecutions under the Excise and Customs Acts can only be brought by or with the consent of the Commissioners, &c. ; (3) the entry in the order-book in petty sessions cases is the order,<sup>6</sup> but in cases not within the

<sup>1</sup> The procedure in Dublin is treated in a separate chapter. Ch. xxvi.

<sup>2</sup> All proceedings under the Illicit Distillation (I.) Act, 1831 (1 & 2 Wm. 4, c. 55), are regulated by the Petty Sessions Act (20 & 21 Vict. c. 40, s. 6).

<sup>3</sup> See CATALOGUE of SUMMARY OFFENCES, under the appropriate titles.

<sup>4</sup> See pp. 45, 55.

<sup>5</sup> It is desirable that all cases, not of emergency, should be heard and determined at petty sessions (Nun & Walsh, 2nd ed., 529). The 7 & 8 Geo. 4, c. 53, s. 67, provides that, if need be, justices in each county shall meet once in three months to hear excise cases. Proceedings in excise cases are not, however, confined to such meetings, which now are never held.

<sup>6</sup> See p. 63.



Petty Sessions Act such entry is not the order,<sup>1</sup> and a formal order or conviction<sup>2</sup> must be drawn up; (4) the distinction between a "dismiss without prejudice" and a "dismiss on the merits"<sup>3</sup> is not applicable to cases not within the Petty Sessions Act<sup>4</sup>; a case, if dismissed, should be "dismissed" simply<sup>5</sup>; (5) in cases within the Petty Sessions Act the justices may award costs, not exceeding 20s., to either party; but in all cases that are not within the Act there is no power to award costs except under the provisions of the particular statute under which the prosecution is brought; (6) the Petty Sessions Act gives a right of appeal only to a party aggrieved, which does not include a prosecutor,<sup>6</sup> whereas the excise and other statutes outside the Petty Sessions Act usually give a right of appeal to either party; (7) the time for and procedure as to appeal are different, and in every case not within the Petty Sessions Act the particular statute must be consulted;<sup>7</sup> (8) the Small Penalties (Ir.) Act, 1873 (36 & 37 Vict. c. 82), does not apply to any penalties recoverable by or on behalf of the Commissioners of Inland Revenue; and lastly, (9) the procedure generally is, of course, different.

Differences between cases within and cases not within Petty Sessions Act.

The proceedings must be commenced by an information or complaint (Paley, 8th ed., p. 75), which need not be either on oath or in writing, unless the statute expressly so directs (*R. v. Millard*, (1853), 6 Cox, 150), unless a warrant is to be issued in the first instance (2 Hale, 111). On the making of the information, the justice should issue a summons setting out the charge.

Information or complaint.

The summons should be signed<sup>8</sup> by the justice, and should be personally served on the defendant (*R. v. Hall*, (1825) 6 D. & R. 84; see *Molloy*, 180; *R. v. Simpson*, 1716, 10 Mod. 341), unless the statute authorizes some other mode of service. If, however, the defendant appears, the irregularity is waived (*R. v. Barret*, (1710) 1 Salk. 383), and justices may adjudicate unless the statute creating the offence makes service necessary (*R. v. Shaw*, (1865) 10 Cox 66, at p. 72, per Erle, C.J.). There is no jurisdiction either under the Petty Sessions Acts, or at common law, by which a summons issued in one county can be served in another (*G. S. & W. Ry. v. Leyden*, (1907) 2 I.R. 160).

Service.

The justice on proof of the service of the summons can proceed in the absence of the defendant (*R. v. Simpson*, (1716) 10 Mod. 341). He can also probably issue a warrant for the arrest of the accused if he does not appear (2 Hawk, 133).

Non-appearance of defendant.

In many cases prosecutions must be brought within six calendar months from the date of the offence (see, for instance, 27 Geo. 3, c. 35 (Ir.), s. 20; 9 Geo. 4, c. 69, s. 4; 11 & 12 Vict. c. 118, s. 3). The laying of the information is the commencement of the prosecution (*R. v. Barret*, (1710) 1 Salk. 383).

Time limit.

<sup>1</sup> See remarks at page 99 (in reference to orders in the Dublin metropolitan police district), which are applicable to all cases not within the Petty Sessions Act.

<sup>2</sup> Frequently the particular statute prescribes the form: see, for example, 5 & 6 Vict. c. 24, Sch. Convictions outside the Petty Sessions Act should be signed and sealed (Paley, 8th ed., p. 183) by all (Paley, 8th ed., pp. 183, 315 n., per Gibson, J., in *R. (De Vesci) v. Queen's Co. JJ.*, (1908) 2 I.R. 285, at p. 307) the justices who adjudicated.

<sup>3</sup> As to which, see p. 62.

<sup>4</sup> *R. (Bridges) v. Armagh JJ.*, (1897) 2 I.R. 236, noted p. 62, was decided on the erroneous assumption that the Petty Sessions Act applied.

<sup>5</sup> As to effect of a "dismiss" *simpliciter* where complainant does not appear, but defendant does, see *Tunncliffe v. Tedd*, (1845) 5 C.B. 553, noted *ante*, p. 57.

<sup>6</sup> See p. 134.

<sup>7</sup> See also p. 139, *post*.

<sup>8</sup> *Quære*, is sealing necessary (*R. v. Garrett-Pegge*, (1911) 27 T.L.R. 187)? If it is, the defect is merely one of form, and curable under s. 39 of the Petty Sessions Act (*ib.*).

Witnesses.

The justices have no power except that given by statute to compel the attendance of witnesses (Paley, 8th ed., 125).

Penalty.

The justices cannot mitigate a penalty, save where the statute imposing the penalty or some statute of general application authorizes them to do so. In Ireland there is no such general enactment except the Dublin Police Act, 1842, s. 63, and even that statute does not extend to penalties for breaches of the Acts relating to customs, excise, stamps, or taxes.

Care should be taken that where the fine mentioned in an Act is Irish currency, the amount should not be exceeded by imposing that amount in British coinage, as, if this is done, the amount of the fine is excessive, and the conviction consequently bad. *R. v. Creagh*, 1852) 5 Ir. Jur. 109. If an order imposes a penalty "in Irish currency," it is bad, having regard to 33 & 34 Vict. c. 10 (*Noble v. Hughes*, (1896) 2 I.W.L.R. 90).

Appeal.

The Fines Act (Ireland), 1851, 14 & 15 Vict. c. 90,<sup>1</sup> the application of which is general, provides (by s. 9), a right of appeal to quarter sessions in all cases where there is an order of justices for payment of any penalty exceeding 40s.<sup>2</sup> Whether such appeal is a full right of appeal, or is limited to the question of the amount of the penalty, is doubtful; see remarks on this section in chapter, APPEAL TO QUARTER SESSIONS, p. 138. Such appeal, however, as the section provides for is, it is submitted, in addition to, and not in substitution for, that prescribed by the particular statute.

Certiorari.

Certiorari does not lie in respect of proceedings under the 7 & 8 Geo. 4, c. 53 (7 & 8 Geo. 4, c. 53, s. 79); but as to the circumstances in which certiorari will lie, this enactment notwithstanding, see p. 226.

Can costs be given against Crown?

As to costs against the Crown,<sup>3</sup> the rule is that the Crown is not bound by an Act of Parliament unless specially named, or unless there is a necessary implication to be drawn from the provisions of the Act, or from the legislation on the subject, that the Crown was intended to be bound *per* Lord Alverstone, L.C.J., in *Thomas v. Pritchard*, (1903) 1 K.B. 209; and, therefore, in statutes dealing with general procedure and not making specific mention of the Crown, costs cannot be given either to or against the Crown, and this applies to appeals to quarter sessions (*R. v. Beadle*, (1857) 7 E. & B. 492; *R. v. Foley*, (1896) 2 I.W.L.R. 69). But, by statute, costs can be given either to or against the Attorney-General,<sup>4</sup> in any proceeding brought by him in respect of any Act of Parliament relating to the public revenue (18 & 19 Vict. c. 90, s. 1); and, further, where the Crown is mentioned—for instance, where section 4 of the 20 & 21 Vict. c. 43, gives the Crown the right to have a case stated, and section 6 of the same statute gives the court general power to give costs against the unsuccessful party—the Crown may be awarded costs or ordered to pay costs (*Moore v. Smith*, (1859) 1 E. & E. 597; see also *Thomas v. Pritchard*, (1903) 1 K.B. 209).

<sup>1</sup> See APPENDIX OF STATUTES.

<sup>2</sup> It gives no right of appeal in case of imprisonment.

<sup>3</sup> An excise officer, in a proceeding to recover an excise penalty, represents the Crown (see *R. v. Beadle*, (1857) 7 E. & B. 492; *R. v. Foley*, (1896) 2 I.W.L.R. 69). But a police officer or constable prosecutes, almost always, as a common informer (see p. 45, *ante*), and costs can be given either to or against him.

<sup>4</sup> This only refers to cases where the Attorney-General himself prosecutes (*R. v. Foley*, (1896) 2 I.W.L.R. 69).

In excise prosecutions the proceedings should be commenced by an officer of Inland Revenue, or of the Attorney-General (Inland Revenue Regulation Act, 1890, 53 & 54 Vict. c. 21, s. 21); but this enactment does not extend to any summary proceedings for the conviction on immediate arrest of any person under the Inland Revenue Acts, nor to any proceeding on the information or complaint of any officer of the peace for recovery of a fine or penalty under the Excise Acts in any case in which such proceeding is authorized (*ib.*). An allegation in the information that the excise officer prosecutes by order of the Commissioners is sufficient proof of such order without further or other evidence (7 & 8 Geo. 4, c. 53, s. 71; *Dyer v. Tully*, (1894) 2 Q.B. 794. Excise officers may conduct the proceedings before justices (Inland Revenue Regulation Act, 1890, s. 27). In any proceeding the letter or instrument under which the officer is acting is evidence (*ib.*, s. 24), and may be produced at any stage of the proceedings (*Hargreaves v. Hilliam*, (1894) 58 J.P. 655. The court should consist of two justices<sup>1</sup> (8 Geo. 4, c. 53, s. 65). The order of the court should be in the form given in Schedule A to the 40 & 41 Vict. c. 13. The information must be laid within six months after the offence (11 & 12 Vict. c. 118, s. 3). The laying of the information is the commencement of the proceedings (*Thorpe v. Priestnall*, (1897) 1 Q. B. 159). As to necessity for notice of information, and service thereof, see 4 & 5 Wm. 4, c. 51, s. 19, APPENDIX of STATUTES. The summons may be served by any person (4 & 5 Vict. c. 20, s. 31), ten days before the hearing (4 & 5 Wm. 4, c. 51, s. 19), and need not be served personally, it being sufficient if a copy is left at the place of business of the defendant or at the place where the offence was committed, or at the place of residence, or with the wife, child, or servant of the defendant (4 & 5 Wm. 4, c. 51, s. 19)<sup>2</sup>. The justice before whom the information is laid can summon any person, in whatever part of the United Kingdom such person may be, as a witness (7 & 8 Geo. 4, c. 53, s. 74), but such summons must be served personally (*R. v. Simpson*, (1716) 10 Mod. 341; *R. v. Hall*, (1825) 6 D. & R. 84), a reasonable time before the hearing (*Hammond v. Stewart*, (1722) Stra. 510), and a reasonable sum tendered to him for costs and expenses (*Chapman v. Pointon*, (1740) Stra. 1150). If the witness does not appear in answer to such summons, he becomes liable to a fine of £50 (7 & 8 Geo. 4, c. 53, s. 74). A justice has no power to bring up on warrant a witness who fails to attend on summons. A person taken into custody without a warrant may be remanded from time to time for a period not exceeding eight days, or admitted to bail (23 & 24 Vict. c. 113, s. 39). All penalties go to the Crown, and are to be paid to the Commissioners or as they direct (53 & 54 Vict. c. 21, s. 33). The justices have power to reduce a penalty to not less than one-fourth, except where it is specially provided that no mitigation is allowed (7 & 8 Geo. 4, c. 53, s. 78). But justices have no power, where a double penalty is sued for on information, to mitigate such double penalty, and when any person has been arrested under the Excise Acts, and is liable under those

<sup>1</sup> This also applies to any Excise Act passed subsequently (*ib.*, s. 1; 51 & 52 Vict. c. 8, s. 8). Jurisdiction is given to any two justices of the county, where the offence is committed or the offender is found, or the goods are seized (7 & 8 Geo. 4, c. 53, s. 65).

<sup>2</sup> See further, the section, in APPENDIX of STATUTES.



Acts to the payment of a penalty, and, in default of payment, to imprisonment for a limited period, the justices have no power, unless such power is given to them by some enactment, to mitigate such penalty (4 & 5 Wm. 4, c. 51, s. 20).

*Appeal in  
excise cases.*  
Stamps.

As to appeals, see APPEALS TO QUARTER SESSIONS, p. 139.

All fines imposed by the Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38), or by any Act for the time being in force relating to stamp duties charged in respect of medicines or playing cards may be proceeded for and recovered in the same manner and, in the case of summary proceedings, with the like power of appeal, as any fine or penalty under any Act relating to the excise (54 & 55 Vict. c. 38, s. 26), and any penalty incurred under s. 9 of the Stamp Act, 1891 (54 & 55 Vict. c. 39), which section relates to stamps used for postal purposes, as well as to stamps used for revenue purposes, is recoverable in like manner and with like right of appeal (*ib.*; Revenue Act, 1898, 61 & 62 Vict. c. 46, s. 7 (5)).<sup>1</sup> No other fines under the Stamp Acts are recoverable except in the High Court. The Commissioners of Inland Revenue are entrusted with, amongst other things, the recovery of fines under the Stamp Acts (53 & 54 Vict. c. 21, s. 39), and it is their authority which is required (*ib.*, s. 21) for the initiation of proceedings relating thereto.

*Customs.*  
*Procedure.*

The procedure as to cases under the Customs Acts is regulated by the Customs Consolidation Act, 1876<sup>2</sup> (39 & 40 Vict. c. 36). The forms to be used in proceedings under this Act are given in schedule C. thereto, and should be carefully followed by justices. Upon the exhibiting within three years after the date of the offence charged (Act of 1876, s. 257) of any information by the Commissioners or proper officer of customs (s. 221), in the form prescribed by ss. 222, 223, alleging any offence whatever by any person against the Customs Acts, a justice may, in cases where it appears to such justice that the person charged is likely to abscond, issue his warrant<sup>3</sup> to bring such person before him or any other justice; and he or any other justice may bail such person until the time for the hearing of the case (ss. 197, 224); or the justice, instead of issuing a warrant, may issue a summons to bring such person before him or any other justice, wherever in the United Kingdom any such person may be. Such summons or any summons issued for the attendance of a witness may be served by any customs officer or "other duly authorized person" upon such defendant or witness either personally or by leaving it at his last place of abode or business in the United Kingdom or on board any vessel to which he belongs or has lately belonged (ss. 224, 227). In case of non-appearance of the defendant, after proof of service of summons (see *R. v. Smith*, (1875) L.R. 10 Q.B. 604, and other cases cited, p. 49), the justice may adjudicate (s. 225). A witness summoned and failing to attend, or refusing to be sworn, or to give evidence, may be

<sup>1</sup> It would appear that justices have no jurisdiction to mitigate penalties under the Stamp Acts.

<sup>2</sup> Amended by Customs and Inland Revenue Act, 1879 (42 & 43 Vict. c. 21); Customs and Inland Revenue Act, 1881 (44 Vict. c. 12); Customs Consolidation Act, 1876, Amendment Act, 1887 (50 Vict. c. 7), and Customs Consolidation Act, 1876, Amendment Act, 1890 (53 & 54 Vict. c. 56).

<sup>3</sup> A warrant may be issued in the first instance in respect of any offence in respect of which proceedings by *Capias* in the High Court lie (s. 221). *Capias* is a writ directed to the sheriff commanding him to arrest the person named therein; and it lay in a great number of customs offences (see s. 247).



fined not more than £20<sup>1</sup> (s. 228). Offences may be dealt with wherever the defendant is or is brought (s. 229).<sup>2</sup> If the penalty imposed is not paid on conviction, the justice is to commit the defendant to any gaol within his jurisdiction, "there to remain for such term as is hereinafter provided,"<sup>3</sup> or until the penalty shall be paid (s. 232).

Where any person is brought before a justice for any offence under the Customs Acts for which a pecuniary penalty is thereby imposed, and if the goods in respect of which he is charged are not spirits, saccharine, or tobacco, or being spirits, saccharine, or tobacco, do not exceed five gallons of spirits, five pounds of saccharine, or twenty pounds of tobacco, such justice may adjudicate summarily without information by anyone or direction of the Commissioners of customs, and may on conviction impose a fine of not less than the single or more than the treble value<sup>4</sup> of the goods, including the duty thereon; and in default of payment order imprisonment for not less than fourteen days or more than one month (s. 233 and 6 Ed. 7, c. 20, s. 5).<sup>5</sup> Where any person is brought before any justice for any offence against the Customs Act with which the justice is not empowered to deal summarily, such justice may remand or admit to bail such person until the direction of the Commissioners has been obtained and the necessary information prepared (s. 197). As to the amount of penalty, see s. 233, and Revenue Act, 1906 (6 Ed. 7, c. 20), s. 5. The justices can award costs<sup>6</sup> either to or against the prosecutor (40 & 41 Vict. c. 13). All penalties, forfeiture, or costs awarded to be paid to the Crown are to be paid to the Commissioners of Inland Revenue, or any person authorized by them to receive the same (39 & 40 Vict. c. 36, s. 255). Section 205 of 39 & 40 Vict. c. 36, deals with the issue of search warrants.

Any justice may amend any information, conviction, or warrant of commitment for any offence at any time, whether before or after conviction (s. 243).<sup>7</sup>

There is no right of appeal, unless such as is given by the Fines Act (L.), 1851, noted *post*, p. 138, or by case stated on a point of law under 20 & 21 Vict. c. 43. In applications for certiorari the affidavit shall state the grounds of objection, and no objection shall be entertained by the Court other than such as is so stated (s. 243).<sup>8</sup>

*Penalty.*

*Appeal ;  
Certiorari.*

<sup>1</sup> A justice has no power to issue a warrant for the arrest of a witness who does not attend.

<sup>2</sup> See s. 230, as to justices of adjoining county. Where the offence is triable in any city or borough having a separate commission of the peace, the justices of the county in which the city or borough is situate may adjudicate (46 & 47 Vict. c. 55, s. 8).

<sup>3</sup> This is six months, if the penalty is less than £100 (s. 236). If the penalty is £100 or more, the imprisonment may be from six to nine months for a first offence and in the case of a subsequent offence, the offender may be imprisoned in lieu of payment of the penalty for a period not less than six or more than twelve months, with or without hard labour (42 & 43 Vict. c. 21, s. 12).

<sup>4</sup> As to how value is to be ascertained, see s. 214.

<sup>5</sup> This is the only case under the Customs Acts in which a justice may adjudicate without an information having been laid. It is the common case of the petty smuggler.

<sup>6</sup> There is no limit to the amount of such costs.

<sup>7</sup> As to the time within which this must be exercised, see *Ex parte Kenyon*, (1881) 45 J.P. 303; *Ex parte Austin*, (1880), 50 L.J.M.C. 8, noted p. 224.

<sup>8</sup> But see *R. v. M'Naghten*, (1845) 9 I.L.R. 93.

## CHAPTER VII.

### CONVICTIONS.

	PAGE		PAGE
General requisites, . . . . .	82	Powers of Amendment ( <i>continued</i> )—	
Contents, . . . . .	82	Offence different from that charged	
Jurisdiction, and place of offence, . . . . .	83	in summons, . . . . .	95
Name of party, . . . . .	83	(a) Petty sessions or quarter	
Liability of corporation, . . . . .	83	sessions, . . . . .	95
Time of offence, . . . . .	84	(b) High Court, . . . . .	97
Statement of offence, . . . . .	84	Suggested rules, . . . . .	99
(a) Examples of defective convictions, . . . . .	85	No amendment if defendant does	
(b) Examples of defective orders, . . . . .	86	not appear, . . . . .	99
Uncertainty, . . . . .	87	No power to substitute different	
(a) Offences charged disjunctively, . . . . .	87	defendant, . . . . .	99
(b) Offences charged conjunctively, . . . . .	88	Power to amend after entry in	
Joint offences, . . . . .	89	order book, . . . . .	99
Negating exemptions, . . . . .	89	Conviction on charge not preferred	
Technical terms, . . . . .	90	by complainant, . . . . .	99
Description of property, . . . . .	90	Signature to orders, . . . . .	100
Conditions precedent to prosecution, . . . . .	90	Dismiss—	
Adjudication and punishment—	90	“on the merits,” or “without	
Conviction imposing wrong punish-		prejudice,” . . . . .	100
ment . . . . .	90	of trivial charge, . . . . .	101
Order indefinite, . . . . .	91	Previous acquittal or conviction, . . . . .	102
When distress must be ordered, . . . . .	91	Meaning of “in jeopardy,” . . . . .	104
“Unless said sum be sooner paid,” . . . . .	91	If conviction quashed, can defendant	
Hard labour, . . . . .	91	be again charged? . . . . .	105
One summons, several orders, . . . . .	91	When objection of <i>res judicata</i> must be	
Appropriation of penalty, . . . . .	91	taken, . . . . .	106
Increased penalty for second		Several acts, one offence, . . . . .	106
offence, . . . . .	91	One transaction, several offences, . . . . .	106
Defendant estopped by acquies-		Postponing decision pending second	
cence, . . . . .	93	charge, . . . . .	107
Powers of amendment—	93	Distinction between orders and con-	
Statutes, . . . . .	93	victions, . . . . .	107
Variance as to date or place, . . . . .	94	Construction of convictions, . . . . .	108
Other variance; defect in sub-		Order Book, . . . . .	108
stance or form, . . . . .	94	Right to withdraw spoken word, . . . . .	108
		Setting aside order obtained under	
		misapprehension, . . . . .	109
		Convictions not returnable to quarter	
		sessions, . . . . .	109
		Waiver of condition precedent, . . . . .	109

General  
requisites.

THE general requisites of a good conviction are:—(1) that it be full and correct; (2) that the directions of the particular statute relative to the offence should appear on the face of the conviction to have been substantially complied with, both as regards the subject-matter of the offence being clearly brought within the statute, and the adjudication; (3) that it be certain; (4) that all the facts necessary to support a conviction must be expressly alleged and not left to be gathered by inference or intendment (Paley, 8th ed., 195 *et seq.*).

Contents of  
conviction.

Proceeding to deal with the particular contents of a conviction, every conviction must contain—(1) a statement showing that the offence is within the jurisdiction, (2) names of complainant<sup>1</sup> and

<sup>1</sup> As to who can be complainant, see p. 43, *ante*.

defendant, (3) time of offence, (4) place of offence, (5) description of offence with certainty and accuracy, (6) an adjudication permitted by statute.

In order to show jurisdiction, the rule is that the conviction must show the place in and for which the justices acted when they made the conviction, that the justices were justices for that place, and that the offence was committed within that place. The order book in use in petty sessions is headed "County of \_\_\_\_\_," and it is necessary, in the column headed "Cause of Complaint," to state that the offence was committed "within the county of \_\_\_\_\_," "or within the county aforesaid," which will be sufficient to show jurisdiction. If the order is made against a person resident in another county comprised in the petty sessions district, the fact that such portion of such other county is in the district should appear. In cases not within the Petty Sessions Act—for example, convictions by a Dublin metropolitan police magistrate—the body of the conviction must show that the justice was acting for the place within which the offence was committed, and that the offence was committed within that place (see form of conviction in schedule to Dublin Police Act, 5 & 6 Vict. c. 24). "It is an elementary matter, and well settled, that the place where the alleged offence took place must be shown to be within the jurisdiction of the magistrates" (*per* Lord O'Brien, L.C.J., in *R. (M'Monagle) v. Donegal JJ.*, (1904) 5 N.I.J.R. 36).

Jurisdiction,  
and place of  
offence.

Justices cannot exercise summary jurisdiction in respect of indictable offences (see *R. (O'Grady) v. Cork JJ.*, (1905) 5 N.I.J.R. 191, and other cases noted *ante*, p. 32).

As to the statement of the name of the party, a firm or trade name is not sufficient, so that a conviction against "Harrison & Company" is a mere nullity. (*R. v. Harrison & Company*, (1800) 8 T.R. 508.) If a person's name be unknown, and he refuses to disclose it, he can be described as a person unknown, and identified by some fact, e.g. that he is personally brought before the court by the keeper of the prison, but it is not sufficient to describe him merely as a person unknown (*R. v. —*, (1822) R. & R. 489).

Name of  
party.

By the Interpretation Act, 1889, 52 & 53 Vict. c. 63, s. 2 (1), the expression "person" in any Act of Parliament shall, *unless the contrary intention appears*, include a body corporate, so that, for instance, a limited liability company can be convicted under sect. 6 of the Food and Drugs Act, 1875 (*Pearks, Gunston, & Tee, Ltd., v. Ward*, (1902) 2 K.B. 1), under the Merchandise Marks Act, 1887 (see *Kirshenboim v. Salmon & Gluckstein, Ltd.*, (1898) 2 Q.B. 19), for causing deleterious matter to flow into a river contrary to 5 & 6 Vict. c. 10, s. 80 (see *R. (King) v. Antrim JJ.*, (1906) 2 I.R. 298), under the Sale of Poisons (Ireland) Act, 1870, 33 & 34 Vict. c. 26, s. 2 (*Lawler v. Egan*, (1901) 2 I.R. 589), and under the Diseases of Animals Act, 1894 (*R. (Langtree) v. Dublin JJ.*, (1904) 4 N.I.J.R. 182). But the statute does not retrospectively enlarge the meaning of the term "person" used in a statute, when such term plainly meant natural person at the time the particular Act was passed (*O'Duffy v. Jaffe*, (1904) 2 I.R. 27). It was held that "a contrary intention" appeared, and that no prosecution lay against a company, in the following cases:—under the Pharmacy Act, 1868 (*Pharmaceutical Society v. London & Provincial Supply Association, Ltd.*, (1880) 5 A.C. 857), or under the Pharmacy Act (Ir.), 1875, and the

Liability of  
corporation.



Liability of  
corporation.

Pharmacy Act (Ir.) 1875, Amendment Act, 1890 (*Pharmaceutical Society of Ireland v. Boyd*, (1896) 2 I.R. 394), or under the Dentists Act, 1878 (*O'Duffy v. Jaffe, supra*), or under sect. 41 of the Lotteries Act, 1823 (*Hawke v. Hulton*, (1909) 2 K.B. 93). The liability of a corporation to indictment, and the procedure thereon, are dealt with, p. 20; as to service of a summons on a limited company, see p. 48.

Time of  
offence.

The time of the offence should be stated with reasonable particularity. It is not essential that the precise day should be named, it being sufficient to say, between such a day and such a day (*R. v. Chandler*, (1702) 1 Salk. 378). Where an information, laid on the 16th November, charged the defendant with having on the 5th of October, and on divers other days and times between the said 5th of October and the laying of the information, being then the occupier of a certain house, knowingly and wilfully kept and used the same for the purpose of betting with persons resorting thereto, a conviction for so keeping and using the house on the 8th of November was held good (*Onley v. Gee*, (1861) 30 L.J.M.C. 222). The prosecution formally charged, and at the hearing endeavoured to prove, the offence of carrying a gun without a licence on the 5th November. When this broke down, they gave evidence of a similar offence on the 20th December, and the justices, without any amendment of the summons, convicted of the offence on the 20th December. *Held*, without deciding as to whether the conviction could have stood had the summons been amended, that the conviction was bad (*R. (McBarron) v. Fermanagh JJ.*, (1907) 41 I.L.T.R. 134).

Statement of  
offence, &c.

The offence must be stated fully, accurately, and with certainty. Convictions are frequently upset by reason of failure to comply with this rule; and such failure usually consists in—(a) the non-statement, or incomplete or incorrect statement, of the ingredients necessary to constitute the offence; (b) uncertainty, usually where several offences are charged in the same summons, conjunctively or disjunctively, and the order does not state upon which charge the conviction is made.

First, every necessary ingredient in the offence must be stated. The general rule is that it is sufficient to state the offence in the words of the statute (*R. v. Speed*, (1701) 1 Ld. Raym. 583; *Davis v. Nest*, (1833) 6 C. & P. 167; *R. v. Grant*, (1857) 21 J.P. 70; *R. v. Latchford*, Judgment of Superior Courts, 282.<sup>1</sup> The following, however, is Mr. Justice Wills' criticism of sect. 39 of the English Summary Jurisdiction Act, 1879, which provides that "the description of any offence in the words of the Act creating the offence, or in similar words, shall be sufficient in law":—"I do not think for a moment that it was intended to relieve persons who had to draw convictions from inserting anything that was necessary as an ingredient of the offence of which the particular defendant has been found guilty. When one comes to the description of the offence itself, then it is quite sufficient if it is described in the terms of the statute, however general they may be. At the same time the old rule must prevail, that whatever is necessary to show that the person convicted has done something which brought him within the words of the statute must still be specified" (*Smith v. Moody*, (1903) 1 K.B. 56, at p. 61).

<sup>1</sup> If the summons is free from objection, a conviction following and based on it is good (*R. (Sheahan) v. Cork JJ.*, (1907) 2 I.R. 5, at p. 12). As to following form of conviction given by the Act, see *R. v. Mayor of Clonmel*, (1858) 9 I.C.L.R. 267, at p. 277; Cf. *Wray v. Toke*, (1848) 12 Q.B. 492.

The following are instances where *convictions* were quashed, as not fully or accurately stating the offence:—

That defendant killed deer in a certain place, the offence being to kill deer in an enclosed place (*R. v. Moore*, (1702) 2 Ld. Raym. 791).

That defendant conveyed foreign brandy in casks then and there liable to forfeiture contrary to the Acts for the prevention of smuggling: *held*, bad, as the facts which formed the ground of liability to forfeiture were not stated (*ex parte Smith*, (1823) 3 D. & R. 461).

That defendant fraudulently and clandestinely removed certain goods from certain premises to prevent X. from distraining the said goods for the arrears of rent due to the said X. out of the said premises: *held*, bad, as not showing (which was the essence of the offence) that defendant was a tenant to X. (*R. v. Davis*, (1833) 5 B. & Ad. 551).

The defendant was *fin*ed on a charge that he was found on board a vessel within one league of the coast, such vessel being liable to forfeiture. Being on such a vessel *anywhere* was an offence. Being on such a vessel *within one league of the coast* was also an offence, but not punishable by a pecuniary penalty: *held*, that the conviction was ambiguous and should be quashed (*R. v. Pereira*, (1834) 2 A. & E. 375).

That the defendant allowed beer to be consumed in licensed premises “at other times than that prescribed by order of petty sessions,” as not stating the time fixed by the justices and the hour at which the beer was consumed (*Newman v. Hardwicke*, (1838) 8 A. & E. 124).

That defendant had “misapplied” moneys, the offence created by the statute being in the words “purloin, embezzle, *willfully* waste, or misapply moneys” (*Carpenter v. Mason*, (1840) 12 A. & E. 629).

That the defendant entered on complainant’s lands to look for game without adding the word “there” (*Fletcher v. Calthrop*, (1845) 6 Q.B. 880; *R. v. Waterford JJ.*, (1869) 18 W.R. 164; but see observations of Madden, J., in *R. (McCarron) v. Donegal JJ.*, (1907) 2 I.R. at p. 388).

Section 42 of 24 & 25 Vict. c. 100, gives power to justices to determine cases of common assault; and section 43, cases of assaults on persons not exceeding fourteen years of age, or assaults which, in the opinion of the justices, cannot be sufficiently punished as common assaults. To found a good conviction under section 43, the circumstances, e.g., that the person assaulted was under fourteen, justifying a conviction under the section must appear (*In re Rice*, (1873) I.R. 7 C.L. 74; see *Connor v. Quest*, (1906) 71 J.P. 62).

That the defendant was guilty of “corrupt practices” (which by the statute includes bribery, treating, and undue influence), without specifying the nature of the corrupt practice (*R. v. Ingall*, (1880) 44 J.P. 552, 42 L.T. 533).

That the defendant did permit smoke to escape from his said engine, contrary to the bye-laws of the Board of Trade. The bye-law was, “no smoke or steam shall be emitted from the engines so as to constitute any reasonable ground of complaint to the passengers or the public,” and accordingly the conviction should have stated that the emission of the smoke was such as to constitute a reasonable ground of complaint to the passengers or the public, specifying which (*Catterill v. Lempriere*, (1890) 24 Q.B.D. 634).

That the defendant wrongfully and without legal authority followed the complainant in a disorderly manner with two or more other persons in certain streets, “with a view to compel him to abstain from doing acts which he had a legal right to do”: *held*, bad, because these acts should have been specified (*R. v. McKenzie*, (1892) 2 Q.B. 519; see, and compare, *Ex parte Wilkins*, (1895) 18 Cox 161).

That the defendant did assault A.B.: *held*, bad, as it did not aver that A.B. had refused to prosecute (*R. (Ryan) v. Wicklow JJ.*, (1892) 30 L.R.I. 633, 27 I.L.T. & S.J. 9; *R. (Peane) v. Galway JJ.*, (1901) 35 I.L.T.R. 156). That the defendant did unlawfully assault Kathleen Symmons, who declines to prosecute: *held*, bad, inasmuch as the statute only gave power to the complainant to prosecute if the party aggrieved had declined or refused to prosecute, and that the mere recital of the words, “who declines to prosecute,” did not amount to a statement that the justices had so found on the hearing of the complaint (*R. (Johnston) v. Armagh JJ.*, (1909) 43 I.L.T.R. 112).

That the defendant, with a view to compel the complainant to abstain from working for X, which he had a legal right to do, wrongfully and without legal

(1) *Examples of defective convictions.*



Statement of offence, &c.

(1) *Examples of defective convictions.*

authority did injure "the property" of the complainant: *held*, bad, as the property should have been specified (*Smith v. Moody*, (1903) 1 K.B. 56).

That the defendants riotously, etc., assembled, and did assault "certain constables": *held*, bad, as the names of the constables were not stated (*R. (Sheehan) v. Tipperary JJ.* (1903) 37 1 L.T.R. 48, 3 N.I.J.R. 121).

That the defendant wilfully interfered with a passenger, because the offence under the bye-law is wilful interference with the comfort of the passengers (*R. (Meehan) v. Louth JJ.*, (1905) 39 1 L.T.R. 23).

"That the defendant placed goods on the footpath" contrary to the provisions of the Towns Improvement (Ir.) Act, 1854, s. 72, without averring that he did so to the obstruction, annoyance, or danger of the residents or passengers (*R. (Bunting) v. Antrim JJ.*, (1905) 39 1 L.T.R. 82).

A conviction of the owner of a motor car under s. 1 (3) of the Motor Car Act, 1903, stated that the defendant did unlawfully refuse to give the name and address of the person who at a specified time and place was driving the defendant's motor car, such name and address being required in order that proceedings might be taken against him under s. 1 of the Motor Car Act, 1903, and the statutory rules and orders: *held*, that the conviction was bad, in that it did not state what offence the driver of the motor car was alleged to have committed (*R. v. Hankey*, (1905) 2 K.B. 687).

By section 25 of the Malicious Damage Act, 1861, 24 & 25 Vict. c. 97, whosoever shall "unlawfully and maliciously" damage, etc., any fence shall pay a certain penalty. By section 52 of the same statute whosoever shall unlawfully or maliciously damage any property "for which no punishment is hereinbefore provided" shall be subject to a certain penalty. The defendant was convicted for wilfully damaging a hedge and paling of the complainant, the conviction purporting to be under section 52. *Held* (1), that the hedge and paling, being a fence, was property for which a punishment was provided by section 25, and that therefore the conviction was not sustainable under section 52, and (2), that, considered as a conviction under section 25, it was bad, because the section uses the words "unlawfully and maliciously," whereas the conviction merely stated "wilfully" (*R. (O'Toole) v. Drury*, (1907) 41 1 L.T.R. 183).

Under the statute, and an exemption order made thereunder, the defendant was obliged to dip his sheep in a dip approved of by the Board of Agriculture and Fisheries between the 15th September and 30th September. The defendant dipped his sheep on the 26th September, but not in an approved dip: *held*, that a conviction for not dipping the sheep in an approved dip on the 26th September was bad, as the offence was the failure to dip in an approved dip between the 15th September and 30th September (*Bingley v. Quest*, (1907) 71 J.P. 443).

(2) *Examples of defective orders.*

The following are instances of defective orders (for distinction between orders and convictions, see p. 107):—

"That a dispute had arisen," etc., without saying "in a fair or market," the statute conferring jurisdiction being limited to sales "in a fair or market" (*R. v. Campbell*, (1853) 3 I.C.L.R. 586).

An order to enter lands for the purpose of obtaining road material under section 162 of the Grand Jury Act must show jurisdiction upon its face (*Butler v. Leahy*, (1867) 1 I.L.T. 477), and is bad if it fails—(1) to state that the contractor is a contractor for the repair of the road in pursuance of a resolution of the county council or (2) to state that the justices were satisfied that the materials could not conveniently be procured elsewhere (*Fitzpatrick v. Pine*, (1861) 13 I.C.L.R. 32; *Butler v. Leahy*, (1867) 1 I.L.T. 477; *R. (Mayo) v. Dublin JJ.*, (1884) 16 L.R.I. 11), or (3) to limit right of entry to a definite time (*R. (Bentham) v. Dublin JJ.*, (1884) 14 L.R.I. 443; *R. (Fitzgerald) v. Limerick JJ.*, (1893) 27 1 L.T.R. 35; *R. (Murphy) v. Wexford JJ.*, (1894) 2 I.R. 81, 28 I.L.T.R. 17; *R. (Guinness) v. Louth JJ.*, (1898) 2 I.R. 248, 33 I.L.T.R. 9);<sup>1</sup> or (4) to negative the statutory exemptions (*R. (Murphy) v. Wexford JJ.*, (1894) 2 I.R. 81, 28 I.L.T.R. 17; see also *R. (Kennedy) v. Dublin JJ.*, (1909) 43 I.L.T.R. 271);<sup>2</sup> or (5) to define the part of the lands to be entered (*Dove v. Westmeath JJ.*, (1904) 38 I.L.T.R. 87). An order which prescribes a route for the contractor to enter is bad (*R. (Coyle) v. Monaghan JJ.*, (1908) 2 I.R. 1). Where a statute authorizes the justices to

<sup>1</sup> See also *R. (Brady) v. Cavan JJ.*, (1907) 2 I.R. 389.

<sup>2</sup> See also *R. (Cust) v. Tipperary JJ.*, (1885) 17 I.C.L.R. 564; *R. (Winder) v. Kildare JJ.*, (1909) 2 I.R. 686.



make an order for the payment of "reasonable remuneration" to a medical officer who examines a dangerous lunatic, and the order awards him a sum for reasonable remuneration for his loss of time and professional services: held, that the order was bad (*King v. Guardians of Delvin Union*, (1908) 2 I.R. 15). An order under the Public Health Act to abate a nuisance is bad if it merely directs the defendant to carry out the necessary works, without specifying the works (*R. (Clarke) v. Meath JJ.*, (1900) 34 I.L.T.R. 47; *R. v. Wheately*, (1885) 16 Q.B.D. 34).

Statement of offence.  
(2) Examples of defective orders.

An order of justices upon a party requiring him to pay money to a person claiming it as a member of a friendly society must find in direct terms that the person applying is a member, that he is entitled to the money, and that the party against whom the application is made is, at the time, an officer of the society. An order served upon D. does not find him to be an officer by being directed to D., "steward of the said society," nor by reciting a complaint upon oath which states him to be so. An order does not show the applicant to be a member and entitled to the money by reciting that he made complaint upon oath, in which complaint he stated himself to be a member and the money to be due, though the order afterwards directed the money "so due and owing as aforesaid" to be paid (*Day v. King*, (1836) 5 A. & E. 359).

The English statute 48 Geo. 3, c. 75, enables justices to order payment by the county treasurer to churchwardens of all necessary and proper costs and expenses incurred in or about the execution of the Act (*scil.* by the burial of a dead body cast on shore). A justice's order which recites that he had ascertained the costs and expenses was held bad, because it did not show that the expenses were proper and necessary expenses incurred in or about the execution of the Act (*R. v. Treasurer Co. Kent*, (1889) 22 Q.B.D. 603).

The next fatal objection to a conviction is that it is uncertain. Uncertainty. An offence was charged under one statute which the Queen's Bench afterwards held was repealed by a later statute. The conviction might have been supported on the later statute, but, as the prosecutor and the justice both professed to proceed upon the earlier statute, the conviction was quashed (*Mitchell v Brown*, (1858) 1 E. & E. 267).

The objection of uncertainty is most commonly raised where several charges are included in the same summons, and the conviction does not specify upon which charge it is made. There is nothing to prevent a number of charges being laid in the same summons,<sup>1</sup> and the conviction may include a conviction on each one of the charges, provided that the conviction is sufficiently clear and explicit, and leaves no doubt that each and every one of the charges laid have been disposed of by the adjudication and judgment (see judgment of Palles, C.B., in *Ex parte Stephens*, (1889), Judgment of the Superior Courts, at p. 312; see also *Conybeare's Case*, *ib.*, p. 327; *Shea v. R.*, (1848) 12 I.L.R. 153; *R. v. Swallow*, (1799) 8 T.R. 284). Where one summons contains several charges there ought to be a distinct adjudication on each, just as in the case of an indictment, but such adjudications, though several for some purposes, form part of one order or conviction (per Gibson, J., in *R. (Daly) v. Cork JJ.*, (1898) 2 I.R. 694, 696). Where one summons contained two charges, and the justices made an order of conviction upon one, and marked the other "no rule," it was held that the wrongful order "no rule" did not vitiate the conviction on the other charge (*Ex parte Conybeare*, (1889) Judgments of the Superior Court, 324).

But where several charges are laid, either disjunctively or conjunctively, a conviction is bad which does not specify upon which

Offence charged disjunctively, conviction general.

<sup>1</sup> In England, since the Summary Jurisdiction Act, 1848, 11 & 12 Vict. c. 42, s. 10, the information must be for one offence or one matter of complaint only.

Uncertainty.  
Offence  
charged dis-  
junctively,  
conviction  
general.

charge the conviction is had. The following are instances where several offences were charged disjunctively, and, the conviction, being general, was held bad:—

That the defendant did kill, take, and destroy, or attempt to kill, take, and destroy (*R. v. Sadler*, (1787) 2 Chitty 519); that the defendant sold “beer or ale” (*R. v. North*, (1825) 6 D. and R. 143); that the defendant had casks used or intended to be used (*R. v. Pain*, (1826) 7 D. and R. 678); that the defendant imported or caused to be imported foreign silk (*R. v. Morley*, (1827) 1 Y. and J. 221); that the defendant did unlawfully open or keep open his licensed premises for the sale of intoxicating liquor, or did unlawfully expose the same for sale, or sell same on the licensed premises (*R. (Collins) v. Waterford JJ.*, (1892) 27 I.L.T.R. 54); that the defendant had and kept a “still, still-head, or worm of a still” (*R. (Moore) v. Wexford JJ.*, (1903) 37 I.L.T.R. 64, 3 N.I.J.R. 129); that the defendant deserted or wilfully neglected to maintain his wife (*R. (Ferris) v. Londonderry JJ.*, (1903) 3 N.I.J.R. 242); that the defendant drove a motor car “at a speed or in a manner which was dangerous to the public” (*R. v. Wells*, (1904) 20 Cox 671); that the defendant did cruelly beat, illtreat, overdrive, or torture, or cause or procure such to be done, a horse his property (*R. (Vaughy) v. Meath JJ.*, (1904) 38 I.L.T.R. 12).

In the following cases, it was held that the rule against a general conviction upon a summons charging offences disjunctively did not apply:—

The defendant was charged that he did “use, fish, or erect a draft net for eels,” etc., and the conviction was general; held, that as the word “erect” was not applicable to a draft net, it was mere surplusage, and that as “use” and “fish” were synonymous terms, there was only one effective charge, and the order was good (*R. (Coyle) v. Tyrone JJ.*, (1908) 42 I.L.T.R. 26). A conviction that the defendant loitered in a certain street “for the purpose of bookmaking or betting or wagering, or agreeing to bet or wager, or paying or receiving or settling bets” contrary to the Street Betting Act, 1906, was held good (*Stenhouse v. Dykes*, (1908) S.C. (J.) 61; cf. *Keenan v. Collie*, (1907) 41 I.L.T.R. 226).

Offence  
charged  
conjunctively,  
conviction  
general.

The following are instances where, several offences being charged conjunctively, the conviction was set aside as not specifying upon which charge the conviction was had:—

That the defendant kept his house open for the sale of beer, and sold beer, and suffered the same to be drunk and consumed in the house, during prohibited hours (*Newman v. Bendyshe*, (1839) 10 A. and E. 11). That the defendant did neglect to comply with a certain notice . . . specifying certain matters therein mentioned in respect of which the laying out or construction of the said streets was in contravention of the bye-laws relating to new streets, and requiring him . . . to do the work therein specified which have been omitted by him to be done contrary to the form of the said bye-laws; held, bad, both as referring to two offences, and on the ground of uncertainty (*R. v. Slater*, (1903) 67 J.P. 299). That the defendant did go and enter upon the lands of the complainant, provided with a gun to look for, set, spring, start, follow, shoot, course, hunt, or otherwise pursue, take, or destroy game (*R. (M'Curran) v. Donegal JJ.*, (1907) 2 I.R. 386, 40 I.L.T.R. 197). That the defendant did, on the 23rd and 29th days of May, 1909, unlawfully exhibit . . . a picture, and printed or written matter of an indecent or obscene nature, on the ground that two dates were charged, and the conviction was general (*R. (Ross) v. Cork JJ.*, (1908) 42 I.L.T.R. 230). That the defendant, during prohibited hours, unlawfully opened his licensed premises for the sale of intoxicating liquor, and unlawfully allowed same to be consumed (*R. (Neely) v. Down JJ.*, (1908) 42 I.L.T.R. 111). That the defendant did cruelly illtreat, abuse, and torture a grey gelding (*Johnson v. Ncedham*, (1909) 1 K.B. 626).

In the following cases it was held that the convictions were good, one offence only being charged in each case :—

An information charging the defendant with having knowingly harboured and concealed, and knowingly permitted and suffered to be harboured and concealed (*R. v. M'Naghten*, (1849) 9 I.L.R. 93), or with having forged, offered, and uttered a certificate under 29 & 30 Vict. c. 100, s. 10, is good, as charging only one offence (*Annakin v. Smith*, (1868) 32 J.P. 759). A charge of aiding, abetting, counselling, and procuring (*Stacey v. Whitehurst*, (1865) 18 C.B.N.S. 344) or of taking, killing, and pursuing game (*Lanton v. Jeffries*, (1894) 58 J.P. 318) constitutes but one offence. Section 72 of the Highway Act, 1835 (E.), makes it an offence to lay any substance on the highway "to the injury, interruption, or personal danger of any person travelling thereon": held, that a conviction for having laid matter on the highway "to the interruption and personal danger of any person travelling thereon" is not bad for duplicity, for the act of laying the matter on the highway, followed by any one or more of the consequences above mentioned, constitutes but once offence (*Smith v. Perry*, (1906) 1 K.B. 262). A conviction that the defendants did persistently follow certain persons, and did watch and beset the working-place and houses of such persons contrary to the Conspiracy and Protection of Property Act, 1875, s. 7: held, good, as the persistently following and the watching and besetting were not alternative charges (*Wilson v. Renton*, (1910) 47 S.L.R. 209).

Uncertainty.  
Offence  
charged  
conjunctively,  
conviction  
general.

As to joint offences, see p. 47.

Joint offences.

Section 78 of the County Officers and Courts (Ireland) Act, 1877 (40 & 41 Vict. c. 56), enacts as follows: "In all cases of summary jurisdiction any exception, exemption, proviso, qualification, or excuse, whether it does or does not accompany the description of the offence complained of, may be proved by the defendant, but need not be specified or negatived in the information or complaint; and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required from the complainant, unless evidence shall be given by the defendant concerning the same."<sup>1</sup> The question as to when it is necessary, in the summons and conviction, to negative an exception, is frequently one of difficulty. The rule is thus laid down by Gibson, J., in *R. (Sheahan) v. Cork JJ.*, (1907) 2 I.R. at p. 11: "Does the statute make the act described an offence subject to particular exceptions, qualifications, etc., which, where applicable, make the *prima facie* offence an innocent act? Or does the statute make an act, *prima facie* innocent, an offence when done under certain conditions? In the former case, the exception need not be negatived; in the latter, words of exception may constitute the gist of the offence?"<sup>2</sup> Accordingly, where it is an offence under 13 & 14 Vict. c. 88, s. 40, to use, for the purpose of taking fish, any gaff (except when used solely as auxiliary to angling with rod and line for the purpose of removing fish from any legal weir or box by the owner or occupier thereof), it was held that a summons and conviction were good although neither negatived that the use was for a purpose excepted by the section (*ib.*; also reported 40 I.L.T.R. 163); see *In re Turner*, (1846) 9 Q.B. 80; *R. v. Corden*, (1769) 4 Burr. 2279; *Re Geswood*, (1853) 2 El. & Bl. 952). Instances of *orders*, as distinct from convictions, which have been set aside as not negativing exemptions are *R. (Murphy) v. Wexford JJ.*, (1894) 2 I.R. 81; *R. (Kennedy) v. Dublin JJ.*, (1909) 43 I.L.T.R. 271, noted, pp. 170, 173). It

Negativing  
exemptions.

<sup>1</sup> The Licensing Act, 1872, s. 51 (4), contains a similar provision.

<sup>2</sup> See also dictum of Williams, J., in *In re Turner*, (1846) 9 Q.B., at p. 81:—"I have always thought that the law was properly laid down by Lord Mansfield in *R. v. Corden*, that, if the fact, as charged, may be consistent with the innocence of the prisoner, no offence is charged."



Negating  
exemption.

is submitted that section 78 of the County Officers and Courts Act does not apply to such orders. The Belfast Harbour Commissioners made a bye-law, under their statutory powers, prohibiting persons addressing a crowd on any quay, &c., their property, without permission in writing from the secretary: *Held*, in a prosecution for breach of the bye-law, that the onus did not lie on the Commissioners to show that such permission had not been given (*Larkin v. Belfast Harbour Commissioners*, (1908) 2 I.R. 214, *per* Wright and Dodd, JJ.).

Use of techni-  
cal terms.

It is not necessary that the conviction should contain the words "against the peace" (*R. v. Chandler*, (1701) 1 Ld. Raym. 581); or "unlawfully," or "knowingly," unless either of these words be distinctly used in the Act as part of the description of the offence (Paley, 8th ed., 200). Neither will the use of such words cure the vices of a defective conviction (*ib.*). It is not necessary to use the phrase "contrary to the statute" (*ib.*).

Description  
of property.

Property should be identified by description, number, and, where value is essential, by the value (see *R. v. Gibbs*, (1722) 1 Str. 497; *R. v. Catherall*, (1731) 2 Str. 900). For instance, it is necessary to specify the value where the justices are empowered to award compensation according to the amount of damage, or where their jurisdiction depends on the value. It is sufficient to describe property belonging to partners, joint-tenants, parceners, or tenants in common, as the property of anyone of such persons who shall be named, and of another or others without naming them (Petty Sessions Act, 1851, s. 38).

Conditions  
precedent to  
prosecution.

Some statutes make certain conditions (e.g. consents and the like) necessary before proceedings can be instituted. In such cases proceedings are considered to be instituted at the time the information is laid, and the proceedings are not sustainable unless the condition precedent is performed at the date of the information or summons (*Thorp v. Priestnall*, (1897) 1 Q.B. 159; *Department of Agriculture v. Porter*, (1910) 44 I.L.T.R. 13).<sup>1</sup> As to waiver, see p. 109.

Adjudication  
and punish-  
ment.

The punishment awarded must be certain, definite, and authorized by the statute. A judgment for too little is as faulty as a judgment for too much (*Whitehead v. R.*, (1845) 7 Q.B. 582; *Brophy v. Ward*, (1859) 4 Ir. Jur. N.S. 235; *R. v. Salomons*, (1786) 1 T.R. 252).<sup>2</sup> If the offence be a second offence, this should appear (see *infra*). The following are cases where the conviction was set aside on the ground that the punishment was not warranted by the statute:—

Conviction  
imposing  
wrong punish-  
ment.

A conviction ordering a forfeiture where the statute did not authorize a forfeiture (*R. (O'Sullivan) v. Kerry JJ.*, (1901) 1 N.I.J.R. 180); a conviction directing an offence under the Licensing Act, and not recordable, to be recorded (*R. (Haslett) v. Fermanagh JJ.*, (1903) 37 I.L.T.R. 120, 3 N.I.J.R. 109); a conviction under the Malicious Damage Act (24 & 25 Vict. c. 97, s. 52), awarding as compensation to the complainant a sum beyond the amount of damage actually proven (*R. (Crilly) v. Londonderry JJ.*, (1904) 38 I.L.T.R. 136); where the statute directed that the conviction should state whether the conviction was or was not to be recorded, but the conviction was silent upon the point (*R. (Sheeran) v. Dublin JJ.*, (1905) 40 I.L.T.R. 22). Where a second conviction was had for selling drink without a licence and defendant was fined £4, being an amount within the jurisdiction as to second offences, but in excess of it so far as regards first offences, and the conviction did not state that the conviction was a second conviction; *held*, that the conviction should have shown upon its face jurisdiction to impose the punishment, and failing to do

<sup>1</sup> See also *Beardsley v. Geddings*, (1904) 1 K.B. 847.

<sup>2</sup> Thus, where the statute directs imprisonment with hard labour, the conviction is bad if it fails to state with hard labour (*Re Byrne*, (1848) 11 I.L.R. 538).

this it should be quashed (*R. (Ryan) v. Kilkenny JJ.*, (1903) 4 N.I.J.R. 4; *Murray v. Thomson*, (1888) 22 Q.B.D. 142). It was held in *R. v. Fowler*, (1894) 64 L.J.M.C. 9, that an offence which in fact is a second offence may be treated as a first offence, unless the prosecution legally prove the first offence, but this case was disapproved in *R. v. Beesby*, (1909) 1 K.B. 849. A conviction, not followed by the adjudication of any punishment, reckons as a first offence, and a conviction following same should be treated as a second offence (*R. (Meehan) v. Donegal JJ.*, (1904) 38 I.L.T.R. 153; *R. v. Blaby*, (1894) 2 Q.B. 170).<sup>1</sup> A conviction awarding a month's imprisonment in default was set aside, where the term of imprisonment was in excess of that prescribed by the Small Penalties Act (*R. (Bulfin) v. Queen's Co. JJ.*, (1902) 2 N.I.J.R. 82). If a penalty imposed by a statute is in Irish currency, an order imposing that amount in British currency will be bad, as being for an excessive amount (*R. v. Creagh*, (1852) 5 Ir. Jur. 109); and if the order imposes the penalty in Irish currency, stating that it is Irish currency, it will, having regard to 33 & 34 Vict. c. 10, be void (*Noble v. Hughes*, (1896) 2 I.W.L.R. 90). The order must specify the amount of the costs (*R. v. Payne*, (1824) 4 D. & R. 72).

Where there is an order for payment of penalty or compensation, it should be to a *persona designata*; an order directing payment to "the aggrieved party, to wit, the representatives of the late A.B., owner," is bad (*R. (Williams) v. King's Co. JJ.*, (1901) 2 N.I.J.R. 22).

A charge of illegal fishing having been dismissed at petty sessions, and appeal having been taken, the order of quarter sessions was "that the dismissal on the merits be reversed," and that a certain fine and costs should be paid by defendant: *Held*, that though there was no express adjudication of guilt, there was a sufficient implied adjudication of guilt, and that the order was good (*R. (Conway) v. Tyrone JJ.*, (1906) 2 I. R. 164).

As to when it is necessary to order distress, see p. 67, *ante*.

As to necessity, when ordering imprisonment in default, to insert "unless said sum be sooner paid," see p. 67, *ante*.

Where the imprisonment is to be without hard labour, the conviction need not say "without hard labour," for that is implied (*R. (Tavener) v. Tyrone JJ.*, (1909) 2 I.R. 763, 43 I.L.T.R. 262).

One summons was brought, alleging eight trespasses on different days, and the justices imposed fines in respect of each trespass and made up eight distinct orders, with five shillings costs in each: *Held*, that the orders were bad, that the various trespasses mentioned in the summons were one case; and that there should have been one order only thereon, with costs not exceeding twenty shillings, the limit laid down by the Petty Sessions Act (*R. (Daly) v. Cork JJ.*, (1898) 2 I.R. 694; see also *R. v. Rawson*, (1909) 2 K.B. 748; *R. v. Cable*, (1906) 1 K.B. 719, noted, p. 106).

Where there is a material variation in the appropriation of the penalty from the directions of the Act of Parliament the conviction will be bad (Paley, 8th ed. 303; *Griffith v. Harries*, (1837) 2 M. & W. 335; *Chaddock v. Wilbraham*, (1848) 5 C.B. 645; cf. *Re Boothroyd*, (1846) 15 M. & W. 1).

Where a statute imposes a penalty for a second offence, care must be taken that the first offence is of the character mentioned in the statute. Section 3 of the Licensing Act, 1872, enacts certain penalties for selling intoxicating liquors without a licence, and increased penalties for a second offence. The defendant having been convicted

Adjudication and punishment.

*Order indefinite.*

*When distress must be ordered "Unless said sum be sooner paid."*

*Hard labour.*

*One summons, several orders.*

*Appropriation of penalty.*

*Increased penalty for second offence.*

<sup>1</sup> In *Meehan's Case* the first order was "convicted and discharged with a caution," and in *Blaby's Case*, on the first conviction, the accused was allowed out on his own recognizances. "It is plain to me that a person is convicted before the sentence is pronounced, or a penalty fixed" (Palles, C.B., in *Meehan's Case*).

Adjudication  
and punish-  
ment.  
Increased  
penalty for  
second offence.

under the section, the justices imposed a conviction as for a second offence, holding that a previous conviction of defendant under s. 17 of 4 & 5 Wm. 4, c. 85, of selling beer without a licence, constituted a first offence. *Held*, that the justices were wrong, for there could only be a conviction under section 3 of the Act of 1872 for a second offence, where the conviction for the first offence had been under the same statute (*In re Authers*, (1889) 22 Q.B.D. 345). Section 1 of the Night Poaching Act, 1828, enacts penalties for the offence of entering by night upon land with a gun or other instrument for the purposes of taking game, and other penalties for repeated offences. *Held*, that a previous conviction under section 9 of the same statute of the misdemeanour of entering upon land by night armed and to the number of three or more for the purpose of taking game, was not a previous conviction within section 1 (*R. v. Lines*, (1902) 1 Q.B. 199).<sup>1</sup>

The defendant was convicted of loitering for the purpose of street betting under section 1 of the Street Betting Act, 1906, which imposes a penalty of £10 for a first offence, and £20 for a second offence. The defendant had been previously convicted under a county council bye-law which made it an offence to frequent a street for the purpose of betting. *Held*, that the justices were not entitled to inflict a fine for a second offence, inasmuch as the second offence should be under the same statute as that creating the original offence (*R. v. Stone*, (1908) 99 L.T. 88). Where a first offence has been committed, the justices, when the previous conviction is proved on oath before them, are bound to treat the case as a second offence, even though it is not charged as such in the information or complaint (*Murray v. Thompson*, (1888) 22 Q.B.D. 142). It was also held that, where, after conviction, and before sentence, the justices were told by a police constable, not upon oath, that the defendant had been previously convicted, they were bound to take cognizance of the previous conviction, and to treat the case as a charge of a second offence (*R. v. Beesby*, (1909) 1 K.B. 849).<sup>2</sup> Where a defendant was convicted under the Licensing Acts of suffering gaming on his licensed premises, and the order was, "convicted and discharged with a caution," it was held that, though this order was bad upon its face, yet it was an effective conviction within section 20 of the Licensing (Ir.) Act, 1874, and that a subsequent conviction should be treated as a second conviction (*R. (Meehan) v. Donegal JJ.*, (1904) 38 I.L.T.R. 153; see also *R. v. Blaby*, (1894) 2 Q.B. 170). The statute may, however, expressly declare that any offence against any other Act of Parliament shall be reckoned as a first offence (see, for instance, Malicious Damage Act, 1861, 24 & 25 Vict. c. 97, ss. 22, 24. Similar provisions are contained in the other statutes known as the Criminal Law Consolidation Acts, 1861, 24 & 25 Vict. cc. 96-100). Where the order imposes an increased penalty for a second conviction, the fact that it is a second conviction should appear upon the face of the order, so as to show jurisdiction under the statute to impose the increased penalty (*R. (Ryan) v. Kilkenny JJ.*, (1903) 4 N.I.J.R. 4).

<sup>1</sup> As to evidence of previous conviction and identity, see EVIDENCE, p. 281.

<sup>2</sup> This was a decision of Walton and Jelf, JJ., Lord Alverstone, L.C.J., dissenting, and is opposed to the decision of Mathew and Charles, JJ., in the prior case of *R. v. Fowler*, (1894) 64 L.J.M.C. 9, noted p. 91, *ante*.



Where an order of forfeiture, though illegal, was made at the instance of the defendant himself, the King's Bench Division refused, on the defendant's application, to set it aside (*R. (Findlay) v. Armagh JJ.*, (1898) 5 I.W.L.R. 4). As to waiver, see p. 109.

Adjudication  
and punish-  
ment.  
Defendant  
estopped by  
acquiescence.

The limits of power of amendment can scarcely be said to be clearly defined. There are three sections dealing with the matter.

In cases of summary proceedings no variance between the information or complaint and the evidence adduced in support thereof as to the time at which the offence or cause of complaint shall be alleged to have been committed, or to have arisen, shall be deemed material if it be proved that such information or complaint was in fact laid or made within the time limited by law for laying or making the same; and any variance between such information or complaint and the evidence adduced in support thereof as to the place in which the same shall be alleged to have been committed or to have arisen, shall not be deemed material, provided that the said offence or cause be proved to have been committed or to have arisen within the jurisdiction of the justice or justices by whom such information or complaint shall be heard and determined, and no objection shall be taken or allowed in any proceedings to any information, complaint, summons, warrant or other form of procedure under this Act for any alleged defect therein in substance or in form, or for any variance between any information, complaint, or summons and the evidence adduced on the part of the complainant or prosecutor at the hearing of the case in summary proceedings, or at the examination of the witnesses by a justice or justices in proceedings for indictable offences. Provided always that, if any such variance or defect shall appear to the justice or justices at the hearing to be such that the defendant has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day, and in the meantime, in cases of proceedings for offences, to commit the said defendant to jail, or to discharge him upon his entering into a recognizance conditioned for his appearance at the time and place to which such hearing shall be so adjourned (Petty Sessions Act, s. 39).

Powers of  
amendment.  
*Statutes.*

The court to which a case<sup>1</sup> is transmitted under this Act shall hear and determine the question or questions of law arising thereon, and shall thereupon reverse, affirm, or amend the determination in respect of which the case has been stated, or remit the matter to the justice or justices with the opinion of the court thereon, or may make such other order in relation to the matter as to the court may seem fit (Summary Jurisdiction Act, 1857, 20 & 21 Vict. c. 43, s. 6).

If on the trial of any appeal to any court of general quarter sessions of the peace in Ireland, or to the chairman of the county, against any conviction or order made or pronounced by any justice or justices of the peace, any objection shall be taken on account of any omission or mistake in the making or drawing up of such conviction or order, or any variance between the facts stated in such conviction or order and the evidence adduced in support thereof, and it shall be shown to the satisfaction of the court that sufficient grounds were in proof before the justice or justices making such conviction or order to have authorized the drawing up thereof free from the said omission or mistake, or that such variance is in some point not material to the merits of the case, it shall be lawful for the court to amend such conviction or order on such terms as it shall think fit, and to adjudicate thereupon as if no such omission, or mistake, or variance had existed (Civil Bill Courts (Ireland) Act, 1864, 27 & 28 Vict. c. 99, s. 49).

No conviction or order made by any justice or justices shall be held void, or shall be quashed by reason of any defect, omission, or variance in the summons, charge, or information upon which the same shall purport to have been made, provided that such defect, omission, or variance shall not have misled or prejudiced the defendant, or have affected the merits of the case, and the justice or justices at the original hearing, or any court of appeal or superior court before whom the decision of any such justice or justices shall afterwards come, may, upon such terms as shall appear just, make any amendment in any summons, charge, or information which shall appear to be requisite for the purpose of making the conviction or order conformable with the same, or of raising the real question at issue and deciding the case as justice shall require (County Officers and Courts (Ireland) Act, 1877, 40 & 41 Vict. c. 56, s. 76).

<sup>1</sup> That is a case stated.

Powers of  
amendment.  
Variance as to  
date or place.

Section 39 of the Petty Sessions Act<sup>1</sup> deals with (1) variance as to time or place between the information or complaint and the evidence; (2) defect in substance or in form, in the information, complaint, summons, warrant, or other form of procedure; (3) variance between the information, complaint, or summons and the evidence.

No difficulty arises as to a variance as to date or place. In such cases, the justices should amend and proceed to adjudicate, giving the defendant an adjournment should he be in any way taken by surprise (*Mayor of Exeter v. Heaman*, (1877) 37 L.T. 534). An offence of carrying a gun without a licence was charged to have been committed on the 5th November, and the prosecutor adduced evidence in support thereof, but the evidence broke down, whereupon the prosecutor called a witness to prove the commission of the offence on 20th December, and the justices, without amending the summons, convicted the defendant "of carrying a gun in December, 1906." *Held*, that this was not the mere mistake in the summons as to a date, but an attempt to substitute an entirely new offence, that there was under the Excise Act, under which the prosecution was brought, no power to do so, and that the conviction should be quashed (*R. (McBarron) v. Fermanagh JJ.*, (1907) 41 I.L.T.R. 134).

Other  
variance:  
defect in sub-  
stance or form.

What is a defect in substance or in form? What is a variance, other than a mere variance as to date or place, between the complaint and the evidence? These are questions upon which authority is scanty. An information under 4 Geo. 4, c. 34, s. 3, giving power to justices to determine disputes between masters and apprentices, described the defendant as having contracted to serve "T. B. and his partners." At the hearing it appeared that the contract of service was between the defendant and "T. B. on behalf of himself and his partners, constituting the R. M. & H. Coal Company (Limited)": *held*, a mere variance (*Whittle v. Frankland*, (1862) 2 B. & S. 49, 26 J.P. 372). In an information for malicious injury to property under 24 & 25 Vict. c. 97, s. 52, where the ownership is laid in several persons, and it appears that only one of these is the legal owner, this being a variance within the section, the justices should not dismiss the information, but ought to amend and hear the case (*Ralph v. Hurrell*, (1875) 44 L.J.M.C. 145, 32 L.T. 816). On the hearing of a charge it was objected that the information disclosed two offences (contrary to section 10 of the English Summary Jurisdiction Act),<sup>1</sup> and the magistrate dismissed the case. *Held*, that although the prosecutor might have been required to elect upon which charge he would proceed, the inclusion of two offences in one information was "a defect in substance"<sup>2</sup> within section 1 of the Summary Jurisdiction Act, 1848, and the justices were wrong in dismissing the information (*Rodgers v. Richards*, (1892) 1 Q.B. 555).

<sup>1</sup> As pointed out, p. 87, this is not the law in Ireland, where several charges may be contained in the one summons or information.

<sup>2</sup> The English Summary Jurisdiction Act, 1848, 11 & 12 Vict. c. 43, s. 1, provides that "no objection shall be taken or allowed to any information, complaint, or summons, for any alleged defect therein in substance or in form, or for any variance between such information, complaint, or summons, and the evidence adduced on the part of the informant or complainant at the hearing of such information or complaint as hereinafter mentioned; but if any such variance shall appear to the justice or justices present and acting at such hearing to be such that the party so summoned and appearing has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day."

The non-statement in the summons of the particulars of the offence as required by section 10 of the Food and Drugs Act, 1879, is a defect within the section (*Neal v. Devenish*, (1894) 1 Q.B. 544); but the non-fulfilment of the requirements of section 19 of the Food and Drugs Act, 1899, is not a matter capable of amendment (*Batt v. Mattinson*, (1900) 82 L.T. 800).

Where the evidence discloses an offence *different from that charged in the summons*, can the justices amend and convict? A number of English cases seem to decide that the corresponding English section gives them no power to do so. Thus, where the summons charged drunkenness and riotous behaviour under 10 & 11 Vict. c. 89, s. 29, and the justices convicted of simple drunkenness under 21 Jac. 1, c. 7, s. 3, the conviction was held bad, and not curable by 11 & 12 Vict. c. 43, s. 1<sup>1</sup> (*Martin v. Pridgeon*, (1859) 1 E. & E. 778, 28 L.J.M.C. 179; *Soden v. Cray*, (1862) 7 L.T. 324). So also, where the defendant was charged with assaulting a constable in the execution of his duty, under the Municipal Corporations Act (5 & 6 Wm. 4, c. 76, s. 81), and the conviction was for common assault under 24 & 25 Vict. c. 100, s. 72 (*R. v. Brickhall*, (1864) 33 L.J.M.C. 156), and where the charge was for keeping or using a common gaming-house, and the conviction was for having the management of a room for the purpose of betting with persons resorting thereto (*Blake v. Beech*, (1876) 1 Ex. D. 320), the convictions were set aside. But in a recent English case, in which the summons charged an offence under s. 6 of the Sale of Food and Drugs Act, 1875 (sale of adulterated milk), and the evidence proved an offence under s. 3 of the Sale of Food and Drugs Act Amendment Act, 1879 (that milk taken by an inspector was adulterated), it was held that the variance was curable under the 11 & 12 Vict. c. 43, s. 1, and that the justices were right in convicting (*Hiatt v. Ward*, (1894) 70 L.T. 374, 17 Cox 736).<sup>2</sup>

*Hiatt v. Ward*, *supra*, has been followed by the King's Bench Division in Ireland, and applied to the construction of s. 76 of the County Officers and Courts (Ir.) Act, 1877, in the case of *Keenan v. Costelloe*, K.B.D. (Ir.), (1910) 44 I.L.T.R. 218, and noted fully *infra*, p. 97. In that case it was held that the King's Bench Division, on the hearing of a case stated, have power to substitute a new charge, for the purpose of raising the real issue between the parties. As section 76 applies not only to the superior court, but also to petty sessions and quarter sessions, it seems that *Keenan v. Costelloe* is equally in point so far as the hearing before the justices is concerned.

But, *apart from the sections*, have the justices power, the defendant

<sup>1</sup> The material part of the English section is given at p. 94 n., *ante*.

<sup>2</sup> This case was decided apparently without any reference being made to *Martin v. Pridgeon*, *supra*, in which, without the defendant being called on to argue, the conviction was quashed, solely because the defendant, being charged with one offence, "was convicted of a distinct statutory offence," or to *Soden v. Cray*, *R. v. Brickhall*, *Blake v. Beech* (*supra*), in which last three cases *Martin v. Pridgeon* was treated as of unquestionable authority. Gibson, J., in *R. (Daly) v. Cork JJ.*, (1898) 2 I.R. at p. 697, referring also to *Martin v. Pridgeon*, *R. v. Brickhall*, and *Blake v. Beech* as unquestioned authorities, says:—"The complaint is a condition to the jurisdiction. A man cannot be found guilty of something which was not put forward as the subject of complaint." See also observations of Lord Russell in *R. v. Jennings*, (1896) 1 Q.B., at p. 66; *R. (Ryan) v. Kilkenny JJ.*, (1871) I.R. 5 C.L. 394; and *R. v. Rawson*, (1909) 2 K.B. 748; and observations of Lord Alverstone, C.J., in *R. v. Garrett-Pegge*, (1911) 27 T.L.R. 187.

Powers of amendment. Offence different from that charged in summons.

(1) Petty sessions or quarter sessions.



Powers of amendment.  
*Offence different from that in summons.*  
 (1) *Petty sessions or quarter sessions.*

being present before them, to hear and adjudicate on a fresh complaint brought against him? "A flood of authorities might be cited in support of the proposition that no process at all is necessary, when the accused, being bodily before the justices, the charge is made in his presence, and he appears and answers to it" (*per* Hawkins, J., in *R. v. Hughes*, (1879) 4 Q.B.D. 614, 626; see also, *R. v. Stone*, (1801) 1 East 639; *R. (Lalor) v. Queen's Co. JJ.*, (1858) 7 I.C.L.R. 438; *R. v. Shaw*, (1865) 34 L.J.M.C. 169; *R. v. Fletcher*, (1871) L.R. 1 C.C.R. 320; *Kennington v. Daniel*, (1888) 22 L.R. 1. 667; *Eggington v. Pearl*, (1875) 40 J.P. 56, 33 L.T. 428). But in these cases the defendant appeared and answered to the charge without even applying for an adjournment (see judgment of Gibson, J., in *R. (Daly) v. Cork JJ.*, (1898) 2 I.R. 694, 696). A complaint under the Sales of Food and Drugs Acts was made to two justices, but the summons was signed by another justice who had not heard the complaint.<sup>1</sup> The defendant at the hearing objected to the jurisdiction, but the justice was of opinion that the defect, if any, in the summons, was cured by the appearance of the defendant, heard the case, and convicted. *Held*, (1) that the summons was invalid, and (2) that the defect was not cured by the appearance of the defendant, as he appeared under protest, and that the provisions of s. 10 of the Sale of Food and Drugs Act, 1879, were imperative, and not merely directory, and that as no summons had been duly served in accordance with them, the magistrates had no jurisdiction (*Dixon v. Wells*, (1890) 25 Q.B.D. 249).<sup>2</sup> The following case seems to have turned upon the waiver by defendant of any objection to the jurisdiction. Persons were arrested and brought before the magistrates and charged with maliciously breaking glass. The arrest was made under warrant, but no summons was issued. The entry of the charge in the petty sessions book set out under the heading "Complainant": "The Queen at the prosecution of the R.I.C." The solicitor for the accused made no objection to the case being summarily disposed of, nor to the want of a summons. Evidence having been given, the magistrates convicted the prisoner. *Held*, the magistrates had jurisdiction to dispose of the case, and that as the parties charged had acquiesced in its being summarily dealt with, certiorari should not issue (*R. (Madden) v. Galway JJ.*, (1879) 6 L.R. 1. 1). The most recent English case is *R. v. Tabrum*, (1907) 71 J.P. 325, in which the information and summons

<sup>1</sup> The charge was under the Sale of Food and Drugs Act of 1875, s. 6, in respect of the sale of a perishable article; and the Act of 1879, s. 10, provides that in a charge relating to a perishable article, the summons must be served twenty-eight days from the time of purchase.

<sup>2</sup> In this case, Coleridge, L.C.J., appears to have doubted if the authorities would support the contention that a protest by a defendant to the jurisdiction would be a complete answer to the assumed jurisdiction. "I do not, however, feel able to decide in his favour on that point (i.e. the protest) alone, for, although the fact of his protest ought to be a complete answer to the assumed jurisdiction, I cannot disguise from myself the fact that, from the language of many of the judges in *R. v. Hughes*—although, perhaps, not necessary for the decision of the case—and the judgments of Erle, C.J., and Blackburn, J., in *R. v. Shaw*, they seem to assume that if the two conditions precedent of the presence of the accused and jurisdiction over the offence were fulfilled, his protest would be of no avail. It would have been easy to say that a protest would have made a difference, but I find no such qualification in *R. v. Hughes*, although something like that is said in one of the cases. It is an important question, well worth consideration in the Court of Appeal" (p. 255). As to waiver, and appearance under protest, see pp. 50, 109.

charged the defendant with having "unlawfully exposed to view . . . a certain indecent exhibition, to wit, certain obscene pictorial postcards." At the hearing, the solicitor for the prosecution stated that the summons was taken out under the Vagrancy Act, 1824, whereupon the defendant's solicitor objected that the summons did not set out an offence under that statute, as it did not charge the defendant with being a "rogue and a vagabond," but that the offence charged was that contained in section 28 of the Town Police Clauses Act, 1847, for which the maximum penalty was £2. No objection was taken by defendant's solicitor that the word "wilfully" contained in the Act of 1824 was omitted from the summons. The defendant's objection was overruled, and the justices convicted the defendant, and a proper conviction was drawn up against him under the Act of 1824, fining him £20. *Held*, that as defendant did not ask for an adjournment or require the summons to be amended, and as no information is required where a defendant is before the justices, the court would direct the justices to draw up a proper judgment.<sup>1</sup>

Powers of amendment.  
Offence different from that charged in summons.

There is no waiver where the solicitor for a limited company which has not been properly served appeared, and having made a protest, takes no farther part in the proceedings (*Pearks v. Ward*, (1902) 2 K.B. 1); see also as to waiver, pp. 50, 96, *ante*, and p. 109, *post*.

The only decisions on the power of the High Court to amend under section 76 of the County Officers and Courts Act, 1877, seem to be the cases of *R. (McArdle) v. Louth JJ.*, (1904) 2 I.R. 64, 3 N.I.J.R. 155, and *Keenan v. Costelloe*, K.B.D. (Ir.), (1910) 44 I.T.L.R. 218. In *R. (McArdle) v. Louth JJ.*, a person was charged in one summons with five offences, and was convicted in respect of one of them. He appealed, and in the appeal the form of appeal (Form H) was erroneously drawn up as if the conviction had been generally on the five charges. The quarter sessions affirmed the erroneous order. *Held*, that the order should be quashed, and that, even if there were jurisdiction to amend the order (which the King's Bench doubted, as the power of amendment given by section 76 is limited to amending the summons, charge, or information), the court should not exercise it. The novelty and importance of *Keenan v. Costelloe* make that case worthy of a full note. The defendant, Thomas Costelloe, was charged with having sold to the complainant, a Sergeant Keenan, and to his prejudice, milk which was not of the nature, substance, and quality demanded. The facts, as appears from the case stated were as follows:—On the date in question, the complainant, who was on duty at Trippol creamery, saw Patrick Costelloe, father of the defendant, with a tankard of milk in a donkey cart, about to deliver milk to the creamery. The complainant thereupon bought from Patrick Costelloe a pennyworth of the milk, which on analysis proved to be deficient in its fats. The milk was the property of the defendant, and what was left of it was delivered by Patrick Costelloe to the creamery, and was accepted, and the defendant was paid for it at the rate of 3d. per gallon at the end of the month.

Offence different from that charged in summons.  
(2) High Court.

<sup>1</sup> Under 12 & 13 Vict. c. 45 (E.), s. 7, providing, *inter alia*, that if upon the return to any writ of certiorari any objection shall be made on account of any omission or mistake in the drawing up of the order or judgment, and it shall be shown to the satisfaction of the court that sufficient grounds were in proof before the justices to have authorized the drawing up thereof free from the said omission or mistake, the court may amend such order or judgment.

Powers of amendment.  
*Offence different from that charged in summons.*  
 (2) *High Court.*

"The defendant, Thomas Costelloe, is usually paid for milk supplied by him to the creamery at a rate determined by a chemical test made at the creamery for the amount of butter fats therein. Milk rich in fats is paid for at a higher rate per gallon than poor milk. There was no evidence before us that this testing is done daily, or that the particular tankard from which Sergeant Keenan was supplied was subjected to any test. In addition to the money payment, the creamery manager returned to Thomas Costelloe by the hand of Patrick Costelloe a certain quantity of separated milk (i.e. milk deprived of its butter fats) proportionate to the volume of milk delivered by Thomas Costelloe. The defendant, Thomas Costelloe, and the manager of the Trippol creamery, had been dealing by agreement for some years previously to and at the date in the summons mentioned, on the terms that milk delivered and accepted should be paid for according to its quality, but there was no evidence before us of any contract between them, binding one party to deliver, or the other party to accept, any quantity of milk, large or small. Patrick Costelloe had no authority, either express or implied, to sell the milk to Sergeant Keenan or to any other person. It was contended on behalf of the complainant that Thomas Costelloe was responsible for the act of Patrick Costelloe." The justices, being of opinion that Thomas Costelloe had given Patrick Costelloe no authority, express or implied, to do the act complained of, dismissed the charge, and stated the case upon the question whether Patrick Costelloe was acting outside the scope of his authority in selling the milk to Sergeant Keenan. The King's Bench Division (Palles, C.B., Kenny and Wright, JJ.), on the ground that the transaction really aimed at by the prosecution was the sale to the creamery, and applying the English case of *Hiett v. Ward*, noted *supra*, p. 95, made an order declaring that Patrick Costelloe's authority was not material to the questions which the justices had to decide, amended the summons into a charge of selling to the creamery, and to the prejudice of the creamery, and remitted the case to the justices with a direction to convict, Palles, C.B., dissenting<sup>1</sup> from that part of the order directing the justices to convict, on the ground that same involved an inference of fact, which it was for the justices, and not for the King's Bench Division, to draw. The direction to convict, at all events, seems open to the further observation that the evidence was not *conclusive* on the amended charge, for (a) it was by no means clear that defendant's contract was to sell milk with all its fats to the creamery, and indeed the evidence, so far as it went (and it is submitted it was irrelevant to the charge as laid), rather showed that the milk was to be sold in such quality as the defendant chose to supply it, the price payable to him depending upon the quality; (b) the fact that the sergeant's pennyworth was below standard was evidence, but, again, not *conclusive evidence*, that the rest of the milk in the tankard was not up to the standard. It may also be observed that the amendment, at the stage it was made, seems a hardship on the defendant, remembering the facts:—(1) that, at the hearing before the justices, the charge, as laid, was persisted in, (2) that no amendment was then asked for,<sup>2</sup> (3) that, to the end, the complainant persisted that

<sup>1</sup> This does not appear from the report, but see Order.

<sup>2</sup> Cf. *Perry v. Bowen*, (1903) 38 I.L.T.R. 37, noted p. 242; *Smith v. Baker*, (1891) A.C., at p. 333.



his charge, as laid, was proved, and went on with his case stated upon that basis, and (4) the defendant may have had an answer upon the merits, which he abandoned, relying on the law point, which was rather of the complainant's, than of his, making.

The High Court has no power to amend by reducing an excessive penalty to that permitted by the statute, (*R. v. Slade*, (1895) 2 Q.B. 247).

It is suggested that the following rules may be safely followed by justices in exercising their discretion to amend: (1) justices can and should amend when a mere mistake has been made in time, place, details of name, or the like (see cases *supra*, p. 94); (2) justices can and should amend an ill-drafted summons, purporting to allege a certain offence, but insufficiently or incorrectly stating it, into a properly drafted charge (for an instance see *R. (Fleming) v. Londonderry JJ.*, (1908) 42 I.L.T.R. 205, in which a charge of assault, preferred by a person other than the party aggrieved, was held rightly amended by adding the necessary averment that the party aggrieved had declined to prosecute); (3) justices can apparently amend by substituting a different offence from that charge, if the doing so is necessary to raise the real question at issue (*Keenan v. Costello*, *supra*), and should do so if they are satisfied that no real injustice will thereby be done; (4) in all cases justices should give defendant an adjournment if he asks for it, unless his request is obviously unreasonable or *mala fide*.

Apparently there is no power to amend in case the defendant does not appear (*R. (Canavan) v. Dublin JJ.*, (1895) 29 I.L.T.R. 125).

The Court cannot amend by substituting one defendant for another, *e.g.*, the name of a company for that of a company's officer (*Oxford Tramways Co. v. Sankey*, (1890) 54 J.P. 564).

The defendant was charged in the same summons with certain offences, and was convicted generally, the entry of the conviction having been made in the order book under the Petty Sessions Act by the presiding justice. A conditional order for a writ of certiorari having been obtained, some of the justices who had originally adjudicated met, and directed one of their number to amend the order, which was accordingly done. *Held*, that, under the circumstances, the amendment was without jurisdiction; *held*, by Lord O'Brien, L.C.J., and *semble* by Gibson, J., that after the justices adjudicating at petty sessions have separated, they have no power to amend an order made by them and duly entered in the order book; *held*, by Gibson and Madden, J.J., that, even assuming the justices had such power, it could only be exercised by all the justices who adjudicated (*R. (Burke) v. Cork JJ.*, (1905) 2 I.R. 309). In Dublin metropolitan police district, where the Petty Sessions Act does not apply, the entry made by the divisional justice in his book is only a memorandum, from which the formal order is drawn up, and if there is any error in the memorandum, the order can rectify it (*R. (Cahill) v. Dublin JJ.*, (1904) 2 I.R. 698).<sup>1</sup>

Where a defendant appeared in answer to a summons for assault which prayed that she be bound over to the peace, and the justices convicted and ordered that she be imprisoned, the conviction was held good, as the charge of assault was expressly averred in the

<sup>1</sup> But a conviction cannot be rectified after filing with the clerk of the peace (*Ex parte Austin*, (1880) 34 L.T. 102; *ex parte Kenyon*, (1881) 45 J.P. 303).

Power of amendment.  
Conviction on charge not preferred by complainant

summons, and upon such a charge it was competent for the justices to imprison as well as to bind to the peace (*Kennington v. Daniel*, (1888) 22 L.R.I. 667). But it has been held that the justices cannot convict summarily of an assault where the complainant, who desired to preserve his civil rights against a defendant, made an information stating the fact of the assault and praying for sureties, and protested against the justices adjudicating summarily upon the assault (*R. v. Denny*, (1851; 20 L.J.M.C. 189). The defendant was summoned for having, without being duly qualified, sold and kept open shop for retailing and dispensing poison, contrary to the Pharmacy (Ir.) Act, 1875 (38 & 39 Vict. c. 57), s. 30, the penalty under that section being £5. At the hearing, the justices, contrary to the wish and protest of the complainant, amended the charge into one of selling poison contrary to the Pharmacy Act (Ir.), 1875, Amendment Act, 1890 (53 & 54 Vict. c. 48, s. 15, under which the penalty is "not exceeding £5," and they fined defendant 1s. *Held*, that the justices were bound to convict upon the charge as laid (*McGann v. Kelly*, (1894) 2 I.R. 8).<sup>1</sup>

Signature to orders.

The document handed to the applicants and signed by the justices under section 162 of the Grand Jury Act. authorizing the entry to obtain road material (*R. (Murphy) v. Wexford JJ.*, (1894) 2 I.R. 81), or under the Public Health Act, 1878, to abate a nuisance (*R. (Ewing) v. Down JJ.*, (1905) 2 I.R. 648), is the order, and not the entry in the petty sessions order book. Where such an order must, under the statute, be made by two justices, it must be signed by at least two (*Wing v. Urban Council*, (1904) 1 K.B. 798).

Summonses under the Public Health Act came on for hearing before five justices, three of whom were of opinion that a nuisance existed, and orders were made for abatement. Formal orders, following form C in schedule C to the Act, were drawn up, and were signed, several days after the decision, by two of the justices, one of these being one of the dissenting justices, and served on the defendants. After a conditional order had been obtained to quash the orders, they were signed by the other two justices, who formed the majority of the court. *Held*, (1) that the orders should have been signed by the majority of the adjudicating justices, (2) that the omission of the signatures did not go to jurisdiction, and that such omission could be corrected by the justices signing afterwards, and (3) that the delay in signing and completing the orders did not warrant certiorari (*R. (Donnell) v. Londonderry JJ.*, (1910) 2 I.R. 458).

Dismiss "on the merits," or "without prejudice."

An order of dismissal under the Petty Sessions Act should be either upon the merits or without prejudice to the charge being again made (Petty Sessions Act, 1851, s. 21); and it has been held that an order of "dismiss" simply is no order at all, and is no bar to subsequent proceedings by the same complainant against the same defendant for the same offence (*G. S. & W. R. Co. v. Darby*, (1892) 27 I.L.T.R. 45). An order of "dismiss without prejudice" of a charge under the Illicit Distillation Act, 1 & 2 Wm. 4, c. 55, is a valid order. as the proceedings under that statute are, by 20 & 21 Vict. c. 40. s. 6,

<sup>1</sup> In this case the two charges were different, and if the justices could legally do what they did, an amendment would have been necessary. But where exactly the same offence is punishable under two different statutes, e.g. selling liquor without a licence (an offence under 17 & 18 Vict. c. 89, s. 3, and under the Licensing Act, 1872), the matter is not so clear, but it is probable that the justices would be held to be obliged to proceed under the summons as laid by the complainant.



to follow the procedure of the Petty Sessions Act (*Lawless v. M'Alcer*, (1897) 2 I.R. 248). A dismissal without prejudice of a charge of larceny under the Criminal Justice Act, 1855, 18 & 19 Vict. c. 126, under which the justices have to decide upon the guilt or innocence of a prisoner, is an acquittal, and the words "without prejudice" are mere surplusage and the order is a bar to subsequent proceedings (*G. S. & W. R. Co. v. Gooding*, (1908) 2 I.R. 429). As to proper form of order, when the complainant does not appear, see p. 57.

Dismissal of  
trivial charge.

Under the Summary Jurisdiction Act (14 & 15 Vict. c. 92, s. 21) whenever any person shall be convicted of any offence *against that Act*, and it shall be a first conviction, the justices may discharge the offender from his conviction upon his making such satisfaction to the party aggrieved for damages and costs or either of them as shall be ascertained by the justices. But this applies only to the very limited class of offences under the Summary Jurisdiction Act; and the Petty Sessions Act contains no such provision, but enacts (s. 21) that the justices shall make such order as shall be authorized by the Act under which the complaint is made, or shall dismiss the complaint either upon the merits or without prejudice.

The power of justices to dismiss a case under the Probation of Offenders Act, 1907 (7 Edw. 7, c. 17<sup>1</sup>), is discussed, pp. 59, 60, *ante*, and, in addition to the cases there cited, the following may be referred to:—*Lee Conservancy Board v. Bishop's Stortford U. C.*, (1906) 70 J.P. 244; *Salt v. Scott Hall*, (1903) 2 K.B. 245; *Pomeroy v. Malvern U. D. C.*, (1903) 89 L.T. 555;<sup>2</sup> and *Phillips v. Evans*, (1896) 1 Q.B. 305. In the last-named case, where the charge was one of keeping an unlicensed dog, and the defendant deliberately refused to take out a licence, the justices were directed to convict, and Lindley, L.J., said:—"It is obvious that it would never do for this Court to encourage appeals from the refusal of justices to convict because they thought, under section 16 of the Summary Jurisdiction Act, 1879,<sup>3</sup> that the offence was of so trifling a nature that it was inexpedient to inflict any punishment. . . . The ground they take is, that for a man to refuse to take out a dog licence is a trifling offence, and, I think, it is impossible, even under section 16, that they should be at liberty to say that. They have no right to let a man off paying his dog-tax, and if he refuses to pay they are bound to convict him." In *Barnard v. Barton*, (1906) 1 K.B. 357 (noted *ante*, p. 60), Kennedy, J. (p. 360), made it clear that the Act was intended to apply either to offences "serious in their nature," but "rendered trifling by the circumstances under which they were committed," or

<sup>1</sup> This statute is not confined to young persons. As to special provisions applicable to young persons, see Summary Jurisdiction over Children (Ir.) Act, 1884, 47 & 48 Vict. c. 19, noted p. 73, *ante*, and *verbatim* APPENDIX OF STATUTES; see also CATALOGUE OF SUMMARY OFFENCES, "CHILDREN."

<sup>2</sup> In *Lee Conservancy Board v. Bishop's Stortford U. C.*, the offence was one of discharging night sewage into a river, and it was held that though, under ordinary circumstances, such an offence is not a trifling offence, yet the circumstances might be so exceptional as to warrant the justices in treating it as such. In *Salt v. Scott Hall*, and *Pomeroy v. Malvern U. D. C.*, the charges were of erecting buildings not constructed of incombustible materials, as required by a bye-law; and it was pointed out that, though such bye-laws were not unreasonable, yet they ought to contain provisions under which the hard and fast rules they laid down could be dispensed with in the case of buildings (e.g. a bungalow) to which they are unsuited, and that the justices could treat non-compliance with such bye-laws, in a proper case, as a trivial offence. A charge against a licensed publican of displaying emblems on his licensed premises is not an offence of a trivial nature (*Glasgow v. O'Connor*, K.B.D. (Ir.), 16th November, 1910, as yet unreported).

<sup>3</sup> Containing a similar provision to that in the Probation of Offenders Act, 1907, noted p. 59, *ante*.



to offences "in their nature trifling—for example, a merely technical or casual breach of a bye-law, if there be no deliberate intention to commit a breach thereof."

Previous  
acquittal or  
conviction bars  
second charge.

Where an act or omission constitutes an offence under two or more Acts or both under an Act and at common law, whether any such Act was passed before or after the commencement of this Act the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of these Acts or at common law, and shall not be liable to be punished twice for the same offence (Interpretation Act, 1889, 52 & 53 Vict. c. 63, s. 33).<sup>1</sup> Apart from the statute, at common law, on the principle, "*nemo debet bis vexari pro una et eadem causa*," a former acquittal or conviction is an answer to a second charge founded on the same facts (*R. v. Duncan*, (1881) 7 Q.B.D. 198; see also *R. v. Tenant*, (1727) 2 Ld. R. 1423). The test as to whether a previous acquittal or conviction is a bar is, whether the evidence necessary to support the second proceeding would have been sufficient to support a legal conviction on the first (Broom's Legal Maxims, 7th ed., 266).

The plea of *autrefois acquit* is, however, not available where the decision has not been a decision on the merits, but a mere non-suit (Paley, 8th ed., 168), as, for instance, where the justices have dismissed the charge for want of form, or under the belief that they had not jurisdiction (see *R. v. Herrington*, (1864) 3 N.R. 468, 12 W.R. 420; *R. v. Ridgway*, (1822) 1 D. & R. 132; *R. v. Machen*, (1849) 14 Q.B. 74; *R. v. Lancashire JJ.*, (1874) 38 J.P. 215; *Commissioners of Excise v. Thompson*, (1838) 1 I.L.R. 5); or where the dismissal has been on the ground that the complainant was not competent to bring the charge (*Foster v. Hull*, (1869) 33 J.P. 629). In such cases, if within the Petty Sessions Act, it is conceived that a "dismiss without prejudice" would be the appropriate form of order;<sup>2</sup> but, in cases not within the Petty Sessions Act, the only order of dismissal is "dismiss" simply, and apparently in such cases it would be a question of fact whether the dismissal was a mere non-suit, or a decision on the merits.

A charge which has been dismissed "without prejudice" (see Petty Sessions Act, 1851, s. 21) can, of course, be brought on again. The decision in *G. S. & W. Rly. v. Gooding*, (1908) 2 I.R. 429, noted *infra*, in no way conflicts with this, for in that case the proper order under the Criminal Justice Act, 1855, was "dismissed" merely, and the words "without prejudice" were mere surplusage. As to order where complainant does not appear, see p. 57.

The following decisions show the application of the above principles:—

A certificate of dismissal by justices of a charge of assault is a bar to an indictment for unlawful wounding arising out of the same circumstances (*R. v. Elrington*, (1861) 31 L.J.(M.C.) 14, 1 B. & S. 688).

<sup>1</sup> The fact that a statute enacts a penalty recoverable summarily does not necessarily take away the right to proceed by civil action (see *Massy v. Cassidy*, (1883) 13 L.R.I. 97).

<sup>2</sup> Section 21 of the Petty Sessions Act, which introduces the distinction between a "dismiss without prejudice" and "a dismiss on the merits," lays down no guiding principle as to which form of dismiss in any particular case should be adopted. As stated, the form "dismiss without prejudice" seems the more appropriate where the fatal point taken by the defendant is merely a technical one as to the form, etc., of the proceeding. The matter, however, rests entirely in the discretion of the justices; and it is suggested that, in the absence of bad faith or surprise, in a case where the plaintiff fails in his proofs (not being merely a technical oversight), he should not be allowed a second chance to strengthen them.

*Semble*, there cannot be two separate convictions under different parts of the Pharmacy Act, 1868 (31 & 32 Vict. c. 121), for one and the same sale (*Berry v. Henderson*, (1870) L.R. 5 Q.B. 296). Previous conviction or acquittal bars second charge.

Appellant convicted under section 78 of 5 & 6 Wm. 4, c. 50, that he, being driver of a carriage on a highway, by negligence and wilful misconduct, to wit, by striking a horse ridden by the respondent, caused hurt and damage to the respondent; *held* a bar to a conviction on the same facts for assaulting the respondent (*Wemyss v. Hopkins*, (1875) L.R. 10 Q.B. 378).

A defendant was charged with poaching, and the case had proceeded to the length of cross-examining the chief witness for the prosecution. An objection was then taken that the defendant was not properly before the Court. The justices having upheld the objection and dismissed the case, the Queen's Bench Division refused a mandamus to compel the justices to hear the charge when brought afresh, on the ground that the defendant was entitled to plead *autrefois acquit* (*R. v. Brakenbridge*, (1884) 48 J.P. 293).

The dismissal of a charge under 1 & 2 Wm. 4, c. 32, s. 30, for trespass in pursuit of game is not a bar to a prosecution under section 23 of that Act for using a dog for taking game without a licence, although the facts alleged are the same (*Bollard v. Spring*, (1887) 51 J.P. 501).

A publican, who harbours a policeman while on duty and on the same occasion supplies him with drink, may be convicted of two separate offences under section 16 of the Licensing Act, 1872 (*R. (McManus) v. Meath JJ.*, (1893) 27 I.L.T.R. 127).

The defendant was drunk upon the public street, and brandished an iron bar over a policeman's head. He was fined for drunkenness and disorderly conduct, the disorderly conduct alleged being the brandishing of the iron bar; *held*, that the conviction was a bar to a second charge of assaulting the police, the only evidence of assault being the brandishing of the iron bar (*R. (Flynn) v. Cork JJ.*, (1909) 43 I.L.T.R. 154). Cf. *R. v. Miles*, (1909) 73 J.P. 516.

Each sale of liquor by a licensed person during prohibited hours constitutes a separate offence; accordingly, a publican was held rightly convicted on four charges of four separate sales on the same Sunday (*McHugh v. Cartin*, (1903) 3 N.I.J.R. 250, see also *Milnes v. Bale*, (1875) L.R. 10 C.P. 591, *Brooke v. Milliken* (1789) 3 T.R. 509, *Re Hartley*, (1862) 26 J.P. 438).

A person who has been convicted under section 8 of the Vaccination Act, 1863 (26 & 27 Vict. c. 52), for refusing and neglecting to have his child vaccinated, and after conviction persists in his refusal, cannot be again prosecuted under section 7 of the Vaccination Act, 1879; but repeated prosecutions for such continued neglect can be brought by the sanitary authority under section 147 of the Public Health Act (Ir.), 1878 (*R. (Vint) v. Donegal JJ.*, (1904) 2 I.R. 1).

The justices dismissed an information charging the defendant with having erected a building in a street beyond the buildings on either side thereof; *held*, that this was a bar to a second prosecution (*Kinnis v. Graves*, (1898) 67 L.J. Q.B. 583).

A person convicted of selling intoxicating liquor during prohibited hours cannot also be convicted of opening for sale during prohibited hours, when the selling and opening are part of the same transaction (*Dorrian v. McHugh* (1907) 2 I.R. 564; see also the Scotch case, *Moore v. Wilson*, 5 F. Just. C. ss. 88).

A dismissal without prejudice of a charge under the Illicit Distillation Act, 1 & 2 Wm. 4, c. 55, is a valid order and a bar to a subsequent charge (*Lawless v. McAleer*, (1897) 2 I.R. 248).

A dismissal "without prejudice" of a charge of larceny under 18 & 19 Vict. c. 126, is an acquittal and a bar to a subsequent charge (*G. S. & W. R. Co. v. Gooding*, (1908) 2 I.R. 429).

The acceptance of compensation for injuries sustained by furious driving awarded under 6 & 7 Vict. c. 86, s. 28 (corresponding Irish section, s. 25 of Dublin Police Act, 5 & 6 Vict. c. 24), is a bar to an action at law for damages, though further injuries subsequently develop (*Wright v. General Omnibus Co.*, (1877) 25 W.R. 647, 41 J.P. 486; see also *McGarry v. Fairbairn*, (1869) I.R. 3 C.L. 552, *McNulty v. Hope*, (1870) I.R. 4 C.L. 377).

A refusal by a metropolitan police magistrate of an order for the delivery of goods is no bar to an action for trover of the same goods (*Dover v. Child*, (1876) 1 Ex. D. 172, see 5 & 6 Vict. c. 24, ss. 56, 57).

Proceedings before justices to recover wages (*Millet v. Coleman*, (1875)



Previous  
acquittal or  
conviction a  
bar to second  
charge.

44 L.J. Q.B. 194; 39 J.P. 805) or moneys fraudulently misappropriated under section 12 of the Trades Union Act, 1870 (*Knight v. Whitmore*, (1885) 53 L.T. 233, 33 W.R. 907), are a bar to proceedings in the county court in respect of the same matters.

In proceedings taken by an urban authority under the Private Street Works Act, 1892, ss. 6, 7, 8, to compel owners of premises to do private street works, the determination by a court of summary jurisdiction that the street is a highway repairable by the inhabitants at large is a judgment *in rem* and conclusive as to the status of the street; and the question whether it is so repairable is *res judicata* in any future proceedings under these sections (*Mayor of Wakefield v. Cooke*, (1904) A.C. 31, cf. *R. v. Hutchings*, (1881) 6 Q.B.D. 300). This doctrine does not apply to a claim by an individual to a several fishery (*R. (Sheehy) v. Kerry J.J.*, (1896) 30 I.L.T.R. 167).

In a charge under s. 1 of the Motor Car Act, 1903, evidence of the speed of the car was relied on as proof that the defendant drove "in a manner dangerous to the public." The defendant was convicted, and the magistrate said that he took into consideration, besides other circumstances, the question of speed, which he considered to be an element of danger, and refused to hear a second charge, arising out of the same occasion, of driving at a speed exceeding twenty miles an hour. *Held* by Lawrence, J., and Sutton, J. (Jelf, J., dissenting), that the magistrate was right, as he must have found that the car was being driven at a speed exceeding twenty miles an hour (*Welton v. Tanebourne*, (1908) 21 Cox 702). But see *R. v. Norton*, (1910) 45 L.J. Misc. 581.

The conviction of a person for larceny of a chattel is no bar to a subsequent prosecution under s. 33 of the Pawnbrokers Act, 1872, for illegal pawning of the chattel (*Pickford v. Corsi*, (1901) 2 K.B. 212).

Where it is an offence to withhold documents after being demanded, each withholding constitutes a separate offence, and therefore a first conviction is no bar to a second charge (*R. (Shortall) v. Queen's Co. J.J.*, (1899) 5 I.W.L.R. 122).

The Court were apparently of the opinion, in *Pickavance v. Pickavance*, (1901) P. 60, that the withdrawal, at the hearing, of a charge prevents the charge from being again brought forward, but the *dictum* was not necessary for the decision: and it is submitted, there are many circumstances which would render a withdrawal very different, in substance and effect, from a dismissal.<sup>1</sup> If the justices, upon the hearing upon the merits of any case of assault or battery within 24 & 25 Vict. c. 100, ss. 42, 43, where the complaint is on the part of the party aggrieved, shall deem the offence not proved, or shall deem the assault justifiable or so trifling as not to merit any punishment, and shall accordingly dismiss the complaint; they shall deliver a certificate accordingly to the defendant (24 & 25 Vict. c. 100, s. 44). As to effect where defendant has obtained such certificate or, if convicted, has suffered the penalty, see p. 58, *ante*, and CATALOGUE OF SUMMARY OFFENCES, "ASSAULT."

In certain cases of larceny, the Criminal Justice Act, 1855 (18 & 19 Vict. c. 106, s. 12), and the Larceny Act, 1861 (24 & 25 Vict. c. 96, s. 109), contain special provisions as to conviction or acquittal being a bar to other proceedings, which will be found noted in the CATALOGUE OF SUMMARY OFFENCES under "LARCENY."

Meaning of  
"in jeopardy."

At common law a man who has once been tried and acquitted for a crime may not be tried again for the same offence if he was "in jeopardy" on the first trial. He was so "in jeopardy" if (1) the court was competent to try him for the offence, (2) the trial was upon a good indictment on which a valid judgment of conviction could be entered, and (3) the acquittal was on the merits, *i.e.*, by verdict on the trial, or in summary cases by dismissal on the merits

<sup>1</sup> Cf. *Brooks v. Bagshaw*, (1904) 2 K.B. 801. As to form of order where complainant does not appear, see p. 57.



followed by a judgment or order of acquittal. In other words, the meaning of not having been "in jeopardy" within the rule seems to be that by reason of some defect in the record, either in the indictment, place of trial, process, or the like, the defendant was not lawfully liable to suffer judgment in that proceeding. It is not necessary that the judgment of acquittal should be, in fact, correct and proper, for while unreversed it will support a plea of *autrefois acquit* in bar of a second trial. Thus a judgment for the defendant, though consequent on a misdirection or erroneously given on a special verdict, or on an insufficient indictment, so long as it stands unreversed, is a bar to a new indictment (Russell on Crimes, 7th ed., 1933).

Meaning  
of "in  
jeopardy."

If a defendant is convicted, and the conviction is set aside as being bad upon its face, can the defendant be afterwards charged on the same facts in proceedings regular on their face?

If conviction  
quashed, can  
defendant be  
again charged?

There is no direct authority on the question, but in *R. v. Ridgway*, (1822) 1 D. & R. 132, 136, an opinion, which, however, was not necessary for the decision, seems to have been expressed that the quashing by quarter sessions of a conviction for mere matters of form is not an acquittal of the defendant, so as to preclude the King's Bench Division from inquiring into the validity of the quarter sessions order on certiorari. A defendant who succeeds in having a conviction quashed on the ground that it is bad *ex facie* cannot, of course plead *autrefois convict*, for there has been no conviction good in law. It is submitted that he cannot maintain a plea of *autrefois acquit* for the following reasons. In the case of indictments, a judgment reversed in error is the same as no judgment, and is no bar to any subsequent indictment (*R. v. Drury*, (1849) 3 C. & K. 193, 18 L.J. (M.C.) 189, 3 Cox. C.C. 546). Similarly, in case of summary convictions, a conviction bad *ex facie* is an act without jurisdiction and is no conviction at all, being not merely voidable, but void (per Palles, C.B., in *In re Heaphy*, (1888) 22 L.R.I. at pp. 510, 511), the function of a court on certiorari in such a case being not to make that void which was voidable, but to declare that void which was void *ab initio* (*R. (Mulgrew) v. Commissioners of Inland Revenue*, (1901) 35 I.L.T.R. 157, 1 N.I.J.R. 229). There has been, therefore, no dismissal of the charge upon the merits, or indeed at all, the certiorari proceedings being merely tantamount to a declaration that the order of the justices was a mere nullity; and it is submitted that the same remarks would apply when a voidable conviction is quashed, *e.g.*, when the tribunal is biassed (but see remarks of Palles, C.B., in *R. (Hastings) v. Galway JJ.*, (1906) 2 I.R. 499).

The case is different where the defendant is charged upon an improperly drawn summons upon which, without amendment, no valid conviction can be made, and the case is dismissed on the merits. It is submitted that a dismiss on the merits, without amendment, of such a summons is an act within the jurisdiction, and valid. Further, a judgment for a defendant on an insufficient indictment so long as it stands unreversed, is a bar to a new indictment (*Vaux's case* (1591) 4 Co. Rep. 44, 2 Hale 248), and as it is not possible to reverse on certiorari an acquittal by a tribunal competent to hear the case (*R. v. Antrim JJ.*, (1895) 2 I.R. 603, see *R. (Drohan) v. Waterford JJ.*, (1901) 2 I.R. 548, *R. (Hastings)*

When  
objection of  
*res judicata*  
must be taken.

*v. Galway JJ.*, (1906) 2 I.R. 499), it follows that the defendant cannot afterwards be impleaded.

The objection of *res judicata* must be taken at the hearing before the magistrate, and not reserved as a ground for quashing the conviction or order after it has been made (Paley, 8th ed., 169, *R. v. Herrington*, (1864) 12 W.R. 420; *Tott v. Rayner*, (1847) 5 C.B. 162).

Several acts  
constituting  
one offence.

Several acts may constitute but one offence. Thus a baker who sold a number of different loaves on Sunday was held to have committed one offence only against 29 Car. 2, c. 7, forbidding tradesmen doing or exercising any worldly labour, business, or work of their ordinary calling on the Lord's Day (*Crepps v. Durden*, (1777) Cowp. 640, 1 Smith, L.C., 11th ed., 651). So also, a person who gave medical advice and supplied medicines to three different persons at different times on the same day, is guilty of only one offence of acting or practising as an apothecary within section 20 of the Apothecaries Act, 1815, 55 Geo. 3, c. 194 (*Apothecaries' Company v. Jones*, (1893) 1 Q.B. 89). The question whether several acts committed on the same day make the offender liable to distinct penalties must be determined by the nature of the offence and the wording of the statute (Paley, 8th ed., 284).

One transac-  
tion constitut-  
ing several  
offences.

One act or omission may be the foundation of several charges. Thus a person who, by omitting to milk several cows, causes cruelty to each of the cows, may apparently be convicted of as many offences as there are cows (*per Lord Alverstone, C.J.*, in *R. v. Cable* (1906) 1 K.B. 719, 721;<sup>1</sup> see also *Ex parte Beal*, (1868) L.R. 3 Q.B. 387), though the charge may be formulated, at the option of the prosecutor, as a single charge of cruelty to all the cows (*R. v. Cable, supra*). Where the information charged one offence, i.e., cruel ill-treatment of four ponies, the defendant was convicted by a court of summary jurisdiction and fined £5 in respect of each pony. Four separate convictions, each in respect of a pony, were drawn up. The defendant had no notice before conviction that he was being charged with a separate offence in respect of each pony. *Held*, that the information only charged one offence, and the defendant, without previous notice, could not be convicted on the information of four offences, and that three of the convictions were bad and must be quashed (*R. v. Rawson*, (1909) 2 K.B. 748). In *Fecitt v. Walsh*, (1891) 2 Q.B. 304, the defendant was contractor for a milk supply to a workhouse, and while the milk, which was contained in five cans, was being delivered by him at the workhouse, an inspector took samples from each of the five cans, and, two of the samples being defective, preferred two separate informations against the defendant, for selling milk from which its fats had been abstracted, contrary to section 9 of the Food and Drugs Act, 1875. The justices having convicted on each information: *Held*, that they were right, for, having regard to the terms of section 3 of the Act of 1879, there were five different transactions so far as the inspector was concerned. The Scotch courts, however, have refused, and it is submitted rightly, to follow this case in *Telford v. Fyfe*, (1908) S.C. (J.) 83.<sup>2</sup>

<sup>1</sup> See special provision in s. 32 of Children Act, 1908, as to charging offences in respect of more than one child.

<sup>2</sup> The grounds of the decision of Lord Ardwall in this case are "irresistible," to use the expression of the Lord Justice Clerk. "With all respect," said Lord Ardwall (p. 89), "to the learned judges who decided *Fecitt v. Walsh*, I cannot concur in the decision they gave. The fallacy, I think, is apparent from the opinion of Mr. Justice Day, for he

Where the defendant put water in each of twenty-nine empty spirit casks, and so extracted spirits from them, it was held that he was guilty of an offence in respect of each cask (*Lord Advocate v. Stewart*, (1899, Court of Exchequer, Scotland) 63 J.P. 311). Each of several sales of intoxicating liquor during prohibited hours on the same day constitutes a separate offence of selling during prohibited hours (*M'Hugh v. Curtin*, (1903) 3 N.I.J.R. 250), but a defendant apparently cannot be convicted both of opening and selling where the selling and opening are part of the same transaction (*Dorrion v. M'Hugh*, (1907) 2 I.R. 564).

One transaction constituting several offences.

There were two charges of separate and distinct offences against separate and distinct sections of the Indecent Advertisement Act (52 & 53 Vict. c. 18). The facts relating to the two charges were the same. After hearing the first charge, the justices proceeded to hear the second; and, after the second had been heard, convicted the appellant of both offences. *Held*, that each case ought to have been decided on the evidence given in relation to the particular charge; that, therefore, the justices were wrong in hearing the evidence on the second charge before deciding on the first, and that both convictions should be set aside (*Hamilton v. Walker*, (1892) 2 Q.B. 25). It is a well-known principle of the criminal law "that each case ought to stand on its own merits, and should be decided upon the evidence given with relation to that particular charge" (*ib.*, per Pollock, B.). No second conviction could have been had, as defendant could plead *autrefois convict* (*ib.*, per Vaughan Williams, J.). But the justices, after hearing one charge, and having decided to convict, may postpone their adjudication of the penalty until they have heard a second charge (*R. v. Fry*, (1898) 19 Cox, 135).

Postponing decision pending hearing of second charge.

A distinction is drawn between orders and convictions. It is said that the courts are more strict in construing convictions than orders (Paley, 8th ed., p. 184), and that an order may be good in part and bad for the residue, whereas a conviction is a judgment entire and indivisible, and if any material part be faulty it vitiates the whole (*ib.*, p. 185, *R. v. Wicklow J.J.*, (1863) 16 I.C.L.R. 23). By section 44 of the Petty Sessions Act, the word "order" shall include "conviction," but this section does not abolish the well-established distinction.

Distinction between orders and convictions.

says:—"Acting under the provisions of the Acts of 1875 and 1879, a constable procured, as there provided, several samples of milk. In each case of procurement he acted as purchaser and the appellant as seller.' Proceeding upon this, he holds that there might be a prosecution in respect of each sample taken. I consider that this is not a sound interpretation of the Acts, and arises from mixing up section 3 of the 1879 Act with section 13 of the 1875 Act. Under section 13 it is provided that an inspector 'may procure any sample of food or drugs, and if he suspects the same to have been sold to him contrary to any provision of this Act,' shall take the proceedings thereafter narrated. It is quite clear that this applies to purchases made by inspectors for the purpose of procuring samples of food or drugs. But section 3 of the Act of 1879 is in wholly different terms: not a word is said about selling to or buying by an inspector. On the contrary, it only authorizes him to procure at the place of delivery any sample of milk in course of delivery to the purchaser, who plainly is not the inspector himself, and although it provides that proceedings shall be taken, and penalties enforced in like manner as if the inspector had purchased the sample himself, yet that does not assimilate his taking as many samples as he might think necessary to the case of a number of purchases made by him from ordinary retail sellers of foods. It is noticeable that apparently the Act contemplates, not many samples, but one sample of milk in a case of this description; the wording of section 3 of the Act plainly shows that it never contemplated the delivery of adulterated milk at the same time and place as anything else than one, and not many offences against the statute. To hold anything else would be to put it in the power of any inspector to multiply unnecessarily and unjustly prosecutions for what was one and the same act."



Distinction  
between  
orders and  
convictions.

tion between convictions and orders, properly so called (*per* O'Brien, J., in *R. v. Wicklow JJ.*, at p. 28). Instances of orders are:—orders under the Grand Jury Acts, Public Health Acts, and civil proceedings such as those to recover small debts or possession of tenements. In *R. v. Radnorshire JJ.*, (1840) 9 Dowl. 98, the suggested distinction between the rules of construction in the case of orders and convictions was thus discussed by Williams, J.:—"Admitting the general rule, which is confirmed in many cases, that a conviction should be construed strictly and an order liberally, the value of that rule is greatly diminished by the difficulty of applying it to each particular case. I much doubt whether upon examination there will be found any rule of law which prescribes, or even allows, language to be forced from its ordinary import and fair meaning to support one instrument, or to invalidate the other. Since the case of *R. v. Hulcott*, (1796) 6 T.R. 583, which has been recognized in many subsequent and recent decisions, it may be questioned whether any intelligible distinction exists at all." But the distinction as to the severalty of good from bad parts of an order is important. In *Jenney v. Brook*, (1844) 6 Q.B. 323, an order was made under the Highway Act, 5 & 6 Wm. 4, c. 50, s. 65 (corresponding to 14 & 15 Vict. c. 92, s. 9), authorizing the complainant to cut defendant's hedges and trees. The order was good as to the hedges, but bad as to the trees. In an action taken for trespass to the hedges and trees, it was held that the order was severable, and that the damages should be limited to the injuries to the trees. An order under 8 & 9 Vict. c. 126, so far as it related to the payment of money for the maintenance of a pauper, was quashed, but confirmed so far as it related to the expense of his examination and conveyance (*R. v. Winstler*, (1850) 19 L.J.M.C. 185). An order on a putative father for payment of a weekly sum from the birth of his child was held to be bad as to the period between the date of the birth and the application for the order, and good in respect of the payments due since the date of the application (*R. v. Green*, (1851) 20 L.J.M.C. 168; and cf. *R. v. Slade*, (1895) 2 Q.B. 247). Where the appellants had created a nuisance by depositing refuse on the lands of others to be carted away, and they had no control over such lands, it was held that an order under the Public Health Act (England), 1875, to abate the nuisance was bad as to the abatement, for it prescribed acts which might include the committal of a trespass, but good as to the prohibition, for it was the appellants' act which created the nuisance (*Mayor of Scarborough v. R. S. A. of Scarborough*, (1876) 1 Ex.D. 344). The rule in the case of orders seems to be, that if the line of demarcation between the good and the bad parts can be clearly pointed out, the court will uphold the good part (*per* Erle, J., in *R. v. Green*, (1851) 20 L.J.M.C., at p 169).<sup>1</sup>

Construction  
of convictions.

The court can intend nothing in favour of convictions, and will intend nothing against them (*per* Lord Ellenborough in *R. v. Hazell*, (1810) 13 East 139, at p. 141).

Order-book.

As has been seen (*ante*, p. 63), in cases within the Petty Sessions Act, the entry in the order-book is to be deemed the order. The order-book in use is printed in the APPENDIX of FORMS.

Right to  
withdraw  
spoken word.

Justices have the right to withdraw their judgment before it is

<sup>1</sup> For a further instance of severing good from bad parts of a conviction, see *Chepstow C.L. Co. v. Chepstow Gas Co.*, (1905) 1 K.B. 198.

entered in the order book (*R. (Horan) v. Galway JJ.*, (1903) 3 N.I.J.R. 111; see also *Jones v. Williams*, (1877) 46 L.J.M.C. 270). In *R. (Horan) v. Galway JJ.* the justices, having heard a complaint of assault, retired to consider their decision. When they returned to court, the chairman announced that the defendants were convicted and sentenced to one month's imprisonment with hard labour. As he was writing this order in the petty sessions order-book, but before it was completed or signed, further discussion arose as to whether or not the sentence should be reduced to a fine. The chairman took a poll, and four voted for imprisonment, and four for a fine. In view of the equal decision, the bench agreed to adjourn: It was held that the order of adjournment was valid.<sup>1</sup>

Right to withdraw spoken word.

The court will set aside an order which is obtained in the absence of one of the parties, caused by a misunderstanding owing to negotiations or the like (*R. (Lowry) v. Antrim JJ.*, (1901) 2 N.I.J. 6; *R. (Brown) v. Londonderry JJ.*, (1906) 6 I.W.L.R. 134).

Setting aside order obtained under misapprehension.

Formerly, whether there was an appeal or not, every conviction was returned to quarter sessions, this being the regular course of procedure (see *R. v. Eaton*, (1787) 2 T.R. 285), or, in some cases, being directed by statute. *c.g.* the repealed Larceny Act, 1828, (9 Geo. 4, c. 55, s. 72). The Petty Sessions Act, s. 21, provides that it shall no longer be necessary to return convictions to quarter sessions.<sup>2</sup>

Convictions not returnable to quarter sessions.

In proceedings of a civil character (such as proceedings to recover the cost of maintenance of an illegitimate child) a defendant may apparently waive the non-compliance with a statutory condition (*R. v. Berry*, (1859) 23 J.P. 86; but see observations of Palles, C.B., in *R. (Houlihan) v. King's Co. JJ.*, (1900) 6 I.W.L.R. 56). But in a criminal prosecution, where a condition is clearly made a condition precedent, apparently the non-fulfilment of the condition cannot be waived (*R. v. Scotton*, (1844) 5 Q.B. 493, as explained in *R. v. Hughes*, (1879) 4 Q.B.D. 614, at p. 628; see also *R. v. Cockshott*, (1898) 1 Q.B. 582). As to waiver of a summons, or a point as to service, see p. 50, *supra*; and of the requisites as to a case stated of the Summary Jurisdiction Act, 1857, see *Morgan v. Edwards*, (1860) 5 H. & N. 415, noted p. 238, *infra*, and *Rust v. St. Botolph Churchwardens*, (1906) 94 L.T. 575, noted, p. 240.

Waiver of condition precedent.

In *May v. Beeley*, (1910) 2 K.B. 722, the complainant, a superintendent of police, was not present, and the proceedings were conducted by a police witness: but the defendant was held to be estopped from successfully raising the point owing to his having elected to go on after the justices had offered an adjournment.

<sup>1</sup> As was pointed out in *R. (Horan) v. Galway JJ.*, *supra*, the spoken word is in law the order; the entry is the record of the order.

<sup>2</sup> Under the Criminal Justice Act, 1855, 18 & 19 Vict. c. 126, s. 7, summary convictions for larceny were made returnable to quarter sessions. The Larceny Act, 1861, 24 & 25 Vict. c. 96, s. 112, and the Malicious Damage Act, 1861, 24 & 25 Vict. c. 97, s. 70, provide that convictions under these statutes shall be returned to quarter sessions, but by s. 120 of the former Act, and by s. 76 of the latter Act, the Petty Sessions Act is applied to prosecutions under both these Acts; and it is consequently submitted that compliance with these provisions as to the returning of convictions under the statutes of 1861, to quarter sessions is unnecessary.

## CHAPTER VIII.

### LICENSING JURISDICTION AT QUARTER SESSIONS.

	PAGE		PAGE
Liquor Licences—	110-116	Liquor Licences—	
Jurisdiction at quarter sessions, .	110	Procedure to obtain publican's licence,—	
Disqualifications . . . . .	110	Bench equally divided, . . . . .	116
Effect of Licensing Act, 1902, . .	112	Re-opening case; adjournment, .	116
Procedure to obtain publican's licence, . . . . .	114	Grant of licence to be unconditional, . . . . .	117
Fitness of applicant and premises, .	115	Appeal from refusal to renew, .	117
Clitheroe's case, . . . . .	115	Music hall licences, . . . . .	117
Objection by justices, . . . . .	115	Licences for private asylums, . .	117
Absence of objection, . . . . .	115	Theatre licences, . . . . .	117
Order of refusal, . . . . .	115		

Licensing jurisdiction at quarter sessions. JUSTICES at quarter sessions have original jurisdiction to grant certificates upon which the Inland Revenue authorities may grant, (a) a full publican's licence,<sup>1</sup> authorizing the sale of beer, wine, and spirits, in certain quantities,<sup>2</sup> for "on" or "off" consumption, or (b) a beer "on" licence (sometimes called a "publican's beer licence"), authorizing the sale of beer for "on" or "off" consumption.<sup>3</sup> This licence is rare; and the procedure to obtain it is precisely the same as in the case of a full publican's licence. Justices at quarter sessions have no original jurisdiction in regard to beer "off" licences, or spirit grocers' licences, though they have such jurisdiction on appeal.

The jurisdiction in regard to publicans' licences is conferred by 3 & 4 Wm. 4, c. 68, ss. 2-5, and statutes amending that Act or incorporated therewith.

Disqualifications for holding licence. A licence cannot be granted to any person who is not a householder (3 & 4 Wm. 4, c. 68, s. 13). There is no definition of "householder" or any decision on its meaning. The term (e.g., in 26 Geo. 3, c. 38, s. 8<sup>4</sup>), though it be not of so strict a sense as "housekeeper," will not include a lodger or temporary inmate, but it will include a partner resorting daily to his firm's counting-house in the place referred to, the dwelling part of which counting-house is occupied by a servant of the firm (*R. v. Hall*, (1822) 1 B. & C. 123; *R. v. Poynder*, (1823)

<sup>1</sup> An interesting instance of an ancient grant of a licence is to be found in a charter of Henry II. granting certain lands at Sanganat, Balligiliregio, and Chelchis to one Nicholas de Benchi to keep an inn of entertainment by him and his heirs "to hold of me and my heirs and half a knight's service to be done at my City of Dublin" (Harris, "Hibernica," pt. 2, pp. 119-120).

<sup>2</sup> The publican's licence authorizes the sale at any one time to one person of any liquor, in the following quantities, (a) in the case of spirits, wine, or sweets, in any quantity not exceeding two gallons, or not exceeding one dozen reputed quart bottles, and (b) in the case of beer or cider, in any quantity not exceeding four and a half gallons and not exceeding two dozen reputed quart bottles, but not in any larger quantities (Finance (1909-10) Act, 1910, 10 Ed. 7, c. 8, First Schedule).

<sup>3</sup> In quantities not exceeding four and a half gallons at a time (Finance (1909-10) Act, 1910, 10 Ed. 7, c. 8, First Schedule).

<sup>4</sup> The imprisonment of Debtors Act (E.), now repealed.



1 B. & C. 178). The term is defined by section 1 of the Towns Improvement (Ireland) Act, 1854, 17 & 18 Vict. c. 103, to mean, for the purposes of that Act, "a male occupier of a dwellinghouse, or of any lands, tenements, or hereditaments rated to the relief of the poor in respect thereof."<sup>1</sup> Under the English Act, 11 Geo. 4 & 1 Wm. 4, c. 64, s. 2, it was provided that "every and any person being a householder" could apply for a licence to sell beer. Under 3 & 4 Vict. c. 61, s. 1 (Beerhouse (Eng.) Act, 1840), it is provided that no licences under 11 Geo. 4 & 1 Wm. 4, c. 64, shall be granted to any person "who shall not be the real resident holder and occupier of the dwelling-house in which he shall apply to be licensed." The mere fact that a tenant in occupation of a beerhouse carries on the sale of beer there as the salaried employé of his landlords—a trading company—to whom he is accountable for the profits, does not involve as a conclusion of law that he is not the real resident holder and occupier of the house (*Nix v. Nottingham JJ.*, (1899) 2 Q.B. 294). Whether a person is the real resident holder is a question of fact (per Smith L.J., *ib.*, p. 297). "The words mean not only that the licensee must be in substance the resident on the premises, but that he must also be in substance the holder and occupier of them. There might be real residence without real occupation" (per Vaughan Williams, L.J., *ib.*, p. 299; see also *R. v. Allmey*, (1871) 35 J.P. 534; *R. v. Manchester JJ.*, (1899) 1 Q.B. 571, where sleeping on the premises was held essential). It is submitted that, although the residential qualification in the Beerhouse (Eng.) Act, 1840, may be regarded as additional to the qualification provided by 11 Geo. 4 & 1 Wm. 4, c. 64, s. 2, the words "holder" and "occupier" are, in effect, definitive of the term "householder" in the earlier Act, and may be applied to that term in 3 & 4 Wm. 4, c. 68, s. 13. The words "holder" and "occupier" are used in defining the £10 householder franchise qualification under 2 & 3 Wm. 4, c. 38, a statute substantially contemporaneous with 3 & 4 Wm. 4, c. 68, s. 13 (for other statutory definitions see 30 & 31 Vict. c. 37, s. 2; 50 & 51 Vict. c. 42, s. 2; 55 & 56 Vict. c. 55, s. 4<sup>2</sup>). It is probable that the term would receive a wide interpretation for the purpose of the licensing Acts, so as to include a servant or manager who is put in charge of and occupies the premises, whether rated or not. The following persons are disqualified from holding a licence:—pawnbrokers (26 Geo. 3, c. 43 (L.), s. 21); distillers, rectifiers, compounders of spirits, bailiffs, gaolers, turnkeys, constables, sheriffs, sub-sheriffs, sheriffs' officers, peace officers, keepers of turnpike gates (3 & 4 Wm. 4, c. 68, s. 13); persons appointed to serve civil bill processes, while holding office (6 & 7 Wm. 4, c. 38, s. 2); sheriffs' officers, clerks of petty sessions, officers executing legal process (23 & 24 Vict. c. 107, s. 8). A person convicted of a felony or of selling spirits without a licence is disqualified from having a licence to retail wine (23 & 24 Vict. c. 107, s. 24). A licensed person permitting his premises to be used as a brothel is disqualified for ever (Licensing Act, 1872, s. 15). If a licensed person has been convicted of two offences, which have been recorded, followed by a third recordable conviction, he is disqualified for five years

Disquali-  
fication for  
holding  
licence.

<sup>1</sup> This definition has been altered by Order 30th Jan, 1899, Art. 15, as regards the Towns Improvement Act.

<sup>2</sup> Public Libraries Act, 1867 (S.), Public Libraries Consolidated Act, 1887 (S.), Burgh Police Act, 1892 (S.), respectively.

Disqualifica-  
tions for  
holding  
licence.

(Licensing Act, 1872, s. 30), but offences more than five years old cannot be reckoned for the purpose (Licensing Act, 1872, s. 30). For punishment of offences, recording convictions and orders disqualifying persons or premises and forfeiture of licences, see CATALOGUE OF SUMMARY OFFENCES, "INTOXICATING LIQUORS, OFFENCES RELATING TO."

Effect of  
Licensing Act,  
1902.

An important limitation has been imposed on the powers of justices to grant licences, including both "on" and "off" licences, by the Licensing (L.) Act, 1902, 2 Ed. 7, c. 18,<sup>1</sup> which prohibits the granting of any licence for which a justice's certificate is required,<sup>2</sup> except in the following cases:—

(a) Where the premises were licensed at the date of the passing of the Act, 31 July, 1902, or at any time since 1 January, 1902.

(b) Where the premises were not so licensed, a licence may be granted to (1) a hotel as defined by the statute—a house containing ten bedrooms set apart and used exclusively for the sleeping accommodation of travellers and having no public bar; (2) a railway refreshment room; (3) premises in the immediate vicinity of premises the licence whereof has been extinguished or surrendered by reason of the expiration of a lease; (4) premises attached to or adjoining already licensed premises where the licence is sought to make the premises more suitable for the business; (5) where, owing to increase in population,<sup>3</sup> there is a growth or extension of any city or town, and the licensing authority are satisfied that the restrictions in the Act on the granting of licences may be relaxed, they may grant a licence to any applicant, notwithstanding that the same would be otherwise forbidden by the Act, provided that such licence shall be granted only for premises situate in the parish in which such increase in population has taken place, and in substitution for an existing licence or licences held in respect of premises situate in the city or town, as the case may be, comprising the whole or any part of the parish. Increase in population "means an increase of not less than twenty-five per cent. of the population according to the last census."

The following cases have been decided upon the Licensing Act, 1902:—

*R. (Collins) v. Donegal JJ.*, (1903) 2 I.R. 533; 36 I.L.T.R. 229; *R. (Butler) v. Cork JJ.*, (1904) 5 N.I.J. 36; *R. (Dorrian) v. Greer*, (1903) 3 N.I.J.R. 302. A person who had a spirit grocer's licence at the date of the Act of 1902 cannot get a publican's licence for the premises. The words "now licensed" mean having a licence of the same class as that applied for; and so also, the holder of a six-day licence cannot get a seven-day licence, or of an early closing licence an ordinary licence.

*R. (Kennedy) v. Antrim JJ.*, (1903) 2 I.R. 671, 37 I.L.T.R. 130. The provisions in section 6 of the Act, enabling the licensing authority to grant a new licence to premises attached to or adjoining premises licensed at the date of the passing of the Act, apply only to the case where the new licence includes the premises formerly licensed, and not the case of an application for a transfer of a licence from one set of premises to another. See also *R. (McClinchy) v. Greer*, (1904) 2 I.R. 494, 37 I.L.T.R. 156.

<sup>1</sup> *Verbatim* in APPENDIX OF STATUTES.

<sup>2</sup> A justice's certificate is required for a publican's, a beer retailer's, and spirit grocer's licence.

<sup>3</sup> Which may be proved by a certificate from the General Register Office, purporting to be signed by the Registrar-General of Births, Deaths, and Marriages in Ireland, which costs 1s. (Census (Ir.) Act, 1910, 10 Ed. 7 & 1 Geo. 5, s. 7).

*R. (Blackburn) v. Down JJ.*, (1905) 2 I.R. 74, 83 ; 38 I.L.T.R. 67. Premises licensed at the date of the passing of the Act of 1902 were knocked down, and on a site comprising the site of the old licensed premises, but embracing a much greater area, very large and elaborate licensed premises were built. The Court of Appeal were equally divided in opinion as to whether there was jurisdiction to grant a licence under section 6, and the order of the King's Bench Division, holding that there was no such jurisdiction, therefore stood. Effect of Licensing Act, 1902.

*Quin v Bourke*, (1906) 2 I.R. 94 ; 39 I.L.T.R. 253. The licence attached to premises licensed as a hotel under the Act of 1902 entitles the licensee, whilst such premises are within the definition of a hotel as given in that Act, to sell to the general public, including persons who are not either travellers or lodgers, but if and while such premises cease to answer such definition (as, for instance, by there being thereon a public bar), the licensee is not entitled to sell to any person whatever.

*R. (Sole) v. Fermanagh JJ.*, (1906) 40 I.L.T.R. 75. Premises had formerly been a licensed hotel, but before the Act of 1902 the licence was allowed to lapse, and the house had been carried on as a sanatorium for some years. The applicant obtained a lease of the premises, and, save for the occupation of a caretaker, they were vacant and unfurnished at the time of the application. The house contained ten rooms suitable for bedrooms. *Held*, that there was no jurisdiction to grant the licence ; that the words "set apart and used" refer to an actual user for sleeping accommodation, though, *semble*, if the rooms were furnished as bedrooms, this would be sufficient.

*R. (Wright) v. Cork JJ.*, (1906) 2 I.R. 349 ; 40 I.L.T.R. 103. The determination by a notice to quit of a tenancy from year to year is an expiration of a lease within the Act.

*R. (Croghan) v. Mayo JJ.*, (1907), 2 I.R. 474 ; 40 I.L.T.R. 227. From 1888 to 1905 J. held a licence in respect of two adjoining houses, both houses being included in the one licence. One of the houses was held by J. as tenant to N. In 1905 J. surrendered this house to N. and obtained a renewal of the licence in respect of the other house. N. subsequently applied for a certificate for a new licence in respect of the house surrendered to him. *Held*, that there was no jurisdiction to grant such certificate. It may be doubted if there was jurisdiction to grant the renewal to J. ; see *post*, p. 114.

*R. (Supple) v. Clare JJ.*, (1907) 2 I.R. 299, 309 ; 40 I.L.T.R. 238, 260. L. was the tenant and licensed owner of a publichouse from 1896 to April, 1905, when he was evicted by C., the landlord of the premises, but L. refused to hand over the licence. In October, 1905, C. applied for and obtained a certificate to entitle him to receive a licence in respect of the evicted premises. L. having built a house a few doors away applied in April, 1906, for a certificate entitling him to obtain a licence for the new house. *Held*, that there was no jurisdiction under the circumstances to grant the certificate for the new house.

*R. (Rigg) v. Tipperary JJ.*, (1907) 41 I.L.T.R. 152. B., the tenant of a licensed house, was served with notice to quit, expiring in April, 1906. She gave up the premises in July, 1906, but kept the licence, and in June, 1906, applied for and obtained a new interim licence in respect of certain other premises in the immediate vicinity of those which she had received notice to quit. On that occasion she handed over the licence to the clerk of the peace, in whose custody it remained. When the duty on the interim licence was paid, credit was given for a proportionate part of the duty paid in respect of the old licence. At the annual licensing sessions held in October, 1906, B. obtained a certificate confirming her licence granted in June. On the same date a certificate was granted to the landlord of the evicted premises. The applications were heard in alphabetical order, and B.'s licence was first adjudicated upon. *Held*, that there was no jurisdiction to grant B. a licence.

*R. (Sargent) v. Leitrim JJ.*, (1905) 39 I.L.T.R. 145. Section 5 requires all premises for which a licence is sought under sections 2 (2), 3, and 4, to be valued under the Irish Valuation Acts at not less than the amounts therein named, *Held*, that the premises must be finally valued, and that a provisional valuation is not sufficient.



Effect of  
Licensing Act,  
1902.

There has been no decision as to whether, if licensed premises are reduced in area <sup>1</sup> so as to substantially alter their identity, a renewal can be applied for, or a new licence granted under the Act of 1902. It is probable that a renewal cannot be validly granted in such a case, the test being, in case of a renewal, are the premises substantially the same (see *R. v. Sheffield JJ.*, (1889) 63 J.P. 595; *Stringer v. Huddersfield JJ.*, (1875) 33 L.T. 568); and it being obligatory that the business should be carried on in the licensed premises during the year (*R. (Lambe) v. Armagh JJ.*, (1897) 2 I.R. 57; 30 I.L.T.R. 47). But it is suggested that justices, on an application for a renewal certificate, which is to the good character of the applicant and to the peaceful and orderly manner in which he has carried on business during the past year, are under no obligation to be over scrupulous as to the question of the identity of the premises, that being a matter which the Excise authorities are at liberty to consider when the application is made to them for the licence itself.<sup>2</sup> Where the premises have been cut down so as to alter their identity, it is submitted there is no jurisdiction under the Act of 1902 to grant a new licence in respect of the reduced area (see *R. (Croghan) v. Mayo JJ.*, (1907) 2 I.R. 474).<sup>3</sup>

Procedure.

The applicant for a licensing certificate must, twenty-one days at least before the quarter sessions, give a notice in writing signed by him to the two next resident justices, the clerk of the peace and the district inspector of the district, or superintendent of the division in which applicant resides (3 & 4 Wm. 4, c. 68, s. 2; 17 & 18 Vict. c. 89, s. 9), and must also, not more than four or less than two weeks before the quarter sessions, cause such notice to be inserted in some newspaper circulating locally (Licensing Act (Ireland), 1874, s. 10). In the case of an application for a new licence, the justices may refuse the application on the ground of unsuitability of the premises, unfitness of applicant, or number of previously licensed houses in the district; but in the case of transfers the number of previously licensed houses cannot be considered (*R. (Clitheroe) v. Recorder of Dublin*, (1877) I.R. 11 C.L. 412; 11 I.L.T.R. 85). In the case of an application where the applicant has got a temporary transfer under 18 & 19 Vict. c. 114, the justices are bound to entertain the application at quarter sessions even though the quarter sessions may not be the annual licensing quarter sessions; in all other cases the justices may, but are not bound to, entertain the application unless at the annual quarter sessions (Licensing Act (Ireland), 1874, 37 & 38 Vict. c. 69, s. 12(1); see *R. (Duggan) v. Fermanagh JJ.*, (1909) 2 I.R. 132). Any justice of the peace, churchwarden, or inhabitant of the parish may object to the granting of the licence, and the objector may previously transmit, or at the hearing deliver in writing, to the clerk of the peace, or orally state to the justices his objection (3 & 4 Wm. 4, c. 68, s. 4).

A certificate granted at sessions other than the annual licensing

<sup>1</sup> This has been done in many cases so as to escape increased licence duty.

<sup>2</sup> See remarks of Lord Loreburn, C., in *Leeds Corporation v. Ryder*, (1907) A.C. 420 (a case in reference to the exercise of licensing jurisdiction by justices in England), at p. 423: "I am not to be understood as saying that justices . . . would be warranted in shutting their eyes in a good-humoured way to any defects . . . What I do say is that they are not bound to enter in detail upon any such inquiries."

<sup>3</sup> The Recorder of Belfast, however, granted a new licence when the premises had been substantially altered in area (*In re Hunter's Licence*, (1910) 44 I.L.T.R. 220).

quarter sessions only enures to the annual licensing quarter sessions, at which it requires confirmation (Licensing Act (Ireland), 1874 s. 12 (1)). Procedure.

The statutory requirements with regard to the service of the notice must be strictly complied with (*R. (Harvey) v. Tyrone JJ.*, (1902) 36 I.L.T.R. 106, 2 N.I.J.R. 59), though a mere clerical error in the notice, if it substantially indicates what the application is, may be overlooked (*R. v. Penkridge JJ.*, (1892) 56 J.P. 87, 66 L.T. 371, 61 L.J.M.C. 132; *R. v. Over Darwen JJ.*, (1878) 39 L.T. 444; *Ex parte Clayton*, (1899) 63 J.P. 788). Where premises are in a town, the townland need not be stated (*R. (Rogers) v. Antrim JJ.*, (1900) 2 I.R. 388, 34 I.L.T.R. 8, 57). An agent may sign the notice (*R. (Murphy) v. Donegal JJ.*, (1896) 30 I.L.T.R. 6). A justice's place of business is a residence within the Act for the purpose of service on the "next resident justices" (*R. (Gallagher) v. Tyrone JJ.*, (1901) 2 I.R. 497, 502; 35 I.L.T.R. 109; 1 N.I.J.R. 42, 89). The fact that one of the next resident justices is a publican makes no difference, and he should be served (*R. (Harvey) v. Tyrone JJ.*, *supra*).

Questions as to the fitness of the applicant and fitness of the premises are questions of fact for the justices, and the court will not interfere with the justices' discretion. Non-residence may, but does not necessarily, constitute unfitness (*R. (Kinsella) v. Wicklow JJ.*, (1877) I.R., 11 C.L. 59; *R. (Leslie) v. Monaghan JJ.*, (1901) 35 I.L.T.R. 37; 1 N.I.J.R. 68). In considering the question of the fitness of the premises, the remoteness from police supervision may apparently be considered (*R. (Leslie) v. Monaghan JJ.*, *supra*, per Palles, C.B.). Fitness of applicant and premises.

It is difficult to say what applications are within *Clitheroe's Case*.<sup>1</sup> It has been held that a landlord evicting his tenant on the termination of a lease is not a transferee (*R. (O'Brien) v. Tipperary JJ.*, (1878) 4 L.R.I. 259, 6 L.R.I. 129, 14 I.L.T.R. 19); and it seems doubtful if a person who acquires premises under a marriage settlement on the determination of a prior interest is a transferee within *Clitheroe's Case* (*R. (Murphy) v. Recorder of Cork*, (1895) 2 I.R. 104). Clitheroe's Case.

Apparently, if a justice wishes to become an objector, he should leave the bench to do so (*R. (Dempsey) v. Antrim JJ.*, (1875) 9 I.L.T.R. 156; *R. (Perry) v. Tyrone JJ.*, (1903) 38 I.L.T.R. 26, 4 N.I.J.R. 58; but see *R. (Findlater) v. Dublin JJ.*, (1904) 2 I.R. 75, 37 I.L.T.R. 202). Objection by justice.

If there is no objection, the justices are bound to grant the application, if it is one which they have jurisdiction to grant (*R. (Perry) v. Tyrone JJ.*, (1903) 38 I.L.T.R. 26, 4 N.I.J.R. 58). Absence of objection.

If the application is refused, an order prohibiting the issue of the licence shall be entered by the clerk of the peace, and the order shall state the reason for such prohibition (3 & 4 Wm. 4, c. 68, s. 4). Unless the order of prohibition states such ground, it is bad, and will be set aside on certiorari, and a mandamus granted to rehear the application (*R. (Brannagan) v. Antrim JJ.*, (1878) 4 L.R.I. 230, *Ex parte Smith*, (1878) 3 Q.B.D. 374). If several grounds are mentioned, this means that the tribunal were against the application on each Order of refusal.

<sup>1</sup> Every licence granted at quarter sessions is a *new* licence. The difference between an application within and an application not within *Clitheroe's Case* is merely one of the admissibility and consideration of evidence as to the number of previously licensed houses (*R. (Duggan) v. Fermanagh JJ.*, (1909) 2 I.R. 131, at p. 161).

Bench equally divided. of such grounds, and the order is good (*R. (Leslie) v. Monaghan JJ.*, (1901) 35 I.L.T.R. 35, 1 N.I.J.R. 68).

The chairman has no casting vote. In *R. (Crowley) v. Cork JJ.*, (1902) 2 I.R. 252, the bench were equally divided; and an order was made up reciting that they were so divided, and rejecting the application. It was held that the order was bad, not only for not stating the grounds of the refusal, but also because the justices, being equally divided, had not adjudicated on the question before them, and that a mandamus should issue to them to hear and determine the application. In *R. (McIntyre) v. Donegal JJ.*, (1902) 2 I.R. 252, the order was "bench equally divided, no rule"; and it was held that a mandamus should go to the justices to hear and determine the application, but that the applicant was not entitled to a mandamus to the clerk of the peace to compel the issue to him of the licensing certificate applied for. In the later case of *R. (Mulcahy) v. Tipperary JJ.*, (1903) 2 I.R. 108, where the order was "this not being the annual quarter sessions, it not seeming fit to the court to grant the application at this sessions, same is refused," it was held that the order was substantially right; and the case was distinguished from the other cases of *R. (Crowley) v. Cork JJ.* and *R. (McIntyre) v. Donegal JJ.*, on the ground that in *Mulcahy's Case* the application was at interim quarter sessions, and in the other cases the applications were at annual quarter sessions, but it is submitted that the decision in *McIntyre's Case* at all events is not sound (see criticism of this case by Gibson, J., in *Mulcahy's Case*, (1903) 2 I.R., at p. 113).

Re-opening case ; adjournment.

Apparently the justices at licensing quarter sessions have power during the continuance of the sessions to re-open a case (*R. (Callaghan) v. Cork JJ.*, (1895) 2 I.R. 350). "The justices in such sessions assembled shall then, or at some other convenient time to be appointed, proceed to consider, examine into, and adjudicate upon the truth, sufficiency, and validity of such objection" (3 & 4 Wm. 4, c. 68, s. 4). There is no decision as to the effect of this clause, or as to the power of justices to adjourn an application to the next sessions. Justices at quarter sessions, in the exercise of their criminal jurisdiction, have power to adjourn a matter to next sessions (see p. 9, *ante*). But the wording of the statute, the existence of the jurisdiction at "interim" sessions to enable the trade to be carried on without a break, and the difficulty in applying *Clitheroe's Case*, unless the application be made within or at the immediate close of the licensing year, suggest obvious objections to the adjournment of licensing cases from one sessions to another.<sup>1</sup> In *R. (O'Leary) v. Kerry JJ.*, (1903) 3 N.I.J.R. 251, A applied at the annual licensing sessions in 1901 for a new licence. The magistrates were equally divided, and agreed to adjourn to the next licensing sessions, when it was granted. Meanwhile, the Licensing Act of 1902 had come into force. An attempt to uphold the granting of the licence on the ground that the application should be treated as having been disposed of at the 1901 sessions, and the 1902 sessions having been only an adjournment thereof, failed, and the licence was held void. The question of jurisdiction to adjourn does not seem to have been raised.

<sup>1</sup> See observations of Lord Halsbury in *Midland R. Co. v. Edminton Guardians*, (1895) 1 Q.B. 357, at p. 362.



A licensing certificate granted on condition of payment of money into court to extinguish another licence (*R. (Peacocke) v. Recorder of Dublin*, (1903) 37 I.L.T.R. 145), or on an undertaking that something will be done to complete the applicants' title (*R. (Barton) v. Donegal JJ.*, (1904) 39 I.L.T.R. 89), is void.<sup>1</sup>

Grant of licence to be unconditional.

Power is conferred on justices at quarter sessions to hear appeals from a refusal to renew a publican's licence (18 & 19 Vict. c. 62; 23 & 24 Vict. c. 35), or from an order granting or refusing a beer "off" licence or spirit grocer's licence (Beerhouses (Ireland) Act, (1864) s. 13; Licensing Act, 1872, s. 82; see APPEALS TO QUARTER SESSIONS, pp. 141, 142).

Appeal from refusal to renew.

Justices have power to grant dancing and music hall licences under the Public Health Acts Amendment Act, 1890, 53 & 54 Vict. c. 59, s. 51, which applies only where Part IV of that Act has been applied by the local authorities. See CATALOGUE OF SUMMARY OFFENCES, "PUBLIC HEALTH."

Music hall Licences.

Under the Lunatic Asylums (Ireland) Act, 1842, 5 & 6 Vict. c. 123, s. 3, no person shall keep a house for the reception of two or more insane persons, unless licensed in manner provided by the Act, sections four to eight of which prescribe the procedure. The licence is granted by the justices at quarter sessions under the hands and seals of three or more of the justices. Notice of application for the licence must be served on the clerk of the peace at least fourteen days before the sessions. The notice must state the full Christian name and surname and place of abode of the applicant, and in case he should not propose to dwell in the house, the Christian name and surname and previous occupation of the resident superintendent. The notice must also state whether the house is to be used for the reception of male or female patients, or both; and if for both, the number of each sex proposed to be received, and the means of keeping them apart. The notice must be accompanied by a plan as provided. The licence is according to the form in the schedule, and to be signed by two or more justices and to be stamped with a ten-shilling stamp, and the clerk of the peace is to furnish the inspectors in lunacy with a copy of the licence, notice, and plan.

Licences for private asylums.

It shall be lawful for the commissioners and officers of excise, and they are hereby authorized and empowered, to grant retail licences to any person to sell beer, spirits, and wine in any theatre established under a royal patent, or in any theatre or other place of public entertainment licensed by the lord chamberlain or by justices of the peace, without the production by the person applying for such licence or licences of any certificate or authority for such person to keep a common inn, alehouse, or victualling house; anything in any Act or Acts to the contrary notwithstanding (Excise Act, 1835, 5 & 6 Wm. 4, c. 39, s. 7).

Theatre Licences.

The effect of this provision is that a licence to sell liquor can be granted without any certificate of justices in respect of theatres, etc., to which a patent or chamberlain's licence is attached.<sup>2</sup> As regards

<sup>1</sup> See also *Rossi v. Provost of Edinburgh*, (1905) A.C. 21; *Taylor v. Winsford U.D.C.*, (1907) 2 K.B. 396. An undertaking not to take full advantage of the licensing facilities conferred by the licence seems to be void (*per Palles, C.B.*, in *R. (Bourke) v. Dublin JJ.*, (1903) 2 I.R. 429, at p. 437; cf. *London C.C. v. Bermondsey Bioscope Co.*, (1910) 27 T.L.R. 141).

<sup>2</sup> A patent may be granted in Dublin under 26 Geo. 3, c. 57. Theatres may be licensed by the mayor in Belfast (Belfast Improvement Act, 1845, 8 & 9 Vict. c. cxlii, s. 242). In Cork a licence from the corporation is required (Cork Improvement Act, 1868, 31 & 32 Vict., c. xxxii, pt. 19, s. 172). Query.—Do these licences in Belfast and Cork come within the meaning of s. 7 of 5 & 6 Wm. 4, c. 39? The licence in the Act is required to be granted by a justice of the peace—a licence by a mayor or corporation does not appear to be the licence required. No chamberlain's licence exists in Ireland.

Theatre  
licences.

other theatres, no licence is required (save in Dublin, where a penalty of £300 is enacted by 26 Geo. 3, c. 57, s. 2, for acting plays in a theatre to which a patent is not attached),<sup>1</sup> to act plays, etc., but if a licence to sell liquor is required, the theatre must be licensed as a theatre by the justices, and when so licensed as a theatre, an excise licence can be granted in respect of it under the foregoing section. It is submitted that this means justices at quarter sessions, and that the application can be made *ex parte*, and that the justices have an absolute discretion in the matter.

The licence authorizes the sale of liquor (*a*) only within the part of the theatre specified in the licence, (*b*) only to persons employed in or *bona fide* attending the performance, and (*c*) only during the performance, or thirty minutes before or thirty minutes after the performance (Licensing (Ir.) Act, 1874, 37 & 38 Vict. c. 69, s. 7).<sup>2</sup>

<sup>1</sup> See s. 89 of Local Government (Ir.) Act, 1898, as to occasional licences to be granted by the Lord Lieutenant on the application of the Dublin county council or Dublin corporation or any urban district council within the county of Dublin, in respect of charitable entertainments.

<sup>2</sup> As to whether a sale can take place during hours ordinarily prohibited, even if within the periods mentioned in this section, *quære* (see *Gallagher v. Rudd*, (1898) 1 Q.B. 114).

## CHAPTER IX.

### LICENSING JURISDICTION AT PETTY SESSIONS.

	PAGE		PAGE
Jurisdiction, . . . . .	119	Liquor licences—	
Liquor licences—		Exemption order to Dublin hotels	
Temporary transfer, . . . . .	119	and restaurants, . . . . .	126
Renewal of publican's licence, . . . . .	120	Clubs—	
Spirit grocers, . . . . .	121	Registration of, . . . . .	126
Beer dealers and beer retailers, . . . . .	123	Duty payable by, . . . . .	128
Wine licences, . . . . .	125	Game and hawkers' licences, . . . . .	129
Occasional licences, . . . . .	125	Cinematograph licences, . . . . .	129
Exemption order, . . . . .	125		

JUSTICES at petty sessions have jurisdiction in respect of applica-  
tions for—(1) temporary transfer of publicans' licences; (2) renewal  
of publicans' licences; (3) spirit grocers', beer dealers', and beer  
retailers' "off" licences; (4) registration of clubs; (5) exemption  
orders, and (6) hawkers' licences and game licences.

Under the 18 & 19 Vict. c. 114, justices at petty sessions are  
authorized, upon the death of any person having an "on" licence,  
or upon the removal of such person from the premises, or the sale or  
assignment of his interest therein by operation of law or otherwise,  
if they shall think proper so to do, after examining on oath all neces-  
sary parties, to transfer the licence by endorsement thereon to any  
person not disqualified by law to whom it shall be proposed at the  
time of such application to transfer such licence, to carry on the  
same business in the premises until the quarter sessions held next  
after the expiration of one calendar month from the time of the trans-  
fer and no longer (s. 1). In Dublin the power to transfer is vested in  
one of the police magistrates (s. 2). The transferee is subject to all  
the powers, regulations, proceedings, penalties, and provisions in force  
concerning licensed persons (s. 2; see *MacDonald v. Hughes*, (1902)  
1 K.B. 94). If a licensed person assigns the premises and licence, and  
the transferee gets an authority to trade under the section, and  
subsequently the premises and licence are re-assigned to the original  
licensed person, such licensed person can thereupon carry on the  
trade during the currency of the licence as if no such transfer had  
taken place (*Dumigan v. Walsh*, (1904) 2 I.R. 298, 38 I.L.T.R. 92;  
cf. *R. (Duggan) v. Fermanagh JJ.*, (1909) 2 I.R. 132).

The justices under this section have jurisdiction to refuse the  
transfer, which is really only an authority to trade, without assigning  
any reason (*R. (Cox) v. Recorder of Dublin*, (1885) 16 L.R.I. 434;  
*R. (Duggan) v. Fermanagh JJ.*, *supra*, at p. 158). The application  
can be made *ex parte*, but the usual course is to serve an informal  
notice upon the police. The application can only be made at a time  
when quarter sessions for the district are not being held (s. 1).



Temporary  
transfer of  
publican's  
licence.

Apart from the powers conferred by this section, s. 3 of the Licensing Act of 1872 empowers the heirs, executors, administrators, or assigns of any licensed person, or the trustee of a bankrupt or arranging licensed person, to carry on the trade until the special session (i.e., petty sessions, see Licensing Act, 1872, s. 77) next ensuing, or if the special session be held within fourteen days after the death of the licensed person, or the appointment of his trustee in the case of bankruptcy or arrangement, until the next special session but one (see *Rose v. Frogley*, (1893) 17 Cox 685).<sup>1</sup>

Renewal of  
publican's  
licence.

The holder of an "on" licence, before he can renew same, is obliged to produce to the excise authorities a certificate signed by two or more justices of the peace at the petty sessions of the district in which the applicant resides, or if in Dublin by a divisional justice of the district in which he resides, certifying to the good character of the applicant, and the peaceable and orderly manner in which the house has been conducted for the past year (17 & 18 Vict. c. 89, s. 11). As a rule, the certificate is not to be granted, unless at the annual licensing petty sessions<sup>2</sup>; but the justices may, in their discretion, grant same at sessions other than the annual licensing sessions (Licensing (Ireland) Act, 1874, s. 12; see *R. (Murphy) v. McCarthy*, (1888) 22 L.R.I. 18). It is submitted that even after the expiry of the licensing year there is jurisdiction to grant the renewal certificate, provided the application for same be made within six months from the termination of the licensing year (see definition of "new licence" in section 37 of Licensing (Ireland) Act, 1874, and *R. v. Liverpool JJ.*, (1883) 11 Q.B.D. 638). An objection to the renewal may be made apparently by any person, but can only be made to the good character of the applicant and the peaceable and orderly manner in which the house has been conducted for the past year. It is submitted that the practice of making objection on the ground of structural alterations of the premises is not well founded, unless the alterations be such as to render the premises substantially different from the premises theretofore licensed (see *R. v. Sheffield JJ.*, (1889) 63 J.P. 595; *Stringer v. Huddersfield JJ.*, (1875) 40 J.P. 22, 33 L.T. 568; *R. v. Raffles*, (1876) 1 Q.B.D. 207).<sup>3</sup> Evidence of a general disorderly business is admissible (*Sharpe v. Hughes*, (1893) 57 J.P. 104); even though the facts relied upon have been made the foundation of a charge against the licensed person which has been dismissed (*Latimer v. Birmingham JJ.*, (1896) 60 J.P. 660). Such evidence of disorderly business should usually be confined to the preceding year; but where a statement was made by the solicitor for the applicant that there was only one conviction against the premises, it was held that this statement allowed evidence to be given of previous convictions, though not within the licensing year (*R. (Quinn) v. Tyrone JJ.*, (1908) 2 I.R. 124). The term "character" does not mean disposition, but reputation amongst one's neighbours (*R. v. Rowton*, (1865) 34 L.J.(M.C.) 57; *Leader v. Yell*, (1864) 16

<sup>1</sup> In this case it was held to be no objection that the person carrying on the trade under the protection order was a minor; but the attention of the Court was not called to 7 & 8 Geo. 4, c. 53, s. 20, forbidding the entry of any licensed premises in the name of any person under twenty-one.

<sup>2</sup> As to date of which, see p. 122 n.

<sup>3</sup> See also *R. v. Merioneth JJ.*, (1908) 99 L.T. 89. The dictum of Wright, J., in *R. (Crogan) v. Mayo JJ.*, (1907) 2 I.R. 474, 479, if taken to mean that alterations in the premises, on an application for a renewal certificate, are matters to be considered, must, it is submitted, be limited to the question whether the premises are substantially the same. As to the power to grant a renewal licence to premises reduced in area, see p. 114.

C.B.N.S. 595; *R. (McKenney) v. Antrim JJ.*, (1901) 2 I.R. 133, 167).<sup>1</sup> The justices have no power to grant a renewal unless business has been *bona fide* carried on in the premises during the past year<sup>2</sup> (*R. (Cox) v. Recorder of Dublin*, (1885) 16 L.R.I. 424; *R. (Lambe) v. Armagh JJ.*, (1897) 2 I.R. 57, 30 I.L.T.R. 47; *R. (Morell) v. Antrim JJ.*, (1900) 2 I.R. 492; *R. (Roe) v. Roscommon JJ.*, (1905) 2 I.R. 101, 112, 37 I.L.T.R. 252); though, if the non-carrying on of the business can be explained by real reasons, such as poverty, sickness, death, illness, and there is no intention to abandon the trade, apparently a renewal certificate can be granted (*R. (Lambe) v. Armagh JJ.*, (1897) 2 I.R. 57, at p. 68). There is no decision as to whether, when a change in the ownership of the premises by death, assignment, or otherwise has occurred during the licensing year, a renewal certificate is necessary or can be granted; but it is probable that it cannot, and the practice in Dublin has been in such cases not to entertain or require applications for a renewal certificate. The proper course is for the assignee, &c., to get a temporary transfer at petty sessions which will enable him to carry on the trade until the next quarter sessions, or the next quarter sessions but one, if the first quarter sessions occurs within one month from the date of granting the temporary transfer (18 & 19 Vict. c. 114, s. 1). The applicant for a renewal certificate must make an application in some form or another, e.g. by sending a messenger or applying by letter (*Carman v. St. Margaret's JJ.*, (1900) 64 J.P. 488), but need not attend personally unless required by the justices to do so for some special cause personal to himself (Licensing Ireland) Act, 1874, s. 14). To ground an objection, seven days' previous notice of intention<sup>3</sup> to oppose must be given, stating in general terms the grounds of objection; but if, no notice of objection having been served, objection is made in court, the justices may adjourn the signing of the certificate to a future day, and require the attendance of the applicant; all evidence with respect to the signing of the certificate shall be given on oath in open Court (*ib.*). An order refusing the renewal certificate must state the grounds of refusal (18 & 19 Vict. c. 62, s. 1). The granting of the certificate must be the act of the majority of the Court, and two or more justices forming a minority cannot grant and sign the certificate when the remaining justices form an objecting majority (*R. (Cusack) v. O'Connell*, (1888) 20 L.R.I. 625; see also *R. (McClinchy) v. Greer*, (1904) 2 I.R. 494, 497). No certificate can be granted where the Court is evenly divided (*R. (Moriarty) v. Dublin JJ.*, (1903) 2 I.R. 420, 463). A right of appeal from a refusal of a renewal certificate is given (18 & 19 Vict. c. 62, s. 2; for procedure, see APPEALS TO QUARTER SESSIONS, p. 141). The determination of justices on an application for a licensing certificate cannot be the subject of a case stated (*Re Dillon*, (1859) 11 I.C.L.R. 232).

All original applications for spirit grocers' or beer dealers' or beer retailers' "off" certificates lie exclusively within the jurisdiction of justices at petty sessions, or the divisional justices in Dublin. Spirit grocers' licences and beer dealers' and beer retailers' licences are

Spirit grocers.

<sup>1</sup> Breach of a bargain made with certain objectors so as to get rid of the opposition to the renewal of the licence was held to be evidence that the applicant was not of good character (*R. (Bourke) v. Dublin JJ.*, (1903) 2 I.R. 429).

<sup>2</sup> Cf. *Leeds Corporation v. Ryder*, (1907) A.C. 420; *Wilson v. Crewe JJ.*, (1905) 1 K.B. 491; *Webb v. London JJ.*, (1910) 102 L.T. 70.

<sup>3</sup> Personal service of this notice is not necessary (*Ex parte Portingell*, (1892) 1 Q.B. 15).

Spirit grocers, subject to the provisions of the Licensing Act, 1902, forbidding, generally speaking, the granting of a licence except in respect of premises licensed on the 31st of July, 1902, or at any time since 1st January, 1902.<sup>1</sup>

A spirit grocer's licence, properly called a spirit retailer's off licence, authorizes the sale of spirits for consumption off the premises in quantities not exceeding, at any one time to one person, two gallons, or one dozen reputed quart bottles. The liquor cannot be sold in open vessels (Finance (1909-10) Act, 1910, 10 Ed. 7, c. 8, First Schedule). A person cannot obtain a spirit grocer's licence, whether by way of new licence, transfer, or renewal, without obtaining a certificate of justices at petty sessions, or in Dublin of a divisional justice.

The following table will show the certificates required (Licensing Act, 1872, s. 82; Licensing (Ir.) Act, 1874, s. 9):—

APPLICATION.	CERTIFICATE.
Transfer or new licence where applicant has within the preceding two years had a licence as a spirit grocer or beer retailer.	To the good character of the applicant, the suitability of the premises, and the peaceable and orderly manner in which the applicant has carried on his business during the year next preceding the expiration of his former licence.
Transfer or new licence by applicants other than foregoing.	To the good character of the applicant, and the suitability of the premises.
Renewal.	To the good character of the applicant, and the peaceable and orderly manner in which he has carried on his business during the past year.

The applicant must give twenty-one days' notice in writing, stating his intention to make the application, and setting forth his place of residence and the situation of the premises, and, if the applicant has been previously licensed for the sale of any excisable liquors, the notice must state the place of his former business as such licensee, and the date when he discontinued same. The notice must be served on the district inspector of police of the district where the applicant resides, or, in his absence, on the head constable, or in Dublin on the superintendent of police of the division in which he resides (Licensing Act, 1872, s. 82; Beerhouses (Ireland) Act, 1864, 27 & 28 Vict. c. 35, s. 4). There is no power to grant a certificate unless the notice has been duly served (*R. (Byrne) v. Dublin JJ.*, (1903) 37 I.L.T.R. 250, 4 N.I.J.R. 48). An application in the case of a new licence can only be made at the annual licensing petty sessions<sup>2</sup> (63 & 64 Vict. c. 30, s. 2), in the case of a

<sup>1</sup> See statute, APPENDIX OF STATUTES, and notes of decisions thereon, p. 112, *ante*.

<sup>2</sup> By the Finance (1909-1910) Act, 1910, wholesale dealers' licences expire on 30th June, and retailers' "on" and "off" licences on the 30th September; but where the same person holds both a retailer's "off" licence and a wholesale dealer's licence for the same liquor, the retailer's licence expires 30th June. A difficulty may hence arise as to the date of the renewal sessions. The portion of section 12 of the Licensing (Ir.) Act, 1874, enabling the Lord Lieutenant in Council to fix the times of such sessions has been repealed (S.L.R. (No. 2) Act, 1893, 56 & 57 Vict. c. 54), but, such repeal notwithstanding, the procedure may, perhaps, be still availed of (see, as to effect of repeal by Statute Law Revision Act, observations of Palles, C.B., in *R. v. Dillon & O'Brien*, (1891) 28 L.R.I., at p. 280). Otherwise, an amending Act seems necessary.



transfer, at any petty sessions, and in the case of a renewal usually at the annual licensing petty sessions, though there is jurisdiction, where the justices see fit, to hear renewal applications at petty sessions other than the annual licensing petty sessions (Licensing (Ireland) Act, 1874, s. 12; *R. (Murphy) v. McCarthy*, (1888) 22 L.R.I. 18). In the case of an application for a new licence any resident or owner of property within the parish may object (63 & 64 Vict. c. 30, s. 1), as well as the police authorities (27 & 28 Vict. c. 35, s. 5). In other cases the only persons who can object are the district inspector of police, or, in his absence, the head constable, or in Dublin the superintendent of police of the division (27 & 28 Vict. c. 35, s. 5; *R. (McKenney) v. Antrim JJ.*, (1901) 2 I.R. 133, 162). The justices have full discretion to refuse an application for a new licence on any ground whatsoever (63 & 64 Vict. c. 30, s. 1). In other cases the objection must be limited to the matters mentioned in the certificate. The necessities or circumstances of the surrounding neighbourhood are not matters that may be considered in considering the question of the suitability of the premises (*R. (Marshall) v. Tyrone JJ.*, (1895) 2 I.R. 174, 28 I.L.T.R. 133). The applicant must reside within the district (*R. (Gilbey) v. Fermanagh JJ.*, (1897) 2 I.R. 559, 31 I.L.T.R. 133). An appeal lies either from a grant or a refusal of the certificate (Licensing Act, 1872, s. 82, Beerhouses (Ireland) Act (1864) s. 13).<sup>1</sup> As to procedure, see p. 142, *post*.

There is no provision in the case of "off" licences, enabling a temporary authority to trade, to be granted, so as to give an artificial prolongation to the existence of the licence; and hence difficulties occur. If the licensee dies at an awkward date—e.g. less than twenty-one days from the 10th October, to use the date applicable in the pre-Budget calendar, as being the most familiar—what is to happen? No renewal can be granted, as a renewal to a dead person is a mere nullity (*Cowles v. Gale*, (1871) L.R. 7 Ch. 12). No transfer can be granted before the 10th October, because twenty-one days' notice cannot be served. The licence dies (again speaking of the old calendar at midnight on the 10th October. Is the application, which the licensee's widow and executrix must make, to be hung up, as an application for a "new" licence within 63 & 64 Vict. c. 30, until the 10th October the following year, the premises being meanwhile shut? It is conceived that s. 37 of the Licensing (Ir.) Act, 1874, defining a "new licence," a "new excise licence," and a "new wholesale beer dealer's licence," to mean such licences "granted in respect of premises in respect of which a similar licence has not theretofore been granted, or, if granted, has been annulled or has not been in force during the preceding six months," may be called in aid, and that there is jurisdiction, in the instance given, to grant a licence to the widow and executrix if she applies within six months from the expiry of the former licence.

With regard to beer dealers' and beer retailers' licences, the certificate of two justices, or in Dublin of a divisional justice, is required. A beer dealer's licence authorizes the sale of beer at any one time to any one person, for off consumption, in quantities not

Beer dealers  
and beer  
retailers.

<sup>1</sup> An order of refusal must specify the grounds (Licensing Act, 1872, s. 82; Beerhouses (Ir.) Act, 1864, s. 13; Licences (Ir.) Act, 1855, s. 1).

<sup>2</sup> A brewer of beer is entitled, notwithstanding the Licensing (Ir.) Act, 1874, ss. 8, 37, to the wholesale beer dealers' licence without any justices' certificate, even in respect of premises other than his brewery premises (*R. (Cottingham) v. Cork JJ.*, (1906) 2 I.R. 415).

Beer dealers  
and beer  
retailers.

less than four and a half gallons, or two dozen reputed quart bottles (Finance (1909-10) Act, 1910, 10 Ed. 7, c. 8, First Schedule). A beer retailer's off licence authorizes the sale by retail at any one time to one person of beer for consumption off the premises in any quantity not exceeding four and a half gallons, or two dozen reputed quart bottles (Finance (1909-10) Act, 1910, 10 Ed. 7, c. 8, First Schedule). The following table<sup>1</sup> will show the certificates required in the case of either a beer dealer or beer retailer (Beer Houses Act, 1864, s. 3; Beer Licences Regulations Act, 1877, s. 2; Beer Retailers' and Spirit Grocers' Licences Act, 1900, Licensing (Ir.) 1874, ss. 8, 37):—

APPLICATION.	CERTIFICATE.
New licence, . . . .	To the good character of the applicant, the suitability of the premises, that they are rated, if in a city or town of a population exceeding 10,000, at £15 or upwards, if elsewhere at £8 or upwards, and that they have been in exclusive occupation of the applicant for three months prior to the certificate.
Transfer, . . . .	To the good character of the applicant, the rating of the premises (as above), and, if the transfer arise otherwise than upon the death or removal of the person in occupation immediately prior to the transfer, exclusive occupation (as above).
Renewal, . . . .	To the good character of the applicant, the peaceable and orderly conduct of the house during the past year, the rating and exclusive occupation (as above).

The Licensing Act, 1902, applies to beer dealers' and beer retailers' licences.<sup>2</sup>

As regards a new beer retailer's licence, the application can only be made at the annual licensing petty sessions (63 & 64 Vict. c. 30, s. 2), may be refused on any grounds the justices may think proper (*ib.* s. 1), and the class of possible objectors includes not only the district inspector of police, or in his absence the head constable (27 & 28 Vict. c. 35, s. 5), but also any resident or owner of property in the parish (63 & 64 Vict. c. 30, s. 1). As regards other applications for a beer retailer's licence, and as regards all applications for beer dealer's licence (to neither of which the 63 & 64 Vict. c. 30 applies), the application may be made at any time, the grounds of objection are limited to the matters required in the appropriate certificate, and the district inspector or head constable is the only competent objector.<sup>3</sup> The procedure and right of appeal are the same as in case of spirit grocers (see p. 123, *ante.* and p. 142, *post.*).

Referring to the valuation, the premises must be actually valued at the time the application is made, and a provisional valuation is not sufficient (*R. (Morris) v. Derry JJ.*, (1900) 1 N.I.J.R. 66).

<sup>1</sup> A certificate as to the rating of the premises is required in the case of a beer dealer as well as of a beer retailer (see *R. (Morris) v. Derry JJ.*, (1900) 1 N.I.J.R. 66).

<sup>2</sup> See the statute, APPENDIX OF STATUTES, and notes thereon, p. 112, *ante.*

<sup>3</sup> The order must state grounds of refusal (Beerhouses (Ir.) Act, 1864, s. 13; Licensing (Ir.) Act, 1855, s. 1).

By the Refreshment Houses (Ireland) Act, 1860 (23 & 24 Vict. c. 107), the justices at petty sessions have power to object of their own motion to the granting of a new wine "on" licence for any of the reasons mentioned in section 13 of the Act, and to the renewal or transfer of an existing licence under section 17, and under s. 14 have power, upon objection made by the police, to forbid the issue of a new licence. If the justices so object or forbid the licence, it cannot be issued unless the applicant is successful (s. 16) in the appeal to quarter sessions provided by section 15.

Wine licences.

An occasional licence is a licence granted by the Inland Revenue authorities to an already licensed person, authorizing him to sell, at a place other than his licensed premises, the like articles which he is already licensed to sell upon his licensed premises (25 & 26 Vict. c. 22, s. 13). Such licence may be granted for the sale of beer only (Finance (1909-10) Act, 1910, 10 Ed. 7, c. 8, First Schedule).

Occasional licences.

Any justice, usually acting at petty sessions for the petty sessions division in which the proposed place of sale is situate, may, whether sitting at petty sessions or not, sign a consent upon which the applicant may obtain an occasional licence (25 & 26 Vict. c. 22, s. 13; 26 & 27 Vict. c. 33, s. 20).<sup>1</sup>

An exemption order authorizes a licensed person to sell upon his licensed premises intoxicating liquor at times prohibited by law;<sup>2</sup> but an exemption order cannot be granted so as to authorize the sale of liquor between one and two o'clock in the morning. The order is granted where it is necessary or desirable for the accommodation of any considerable number of persons attending any public market or fair or following any lawful trade or calling. In Dublin the exemption order is granted by the chief commissioner or assistant commissioner of police, elsewhere by two or more justices at petty sessions (Licensing (Ir.) Act, 1874, 37 & 38 Vict. c. 69, s. 11). Unless the order is expressly limited to certain classes of persons, the licensed person can sell to any member of the public under it, but the justices, if they so desire, can so limit the operation of the order (*Gamble v. Green*, (1910) 44 I.L.T.R. 14). *Seem*, the jurisdiction to make the order should appear by a proper recital that the justices deem it necessary or desirable for the accommodation of any considerable number of persons attending any public market or fair, or following any lawful trade or calling (*ib.*). The justices, under colour of compliance with the section, cannot make a wholesale order extending the time for keeping open practically all the licensed premises in the district (*R. v. Johnson*, (1905) 2 K.B. 59). The words "following any lawful trade or calling" were intended to refer to some special calling, such as that of night-porters at a railway station, and the jurisdiction was intended to be confined to some particular public-house in the immediate vicinity of the place where the persons following that special calling worked (*ib.*, per Lord Alverstone, C.J., at p. 64). A notice of the exemption order, in the prescribed form, must be kept affixed to the premises, under a penalty not exceeding £5 (Licensing

Exemption order.

<sup>1</sup> The hours during which such occasional licence shall authorize sale are from such hour not earlier than sunrise to such hour not later than 10 o'clock at night as are specified in the consent (26 & 27 Vict. c. 33, s. 20 (2); 37 & 38 Vict. c. 69, s. 5). Exceptions to this limitation are allowed when specified in the consent, on the occasion of public dances or balls (26 & 27 Vict. c. 33, s. 20).

<sup>2</sup> Including, it is submitted, times during which sale is prohibited under the Licensing (Ir.) Acts, on Sunday, Christmas Day, and Good Friday.



(Ir.) Act, 1874, s. 11). The commissioner or justices may withdraw the exemption order or alter the same by way of extension or restriction, as he or they may deem fit (*ib.*).

Exemption  
order to  
Dublin hotels  
and  
restaurants.

By the Hotels and Restaurants (Dublin) Act, 1910 (10 Ed. 7 and 1 Geo. 5, c. 33, if the holder of a licence for any hotel or restaurant within the police district of Dublin metropolis applies to a divisional justice for that district for an order exempting him on any special occasion from the provisions of the Licensing Acts relating to the closing of premises, it shall be lawful for the divisional justice, if he in his discretion thinks fit so to do, to grant the applicant such an order, upon such conditions as he thinks proper, exempting him during the hours and on the special occasion to be specified in the order, and the holder of any such licence to whom an order has been granted under the Act shall not, if and so long as he complies with the conditions upon which the order has been granted, be subject to any penalty for the contravention of the provisions of the Licensing Acts<sup>1</sup> relating to the closing of premises during the time to which the order extends, but he shall not be exempted by any such order from any penalty to which he may be subject by any other provisions of those Acts or by any other Act (s. 2 (1)). An order granted with respect to any Saturday shall not extend beyond twelve o'clock on Saturday night (s. 2 (2)). An order shall not be granted under the Act unless the applicant has, not less than twenty-four hours before making the application, served upon the superintendent of police for the division in which the hotel or restaurant is situated, a notice of his intention to apply for the order, setting out his name and address, and the place, occasion, and time for which the order is sought (s. 3). Section 64 of the Licensing Act, 1872, which relates to the production of licences and penalties for non-production, applies to orders granted under the Act (s. 2 (3)).

Registration of  
clubs.  
Procedure.

The Registration of Clubs (Ireland) Act, 1904, 4 Ed. 7 c. 9,<sup>2</sup> makes provision for the registration of clubs in which excisable liquors are sold. The register is to be kept by the registrar, that is, the petty sessions clerk, or in Dublin the principal clerk at each police court. The application for registration is made by the secretary of the club lodging with the registrar for the petty sessions district in which the club is situate an application signed by the chairman or secretary, stating the name and object of the club, and the address of the premises occupied by the club, and publishing a notice of the application once in a daily newspaper circulating in the locality. The application is to be accompanied by (1) two copies of the rules, (2) a list of the names and addresses of the officials and committee of management, and the names of the members, and (3) a certificate to be signed by two justices that the club is conducted as a *bona fide* club, and not mainly for the supply of liquors; this certificate to be signed, (a) where the premises are situate in the county borough of Dublin by two justices of the peace for the county borough, and where the premises are situate in the Dublin metropolitan police district not within the county borough, by two justices of the peace for the county Dublin, or, if the premises are situate elsewhere in Ireland, by two justices of the peace sitting in petty sessions for the

<sup>1</sup> Which mean the Licensing (Ireland) Acts, 1833 to 1905, and the Intoxicating Liquors (Ireland) Act, 1906 (s. 3).

<sup>2</sup> See APPENDIX OF STATUTES.

district where the premises are situate, and also (b) where the premises are not owned by the club, by the owner of the premises, or where the owner is under any legal disability, by his legal representative (s. 2). Such certificate shall not be signed by a divisional justice; and any justice who has signed such a certificate is debarred from adjudicating on the application (s. 11).<sup>1</sup> In the case of a renewal the same procedure is required; the application to be made not later than twenty-one days prior to expiry of certificate; and on every application a fee of five shillings is payable to the registrar (s. 2). In case of failure or neglect to apply for renewal within due time, the renewal shall not be granted unless the failure is due to inadvertence. The registrar gives notice of the application, if in Dublin to the superintendent of police of the district, and elsewhere to the district inspector of the Royal Irish constabulary; and, if no objection is taken, the court, if satisfied that the application has been duly made and that the rules of the club are in conformity with the provisions of the Act, shall grant the application (s. 3 (1)). The superintendent of police or the district inspector of the Royal Irish constabulary or any person resident in the parish in which the club premises are situate may lodge objections to the grant or renewal of the certificate on any of the grounds specified in the Act, the objections to be lodged by the objectors with the registrar within ten days of the receipt or publication of the notice of application, and at the same time a copy of the objections shall be sent by them to the secretary of the club. The Court (meaning a court of summary jurisdiction, and, outside Dublin, two or more justices sitting in petty sessions in the district where the premises are situated (s. 13)) shall, as soon as may be, hear the application, may order such inquiries as it thinks fit, and thereafter shall grant or refuse the application (s. 3 (3)). The certificate of registration, if granted, remains in force for twelve months from the date of issue (*ib.*). The Court has power to order costs to be paid by the unsuccessful party (s. 3 (4)). In order to satisfy the requirements of the statute, the rules of the club shall provide certain matters set forth in section 4. The grounds of objection to the registration are set forth in section 5, and are as follows:—(a) The character of the chairman or secretary or of any official or member of the committee of management or governing body; (b) the suitability of the premises; (c) that the application, or the rules, or any of them, are, in any respect specified in such objection, not in conformity with the provisions of the Act; (d) that the club has ceased to exist, or that the number of members is less than 25; (e) that the club is not conducted in good faith as a club, or that it is kept or habitually used for any unlawful purpose, or mainly for the supply of excisable liquor; (f) that there is frequent drunkenness on the club premises, or that persons in a state of intoxication are frequently seen to leave the club premises, or that the club is conducted in a disorderly manner; (g) that illegal sales of excisable liquor have taken place on the club premises; (h) that persons who are not members are habitually admitted to the club merely for the purpose of obtaining excisable liquor; (i) that the club occupies premises in respect of

Registration  
of clubs.  
*Procedure.*

*Objections.*

*Grounds of  
objection.*

<sup>1</sup> A justice is also debarred from adjudicating on an application or complaint affecting a club of which he is a member (s. 11 (3)).

Registration  
of clubs.  
Grounds of  
objection.

which, within twelve months next preceding the formation of the club, a licence for the sale of excisable liquor has been forfeited, or a certificate under the Licensing (Ireland) Acts, 1833 to 1900, in respect of the renewal of any such licence has been refused,<sup>1</sup> or in respect of which an order has been made that they shall not be used for the purposes of a club; (j) that the supply of excisable liquor to the club is not under the control of the members or the committee appointed by the members; (k) that any of the rules of the club are habitually broken; (l) that the rules have been so changed as not to be in conformity with the provisions of section 4.

Search  
warrant.

The Act gives power to a justice of the peace or divisional justice, if satisfied by information on oath that there is reasonable ground to believe that a registered club is so carried on as to constitute a ground of objection to the renewal of its certificate, or that an offence under the Act has been or is being committed, or that any excisable liquor is sold or supplied or kept for sale or supply, to grant a search warrant to a constable or constables to search and inspect the club, and take the names and addresses of the persons found therein and to seize books and papers (s. 6). Power is given to the court upon summary complaint by or at the instance of a competent objector, or in case of conviction, to cancel the certificate of registration (s. 9). Penalties are provided for supplying liquor in an unregistered club (s. 7), for supplying liquor for consumption outside the registered club (s. 8), and for offences by the officials (s. 10), and for making a false application (s. 12). If on a summary complaint being made, the court grants a summons, the summons shall be served on the secretary and on such other person, if any, as the court may direct (s. 11).

Cancelling  
registration.  
Penalties.

Appeal.

The decision of the court in dealing with an application for an original certificate, or the renewal of a certificate, or in cancelling a certificate, shall be subject to appeal in manner provided by the Summary Jurisdiction Acts as if it was an order subject to appeal under these Acts (s. 11).

Effect of  
registration.

The registration of a club under the Act shall not constitute the club licensed premises or authorize any sale of liquor which would otherwise be illegal (s. 1 (2)).

Duty on  
purchases in  
club.

It shall be the duty of the secretary of every registered club to deliver to the Commissioners of Inland Revenue in the month of January in every year, or within such further time as the Commissioners may in any case allow, a statement of the purchases during the preceding calendar year of intoxicating liquor to be supplied in or to the club or on behalf of the club to the members thereof, in such form and containing such particulars as may be prescribed by the Commissioners, and every such statement shall be charged with an excise duty of sixpence for every pound of the purchases shown in the statement (Finance (1909-10) Act, 1910, 10 Ed. 7, c. 8, s. 48 (1)). If the secretary of a club fails to deliver such statement after a notice in writing from the Commissioners requiring him so to do has been served on him, either by leaving it at the club premises or by sending it to him by post addressed to the club, he shall be

<sup>1</sup> The date of such refusal is the date of the original refusal, even though the premises, by reason of a pending appeal, etc., are kept open some time subsequent (see *Plaistow Working Men's Club v. Harrod*, (1910) 26 T.L.R. 216).



liable on summary conviction to a fine not exceeding £20, and in the case of a subsequent offence to imprisonment with or without hard labour for a term not exceeding one month, or to a fine not exceeding £50, or to both; and, if he knowingly delivers a statement which is in any material particular untrue, he shall be liable on summary conviction to imprisonment with or without hard labour for a term not exceeding three months, or to a fine not exceeding £50, or to both imprisonment and fine (*ib.*, s. 48 (2)).<sup>1</sup> Duties in arrear may be levied by distress as prescribed (s. 48 (3)). If any duty payable under the section remains unpaid after the first day of March in any year, or if the secretary of a club fails in any year to deliver a statement as required by the section, the supply of any intoxicating liquor in the club shall, so long as the duty remains unpaid, or the failure continues, as the case may be, be deemed to be a sale of intoxicating liquor without a licence (s. 48 (4)).

Duty on purchases in club.

As to hawkers' and game dealers' licences, see CATALOGUE OF OFFENCES. (game and hawkers' licences. Cinematograph licences.)

The county council may, if they think fit, delegate to justices in petty sessions any of the powers (including licensing) conferred on the council by the Cinematograph Act, 1909, 9 Ed. 7, c. 30 (s. 9); see CATALOGUE OF SUMMARY OFFENCES.

<sup>1</sup> See also s. 94, which provides that any person knowingly making any false statement or representation in any return made with reference to duty under the Act shall be liable on summary conviction to imprisonment with hard labour not exceeding six months.

## CHAPTER X.

### APPEAL TO QUARTER SESSIONS.

	PAGE		PAGE
Statutes governing appeals, . . .	130	Appeal under Petty Sessions Act—	
When appeal under P. S. Act applies—		Execution of warrant, . . .	138
(1) Statutes passed before 1851, . .	130	Mandamus to compel hearing of	
(2) Statutes passed since 1851, . .	131	appeal, . . .	138
Appeal under Petty Sessions Act—		Record of order, . . .	138
Right of appeal, . . .	132	Appeals under Fines Act, . . .	138
Procedure, pp. 133-135; notice,		Case stated from quarter sessions, .	139
p. 133; recognizance, p. 134;		Appeals under Summary Jurisdiction	
Form H, p. 135; notice of		Act, . . .	139
intention to prosecute, p. 135;		Appeals under the Excise Acts, . .	139
transmission of documents by		Appeal from refusal to renew publi-	
petty sessions clerk, . . .	135	can's licence, . . .	141
Power of Court on appeal, . . .	136	Appeal from grant or refusal of beer	
Even division of justices, . . .	137	retailer's and beer dealer's	
Abandonment of appeal, . . .	137	licences, . . .	142
Death of respondent, . . .	137	Appeal from grant or refusal of	
Stay of execution pending appeal,	137	spirit grocer's licence, . . .	143
Justices in original hearing can-		Appeals under the Small Debts Act, .	143
not adjudicate, . . .	137	Special appeals under various statutes,	143
Return of proceedings to p. s., . .	137	Certiorari not granted pending appeal,	143

Statutes  
governing  
appeals.

No right of appeal exists unless when expressly conferred by statute. There is, for instance, no right of appeal against a fine imposed by a coroner (*R. (Redmond) v. Armagh JJ.*, (1895) 30 I.L.T.R. 17).

When appeal  
given by  
Petty Sessions  
Act applies.

The Petty Sessions (Ireland) Act, 1851, 14 & 15 Vict. c. 93, and the Fines Act (Ireland), 1851, 14 & 15 Vict. c. 90, contain general provisions as to appeal in cases of summary jurisdiction.

The applicability of the general appeal provisions of the Petty Sessions Act is not such an easy question as might be at first supposed.

Statutes  
passed before  
1851.

The opinion generally, and, it is submitted, rightly, held, is that, so far as regards statutes passed before the Petty Sessions Act, 1851,<sup>1</sup> the right of appeal and the procedure thereunder are governed exclusively by the Petty Sessions Act, whether the pre-1851 statute itself expressly dealt with appeal or not.<sup>2</sup> Appeals under the Fishery Acts, therefore, would seem to be regulated by the Petty Sessions Act; and no appeal from a conviction will lie unless where the fine exceeds twenty shillings.<sup>3</sup>

As regards statutes specially excepted from the operation of the Petty Sessions Act (as to which see p. 41, *ante*), the particular statute must be looked to (see *infra*).

<sup>1</sup> Which came into force on the 1st November, 1851 (see s. 26).

<sup>2</sup> In support of this view, reference should be made to Hardcastle, 4th ed., pp. 302-305, *R. (Jones) v. Barry*, (1888) Judgments of the Superior Courts, 202, 23 I.L.L.T.R. 28 (note also the words "but in no other case" in s. 24 of the Petty Sessions Act).

<sup>3</sup> The later County Officers and Courts (Ir.) Act, 1877, 40 & 41 Vict. c. 56, s. 72, gives also an express right of appeal from a dismissal. The Fisheries (Ir.) Act, 1850 (13 & 14 Vict. c. 88), s. 51, gives a right of appeal to assizes from offences in relation to fixed nets, and it has been held in the county court that such right is impliedly repealed (*Hosford v. McAuliffe*, (1884) 29 I.L.T.R. 31), but this is very doubtful (see *Hosford v. Devine*, (1898) 2 I.R. 28; see also CATALOGUE OF SUMMARY OFFENCES, "FISHERIES").

Statutes passed since 1851 may be divided into three classes:—

(A) Statutes containing themselves an express special right and a special procedure. Such right and procedure are unaffected by the Petty Sessions Act (*R. (McGrath) v. Wicklow JJ.*, (1901) 2 I.R. 130; *R. (Lyster) v. Queen's Co. JJ.*, (1901) 2 I.R. 132 n.). The Licensing Acts and the Public Health Acts are instances of this class; and such special right of appeal will be noted in the CATALOGUE OF SUMMARY OFFENCES.

When appeal given by Petty Sessions Act applies.

Statutes passed since 1851.

(B) Statutes enacting that penalties shall be recoverable under, and appeals regulated by, the Summary Jurisdiction Acts.<sup>1</sup> In this class<sup>2</sup> no difficulty arises, as the right and procedure are governed by the Petty Sessions Act.

(C) Statutes which either (1) merely enact that the penalties shall be recoverable<sup>3</sup> on summary conviction, without expressly incorporating the Summary Jurisdiction Acts, or saying anything about appeal<sup>4</sup>; or (2) enact that penalties shall be recovered in manner provided by the Summary Jurisdiction Acts, and are silent as to appeal.<sup>5</sup> The general rule is, that an appeal does not lie unless expressly given, and cannot be extended by an equitable construction to cases not distinctly enumerated (*R. v. Surrey JJ.*, (1788) 2 T.R. 504; *R. v. Hanson*, (1821) 4 B. & Ald. 521; *R. v. Stock*, (1838) 8 A. & E. 405; *Steer v. Bennett*, (1903) 67 J.P. 112; *Davy v. Bennett*, (1905) 79 J.P. 200; *R. v. Otto Monstead*, (1906) 2 K.B. 456).

The case of *R. (Hegarty) v. Dublin JJ.*, (1899) 2 I.R. 310, goes some way to support an argument that in cases within class (C) no appeal lies. The defendant in that case was convicted, before a Dublin divisional justice, under section 1 of the Prevention of Cruelty to Children Act, 1894 (57 & 58 Vict. c. 41), of cruelty to children, an offence which, under the section, may be tried "either on indictment or by a court of summary jurisdiction." Section 19 of the same statute provides that a person convicted may appeal "to a court of quarter sessions."<sup>6</sup> The Act provides no procedure as to appeal, and is silent as to the incorporation of the Dublin Police Acts or the Summary Jurisdiction Acts. It was held that the procedure sections under 1 Vict. c. 25 (the general statute regulating appeals in the Dublin metropolitan police district), including the provision as to the release of an appellant upon his entering into recognizances, were not impliedly applied by the Act of 1894, and that, therefore, the defendant, whose right to appeal, given in express terms by section 19

<sup>1</sup> Meaning in Dublin the Dublin Police Acts, elsewhere the Petty Sessions Act, and all Acts amending the same; see p. 41, *ante*.

<sup>2</sup> Of which the Diseases of Animals Act, 1894, 57 & 58 Vict. c. 57 (see s. 75 (1), (2)), is an example.

<sup>3</sup> Or words to the like effect.

<sup>4</sup> Penalties in such a case are recoverable as provided by the Petty Sessions Act (Fines Act (Ir.), 1874, s. 5). An example of this class is the Locomotives on Highways Act, 1896, 59 & 60 Vict. c. 36.

<sup>5</sup> An example of this class is the Indecent Advertisements Act, 1839, 52 & 53 Vict. c. 18.

<sup>6</sup> This is one of the rare statutes which expressly give a right of appeal, but say nothing as to procedure. Where no procedure is prescribed, reasonable notice must be given (*Re Blues*, (1855) 5 E. & B. 291).



When appeal  
given by  
Petty Sessions  
Act applies.  
*Statutes passed  
since 1851.*

of the Act of 1894 was undoubted, should remain in custody pending the hearing of the appeal. The attention of the court, however, does not seem to have been drawn to the provisions of the Fines Act (Ir.), 1874, s. 5, which see at p. 1061.

On the other hand, the settled practice of allowing appeals in cases within this class, the analogy of *R. v. Unkles*, (1874) I.R. 8 C.L. 50, and the obvious intention, shown in the enactment of section 5 of the Fines Act (Ir.), 1874, of establishing a uniform right and procedure (unless where the particular statute itself furnishes an express right and procedure), are strong arguments the other way, and it is submitted that in cases within class (C) the right and procedure as to appeals would be held to be regulated by the Petty Sessions Act.

Right of  
appeal under  
Petty Sessions  
Act.

The Petty Sessions Act, 1851, s. 24, provides as follows:—

In any case of summary jurisdiction, where an order shall be made by the justices for payment of any penal or other sum exceeding twenty shillings, or for any term of imprisonment exceeding one month, or for the doing of anything at a greater expense than forty shillings, or for the estreating of any recognizance to a greater amount than twenty shillings (but in no other case), either party (whether he shall be the complainant or the defendant<sup>1</sup>) in cases of a civil nature, or the party against whom the order shall have been made in other cases, shall be entitled to appeal to the next quarter sessions to be held in the same division of the county when the order shall have been made by any justice or justices of any petty sessions district (or to the Recorder of any corporate or borough town at his next sessions, when the order shall have been made by any justice or justices of such corporate or borough town) (unless when any such sessions shall commence within seven days from the date of the order, in which case the appeal may be made to the next succeeding sessions of such division or town).

It will be noted that the expression in the section does not authorize an appeal in the case of a fine of twenty shillings exactly, or imprisonment for one month (see *Ex parte Novis*, (1905) 2 K.B. 456). The appeal lies only where the sum adjudged as penalty, exclusive of the costs, exceeds twenty shillings (*R. v. Warwickshire JJ.*, (1856) 6 E. & B. 841; *Ex parte Novis*, *supra*). It is difficult to assign a precise subject-matter to the expression "for the doing of anything at a greater expense than forty shillings." These words seem to refer to a case where an order is made that a party shall himself do something at a greater expense than forty shillings (e.g., a direction to cut a hedge under 14 & 15 Vict. c. 92, s. 9), and not to a case where something is directed or authorized to be done to the property of the party, e.g., the forfeiture of a net under the Fisheries Acts. What would be "at a greater expense than forty shillings" would, it is submitted, be a question of fact for the appeal tribunal. One of several persons aggrieved may appeal without the concurrence of the others (*R. (Gibson) v. Fermanagh JJ.*, (1897) 2 I.R. 603). Where a number of defendants were charged with a joint offence in the same summons, and all of them were convicted and appealed, the fact that the recognizance of one of them was defective was held not to prevent the other defendants from proceeding with the appeal; and the reversal of the order appealed against enured for the benefit of

<sup>1</sup> The section, literally, means that if a complainant in a civil case recovers 21s., he can appeal; if he recovers 19s. or less, or nothing, he cannot. But, *quære*, would the courts construe the section so as to lead to such a manifest absurdity?

all (*R. (Drohan) v. Waterford JJ.*, (1901) 2 I.R. 548). There is no appeal from an order binding to the peace (*Re Hurley*, Q.B.D. (Ir.) 19 Dec., 1888); nor, unless the particular statute so directs, from an order of dismissal (*R. v. London JJ.*, (1890) 25 Q.B.D. 357). A right of appeal is given in respect of any order for payment of any penal sum exceeding forty shillings by the Fines Act (Ireland), 14 & 15 Vict. c. 90, s. 9. As to the application thereof and procedure thereunder, see *post*, p. 138.

The appeal is to the next quarter sessions in the division unless such sessions commence within seven days from the date of the order appealed against, in which event the appeal may<sup>1</sup> be to the next sessions but one (Petty Sessions Act, 14 & 15 Vict. c. 93, s. 24). Where there are several quarter sessions towns in the same civil bill division, the appeal must be taken to the town at which are held the first quarter sessions after the expiration of seven days (*R. (Sands) v. Armagh JJ.*, (1895) 2 I.R. 503). Where the petty sessions district is partly within one quarter sessions division and partly within another quarter sessions division of the same county, the appeal should be taken to the court of quarter sessions of the division in which the hearing before the justices took place, although the offence be charged to have taken place in the other division (*R. (Conway) v. Tyrone JJ.*, (1906) 2 I.R. 164, 39 I.L.T.R. 225, 5 N.I.J.R. 211). In selecting the forum of appeal in such a case, the determining factor is not where the offence was committed, but where it was tried at petty sessions (*ib.*, *per* Gibson, J., at p. 171).

Procedure  
under Petty  
Sessions Act.

The procedure is regulated by section 24 of the Petty Sessions Act, 1851, as amended by the County Officers and Courts (Ireland) Act, 1877, 40 & 41 Vict. c. 56, s. 72, and is as follows :—

(a) The appellant must serve notice in writing of his intention to appeal, upon the clerk of petty sessions<sup>2</sup> within three days<sup>3</sup> from the date of the order appealed against. Notice of  
appeal.

Where the right of appeal is given by statute to a party aggrieved, it should be stated in the notice of appeal that the appellant is such a party (*R. v. Yorkshire JJ.*, (1828) 7 B. & C. 678; *R. v. Somerset JJ.*,

<sup>1</sup> In such a case the effect of s. 24 (5), rendering necessary a seven clear days' notice of intention to prosecute the appeal, is to remit the appeal to the next sessions but one.

<sup>2</sup> This notice need not be served on the justices or opposite party. The clerk of petty sessions, in offence cases, serves the notice on the complainant (21 & 22 Vict. c. 100, s. 8 (6)). The statute contains no provision as to signature of the notice, and it is submitted that signature is not necessary. If signature is necessary, it is submitted that any person authorized, expressly or impliedly, by the appellant can sign (see *R. v. Middlesex JJ.*, (1850) 1 L. M. & P. 621; *R. v. Kent JJ.*, (1873) L.R. 8 Q.B. 305; *Browne v. Kinsella*, (1889) 24 L.R.I. 99; *R. (Murphy) v. Donegal JJ.*, (1896) 30 I.L.T.R. 6). The following is, it is suggested, a sufficient notice :—

County of . . .  
Petty Sessions District of . . .  
Between A.B., Complainant.  
and C.D., Defendant.

Take Notice that it is my intention to appeal from the order made by the justices on the hearing of the above matter on the . . . day of . . . , 19 . . . , in which I was defendant (or, in civil cases, complainant, as the case may be), to the next quarter sessions to be held at . . . in said county.

Dated this . . . day of . . . , 19 . . .

Signed

C. D. [or E. F., solicitor for the said C. D.].

To E. F., clerk of the petty sessions aforesaid.

<sup>3</sup> As to when the last day falls on Sunday, see CATALOGUE OF SUMMARY OFFENCES.  
“SUNDAY.”

Procedure  
under Petty  
Sessions Act.

(1828) *ib.* 681 : *R. v. Dublin Recorder*, (1843) 6 I.L.R. 440 : see also *R. v. Bond*, (1837) 6 A. & E. 905. A complainant is not a party aggrieved (*R. Kane v. Tyrone J.J.*, (1906) 40 I.L.T.R. 81).

Recognizance.

(b) Within three days after such notice the appellant must enter into a recognizance,<sup>1</sup> according to the form (C in the schedule to the Act, with two solvent sureties conditioned to prosecute the appeal, and to abide and perform the judgment and order of the court of appeal thereon, and to pay such costs as may be awarded by the said court (and, in the case of an order to imprison, not to abscond pending the execution of the original order or of the judgment or order of the Court of Appeal).<sup>2</sup> The amount of the recognizance is to be double the amount of the sum and costs ordered to be paid where payment only is ordered, or of such reasonable amount as the justices shall see fit, where imprisonment is ordered. By the Civil Bills Court Procedure Amendment Act (Ir.), 1864 (27 & 28 Vict. c. 99, s. 50), it is provided :—

Where any recognizance or recognizances, which shall have been entered into within the time by law required, before any justice or justices, for the purpose of complying with any such condition of appeal, shall appear to the court before which such appeal is brought to have been insufficiently entered into, or to be otherwise defective or invalid, it shall be lawful for the court, if it shall so think fit, to permit the substitution of a new and sufficient recognizance, or new and sufficient recognizances, to be entered into before such court, in the place of such insufficient, defective, or invalid recognizance or recognizances, and for that purpose to allow such time, and make such examination, and impose such terms as to payment of costs to the respondent or respondents, as to such court shall appear just and reasonable, and such substituted recognizance or recognizances shall be as valid and effectual to all intents and purposes as if the same had been duly entered into at any earlier time or times as required by any Act or Acts now in force.

An infant generally finds security by his friend ; but in *Ex parte Williams*, (1824) 13 Price 673, it was held that infancy was not a ground for discharging a forfeited recognizance, from which it would appear that an infant can enter into a valid recognizance. A married woman can apparently enter into a recognizance (Russell, 7th ed., 219 (Z) ; but see remarks of Palles, C.B., in *R. v. Antrim J.J.*, (1906) 2 I.R. 328). It seems doubtful whether a corporate body can enter into a recognizance (*Cortis v. Kent Waterworks Co.*, (1827) 7 B. & C. 331 ; *per* Palles, C.B., in *R. v. Antrim J.J.*, *supra*). The practice in England is to allow such bodies to enter into recognizances by one member of the corporation, who must, however, have been previously authorized to do so (see Short and Mellor, 2nd ed. 27 ; *Southern Counties Deposit Bank v. Boaler*, (1895) 11 T.L.R. 568) ; but in *R. v. Antrim J.J.* (*supra*), Palles, C.B., expressed the opinion that provisions as to recognizances are not applicable to an appeal by a body corporate, on the principle that *lex non cogit impossibilia* ; and it has been said that the practice of allowing the corporation to enter into recognizance through a member or officer is merely an evasion of

<sup>1</sup> It has been held in England, where 42 & 43 Vict. c. 49, s. 31, provides for the recognizances being entered into before a court of summary jurisdiction, that the recognizance may be entered into before any court of summary jurisdiction, whether acting for the same county as the court from whose order the appeal is brought or not (*R. v. Durham J.J.*, (1895) 1 Q.B. 801).

<sup>2</sup> The condition in brackets is added by 40 & 41 Vict. c. 56, s. 72.



the enactments requiring the recognizance (*R. v. Manchester*, (1857) 7 E. & B. 459).

Procedure  
under Petty  
Sessions Act.

Where the appellant is legally competent to enter into the recognizance himself, it seems no one else can do so on his behalf (*R. (Drohan) v. Waterford JJ.*, (1901), 2 I.R. 559, 33 I.L.T.R. 168).

(c) Thereupon the appellant shall be entitled to receive the form of appeal (Form H) containing a certificate of the order appealed from, signed by the justice who shall have made the same, or by any other justice of the same petty sessions, and it shall also be therein certified by the clerk of petty sessions that the notice was duly given, and the recognizance was duly entered into if the fact shall be so.

Form H.

(d) The appellant must give notice in writing to the opposite party of his intention to prosecute the appeal, at least seven clear days before the commencement of the sessions in which the appeal is made.<sup>1</sup> This notice requires no stamp (*R. (Coughlan) v. Cork JJ.*, (1892), 30 L.R.I. 679, 27 I.L.T.R. 8). Service of this notice on the solicitor who appeared at petty sessions for the opposite party is not sufficient (*R. (Hamilton) v. Leitrim JJ.*, (1900) 2 I.R. 397; *R. v. Oxfordshire JJ.*, (1893) 2 Q.B. 149), at all events in the absence of express authority to accept service (see *R. (Campbell) v. Donegal JJ.*, (1890) 24 I.L.T.R. 47), but *semble*, this notice need not be personally served (see judgments of Holmes, J., and Murphy, J., in *R. (Campbell) v. Donegal JJ.*, *supra*).

Notice of in-  
tention to pro-  
secute.

(e) The clerk of petty sessions shall transmit the recognizance and all the proceedings in the case to the clerk of the peace, or proper officer of the Recorder's court,<sup>2</sup> at least seven days before the commencement of the sessions, or as soon afterwards as practicable, in the same manner as informations (s. 24 (4)); and shall also in offence cases cause a notice of the appeal to be duly served upon the complainant, who shall be the respondent in the appeal, the service to be effected in like manner as in the case of a summons; and by the said notice the respondent shall be required to attend with the necessary witnesses on the hearing of such appeal. The stamp duty on such notice, and the expenses of service thereof shall be borne and paid by the appellant. In case any respondent shall upon being served with such notice fail to comply with the exigency thereof, he shall be liable to a fine not exceeding £5, or such greater sum as the appellant may have been adjudged to pay upon such conviction, to be recovered and levied upon a prosecution by the constabulary; but the justices upon the hearing may remit the whole or any part of the

Transmission  
of documents  
by clerk of  
petty sessions.

<sup>1</sup> This notice need not be served on the justices or petty sessions clerk. The following is a form of notice of intention to prosecute the appeal. There is no provision as to signature (see p. 133, n. 2) :—

County of  
Petty Sessions District of

Between A.B., Complainant.

and

C.D., Defendant.

Take Notice that it is my intention to prosecute my appeal herein to the next quarter sessions to be held at in said county.

Dated

C.D.

To A.B., the respondent.

<sup>2</sup> Formerly all convictions, whether appealed from or not, were returnable to quarter sessions (see p. 109), but this is no longer necessary (Petty Sessions Act, 1851, s. 21), except under the Criminal Justice Act, 1855, s. 7 (see p. 109, n. 2, *ante*), or where the procedure indicated above in case of an appeal has been taken.

Procedure  
under Petty  
Sessions Act.

penalty if they shall be of opinion that the respondent had any sufficient excuse for his non-compliance (Petty Sessions Clerk (Ireland) Act, 1858, 21 & 22 Vict. c. 100, s. 8 (6)). The service of an unstamped copy of this notice, provided the original is stamped, is sufficient (*R. (Brennan) v. Armagh JJ.*, (1895) 29 I.L.T.R. 137).

Power of court  
on appeal.

The necessary preliminaries to the appeal having been complied with, the quarter sessions or Recorder may entertain the appeal, and may confirm, vary, or reverse<sup>1</sup> the order made by the justices as so certified in such form of appeal, and may award either party forty shillings for the costs of appeal (Petty Sessions Act, 1851, s. 24 (6)). The Court have also power to adjourn the appeal, or to remit the matter to the justices at the petty sessions where the original order was made, with such declarations or directions as to the court of appeal shall seem proper, and such justices shall have power to determine the matter when so remitted, having regard to such declarations or directions (County Officers and Courts (Ireland) Act, 1877, 40 & 41 Vict. c. 56, s. 72). The county court judge may proceed with the business of the sessions, even though no justice attends (14 & 15 Vict. c. 57, s. 2). The other justices are not bound to follow the opinion of the county court judge on a question of law. (*R. (Kennedy) v. Antrim JJ.*, (1903) 2 I.R. 671). The appeal is a rehearing, and the complainant begins.

The Court has power to vary the original order by increasing the penalty (*Ex parte M'Fadden*, (1888) Judgment of the Superior Courts 165), or, while varying a sentence of imprisonment, to order, on its expiration, that the defendant shall give sureties to keep the peace, or in default be further imprisoned (*Ex parte Harken*, (1889) 24 L.R.I. 427).

An order "that the dismiss on the merits be reversed," and directing the defendant to pay a certain fine and costs, is a good conviction (*R. (Conway) v. Tyrone JJ.*, (1906) 2 I.R. 164, 39 I.L.T.R. 225, 5 N.I.J.R. 211). The complainant appealed to quarter sessions from an order of "dismiss," and at the hearing of the appeal, on the ground that the dismiss (being neither "without prejudice" nor "on the merits") was a mere nullity, applied to have the case struck out, which was done, notwithstanding defendant's protest. The complainant then took out a fresh summons, which the justices refused to hear. The complainant applied for a mandamus, which was refused, on the ground that the first order was not a mere nullity, that it was the subject of appeal, and the quarter sessions had power to entertain the appeal and adjudicate thereon, and that the case came within the rule that the party had another remedy, which he himself abandoned (*R. (Bridges & Ram) v. Armagh JJ.*, (1897) 2 I.R. 236). On the hearing of an appeal, the justices must confine themselves to the charge upon which the conviction was made, and cannot convict upon other charges included in the summons at petty sessions, which were dismissed (*R. v. Gamble*, (1847) 16 M. & W. 384). A. was charged in one summons with several different offences, and was convicted at petty sessions on one charge, the others being dismissed, and an order to that effect was duly entered in the order book. A. appealed, and an erroneous form of certificate (Form H) was made out, which recited the several charges, and stated generally that the defendant was convicted and fined, but containing no statement showing upon what charge, or as

<sup>1</sup> As to whether a merger of the order below takes place, see p. 229.

to the other charges having been dismissed. *Held*, that the order so affirmed was bad upon its face as not showing upon what charge the defendant was convicted, and that the defendant was entitled, upon continuances being entered, to prosecute his appeal (*R. (M'Arde) v. Louth JJ.*, (1904) 2 I.R. 64). The court of quarter sessions has power during its sitting to alter its own judgment or order, and the continuity of the sessions is not broken by the presence or absence of individual justices other than the statutory chairman (*R. (Callaghan) v. Cork JJ.*, (1895) 2 I.R. 350). As to power of amendment, see p. 93 *et seq.*; and as to power of adjournment, see p. 9.

Power of court on appeal.

There is no decision as to what is to happen in the event of an even division of justices. The chairman has no casting vote. It is suggested that an adjournment of the case would be a proper order; but, unless a majority of justices concur in adjourning, there can be no adjournment, and in that event it seems that the appeal fails, and the original order can be enforced (see *R. v. Belton*, (1848) 11 Q.B. 379, 389; *Garten v. Southampton JJ.*, (1893) 9 T.L.R. 430; *R. v. M'Mahon*, (1875) I.R. 9 C.L. 372; judgment of Gibson, J., in *R. (Mulcahy) v. Tipperary JJ.*, (1903) 2 I.R. 112).

Even division of justices.

Whenever any appeal shall not have been duly prosecuted, the clerk of the peace shall so certify upon the recognizances, and return the same to the justices of the petty sessions from which the same shall have been transmitted within seven days after the termination of the sessions, the certificate to be free of charge (Petty Sessions Act, 1851, s. 24 (6)). Costs not exceeding 40s. may be awarded to the person receiving any notice of appeal, although the appeal is not proceeded with (27 & 28 Vict. c. 99, s. 51). When the appeal is called on, and there is no appearance for the appellant, the proper course is to order the appeal to be struck out (*R. (M'Monagle v. Donegal JJ.*, (1905) 2 I.R. 644, 5 N.I.J.R. 36). The appeal does not abate by reason of the death of the respondent (*R. v. Leicestershire JJ.*, (1850) 15 Q.B. 88).

Abandonment of appeal.

The appeal operates as a stay of execution, and on a notice being given and recognizance duly entered into, a defendant, if in custody, is entitled to be liberated, or if a distress has been made, to have same returned (Petty Sessions Act, 1851, s. 23).

Death of respondent

Stay of execution pending appeal.

The justices who took part in the decision appealed from cannot adjudicate upon the appeal (County Officers and Courts Act, 1877, 40 & 41 Vict. c. 56, s. 73). No justice who has taken part in the hearing of a case in which there is an appeal ought, during the appeal, either to go or remain upon the bench, or converse or communicate with any member of the appellate court at all (*per Andrews, J.*, in *Ex parte Clarke*, (1890) 26 L.R.I. 1, at p. 9). Where one of the justices who had adjudicated in the court below took his seat upon the bench, and remained there until the appeal was decided, and was consulted by the county court judge as to the number of justices who took part in the decision appealed from, and their unanimity, but took no other part in the appeal, it was held that the appeal was thereby invalidated (*ib.*).

Justices in original hearing cannot adjudicate.

The clerk of the peace shall certify the decision at the foot of the form of appeal (or, in case of no appearance, shall certify that fact on the recognizance), and shall within seven days (reckoned from the date of the order if appellant appeared, and if he did not appear, from

Return of proceedings to petty sessions.



the date of the termination of the sessions) return the proceedings to the justices from whom the appeal has been brought (Petty Sessions Act, s. 24 (6)).

Execution of  
the warrant.

The necessary warrants of execution may be signed by the justices who made the original order, or by any other justice of the same petty sessions (s. 24 (7)), or by the court which shall have decided the appeal (40 & 41 Vict. c. 56, s. 72). Where a person has served portion of the sentence, he is to be imprisoned only for the remainder of the period (Petty Sessions Act, s. 24 (7)).

Mandamus to  
sessions to  
compel hear-  
ing.

Where the justices at quarter sessions, being wrongly of opinion that the conviction appealed from was bad upon its face, refused to go into the case, marking it "reversed on the ground that the order is bad upon its face," a certiorari was issued to quash the order of quarter sessions, and a mandamus was issued directing quarter sessions to rehear the case (*R. (McGrath) v. Clare JJ.*, (1905) 2 I.R. 510; cf. *R. v. Middlesex JJ.*, (1877) 2 Q.B.D. 516).

Record of  
order.

When the order of sessions has been duly recorded, the King's Bench Division will not entertain the question whether it did or did not represent the opinion of a majority of the justices (*R. v. Middlesex JJ.*, (1877) 2 Q.B.D. 516; see also *R. (Quinn) v. Tyrone JJ.*, (1908) 2 I.R. 124).

Appeals under  
Fines Act  
(14 & 15 Vict.  
c. 90).

It would be difficult to conceive a section more obscure than section 9 of the Fines Act (Ireland), 1851, 14 & 15 Vict. c. 90; and neither the right of appeal nor the procedure is very clear.

It shall be lawful for any person against whom any order shall be made for payment of any such penal sum as aforesaid, by any such court or officer as aforesaid, exceeding the sum of forty shillings, and in cases of fines upon jurors, whatever the amount may be, to appeal for the reduction or remission thereof by petition to the court of assizes which shall be held next after such order shall be made, if the same shall be made at assizes, or to one of the superior courts of law in Dublin at the next term, if the same shall be made by a superior court, or to the court of quarter sessions of the county which shall be held next after such order shall be made, if the same shall have been made at quarter sessions, or to the Recorder of Dublin at his next sessions, if the same shall have been made at any of the divisional police offices of Dublin metropolis, or to the next quarter sessions to be held in the same division of the county where the order shall be made by any justice or justices in any petty sessions district, or to the Recorder of any corporate or borough town, where the order shall be made by any justice or justices in such corporate or borough town (unless when any such sessions shall commence within seven days from the date of any such order, in which case it may be made to the next succeeding sessions to be held for such division or town); and such appeal, when made against any order by the said divisional justices, or by any other justice upon summary conviction, shall be subject in all respects to the provisions of the said Petty Sessions Act, but in every other case it shall be made by petition to the court which shall have power to entertain the appeal, and shall be subject to the provisions following:

[Here follow provisions as to procedure, and the section goes on:]

In every case where an appeal shall be so made, the judges of the said superior courts, judge of assize, assistant barrister, or Recorder, as the case may be, shall and are hereby severally authorized to hear the matter of the said petition, and to make such order thereon for confirming the original order, or for reducing or wholly remitting the fine or other penal sum as may seem fit under all the circumstances of the case (s. 9).

The question arises, does the section give the right to the Appeal Court to reverse the justices' order, and pronounce a dismiss? or is their power limited to a reduction or remission of the fine? This is

a question which, in Dublin, is of particular importance, for the Petty Sessions Act does not apply to Dublin, and the statutes applicable to Dublin give a very limited right of appeal. It is submitted that, having regard to the words "appeal for the reduction or remission thereof," to the wording of the repealed Fines (Ir.) Act, 1843 (6 & 7 Vict. c. 56), to the fact that no appeal is given in respect of a term of imprisonment, and to the fact that the Petty Sessions Act itself (passed upon the same day as the Fines Act) supplies an appeal where the amount ordered to be paid exceeds twenty shillings, the appeal given by the Fines Act is limited to an appeal for the reduction or remission of the penalty, and that no power is given under it to reverse a conviction.

Appeal under  
Fines Act.

In cases, therefore, where payment of a penal sum exceeding forty shillings is ordered, an appeal may be taken, whether the case is or is not within the Petty Sessions Act, under the Fines Act; but such appeal is of the limited character described.

As to the procedure under the section, apparently appeals from orders at petty sessions or by divisional justices are governed by the Petty Sessions Act, the procedure by petition being only applicable in case of appeals from penalties ordered by the Superior Courts, quarter sessions, or upon jurors.

The appeal, under the section, is to the Recorder of a city or borough from the divisional or borough justices, elsewhere to quarter sessions.

The adjudication upon appeal at quarter sessions<sup>1</sup> is not within the Cases Stated Act; and therefore a case cannot be stated pursuant to the provisions of that statute. But the opinion of the Superior Courts upon a question of law can be taken by making up a "speaking order," and having same removed into the King's Bench on certiorari (see p. 237).

Case stated  
from quarter  
sessions.

The Summary Jurisdiction Act (14 & 15 Vict. c. 92), which applies to the Dublin metropolitan police district, provides, by section 23, that where an order shall be made under the provisions of the Act for the payment of any penal or other sum exceeding twenty shillings, or for any term of imprisonment exceeding one month, or for doing anything at a greater expense than twenty shillings, but in no other case, either party (whether he shall be the complainant or defendant in cases of a civil nature, or the person against whom any such order shall have been made in other cases) shall be entitled to appeal, the procedure to be the same as under the Petty Sessions Act. This statute deals with, amongst others, the following matters:—larceny by juvenile offenders, offering unwholesome food for sale, trespass, injuries to and nuisances upon the public highway, road offences, disputes between master and servant, disputes at markets and fairs, impounding and trespass of animals.<sup>2</sup>

Appeals under  
Summary  
Jurisdiction  
Act.

Appeals under the Excise Acts, e.g., in case of an alleged offence against the 6 Geo. 4, c. 84, are regulated by 7 & 8 Geo. 4, c. 53, ss. 82–84, 4 & 5 Wm. 4, c. 51, s. 23, 4 & 5 Vict. c. 20, s. 30, and

Appeals under  
Excise Acts.

<sup>1</sup> Special power is given to state a case under the Excise Acts; see p. 141, *infra*.

<sup>2</sup> The Summary Jurisdiction Act, though an earlier chapter, received the Royal assent on 7th August, 1851, that is on the same day as the Petty Sessions Act and Fines and Penalties Act. Consequently the negative words in s. 24 of the Petty Sessions Act do not affect the appeal provisions of the Summary Jurisdiction Act, 1851.

Appeal under  
Excise Acts.

24 & 25 Vict. c. 91, s. 19. In excise prosecutions an appeal may be taken against either a conviction or a dismiss (7 & 8 Geo. 4, c. 53, s. 82, 24 & 25 Vict. c. 91, s. 19), including a dismiss without prejudice (*Lawless v. M'Aleer*, 1897, 2 I.R. 248; *R. (M'Aleer) v. Tyrone JJ.*, (1897) 31 I.L.T.R. 81). The appeal is to the quarter sessions held next after the expiration of twenty days from the date of the judgment appealed against (4 & 5 Wm. 4, c. 51, s. 23).

Upon every such appeal the court of appeal may examine witnesses on oath, but may not receive evidence not received, or examine witnesses not heard, at original hearing. The court of appeal may reverse or confirm the whole or part of the judgment appealed against, or make a new or different order, and have the same power of mitigation as the court below (7 & 8 Geo. 4, c. 53, s. 84).

Notice in writing must, at and immediately upon the giving of the judgment appealed against, be given to the opposite party and to the justices, and the notice must be lodged with the clerk of the peace (7 & 8 Geo. 4, c. 53, s. 83). The words "immediately upon the giving of the judgment" mean while the Court is still sitting, though the notice would probably not be too late if given on the same day as judgment was pronounced, after an adjournment by the Court; but what the statute requires is, that the appeal shall be notified while the justices are sitting (*Sumner v. Middleton*, (1878) 15 Scot. L.R. 594<sup>1</sup>; see also *R. (Hegarty) v. Dublin JJ.*, (1899) 2 I.R. 310, noted p. 131). But what is a sufficient compliance with the section must depend on the circumstances of each case. In *Lawless v. M'Aleer*, (1897) 2 I.R. 248, the summons was heard on the 15th May, and the notice was served upon the justices on that day. Owing, however, to the respondent having disappeared, and his house being shut up, the prosecutor was unable to serve him, but posted the notice on his house on the 16th May, and lodged the notice the same day with the clerk of the peace. *Held*, sufficient service within the section, Andrews, J., remarking (p. 256) that the words ought to be construed as meaning "with all the expedition reasonably practicable" (see also remarks of Cockburn, C.J., in *R. v. Berkshire JJ.*, (1878) 4 Q.B.D., 469, at p. 471). The service may be personal, or by leaving the notice at the place of abode of the person to be served (*R. v. North Riding JJ.*, (1845) 1 N. S. Cas., 574). In *R. v. Eaves*, (1870) L.R. 5 Ex. 75, it was held that service in court, in the presence of the justices, upon the clerk to the justices was good service upon the justices.

The notice of appeal need not state the grounds of appeal; and, if the appeal is from a dismiss, the appellant need not enter into recognizances or give security, by deposit of money or otherwise (*R. v. Finucane*, (1875) I.R. 9 C.L. 408). A further notice must be given at least seven clear days before the hearing of the appeal, stating the time and place of hearing of the appeal (7 & 8 Geo. 4, c. 53, s. 83; 4 & 5 Vict. c. 20, s. 30); but apparently the notice is good if it merely states "the next quarter sessions," without specifying the date (*R. v. Donegal JJ.*, (1878) Q.B.D. (Ir.), unreported; noted, Highmore's Excise, 2nd ed., p. 67). The proper date to insert in the notice is the day when the sessions commence, and not the day upon which the Crown business is heard (*R. (Sides) v. McGarvey*, (1891) 25 I.L.T.R. 25).

<sup>1</sup> Noted, Highmore's Excise, 2nd ed., pp. 66-68.



The notice of appeal may be given by the excise officer who attends and conducts the proceedings, even though he is not the officer named in the information as informing or exhibiting the same (4 & 5 Wm. 4, c. 51, s. 23) Appeal under  
Excise Acts.

When the judgment appealed from is a conviction, the appellant must, within three days from the date of the judgment, lodge in the hands of the commissioners, collector, or supervisor of excise, the amount of the penalty, or the amount to which the penalty has been mitigated, and any goods ordered to be forfeited must be likewise deposited pending the hearing of the appeal (7 & 8 Geo. 4, c. 53, s. 83).

The justices at quarter sessions may, on an excise appeal, state the facts of any case on appeal for the opinion and direction of the Superior Courts (7 & 8 Geo. 4, c. 53, s. 84).

The justices shall, three days at least before the commencement of the quarter sessions at which the appeal is to be heard, lodge with the clerk of the peace a record of the conviction or acquittal, as the case may be. Every such record shall and lawfully may be in the form in the schedule to the Act, with such variations as may be required by the circumstances of the case (40 Vict. c. 13, s. 10).

An appeal is provided by the Licensing (Ir.) Act, 1855, 18 & 19 Vict. c. 62, in the case of refusal of a publican's licensing certificate.<sup>1</sup> Appeal from  
refusal to  
renew publi-  
can's licensing  
certificate. Section 2 of that statute is as follows:—

In case any person shall feel aggrieved by such order of refusal, it shall be lawful for such person to appeal against the same to the quarter sessions of the division within which such person shall reside, or if in the Dublin metropolitan police district, to the Recorder of the city of Dublin, at the next quarter sessions after such order, but in case there shall not be fifteen clear days between the making of the order and such next quarter sessions, then to the quarter sessions next following in such division or city, as the case may be; and in such appeal the party opposing such application shall be respondent, and no other ground for refusing such certificate shall be entered upon, except such as shall be stated in such order of refusal; and such appeal shall be subject to the like incidents, and be heard and dealt with by the court of quarter sessions or Recorder in like manner,<sup>2</sup> as an appeal from an order of the justices at petty sessions under the "Petty Sessions (Ireland) Act, 1851," save that the recognizance to be entered into shall be in the form to this Act annexed: Provided always, that upon such person having lodged such appeal, and entered into the recognizance, as directed by this Act, the licence affected by such order shall remain in full force and effect, unless and until such court of quarter sessions or Recorder shall confirm the said order of refusal; and such appeal shall not be dismissed upon any point of form: Provided that, notwithstanding anything herein contained, any licence may be withdrawn or annulled under the provisions of any Act or Acts now in force, other than the said first-mentioned Act.

The following is the form of recognizance provided by the statute:—

#### [FORM OF RECOGNIZANCE.]

<sup>1</sup> As to application for such certificate, see p. 120. There is no appeal from a grant of a publican's certificate. But, in the case of a spirit grocer, or a beer dealer, or a beer retailer, an appeal lies from either a grant or refusal of the renewal certificate (see pp. 142, 143, *post*).

<sup>2</sup> See pp. 133–135, *ante*, as to procedure. The notice should apparently state that the appellant is a person aggrieved (see *R. v. Yorkshire JJ.*, (1828) 7 B. & C. 678, and other cases noted, p. 133).

Appeal from  
refusal to  
renew publi-  
can's licensing  
certificate.

## FORM OF RECOGNIZANCE.

A.B., Appellant. } Petty Sessions District of  
C.D., Respondent. } County of or Dublin.

## Metropolitan Police District.

WHEREAS the justices [or, if in the City of Dublin, A.B., divisional justice], on the day of 19 , made an order refusing to grant to the appellant a certificate to entitle him [her] to obtain a renewal of a licence to sell beer, cider, or spirituous liquors (*as the case may be*), upon the grounds that [*state grounds mentioned in the order*]. The undersigned principal party to this recognizance hereby binds himself [herself] to perform the following obligation, that is to say, to prosecute his [her] appeal at the quarter sessions to be held at , and to pay such costs as the assistant barrister (chairman, or Recorder) shall order or direct; and the said principal party, together with the undersigned sureties, hereby severally acknowledge themselves bound to forfeit to the Crown the sums following, that is to say, the said principal party five pounds, and the undersigned sureties the sum of fifty shillings each, in case the principal party fails to perform his [her] obligation.

(Signed), A. B. (principal party). E. F., G. H. (sureties).

Taken before me, this day of , 19 ,  
at

(Signed), Y. Z. (Justices or Divisional Justice).

The Licensing (Ir.) Act, 1860, 23 & 24 Vict. c. 35, s. 1, provides that if justices at petty sessions, or divisional justices, shall not have caused to be entered in the order the grounds of the refusal,<sup>1</sup> or in case the order of refusal shall be in any other respect erroneous or informal, the Court on the appeal shall hear and determine the appeal, notwithstanding such omission, error, or informality. By section 2, if the order of refusal is reversed, the excise officer shall renew the licence.

Appeal from  
grant or  
refusal of beer  
retailer's or  
beer dealer's  
licensing  
certificate.

The Beerhouses (Ir.) Act, 1864, 27 & 28 Vict. c. 35, provides an appeal in the case of the grant or refusal of a beer retailer's certificate,<sup>2</sup> and the like appeal is applicable in case of a beer dealer (Licensing (Ir.) Act, 1874, s. 8). Section 13 of the Beerhouses (Ir.) Act, 1864, provides that, after the hearing and determination by any justice or justices of any application for a beer retailer's certificate, either party to the proceedings<sup>3</sup> may, if dissatisfied with the decision, appeal to the justices at quarter sessions<sup>4</sup> for the county, city, town, or place in which such decision shall have been given (or if in the Dublin metropolitan police district, to the Recorder at his next sessions<sup>4</sup>). Such appeal to be subject to the provisions contained in the Licensing (Ir.) Acts, 1855 and 1860 (*supra*), and the recognizance to be in the form in the schedule to the Licensing (Ir.) Act, 1855, or as near thereto as the circumstances may admit: where the decision granting the certificate is reversed, the order on appeal

<sup>1</sup> See p. 121.

<sup>2</sup> As to application for this certificate, see p. 123.

<sup>3</sup> See p. 124 as to who can be a competent objector.

<sup>4</sup> The statute says "next" in reference to the Recorder's sessions, and omits it in reference to other quarter sessions. It is, however, submitted that, having regard to the incorporated provisions of 18 & 19 Vict. c. 62, the appeal in all cases must be to the next sessions, unless where less than fifteen days intervene, in which case the appeal will be to the next but one.

shall forthwith annul any licence granted on the faith of such certificate.

Section 82 of the Licensing Act, 1872, provides that applications for spirit grocer's licences shall be subject to the like conditions as to appeals as are prescribed by the Beerhouses (Ir.) Act, 1864. Accordingly an appeal lies from a grant or refusal of a spirit grocer's licensing certificate,<sup>1</sup> and the procedure is the same as an appeal from the grant or refusal of a beer retailer's certificate (*supra*).

Appeal from grant or refusal of spirit grocer's licensing certificate.

An appeal is provided by the Small Debts Act.<sup>2</sup> Either party may appeal from the order to the chairman at quarter sessions' at the next quarter sessions held in the same division and district of the county held next immediately after the decision of petty sessions, or to the Recorder, as the case may be; but if the next quarter sessions occur within three days from the hearing at petty sessions, then to the next sessions but one, the appellant, if defendant, to lodge with the clerk of petty sessions the amount ordered to be paid, or enter into recognizance as prescribed by the Summary Jurisdiction Act, 1851, s. 24, and, if the plaintiff, to deposit the sum of 5s. for the costs of the appeal.

Appeals under the Small Debts Act.

Besides the special provisions as to appeal applicable to excise cases, a number of other statutes—e.g., the Licensing Acts, Public Health Acts, Game Acts, Fisheries Acts, Larceny Acts, Cottier Tenant Act—give special rights of appeal, which will be found noted under the various subjects with which they are concerned.

Special appeals under various statutes.

A writ of certiorari will not be granted to quash a conviction of a petty sessions court pending an appeal to quarter sessions (*R. v. Barnes*, (1910) 74 J.P. 231).

Certiorari not granted pending appeal.

<sup>1</sup> As to procedure to obtain such certificate, see p. 121.

<sup>2</sup> The popular title of the Manor Courts Abolition (Ir.) Act, 1859, 22 Vict. c. 14, s. 5, *verbatim*, APPENDIX OF STATUTES.

<sup>3</sup> It should be noted that this appeal is not to the quarter sessions, but to the county court judge.



## CHAPTER XI.

### MISCELLANEOUS DUTIES OF JUSTICES OUT OF SESSIONS.

	PAGE		PAGE
Search warrants—	144-6	Searching prisoner in custody, . . .	149
At common law, . . .	144	Breaking doors without warrant, . . .	149
Under Larceny Act, 1861, . . .	144	Riot and unlawful assembly, . . .	149-151
Powers under warrant, . . .	145	Definitions, . . .	149
Other statutes, . . .	145	Powers of justices and peace officers, . . .	150
Disposal of property, . . .	146	Closing licensed premises, . . .	151
Arrest without warrant—	146-149	Committal of dangerous lunatics, . . .	151
(1) At common law, . . .	146	Holding inquests, . . .	153
Felony, . . .	146	Visiting prisons, . . .	163
Breach of peace, . . .	147		
(2) Under statute, . . .	147		

### *Search Warrant.*

Search warrant.

(1) At common law.

A SEARCH warrant is an order of a justice of the peace authorizing the persons named or described therein to enter a specified building, to search for goods named or described, and to seize them if found. At common law the only right to issue a search warrant was in respect of stolen goods (*Entick v. Carrington*, (1765) 19 State Trials 1030; 2 Hale, 113, 149, 150; 5 Burns, 30th ed., 1180). Such a warrant is not to be granted without a sworn information (2 Hale, 150, *Entick v. Carrington*, *supra*, p. 1067). In *Jones v. German*, (1896) 2 Q.B. 418, (1897) 1 Q.B. 374, it was held that it is not necessary to allege in such information that a larceny has in fact been committed; that it is enough to allege a suspicion that a larceny has been committed; and that it is not necessary to specify in the information the particular goods for which a search is desired. By section 103 of the Larceny Act, 1861, 24 & 25 Vict. c. 96, if any credible witness shall prove upon oath before a justice of the peace a reasonable cause to suspect that any person has in his possession or on his premises any property whatsoever, on or with respect to which any offence, punishable either upon indictment or upon summary jurisdiction by virtue of the Act, shall have been committed, the justice may grant a warrant to search for such property as in the case of stolen goods. The warrant is directed to the district inspector or head constable, or to such other person, not being a party interested, as the justice may see fit (Petty Sessions Act, s. 25). The form of warrant given in the Petty Sessions Act authorizes a search in the daytime; but justices are not bound to follow the form rigidly (see s. 36), and they have power to issue a warrant authorizing a search at any time (2 Hale, 150).

(2) Under Larceny Act.

There is, outside Dublin, no general statutory authority for the issue or execution of search warrants on Sunday.<sup>1</sup> At common law, a

<sup>1</sup> The repealed Indictable Offences (Ir.) Act, 1849, 12 & 13 Vict. c. 69, s. 4, gave express power to issue and execute search warrants on Sunday. As this statute still applies to Dublin (see p. 319, *post*), such power still exists in Dublin. Further, some of the particular statutes mentioned *infra*, giving power to issue a search warrant, specially authorize its issue and execution on Sunday, e.g., the Explosives Act, 1875, s. 73.

search warrant could only be granted in respect of stolen goods, and, as no judicial act<sup>1</sup> can be done on Sunday, it appears that there is no power to issue on Sunday a search warrant for stolen goods. But probably such warrant could be *executed*<sup>2</sup> on Sunday, such execution being a merely ministerial act, though the doing of ministerial acts on Sunday, unless in case of necessity, has always been looked upon as objectionable (see Sheppard's Abridgment, vol. ii., p. 181).

The warrant is a sufficient authority to the police officer to use force if necessary for the purpose of entering (2 Hale, 151), but he should first demand admission (*Launock v. Brown*, (1819) 2 Barn. and Ald. 592).<sup>3</sup> He may also break open boxes after demanding the keys (2 Hale, 151). There is no power to back this warrant. The form of warrant given in the Petty Sessions Act, 1851 (sch. E. e), authorizes the constable to apprehend the person in whose custody the goods are found; but unless there is some reason to suspect that the party has been guilty of an offence in relation to the goods, this should be omitted. A warrant to search a particular house does not justify a search in another house (2 Hale, 150); and where the warrant mentions specific goods, a trespass will be committed if goods other than those specified are taken (*Crozier v. Cundy*, (1827) 9 D. and R. 224; *Price v. Messenger*, (1800) 2 Bos. and P. 158, 3 Esp. 96). When the person in whose possession stolen property is found is brought before the justices, if the facts justify it, an information may be made and the prisoner remanded or sent forward for trial; but if there is no evidence against him, and his explanation as to his possession of the property is satisfactory, he may be discharged.

The following statutes authorize the issue of search warrants by justices:—bread, Bread (Ir.) Act, 1838 (1 & 2 Vict. c. 38, s. 10); child (ill-treatment), Children Act, 1908 (8 Ed. 7, c. 67, s. 24); clubs, Registration of Clubs (Ir.) Act, 1904 (4 Ed. 7, c. 9, s. 6); coining instruments, Coinage Offences Act, 1861 (24 & 25 Vict. c. 99, s. 27); customs (uncustomed goods), Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36, s. 205); excise (forfeited goods), Excise Management Act, 1827 (7 & 8 Geo. 4, c. 53, s. 34); explosives, Malicious Damage Act, 1861 (24 & 25 Vict. c. 97, s. 55), Offences against the Person Act, 1861 (24 & 25 Vict. c. 100, s. 65), Explosives Act, 1875 (38 Vict. c. 17, s. 73), Explosive Substances Act, 1883 (46 & 47 Vict. c. 3, s. 8); fishing (suspected places), Fisheries (Ir.) Act, 1876 (39 & 40 Vict. c. 36, s. 205); forgery (bank-notes, forgers' apparatus), Forgery Act, 1861 (24 & 25 Vict. c. 98, s. 46); gaming-houses, Gaming Act, 1845 (8 & 9 Vict. c. 109, s. 3); illicit stills, Illicit Distillation (Ir.) Act, 1831 (1 & 2 Wm. 4, c. 35, s. 17), Spirits Act, 1880 (43 & 44 Vict. c. 24, s. 140); intoxicating liquors, Licensing (Ir.) Act, 1874 (37 & 38 Vict. c. 69, s. 24); merchandise marks (goods in relation to which offences have been committed), Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28, s. 12); military property (stolen), Army Act, 1881 (44 & 45 Vict. c. 58, s. 136 (1));

Powers under warrant.

Search warrants under other statutes.

<sup>1</sup> The issuing of such a warrant, it is submitted, is judicial (see *Fourth City Building Society v. Churchwardens, &c., of East Ham*, (1892) 1 Q.B. 661).

<sup>2</sup> See the English Indictable Offences Act, 1848, s. 4, authorizing the issue of a search warrant on Sunday, and thereby implying that there was no necessity to authorize its execution on Sunday. See also CATALOGUE OF SUMMARY OFFENCES, "SUNDAY."

<sup>3</sup> He should also, it is submitted, have the warrant with him. This is necessary in an arrest under warrant for a misdemeanour (*Codd v. Cabe*, (1876) 1 Ex. D. 352).

Search warrants under other statutes.

obscene books, Obscene Publications Act, 1857 (20 & 21 Vict. c. 83, s. 1); pawnbrokers (illegal pawning), Pawnbrokers (Ir.) Act 1786 (26 Geo. 3, c. 43, s. 13); petroleum, Petroleum Act, 1871 (34 & 35 Vict. c. 105, s. 13); pirated music, Musical Copyright Act, 1906 (6 Ed. 7, c. 36, s. 2); spirits, Spirits (Ir.) Act, 1854 (17 & 18 Vict. c. 89, s. 2); stamps (stolen or forged), Stamp Duties Management Act, 1891 (54 & 55 Vict. c. 38, s. 17(1)); stolen goods, Dublin Police Act, 1842 (5 & 6 Vict. c. 24, s. 54); textile manufactures (unlawful pawning, etc.), Textile Manufactures (Ir.) Acts, 1840 (3 & 4 Vict. c. 90, s. 5), 1842 (5 & 6 Vict. c. 68, s. 2), 1867 (30 & 31 Vict. c. 60, s. 1); unsound meat, Public Health (Ir.) Act, 1878 (41 & 42 Vict. c. 52, s. 135); women and girls (illegal detention), Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 9, s. 10).

Some of these statutes confer the right to issue a search warrant upon one justice, others upon two justices, and others again upon a court of summary jurisdiction, and although in most cases the warrant can be directed only to the police, yet in several cases it may be directed to other persons. The time during which such warrants may be executed also vary. Reference should be made in each case to the particular statute.

Disposal of property.

Where property has come into the possession of police in connection with any criminal charge, or under the Larceny Act, 1861, s. 103, a court of summary jurisdiction may, on application either by an officer of police or by a claimant of the property, make an order for the delivery of the property to the person appearing to the magistrate or court to be the owner thereof, or, if the owner cannot be ascertained, make such order with respect to the property as to the magistrate or court may seem meet (Police Property Act, 1897, 60 & 61 Vict. c. 30, s. 1(1)). An order under the section shall not affect the right of any person to take within six months from the date of the order legal proceedings against any person in possession of property delivered by virtue of the order for the recovery of the property, but on the expiration of those six months the right shall cease (section 1(2)). Property was seized by virtue of a search warrant, and the parties in whose possession it was found were brought before two justices sitting in a day-room in a police barrack, and were returned for trial. Afterwards, in the absence of the defendants, the justices purported to make an order with regard to the property under the foregoing section. *Held*, (1) that the justices were not a court of summary jurisdiction within the section, the expression apparently meaning justices when sitting in petty sessions, and (2) that, even if the justices were sitting as a court of summary jurisdiction, there was no jurisdiction to make the order behind the backs of the defendants (*Quinn v. Pratt*, (1908) 2 I.R. 69). An illegal seizure of property by police subjects them to a civil action (e.g., see *Stowe v. Benstead*, (1909) 2 K.B. 415).

#### *Arrest without Warrant.*

Power of arrest: (1) at common law.

*Felony.*

Peace officers (a term which includes justices, constables, sheriffs, and coroners) have the following powers of arrest at common law:—

(1) *Felony.* Power to arrest in the actual commission of a felony, or on the point of committing or attempting to commit a



felony (2 Hawk, c. 12, ss. 1, 19, *R. v. Hunt*, (1825) 1 Mood C. C. 93), or on suspicion of felony, whether a felony has or has not been committed (*Hadley v. Perks*, (1866) L.R. 1 Q.B. 456). The suspicion must be a reasonable suspicion; knowledge that a warrant has been issued for the arrest is a sufficient ground of reasonable suspicion (*Creagh v. Gamble*, (1888) 24 L.R.I. 458).<sup>1</sup>

A felonious assault having been committed, a justice, upon suspicion arising in his own mind that a certain person had been concerned in it, gave verbal directions that that person should be taken by a constable to the house of the person assaulted, for the purpose of identification, and if identified be taken to gaol. *Held*, that the conduct of the justice, although he acted *bona fide*, was illegal; a justice who arrests upon his own suspicion must be able to show not only that his suspicion was reasonable, but that what he did under the influence of it was no more than was necessary to prevent the escape of the suspected person and render him amenable; and the reasonableness of the suspicion is a question for the jury (*Annett v. Osborne*, (1840) 2 Jebb & Sym. 376).

(2) Breaches of the peace.

*Breach of  
peace.*

Power to arrest when committed in view, or when there is a reasonable ground for apprehending a renewal of the breach (*Timothy v. Simpson*, (1835) 1 Cr. M. & R. 757; *Cooke v. Nethercote*, (1835) 6 C. & P. 744; *R. v. Light*, (1857) 27 L.J.M.C. 1), or when the offender escapes immediately, and is taken in a pursuit which commenced immediately, and is continued without a break (*Price v. Seeley*, (1843) 10 Cl. & Fin 28).<sup>2</sup> A breach of the peace is committed:—(1) when an assault is committed (*Coward v. Baddeley*, (1859) 4 H. & N. 478); (2) by disturbing and obstructing a returning officer in the execution of his duty (*Spilsbury v. Micklethwaite*, (1808) 1 Taunt. 146, 151); (3) by a person who is guilty of abusive language and disorderly conduct on the highway, and causes a crowd to assemble and refuses to desist (*Ingle v. Bell*, (1836) 1 M. & W. 516). But mere abusive language or insult does not constitute a breach of the peace (*Wheeler v. Whiting*, (1840) 9 C. & P. 262), nor interruption of a meeting by derisive cries and putting questions (*Wooding v. Oxley*, (1839) 9 C. & P. 1).

(3) Misdemeanour or offences triable summarily other than breaches or apprehended breaches of the peace. *Misdemeanour.*

The law seems unsettled, and the following different views are laid down by the text-writers:—(1) No power to arrest unless where offence is of a character publicly scandalous and prejudicial to morals (Nun & Walsh, 2nd ed., p. 109); (2) no power to arrest (Halsbury, vol. ix, p. 299; *Colman v. Griffin*, (1859) 4 H. & N. 265; *Hutton v. Treeby*, (1897) 2 Q.B. 452); (3) constable has power of arrest where a misdemeanour is committed in his presence, but not otherwise (Russell, 7th ed., p. 725; Molloy, p. 79 n. (k)).

(4) By statute various powers are given to private persons and peace officers to arrest without warrant. Amongst the statutes giving power of arrest without warrant are:—Any person may arrest and bring before a justice of the peace any person found committing any indictable offence in the night (14 & 15 Vict. c. 19, s. 11, or any

Power of  
arrest :  
(2) statutory.

<sup>1</sup> A private person has the same rights of arrest, with the exception that he has no right to arrest on suspicion, should it transpire that a felony has not been committed; see Bac. Abr. "Trespass," 7th ed., vol. vii, at p. 663.

<sup>2</sup> Any private person has the same power.

Power of  
arrest:  
(2) statutory.

person committing any offence punishable, either on indictment or summary conviction, by virtue of the Larceny Act, 1861, except the offence of unlawful angling in the daytime (24 & 25 Vict. c. 96, s. 103); or any offence against the Coinage Offences Act, 1861 (24 & 25 Vict. c. 99, s. 31). Any constable or peace officer may take into custody and bring before a justice any person whom he shall find loitering in any highway, yard, or other place during the night, and whom he shall have good cause to suspect of having committed, or being about to commit, any felony against the Larceny Act, 1861, 24 & 25 Vict. c. 96, s. 104, or any felony against the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97, s. 57); or any felony mentioned in the Offences against the Person Act (24 & 25 Vict. c. 100, s. 66); or any holder of a licence (ticket of leave) granted under the Penal Servitude Acts, whom he may reasonably suspect of having committed any offence, or having broken any of the conditions of his licence (27 & 28 Vict. c. 47, s. 6). Any person found committing any offence against the Malicious Damage Act, 1861, whether punishable upon indictment or summary conviction, may be arrested by any peace officer, or the owner of the property injured, or his servant, or any person authorized by him, and taken before a justice of the peace (s. 61). A justice may arrest without warrant persons engaged in illegal drilling (60 Geo. 3 & 1 Geo 4, c. 1, s. 2). A person drunk on the public highway may be arrested by a constable or justice of the peace, and forthwith conveyed before a justice (6 & 7 Wm. 4, c. 38, s. 12). Every person who in any highway or public place, whether a building or not, is guilty while drunk of riotous or disorderly behaviour, or who is drunk while in charge on any highway or public place of any carriage, horse, cattle, or steam-engine, or who is drunk while in possession of any loaded fire-arms, may be apprehended<sup>1</sup> (Licensing Act, 1872, s. 12). Any person who in any highway or other public place, whether a building or not, is so drunk as to be incapable of taking care of himself, may be detained by any constable until he can with safety to himself be discharged (Licensing (Ir.) Act, 1874, s. 25). Any person found drunk in any place, whether a building or not, to which the public have access, whether on payment or not, or on any licensed premises, while in charge of a child apparently under the age of seven years, may be apprehended<sup>1</sup> (Summary Jurisdiction (Ir.) Act, 1908, s. 9). Any constable may arrest any person found in premises where there is an illicit still working (Illicit Distillation (Ir.) Act, 1831, 1 & 2 Wm. 4, c. 55, s. 19), or carrying or removing illicit stills or spirits (*ib.*, s. 25), and any person may arrest anyone unlawfully signalling to illicit distillers (*ib.*, s. 30). By the Towns Improvement (Ir.) Act, 1854, any constable may arrest any person who commits any offence within his view mentioned in that section. By the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36, s. 190), any person may arrest anyone signalling to smuggling vessels. Powers of arrest are given in the case of persons poaching at night or killing game and not producing certificates, in the case of persons not producing gun licences, and in fishery offences. Under the Acts relating to the army, navy, and militia, to railways, tramways, and merchant shipping, to hawkers, pedlars, explosives, indecent advertisements, diseases of animals, the revenue, public stores, cruelty to children, the

<sup>1</sup> Apparently this power of arrest may be exercised by any person whomsoever.

customs, military lands, offences (other than felony) against women and girls, dangerous performances, powers of arrest without warrant are also given. In most of the above cases reference will be found under the appropriate titles in the CATALOGUE OF SUMMARY OFFENCES, or CATALOGUE OF INDICTABLE OFFENCES, as the case may be. Under ss. 25-29 of the Dublin Police Act, 1842 (5 Vict. c. 24), very extensive powers of arrest without warrant are given to the Dublin metropolitan police (see p. 318).

Power of arrest:  
(2) statutory.

Where the statute authorizes the arrest of a person "found committing" the offence, this means in the act of committing it (*R. v. Curran*, (1828) 3 C. & P. 397; *Simmons v. Millengen*, (1846) 2 C.B. 532; *Roberts v. Orchard*, (1863) 2 H. & C. 769); and the lapse of several hours will prevent the arrest being lawfully made (*Downing v. Capel*, (1867) L.R. 2 C.P. 461; *R. v. Walker*, (1854) 23 L.J.M.C. 123).

A person arrested without a warrant should be brought before a justice, and formally charged as soon as possible (see *Wright v. Court*, (1825) 4 B. & C. 596). The constable may bring his prisoner before any justice he thinks fit (1 Hale, 582). The prisoner is in the custody of the constable until the justice discharges, bails, or commits him.<sup>1</sup>

A constable may search a prisoner, if he behaves with such violence of language or conduct that the constable may reasonably think it prudent to search him, in order to ascertain whether he has any weapon, &c., with which he might do mischief<sup>2</sup> (*Leigh v. Cole*, (1853) 6 Cox, 329, 332). He may take and detain property found in the offender's possession if such property is likely to afford material evidence for the prosecution in respect of the offence charged (*Dillon v. O'Brien*, (1887) 20 L.R.I. 300; *Tyler v. L. & S.W.R. Co.*, (1894) Cab. & El. 285); but a constable has no right to take property in no way connected with the offence charged (*R. v. O'Donnell*, (1835) 7 C. & P. 138; *R. v. Kinsey*, (1836), 7 C. & P. 447; *R. v. Bass*, (1849) 2 C. & K. 822). As to orders for restoration of property to a prisoner, see p. 20.

Searching prisoner in custody.

A justice has no power to order the medical examination of a prisoner (see p. 20, *ante*).

Where a felony has been committed, the doors of a house may, without warrant, be broken open to arrest the offender (*Smith v. Shirley*, (1846) 3 C.B. 142, 4 Bl. Com. 289). A constable may, without warrant, break open a door to arrest a person who has taken part in an affray within his view, and whom he has immediately pursued (*R. v. Marsden*, (1868) L.R. 1 C.C.R. 131). Doors may be broken to prevent the commission of a murder or manslaughter or other violent felony (*Handcock v. Baker*, (1800) 2 Bos. & P. 260, 2 Hale, P.C. 95).

Breaking doors without warrant.

### *Riot and Unlawful Assembly.*

A riot is a tumultuous disturbance of the peace, by three persons or more, who assemble together of their own authority, with an intent mutually to assist one another against anyone who shall oppose them in the execution of some enterprise of a private nature,

Riots and unlawful assemblies.  
*Riot.*

<sup>1</sup> The prison authority, to whom a prisoner on bail is bound to surrender, is responsible for his custody at the court where he is tried (*Mee v. Cruikshank*, (1902) 20 Cox 210).

<sup>2</sup> As to handcuffing prisoner, see p. 18, *ante*.



Riots and  
unlawful  
assemblies.

and afterwards actually execute the enterprise in a violent and turbulent manner, to the terror of the people, whether the act intended were of itself lawful or unlawful (Russell, 7th ed., 409). There are five necessary elements of a riot—(1) A number of persons, three at least; (2) common purpose; (3) execution or inception of the common purpose; (4) an intent to help one another by force if necessary against any person who may oppose them in the execution of their common purpose; (5) force or violence “displayed in such a manner as to alarm at least one person of reasonable firmness and courage” (*Field v. Receiver of Metropolitan Police*, (1907) 2 K.B. 853, 860).

Rout.

A rout is a disturbance of the peace by three or more persons assembling together with an intention to do a thing, which, if executed, will make them rioters, and actually making a motion to execute their purpose (Russell, 7th ed., 422).

Unlawful  
assembly.

An unlawful assembly is a disturbance of the peace by persons assembled together with an intention to do a thing which, if it were executed, would make them rioters, but neither actually executing it nor making a motion towards its execution. Hawkins, however, thinks this opinion much too narrow, and that any meeting of great numbers of people with such circumstances of terror as cannot but endanger the public peace, and raise fears and jealousies among the King's subjects, seems properly to be called an unlawful assembly (Russell, 7th ed., 422). Any meeting assembled under such circumstances as, according to the opinion of rational firm men, are likely to produce danger to the tranquillity and peace of the neighbourhood is an unlawful assembly (*per* Baron Alderson, *R. v. Vincent*, (1839) 9 C. & P. 109; *O'Kelly v. Harvey*, (1882) 10 L.R.I. 291). An unlawful assembly cannot take place unless three or more persons are assembled together (Stephens' Cr. Law, 6th ed., 55).

Affray.

An affray is the fighting of two or more persons in a public place, to the terror of His Majesty's subjects (Russell, 7th ed., 427).

Powers of  
justices and  
peace officers.

Powers are conferred by the 3rd Geo. 3, c. 19 (Ir.), upon justices of the peace, sheriffs, and mayors, within their respective jurisdictions, on knowledge or notice of a riotous assembly, to take necessary assistance, and to command the aid of all persons of sufficient age or ability,<sup>1</sup> and disperse and apprehend the offenders; and indemnity is given in case any of the rioters shall happen to be killed or wounded whilst being dispersed or seized. Justices, sheriffs, mayors, bailiffs, and other peace officers may raise the *posse comitatus*, and disperse and apprehend all concerned in Whiteboy Offences, and are indemnified for killing or hurting (15 & 16 Geo. 3, c. 21 (Ir.), s. 6; 26 Geo. 3, c. 24, s. 74). By 27 Geo. 3, c. 15 (Ir.), if any persons, to the number of twelve or more, are unlawfully and riotously assembled to the disturbance of the public peace, they may be commanded in the King's name by a justice of the peace, sheriff, or under-sheriff, or mayor, by proclamation<sup>2</sup> in the form thereafter,

<sup>1</sup> This is called raising the *posse comitatus*.

<sup>2</sup> The proclamation is to be made by the justice, etc., amongst the said rioters, or as near to them as he can safely come, in a loud voice, in the following words:—Our Sovereign Lord the King charges and commands all persons assembled immediately to disperse themselves, and peaceably to depart to their habitations or lawful business under pains contained in the Act made in the 27th year of King George the Third, to prevent tumultuous risings and assemblies.

to disperse, continue unlawfully and riotously together to the number of twelve or more for one hour thereafter, then such continuing shall be deemed a felony.<sup>1</sup>

Riots and unlawful assemblies.

Apart from the statute, a justice not only has the power to disperse a riot or an unlawful assembly, but is guilty of an indictable misdemeanour, if in case of necessity he fails to do so: and it should be noted that the common law power of justices to disperse rioters or persons unlawfully assembled is not suspended during the hour that the Riot Act allows the rioters or the assembly to disperse. During that time justices have necessarily the same powers and are under the same duty at common law as they are at any other time (see charge of Lord Loughborough to the grand jury in *R. v. Gordon*, (1781) 21 St. Tr. 485, 493; 5 Burns, 30th ed., 149; *R. v. Neale*, (1839) 9 C. & P. 431; *R. v. Pinney*, (1832) 5 C. & P. 254).

Powers of justices and peace officers.

In the case of a riot or rebellious assembly, peace officers and their assistants, endeavouring to disperse the mob, are justified, both at common law and by the Riot Act, in proceeding to the last extremity in case the riot cannot otherwise be suppressed. And it has been said that perhaps the killing of dangerous rioters may be justified by any private persons who cannot otherwise suppress them, or defend themselves from them, inasmuch as every private person seems to be authorized by the law to arm himself for the preservation of the peace (Russell, 7th ed., 814). A justice of the peace is entitled to call in the military, and also any other citizens, to his assistance in quelling a riot (*R. v. Pinney*, (1832) 5 C. & P. 254, 263).

By the 3 & 4 Wm. 4, c. 68, s. 21, it is provided that it shall be lawful for any one justice acting for any county in which any riot or tumult shall happen, or for any two or more justices of the peace where any riot or tumult is apprehended, to direct that any licensed person shall close his house for such length of time as such justice or justices shall direct; penalty on breach, £2. A similar provision is enacted by 23 & 24 Vict. c. 107, s. 30, in respect of wine retailers.

Closing of licensed premises.

### *Committal of Dangerous Lunatics.*

By the District Lunatic Asylums (Ireland) Act, 1867, 30 & 31 Vict. c. 118, s. 10, if any person shall be brought before any two justices,<sup>2</sup> and it shall be proved to their satisfaction that such person was discovered and apprehended under circumstances denoting a derangement of mind and a purpose of committing some crime for which, if committed, such person would be liable to be indicted, such justices shall call to their assistance the medical officer, or if there be more than one, the nearest available medical officer of the dispensary district in which they shall be at the time, who shall examine such person,<sup>3</sup> and if such medical officer shall certify that such person is a

Removal of dangerous lunatics or dangerous idiots to asylums.

<sup>1</sup> For penalty, see CATALOGUE OF INDICTABLE OFFENCES.

<sup>2</sup> As to whether this can be done on Sunday, see CATALOGUE OF SUMMARY OFFENCES, "SUNDAY."

<sup>3</sup> The statute adds "without fee or reward," but now by 38 & 39 Vict. c. 67, s. 14, power is given to the justices to order the payment of a sum not exceeding £2 to cover the doctor's reasonable remuneration for the examination and other reasonable expenses, to be paid by the guardians, and to be raised as part of the poor rate. An order awarding £2 as

Removal of  
dangerous  
lunatics or  
dangerous  
idiots to  
asylum.

dangerous lunatic or a dangerous idiot, it shall be lawful for the justices by warrant under their hands and seals to direct that such person shall be taken to the lunatic asylum established either wholly or in part for the county, county of a city, or county of a town in which he shall have been apprehended, to be there detained. Provided that nothing in the section shall be construed to restrain or prevent any relation or friend from taking such person under his own care and protection, if he shall enter into sufficient recognizance for his peaceable behaviour or safe custody before two justices of the peace, or chairman of quarter sessions, or a judge of the superior court. Such a person may be discharged from the asylum without any order of the Lord Lieutenant, on a certificate of the resident medical superintendent or visiting physician that he has become of sound mind, or has ceased to be, or is not, a dangerous lunatic or a dangerous idiot (s. 11). A form of warrant is provided for use by justices, and it must be borne in mind that the blanks must be properly filled up, as otherwise the warrant, which must show jurisdiction on its face (*R. v. Riall*, (1860) 11 I.C.L.R. 279), will be invalid, and the detention of the lunatic will render the justices signing it and the resident medical superintendent liable to an action. Thus, a warrant which does not state upon its face that the justices called in the assistance of the proper medical officer, and that such officer gave the proper medical certificate, is no answer to an action for false imprisonment brought by the person committed against the justice and the medical superintendent of the asylum (*Coghlan v. Woods*, (1882) 10 L.R.I. 29, 16 I.L.T.R. 105; cf. *Hutchinson v. Walsh*, (1904) 38 I.L.T.R. 133). A defective warrant or certificate may, with the sanction of one of the inspectors of lunatics be amended within fourteen days from the reception of the lunatic (38 & 39 Vict. c. 67, s. 5). Even though the relatives of the prisoner enter into the recognizance provided by s. 11 of the Act of 1867, they have no right to the custody of the prisoner (*In the Matter of James O'Reilly*, (1894) 29 I.L.T.R. 33). One of the committing justices shall, within two days after the signing of the warrant, transmit or cause the clerk of petty sessions to transmit, by post, to the registrar in lunacy a copy of the medical officer's certificate (34 & 35 Vict. c. 22, s. 4). A prisoner under remand certified to be insane may, by warrant of the Lord Lieutenant, be removed to a district asylum, and when sane be removed back for further examination before the justices (38 & 39 Vict. c. 67, s. 13). The solemn declaration at the beginning of forms of application for admission into a district lunatic asylum is not within the Stamp Act, 1891, but remains subject to the provisions of the Petty Sessions Clerks (Ir.) Act, 1858, 21 & 22 Vict. c. 100, and is therefore liable to a stamp duty of one shilling (*Casey v. Pope*, (1905) 40 I.L.T.R. 68).

As to the necessity for, and the grant of, licences to private asylums, see p. 117.

reasonable remuneration for a doctor's loss of time and professional services was held bad, as it awarded compensation for both loss of time and professional services (*King v. Guardians of Delvin Union*, (1908) 2 I.R. 16). The "other reasonable expenses" are not confined to the expenses of the medical officer, but would include expenses of the police incurred in connection with the conveyance of the lunatic before his committal (*ib.*). The certificate of such an order is not a certificate of order within schedule C of the Petty Sessions Clerks Act, 1858, and does not require a stamp (*ib.*), but does require to be sealed (*Jennings v. Guardians of Clonakilty Union*, (1895) 29 I.L.T. & S.J. 617, County Court).



*Holding Inquests.*

Power is given by the Coroners (Ireland) Act, 1846, 9 & 10 Vict. c. 37, s. 44, to two justices of the peace to hold an inquest in the absence of the coroner, but the necessity for its exercise will now seldom arise, since the Coroners (Ir.) Act, 1908, 8 Ed. 7, c. 37, extends to Ireland the provisions of the Coroners Act, 1892, 55 & 56 Vict. c. 56, whereby every coroner, whether for a county or borough, is required to appoint a deputy coroner to act for the coroner at any inquest which the coroner is disqualified from holding, or during his illness or his absence from any lawful or reasonable cause. In the case of a borough coroner, the necessity of the deputies so acting is to be certified on each occasion by a justice of the peace (Coroners Act, 1892, s. 3). Duties as to inquests.

Any deputy coroner must have the same qualifications as the coroner, and is liable to be removed from office by the Lord Chancellor in the same way and for the same cause as the coroner (8 Ed. 7, c. 37, s. 1). When an inquest is held before a deputy coroner, the inquisition should be alleged in the caption to be taken before the coroner (see *R. v. Perkin*, (1845) 7 Q.B. 165), and the deputy should sign in the name of the coroner (*ib.*).

The appointment of coroner now lies with the county council, who may alter the coroner's districts (Local Government (Ireland) Act, 1898, s. 14). The Lord Chancellor may, if he thinks fit, remove any coroner for inability or misbehaviour in the discharge of his duty (*ib.*). A duly registered surgeon or doctor, a barrister, a solicitor, or a justice of the peace of more than five years' standing, is eligible for the appointment (44 & 45 Vict. c. 35, s. 2).

Where, under the powers given to him by 9 & 10 Vict. c. 37, s. 35, a coroner has imposed a fine on a juror for non-attendance at an inquest to which he was duly summoned, no appeal lies from such fine to quarter sessions (*R. (Redmond) v. Armagh JJ.*, (1895) 30 I.L.T.R. 17).

*Visiting Prisons.*

Powers of visiting and reporting on prisons are conferred by the Prisons (Ireland) Act, 1877, 40 & 41 Vict. c. 49. Section 24 gives power to the grand jury<sup>1</sup> to appoint a visiting committee of such number of justices as the Lord Lieutenant may determine. Where a prison is used for more counties than one, a joint visiting committee may be appointed, to consist of such members to be appointed by each grand jury as the Lord Lieutenant may prescribe (47 & 48 Vict. c. 36, s. 3). The duties of a visiting committee are laid down in rules made by the Lord Lieutenant from time to time; and, subject thereto, the committee shall from time to time, and at frequent intervals, visit the prison for which they are appointed, and hear any complaints which may be made to them by the prisoners, and if asked shall do so privately. They shall report to the Lord Lieutenant any abuses or urgent want of repairs, and generally perform all such duties in relation to a prison as they may be required by the Lord Lieutenant (40 & 41 Vict. c. 49, s. 25). Visiting prisons.

<sup>1</sup> This power does not pass to the county council; see Local Government (Ireland) Act, 1898, s. 4.

Visiting  
prisons.

Any justice having jurisdiction in the place in which a prison is situate, or in the place where the offence in respect of which any prisoner may be confined in prison was committed, may, when he thinks fit, enter into and examine the condition of the prison and of the prisoners, and he may enter any observations he may think fit in reference to the condition of the prison or abuses therein in the visitors' book to be kept by the governor, whose duty it shall be to draw the attention of the visiting committee at their next visit to such entry. A justice is not entitled, in pursuance of this section, to visit a prisoner under sentence of death, or to communicate with a prisoner except in reference to his treatment or to any complaint, nor does the section apply to convict prisons (40 & 41 Vict. c. 49, s. 26).

## CHAPTER XII.

### CIVIL JURISDICTION.

	PAGE		PAGE
Small Debts, . . . . .	155	Order to cut hedges, &c., . . . . .	173-175
Disputes as to wages, . . . . .	156	Jurisdiction, . . . . .	173
Disputes between employer and		Form of orders, . . . . .	174
workman (E. & W. Act, 1875)	157-159	Costs, . . . . .	175
Jurisdiction, . . . . .	157	Enforcing auditor's surcharges, . . . . .	175
"Dispute," . . . . .	158	Compulsory acquisition of land, . . . . .	175
"Workman," . . . . .	158	Salvage jurisdiction, . . . . .	176
Apprentices, . . . . .	158	Recovery of Income Tax, . . . . .	178
Number of justices, . . . . .	159	Labourers' Dwellings, . . . . .	178-180
Enforcement of order, . . . . .	159	Correcting scheme, . . . . .	178
Time limit, . . . . .	159	Order to obtain material, . . . . .	178
Costs, . . . . .	159	Closing dwellings, . . . . .	179
Appeal, . . . . .	160	Recovery of possession, . . . . .	179
Claims by seamen for wages, . . . . .	160	Providing for cottages in fair rent	
Disputes as to hire and tuition, . . . . .	160	order, . . . . .	179
Disputes in fairs and markets, . . . . .	160	Orders for support of lunatics, . . . . .	180
Charitable Loan Societies, . . . . .	161	Orders under Drainage Acts, . . . . .	181
Friendly Societies, . . . . .	161-163	Railways, . . . . .	
Jurisdiction, . . . . .	161	Order on company to repair roads,	
Procedure, . . . . .	162	&c., . . . . .	183
Evidence of documents, . . . . .	163	Dangerous trees near railway, . . . . .	184
Appeal, . . . . .	163	Damage by sparks, . . . . .	184
Collecting societies, &c., . . . . .	164	Damage by negligent driving, &c., . . . . .	185
Recovery of gas rents, &c., . . . . .	164	Wrongful entry on lands to be com-	
Electric lighting, . . . . .	165	pulsorily taken, . . . . .	185
Recovery of water rents, &c., . . . . .	165	Recovery of Tolls, . . . . .	
Recovery of seed rate, . . . . .	167	Rating and Valuation (Chapter XVI.),	
Damage to cattle by dogs, . . . . .	167	Jurisdiction in Ejectment (Chapter	
Entry on lands to survey new line of		XIII.), . . . . .	185
road, . . . . .	168	Public health	
Entry on lands for road materials, 168-172		Trespass	
Jurisdiction, . . . . .	168	Pawnbrokers	
Procedure, . . . . .	169	Education	
Essentials of order, . . . . .	170	Closing roads during	
Specimen order, . . . . .	171	manœuvres	
Costs, . . . . .	172	See also Chapter XI.	
Enforcing road contract, . . . . .	172		

See CATALOGUE OF  
SUMMARY OFFENCES.

By section 5 of the Manor Courts Abolition (Ir.) Act, 1859, 22 Vict. Small Debts. c. 14,<sup>1</sup> jurisdiction is given to a justice or justices at petty sessions to hear and determine causes for the recovery of debts between party and party, "under the value of £2,"<sup>2</sup> where the right to recover same shall have accrued within twelve months from the date of the process.

The Act is confined to the recovery of debts. A "debt" is a sum payable in respect of a liquidated money demand recoverable by action (Stroud, *sub verb.*). The debt must be under the value of £2; so that apparently it is not competent for a person to whom a debt of £2 or over is due to bring the case within the jurisdiction by reducing his claim to under £2; but if the debt be under £2, it is

<sup>1</sup> *Verbatim*, APPENDIX OF STATUTES.

<sup>2</sup> The marginal note, "debts not exceeding £2," is erroneous. A marginal note is not to be relied upon in construing an Act of Parliament (*Claydon v. Green*, (1868) L.R. 3 C.P. 511, at p. 522, *per* Willes, J.).



Small Debts. immaterial that it formerly exceeded that amount and was reduced by payment on account.

The justices can order payment of the sum claimed or dismiss the case on the merits or without prejudice (s. 5), and it is submitted they can issue a decree for an amount less than the sum claimed if they find a sum to be due that is less than the amount claimed. Costs not exceeding five shillings may be given to either party (s. 5). A form of process is provided (s. 6) to be served by a duly authorized process-server three clear days before the petty sessions (s. 9). No defendant is liable to be sued or proceeded against otherwise than in the petty sessions district where he resides; the occupation of a counting-house, shop, factory, or office to be deemed a residence (s. 10). When justices have once given a decree, their jurisdiction is spent, and they cannot make a second decree, whether in respect of the original debt or the old decree (*Wrench v. O'Rourke*, (1902) 37 L.T.R. 15).

The form of the decree, which orders that in default of payment the amount be levied off the goods of the defendant, is given in the schedule to the Act. When this order, which is not addressed to any person, is made and signed by the justices, and handed to the complainant, it is submitted that the court is *functus officio*, and that it will lie on the complainant himself to make arrangements for its execution. It is submitted that the provisions of s. 25 (2) of the Petty Sessions Act, 1851, as to directing warrants to the district inspector or police, are altogether inapplicable to orders under this statute.

Where a board of guardians recovered a decree at petty sessions for a sum in excess of the limits of jurisdiction under the Act, the order was quashed with costs against the guardians (*R. (Ferris) v. Londonderry J.J.*, (1903) 3 N.I.J.R. 298).

An appeal is provided; for procedure, see p. 143.

Disputes as to  
wages.  
14 & 15 Vict.  
c. 92, s. 16.

The Summary Jurisdiction Act, 1851, 14 & 15 Vict. c. 92, s. 16,<sup>1</sup> enables the justices to hear and determine disputes as to wages claimed by any apprentice, artificer, labourer, servant, or other person employed to do any species of work or labour whatsoever, as well as to other matters dealt with at p. 160, provided that the amount of the demand shall not exceed £10. No definition is given of labourer or servant, and it is probable that an employé such as a clerk would not be held to be within the section. For the purpose of the Wages Attachment Abolition Act, 1870, 33 & 34 Vict. c. 30, it has been held that the expression "servant, labourer, or workman" does not include the secretary of a company in receipt of a salary of £50 a quarter, and subject to dismissal at a quarter's notice (*Gordon v. Jennings*, (1882) 51 L.J.Q.B. 417). The section applies whether the labourer, etc., finds the materials or not, and whether the wages shall be due in respect of any day's work, or of any labour done by task, job, or contract. In certain cases the order may be made against a steward or manager, in the absence of the master. The section enables the justices to award a further sum, not exceeding forty shillings, for loss of time in recovering the wages. An appeal by either party lies where an order is made for the payment of any sum exceeding twenty shillings (s. 23); see APPEALS TO QUARTER SESSIONS, p. 139.

<sup>1</sup> *Verbatim*, APPENDIX OF STATUTES.

It is submitted that costs, not exceeding twenty shillings, may be awarded to the successful complainant or defendant (see Summary Jurisdiction Act, s. 2, Petty Sessions Act, s. 22 (9)).

Disputes as to wages.

Any order for wages, or further sum of compensation in addition to wages, made in pursuance of section 16 may be enforced in like manner as if it were an order made by a court of summary jurisdiction in pursuance of the Employers and Workmen Act, 1875, and not otherwise<sup>1</sup> (Conspiracy and Protection of Property Act, 1875, 38 & 39 Vict. c. 86, s. 17).

By the Employers and Workmen Act, 1875, 38 & 39 Vict. c. 90,<sup>2</sup> a court of summary jurisdiction<sup>3</sup> may determine a dispute under the Act (i.e. a dispute between an employer and workman arising out of or incidental to their relation as such (s. 3)), provided that such court shall not exercise jurisdiction when the claim exceeds £10, and shall not make an order for payment exceeding £10, exclusive of costs, and shall not require security to any amount exceeding £10 (s. 4). The expression "workman" does not include a domestic or menial servant, but save as aforesaid, means any person, who being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract be expressed or implied, oral or in writing, and be a contract of service, or a contract personally to execute any work or labour (s. 10). The Act now applies to seamen and apprentices to the sea service (43 & 44 Vict. c. 16, s. 11); and see the Merchant Shipping Act, 1894, *infra*, as to claims for wages by seamen.

Disputes between employer and workman.

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Jurisdiction under 38 & 39 Vict. c. 90.

The court of summary jurisdiction may adjust and set off claims, whether such claims are liquidated or unliquidated, for wages, damages, or otherwise; may rescind any contract under this enactment (for the precise terms of which see the statute *post*),<sup>4</sup> on such terms as it thinks just; may in lieu of damages accept security for the performance of a contract with or without sureties, if the defendant is willing to give security and the plaintiff so consents (Employer and Workmen Act, 1875, ss. 3 & 4). The rules made under the Act will be found at the end of the statute in the APPENDIX OF STATUTES.

The jurisdiction of the justices to hear claims under the Act is ousted where the fact upon which the claim is grounded has been decided by another court (*Routledge v. Hislop*, (1860) 29 L.J.M.C. 90), where it was held that a judgment for the defendant in a county court action brought by a servant for wrongful dismissal before the end of a quarter for which she had been hired was a bar to proceedings before justices to recover wages for that quarter (see also *Millett v. Coleman*, (1873) 44 L.J.Q.B. 194). But where a factory-hand was dismissed without notice, or wages in lieu of notice, for negligence in regard to the manufacture of material given to him for manufacture, it was held that his employer could recover damages under s. 4 of the

<sup>1</sup> As to which, see p. 159, *infra*.

<sup>2</sup> *Verbatim*, APPENDIX OF STATUTES.

<sup>3</sup> For the meaning of which term, see p. 159.

<sup>4</sup> It has been held in Scotland that justices may adjudicate upon claims which by the terms of a contract of service are to be decided by arbitration (*Glasgow Tramways Co. v. Dempsey*, (1877) 3 Coup. 440; *Wilson v. Glasgow Tramways Co.*, (1878) 5 R. 981). But in England it has been held that, where such a claim has been decided by the arbitrator, justices have no jurisdiction (*London Tramways Co. v. Bailey*, (1877) 3 Q.B.D. 217).

Disputes  
between  
employer and  
workman.  
(Act of 1875).

Act in the county court for the injury caused by such negligence, although the hand had recovered under s. 3, before justices, the amount of his claim for wages in lieu of notice, and no counter-claim in respect of his negligence had been made before the justices, it being held by the Queen's Bench Division that such negligence might not have been sufficient to justify dismissal, though sufficient to sustain a claim for damages (*Hindley v. Haslam*, (1878) 3 Q.B.D. 481).

“Dispute.”

The term “dispute” is not limited to strictly legal causes of action (*Charles v. Plymouth Waterworks*, (1890) 60 L.J.M.C. 20). It includes, for instance, a claim for damages caused by a workman wrongfully absenting himself from work (*Clemson v. Hubbard*, (1876) 1 Ex. D. 179; *Perry v. Bowen*, (1904) 38 I.L.T.R. 37); and a claim for damages for breach of contract in the potting trade, where the breach was caused by the refusal to work of the workman's sub-employees, though the defendant himself was ready to do the work (*Grainger v. Aynsley*, (1880) 6 Q.B.D. 182). On the hearing of a claim by an employer against a workman for damages for breach of contract, the justices can set off such damages against a debt due for wages by the employer to the workman, though no requisition or application for payment thereof has been made by the workman (*Kcates v. Lewis Merthyr Consolidated Collieries*, (1910) 1 K.B. 386, (1910) 2 K.B. 445).

“Workman.”

The Act has been held not to apply to the conductor of an omnibus (*Morgan v. London General Omnibus Co.*, (1884) 13 Q.B.D. 832), the driver of a horse tramcar (*Cook v. North Metropolitan Tramway Co.*, (1887) 18 Q.B.D. 683), a guard of a goods train (*Hunt v. Great North Ry. Co.*, (1891) 2 Q.B. 189), a grocer's assistant (*Bound v. Lawrence*, (1892) 1 Q.B. 226; *Pearce v. Lansdowne*, (1893) 62 L.J.Q.B. 441), or a hairdresser (*R. v. Louth JJ.*, (1900) 2 I.R. 714); but a seamstress and ironer has been held to be within the definition (*Maynard v. Robinson*, (1903) 89 L.T. 136).

The expression used in the statute is not “manual work,” but “manual labour,” for many occupations involve the former, but not the latter, such as that of telegraph clerks, and all persons employed in writing (*Cook v. North Metropolitan Tramway Co.*, *supra*, per A. L. Smith, J.). The driver of a motor omnibus who is obliged to do such necessary repairs to it as he is able to do is within the Act (*Smith v. Associated Omnibus Co.*, (1907) 1 K.B. 916).

Apprentices.

The Act applies also to disputes between masters and apprentices to the business of a workman (see definition, *ante*) upon whose binding either no premium is paid, or the premium (if any) paid does not exceed £25, and apprentices bound under the provisions of the Acts relating to the relief of the poor (ss. 5, 12). In such disputes the court shall have the same powers as if the apprentice were a workman, and the instrument of apprenticeship a contract between an employer and a workman, and may also (1) make an order directing the apprentice to perform his duties under the apprenticeship; (2) if it rescinds the instrument of apprenticeship, it may order the whole or any part of the premium paid to be repaid. When an order is made directing an apprentice to perform his duties under the apprenticeship, the court may, from time to time, if satisfied after the expiration of not less than one month from the date of the order that the apprentice has failed to comply with same, order him to be imprisoned for a period not exceeding fourteen days (s. 6); if there is any person liable, under the instrument of apprenticeship, for the good conduct



of the apprentice, that person may, if the court so direct, be summoned, as if he were the defendant, to attend on the hearing, and the court may, in addition to, or in substitution for, any order which the court is authorized to make against the apprentice, order the person so summoned to pay damages for any breach of the contract of apprenticeship to an amount not exceeding the limit, if any, to which he is liable under the instrument of apprenticeship. The court may, if the person so summoned, or any other person, is willing to give security, accept such security instead of punishing the apprentice (s. 7). As to the mode of giving such security, see s. 8.

Disputes  
between  
employer and  
workmen.  
(Act of 1875).

The portion of section 15 enacting that the court of summary jurisdiction shall be constituted, in Dublin, of one or more divisional justices, elsewhere of two or more justices of the peace, is repealed (Statute Law Revision (No. 2) Act, 1893). A court of summary jurisdiction, generally speaking, may consist of one justice (see Interpretation Act, 1889, 52 & 53 Vict. c. 63). The repeal of a section by the Statute Law Revision Acts is stated to be literary only (Hardcastle on Statutes, 4th. ed., p. 296; and see observations of Palles, C.B., in *R. v. Dillon*, (1891) 28 L.R.I., at p. 280), so that, even still, it is safer to act on the old provision, and have the court constituted of two justices (see also *Scott v. Crawford*, (1910) 44 I.L.T.R. 19; *Sayers v. Collyer*, (1884) 28 C.D. 107; *Winfield v. Boothroyd*, (1886) 34 W.R. 501).

Number of  
justices.

Any dispute or matter in respect of which jurisdiction is given by the Act to a court of summary jurisdiction, shall be deemed to be a matter on which that court has authority by law to make an order on a complaint in pursuance of the Summary Jurisdiction Act,<sup>1</sup> but shall not be deemed a criminal proceeding; a warrant cannot be issued to enforce appearance, except in case of an apprentice; an order for the payment of money shall not be enforced by imprisonment, except in the manner and under the conditions by the Act provided<sup>2</sup> (s. 9).

Enforcement  
of order.

No goods or chattels, save those seizable under a county court decree, can be taken; sums may be ordered to be paid by instalments; power is given to the Lord Chancellor to make rules (s. 9).<sup>3</sup>

Any sum ordered to be paid shall be deemed to be a debt due under a judgment within section 6 of the Debtors (Ireland) Act, 1872, 35 & 36 Vict. c. 57, and may be enforced accordingly (ss. 9, 15).<sup>4</sup>

The time limit for the enforcement of the claim is six years (see *Charles v. Plymouth Waterworks*, (1890) 60 L.J.M.C. 20).

Time limit.

Section 4 of the Act forbids the making of an order for the payment of any sum exceeding £10, "exclusive of the costs incurred in the case," which would seem to imply a power to give costs exceeding the limit of twenty shillings laid down by s. 22 (9) of the Petty Sessions Act. Section 9 of the Act enables rules to be made "with power to provide that the costs shall not exceed the costs

Costs.

<sup>1</sup> Meaning, in Dublin, the Dublin Police Acts, elsewhere the Petty Sessions Act and any Acts amending the same (s. 21).

<sup>2</sup> The only power to imprison given by the Act is to imprison an apprentice who persists in refusing to perform his duties (s. 6), or to imprison in default of payment under the Debtors Act (Ir.), 1872.

<sup>3</sup> For which see at end of statute, in APPENDIX OF STATUTES.

<sup>4</sup> The Debtors (Ir.) Act, 1872, gives power to imprison for six weeks in default of payment of a debt by the instalments directed, where proof is given that the person making default has or had since the date of the order or judgment the means to pay.

Disputes  
between  
employer and  
workman.  
(Act of 1875).

which would in a similar case be incurred in a county court." The rules, however, are silent as to the costs, save that the form of judgment prescribed by the rules leaves a blank for costs. It is probable that justices are not confined to the limit laid down by the Petty Sessions Act.

*Appeal.*

As the Petty Sessions Act is applicable, it follows that an appeal will lie in the cases mentioned in section 24 of that statute, namely, where an order is made for the payment of any sum exceeding twenty shillings, and other cases noted p. 132, *ante*.

Claims by  
seamen for  
wages  
(57 & 58 Vict.  
c. 60, s. 164).

By the Merchant Shipping Act, 1894, a seaman, or apprentice to the sea service, or a person duly authorized on his behalf, may, as soon as any wages due to him, not exceeding £50, become payable, sue for the same before a court of summary jurisdiction in or near the place at which his service has terminated, or at which he has been discharged, or at which any person on whom the claim is made is or resides, and the order made by the court in the matter shall be final (s. 164). The master of a ship is given the same remedies as a seaman (s. 167 (1)). He may also recover disbursements or liabilities properly made by him on account of the ship (s. 167 (2)). Proceedings under the Act are to be brought within six months of the cause of complaint, or, if either party is absent from United Kingdom, within six months of the return of both (s. 683). The Petty Sessions Act applies (s. 681; Interpretation Act, 1889, s. 13).

Disputes as to  
hire and  
tuition.  
(14 & 15 Vict.  
c. 92).

Jurisdiction is given by the Summary Jurisdiction Act, 14 & 15 Vict. c. 92, s. 16,<sup>1</sup> to determine demands, not exceeding £10, for the hire of horses or other animals of draught, or carts or vehicles drawn by such animal for the purpose of labouring work (and not being for the carriage of any passenger), for the hire of any boat for labouring work (and not for carriage of passengers), whether such hire is by the day, or by contract, or otherwise; and claims by a schoolmaster or teacher for teaching of a child. The order for payment may include any sum not exceeding forty shillings compensation for loss sustained owing to absence from home occasioned by non-payment. In certain cases the order may be made, in the absence of the master, against his steward or manager, &c. Justices may punish a servant who hires or engages under a false or forged discharge or certificate, by forfeiture of all wages due, and a fine not exceeding £5, and in default imprisonment not exceeding three months. An appeal by either party will lie if an order is made for payment of a sum exceeding twenty shillings (Summary Jurisdiction Act, s. 23: see APPEALS TO QUARTER SESSIONS).

Disputes in  
fairs and  
markets  
(14 & 15 Vict.  
c. 92, s. 16).

Justices may make awards as to disputes at sales in fairs and markets where the value does not exceed £5, and this jurisdiction may be exercised out of petty sessions (Summary Jurisdiction Act, 1851, 14 & 15 Vict. c. 92, s. 17). The order should show upon its face that the dispute arose in a fair or market (*R. v. Campbell*, (1853) 3 I.C.L.R. 586). Justices may, it is submitted, award costs not exceeding twenty shillings (Summary Jurisdiction Act, 1851, s. 1; Petty Sessions Act, 1851, s. 22 (9)).

An appeal by either party<sup>2</sup> will also lie where the amount awarded exceeds twenty shillings (Summary Jurisdiction Act, 1851, s. 23).

<sup>1</sup> *Verbatim*, APPENDIX OF STATUTES.

<sup>2</sup> As to whether a complainant who has been awarded 20s. or less can appeal, see p. 132 n. as to similar section in P. S. Act.

By 2 Anne, c. 15 (Ir.), s. 12, no seller of any beasts in a fair or market is obliged to wait for the buyer for more than two hours after earnest given, after which the cattle may be re-sold, and the losses recovered by action from the buyer, whose earnest is forfeited.

Loans by charitable loan societies can be recovered by summary procedure before justices at petty sessions (6 & 7 Vict. c. 91, s. 30<sup>1</sup>); and this is the only procedure available (*Moore v. Donagher*, (1903), 2 I.R. 290). A society cannot make any loan on personal security to any one individual at any one time exceeding £10 (s. 24), and a mortgage given to secure a loan in excess of that amount is void (*Irvine v. Teague*, (1898) 32 I.L.T.R. 109); and no second or other loan shall be made to the same individual or to any person on his behalf or for his use till the previous loan shall have been paid (s. 24). Proceedings under the Act must be brought within six months from the time when the cause of the action arose (Petty Sessions (Ireland) Act, 1851, s. 10 (4); *R. (O'Reilly) v. Fermanagh JJ.*, (1904) 2 I.R. 18).

An account setting forth the particulars of the amount sought to be recovered shall, not less than fourteen days before the issue of the summons, be forwarded by registered letter addressed to the borrower at his last known place of residence, showing the allowance made for all sums paid by the borrower in respect of principal, interest, or otherwise (63 & 64 Vict. c. 25, s. 2 (1),<sup>2</sup> as amended by Charitable Loan Societies (Ireland) Act, 1906, 6 Ed. 7, c. 23, s. 4 (2)).<sup>3</sup> The forms in the schedule to the Petty Sessions Act shall be used wherever applicable (63 & 64 Vict. c. 25, s. 3); costs up to the amount of twenty shillings allowed by section 22 of the Petty Sessions Act may be awarded, out of which costs remuneration may be given to any person directed by the Court to take an account (*ib*).

The order for payment must be for immediate payment, and the justices have no power to make an order for payment at a future time (*Parker v. Boughey*, (1862) 3 B. and S. 43). The justices, when appointing a bailiff to execute a levy warrant under the Acts, have no power to delegate their powers by referring the making of such appointment to some only of their members (*R. (Nugent) v. Tyrone JJ.*, (1909) 43 I.L.T.R. 261).

Jurisdiction is given to a court of summary jurisdiction<sup>4</sup> to determine disputes as to registered friendly societies in the following cases (Friendly Societies Act, 1896, 59 & 60 Vict. c. 25, s. 68 (7); Friendly Societies Act, 1908, 8 Ed. 7, c. 32, s. 6) :—

- (1) Where the rules of a society or branch direct that disputes shall be referred to justices;<sup>4</sup>
- (2) Where the rules contain no directions as to disputes;
- (3) Where, after application, under the rules, to the society or branch to determine the dispute, no decision is made on the dispute for forty days after the application.<sup>5</sup>

Disputes within the section are :—disputes between (a) a member or person claiming through a member or under the rules of a registered

<sup>1</sup> The material sections of this statute will be found *verbatim*, APPENDIX OF STATUTES.

<sup>2</sup> This statute is given *verbatim*, APPENDIX OF STATUTES.

<sup>3</sup> As to the meaning of which term, see p. 146.

<sup>4</sup> In this case the parties, by consent, have an alternative remedy in the county court.

<sup>5</sup> The member or party aggrieved, at his option, may apply to the county court also.



Friendly  
Societies.  
Jurisdiction.

society or branch, and the society or branch or an officer thereof; (b) any person aggrieved who has ceased to be a member, or any person claiming through such person aggrieved, and the society or branch or an officer thereof; (c) between a branch and the society or branch of which it is a branch; (d) between any officer of a branch and the society or branch of which such branch is a branch; (e) any two or more registered branches of any society or branch, or any officers thereof (Friendly Societies Act, 1896, 59 & 60 Vict. c. 25, s. 68; Friendly Societies Act, 1908, 8 Ed. 7, c. 32, s. 6). The dispute must be with the member as a member and not in any other capacity (*Mulkern v. Lord*, (1879) 4 A. C. 182). The justices have no jurisdiction where the rules of such societies provide a mode for settlement by arbitration (*R. (Duane) v. Dublin JJ.*, (1891) 28 L.R.I. 516). The rules of an industrial and provident society, which substantially followed the terms of section 49 of the Industrial and Provident Societies Act, 1893, provided for the reference of all disputes between the society and its members to arbitration. A member of the society commenced an action against the committee of management of the society for a declaration that certain resolutions passed by them were *ultra vires* the society, and for consequential relief. *Held*, that the plaintiff's claim was a dispute within the arbitration rule and s. 49, and that the proceedings in the action must be stayed: where the rules of a registered society contain a provision for the reference of disputes between a member and the society and its officers to arbitration, it is not an answer to an application for a stay of proceedings that the question at issue is, whether or not the act complained of is *ultra vires* (*Cox v. Hutchinson*, (1910) 1 Ch. 513).

Refusal to repay subscriptions claimed to be due to a member is a "dispute" (*Huckle v. Wilson*, (1877) 2 C.P.D., which was decided upon 6 & 7 Wm. 4, c. 32, s. 4, and 10 Geo. 4, c. 56 s. 27, now replaced by the Building Societies Act, 1875, 38 & 39 Vict. c. 9; see also *Clemson v. Hubbard*, (1876) 1 Ex. D. 174, which was decided on the construction of the Employers and Workmen Act, 1875, and is noted p. 158). The jurisdiction conferred by the section is exclusive; and, speaking generally, there is no recourse to any court of law outside the section (see *Norton v. Counties Conservative Permanent Building Society*, (1895) 1 Q.B. 246; *Catt v. Wood*, (1910) A.C., 404). In the last case, the decision of the society, under the rules as to expulsion, was held conclusive, and not reviewable in a court of law. Where, however, a society, in purporting to settle a dispute, acts with an informality which goes to the root of the jurisdiction, the aggrieved person is entitled to seek a remedy in a court of law (*Ex parte Woolridge*, (1862) 31 L.J.Q.B. 122; *Andrews v. Mitchell*, (1905) A.C. 78); but it is otherwise if the irregularity is in a mere matter of form (*Andrews v. Mitchell*, *supra*).

Procedure.

All offences and fines under the Acts may be prosecuted and recovered in the manner directed by the Summary Jurisdiction Acts<sup>1</sup> either (a) at the place where the offence was committed; or (b) as respects a prosecution against a registered society or branch, or an officer thereof, at the place where the registered office of the society or branch is situated; or (c) as respects a prosecution against a person other than a registered society or branch, or an officer thereof, at the place where the person is resident at the time of the institution of the prosecution (Act of 1896, s. 92).

<sup>1</sup> As to which see p. 41.

(1) The trustees of a registered society or branch, or any other officers authorized by the rules thereof, may bring or defend any legal proceeding in their proper names, without other description than the title of their office. (2) In proceedings brought by a member, &c., a registered society or branch may also be sued in the name, as defendant, of any officer or person who receives contributions or issues policies on behalf of the society or branch within the jurisdiction of the court in which the legal proceeding is brought, with the addition of the words "on behalf of the society or branch" (naming the same). (3) A legal proceeding shall not abate or be discontinued by the death, &c., of any officer, or by any act of any such officer after the commencement of the proceedings. (4) The summons, &c., issued to or against the officer, &c., on behalf of a registered society or branch, shall be sufficiently served by personally serving that officer or other person, or by leaving a true copy thereof at the registered office, or at any place of business of the society or branch within the jurisdiction of the court in which the proceeding is brought, or, if that office or place of business is closed, by posting the copy on the outer door of that office or place of business. (5) In all cases where the service, &c., is not personal or at the registered office, a copy thereof shall be sent in a registered letter addressed to the committee at the registered office and posted at least six days before any further step is taken on the proceeding. (6) Where proceedings are taken against a society or branch for the recovery of any fine under this Act, the summons or other process shall be sufficiently served by leaving a true copy thereof at the registered office of the society or branch, or at any place of business of the society or branch, within the jurisdiction of the court in which the proceeding is brought, or, if that office or place of business is closed, by posting the copy on the outer door of that office or place of business. (7) Where the person against whom the proceedings are to be taken is himself a trustee of a society or branch, the proceedings may be brought by the other trustees or trustee of the society or branch (Act of 1896, s. 94; Act of 1908, s. 11).

Friendly  
Societies.  
Procedure.

Every document bearing the seal or stamp of the central office shall be received in evidence without further proof, and every document purporting to be signed by the chief or any assistant registrar, or any inspector, or public auditor or valuer under this Act, shall, in the absence of any evidence to the contrary, be received in evidence without proof of the signature (Act of 1896, s. 100).

Evidence of  
documents.

Any person may appeal from *any* order or conviction made by a court of summary jurisdiction (s. 93). *Appeal.*

Where the rules of a friendly society referred disputes to "one of the divisional magistrates of Dublin" it was held that no appeal lay from the decision of such magistrate (*M'Caffrey v. M'Mahon*, (1901) 35 I.L.T.R. 97). That case, however, turned upon the wording of the rules. In the case where, the rules being silent as to the tribunal to determine disputes, a court of summary jurisdiction has jurisdiction, there is an appeal to quarter sessions under the Petty Sessions Act, 1851, 14 & 15 Vict. c. 93 (*R. (M'Aneney) v. Tyrone JJ.*, (1910) 44 I.L.T.R. 147).

As to offences, see CATALOGUE OF SUMMARY OFFENCES.

In disputes between a collecting society or industrial assurance company, and any member or person insured, or any person claiming

Collecting societies and industrial assurance companies.

through a member or person insured, or under the rules, that member or person may, notwithstanding any provisions of the rules of the society or company to the contrary, apply to the county court, or to the court of summary jurisdiction for the place where that member or other person resides, and the court may settle that dispute according to the provisions of the Friendly Societies Act, 1896. (Collecting Societies and Industrial Assurance Companies Act, 59 & 60 Vict. c. 26, s. 7).

Recovery of gas rents, &c.

Power is given by the Gasworks Clauses Act, 1871, 34 & 35 Vict. c. 41,<sup>1</sup> ss. 23 and 40, to justices to determine claims by gas undertakers for amounts due in respect of the supply of gas, gas meters, gas fittings, or of the cutting off of gas. Apparently a single justice may adjudicate in respect of claims for gas supply, under s. 23; but two justices are required in case of claims for gas rents or money due for the hire or fixing of the meter, or any expenses incurred in cutting off the gas (ss. 40, 44). There is no limit as to the amount that may be sued for. Such costs as to the justices shall seem just and reasonable may be awarded (34 & 35 Vict. c. 41, s. 1; 10 & 11 Vict. c. 15, s. 40; 8 & 9 Vict. c. 20, s. 142). The distress warrant for any money ordered to be paid shall include the amount awarded for costs (s. 43). The register of the gas meter is to be *prima facie* evidence of the quantity consumed, and differences between the customer and the undertakers as to the quantity may be settled by two justices whose decision is final, and who may order either party to pay the costs of the proceedings before them (s. 20). Where an automatic slot-meter is used, the customer cannot be compelled to pay over again the amount deposited by him in the meter, which has been stolen through no negligence on his part (*Edmundson v. Longton Corporation*, (1902) 19 T.L.R. 15).

Every person who shall carelessly or accidentally damage any pipe, pillar, or lamp belonging to the undertakers, or under their control, shall pay to the undertakers such sum by way of satisfaction as any two justices shall think reasonable, with costs in the discretion of the justices (Gasworks Clauses Act, 1847, 10 & 11 Vict. c. 15, ss. 20, 40; Railway Clauses Consolidation Act, 1845, 8 & 9 Vict. c. 20, s. 142). The summary remedy given by section 20 is not an exclusive remedy, and the undertakers can proceed by action if they so choose (*Crystal Palace District Gas Co. v. Idris & Co., Ltd.*, (1900) 16 T.L.R. 180). Where, under sections 6-12, undertakers propose to break up streets, &c., for the purpose of laying or repairing pipes, &c., and any difference arises between the undertakers and the persons or officers having control of such street, &c., as to the plan to be adopted for the prevention of interference with drainage, &c., then such plan shall be determined, and orders given for its adoption by the undertakers, by any two justices (s. 9), whose power as to costs is the same as that noted under s. 20.

By section 16 of the Gasworks Clauses Act, 1871, where any owner or occupier is required by the special Act to give security to the undertakers, the amount of such security, in default of agreement, may be determined, on the application of either party, by two justices,

<sup>1</sup> The Gasworks Clauses Act, 1847 (10 & 11 Vict. c. 15), is usually incorporated by the private Act of gas companies. The Gasworks Clauses Act, 1871 (34 & 35 Vict. c. 41), applies to any undertaking authorized by any special Act passed after 1871, unless expressly excluded (Act of 1871, s. 3). The Acts are to be read as one Act (*ib.*, s. 1).



who may order by whom the costs of the proceedings shall be borne. Recovery of gas rents, &c. Section 49 of the Alliance & Dublin Gas Act, 1866 (29 & 30 Vict. c. cccv), empowers the Alliance & Dublin Gas Co., to require security from any person, not being the Dublin Corporation, or any local authority.

It is probable that the six months' limitation imposed by the Petty Sessions Act, s. 10 (4) applies to summary proceedings with regard to gas see *East London Waterworks Co. v. Charles*, (1894) 2 Q.B. 730; *Elliott v. Russell*, (1902) 2 K.B. 748, both noted, p. 166, *infra*.

As to offences relating to "Gas," see under that title in CATALOGUE OF SUMMARY OFFENCES, and under LARCENY in CATALOGUE OF INDICTABLE OFFENCES.

The Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), s. 12, Electricity. incorporates sections 38-42 inclusive. and sections 45 and 46 of the Gasworks Clauses Act, 1871, and the provisions of the Gasworks Clauses Act, 1847, "with respect to breaking up streets for the purpose of laying pipes" . . . and "with respect to injury to the pipes and other works," and provides that "electricity" and "electric line" are, for the purpose of such incorporation, to be substituted in those sections for "gas" and "pipe." Consequently (under section 40 of the Gasworks Clauses Act, 1871, noted *supra*) two justices can determine claims by electric undertakers for amounts due in respect of the supply of electricity, electric meters, electric fittings, or the cutting off of electricity: there is no limit to the amount that may be sued for; and the justice may award such costs as he pleases. Differences between undertakers and consumers as to the accuracy of meters are to be settled, not by justices, but by a Board of Trade Inspector (Electric Lighting Clauses Act, 1899 (62 & 63 Vict. c. 19), s. 57). "Subject as aforesaid, the register of the meter shall be conclusive evidence, in the absence of fraud, of the value of the supply" (*ib.*), but where a meter was conclusively shown to have registered a supply three times more than actually passed through it, Judge Rentoul, K.C., in the City of London Court, held on the facts that the meter was not conclusive evidence (*City of London E. L. Co. v. Oakley*, "Times" newspaper, 12 Nov., 1902).<sup>1</sup> The incorporation already mentioned of part of the Gasworks Clauses Act, 1847, gives the justices precisely the same power to award compensation and costs for careless or accidental damage to any electric line, pillar, or lamp as they have in the case of such damage to gas-pipes, pillars, or lamps, and to determine, in case of dispute, just as already mentioned, as they may do with regard to the laying of gas-pipes, the plan on which streets are to be broken up so as not to interfere with drainage.

It would appear that the six months' limitation imposed by the Petty Sessions Act, s. 10 (4), applies to proceedings with regard to electricity also.

As to offences relating to "Electricity," see under that head in CATALOGUE OF SUMMARY OFFENCES, and under LARCENY, in CATALOGUE OF INDICTABLE OFFENCES.

Water rates and water rents may be recovered in a summary manner (Public Health (Ireland) Act, 1878, 41 & 42 Vict. c. 52, s. 66), and sections 68 to 74 of the Waterworks Clauses Act, 1847, 10 & 11 Vict. c. 17, with respect to the payment and recovery of water rates, are made applicable (s. 67). The water rates shall be paid Recovery of water rent and water rates.

<sup>1</sup> But cf. *Leonard v. Richards*, (1891) 25 I.L.T.R. 58.

Recovery of  
water rents  
and water  
rates.

by the person using the water, and shall be payable according to the annual value of the tenement supplied with water.<sup>1</sup> The owner, and not the occupier, of a house not exceeding £10 in value is liable (s. 72). If the rates are not paid, the water may be cut off, and the rate, if not exceeding £20, with the expenses of cutting off the water and costs, may be recovered in the same manner as damages for the recovery of which no special provision is made are recoverable (s. 74), that is, the amount in case of dispute is to be determined by two justices, who may in their discretion award costs to either party, and, if not paid within seven days after demand, is recoverable by distress under the Railways Clauses Consolidation Act, 1845, 8 & 9 Vict. c. 20, ss. 140, 142, and Waterworks Clauses Act, 1847, 10 & 11 Vict. c. 17, s. 85. The rate can be sued for, even though the water has not been cut off (*R. v. Hutton*, (1907) 2 K.B. 578). The six months' limit in the Petty Sessions Act, 1851, s. 10 (4), probably applies (see *East London Waterworks Co. v. Charles*, (1894) 2 Q.B. 730, decided on the construction of the 11 & 12 Vict. c. 43) the date running from the date of demand (*Elliott v. Russell*, (1902) 2 K.B. 748). An alternative remedy, by action in any court of competent jurisdiction, is given by the Waterworks Clauses Act, 1863 (26 & 27 Vict. c. 93, s. 21).

The statute requires the undertakers to supply water for domestic use of the inhabitants (Waterworks Clauses Act, 1847, s. 35), without extra charge for domestic purposes beyond the payment of the water rate (s. 53). It therefore frequently becomes material to consider what are domestic purposes within the Act. The Waterworks Clauses Act, 1863, s. 12, enacts: "that domestic purposes shall not include a supply of water for cattle, or for horses, or washing carriages, where such horses or carriages are kept for sale or hire, or by a common carrier, or a supply for any trade, manufacture, or business, or for watering gardens, or for fountains, or for any ornamental purpose." "The words 'domestic purposes' include user, not merely for washing, drinking, flushing closets, and the like, but extend to user for what in *Bristol W.W. Co. v. Uren*, 15 Q.B.D. 637, were called 'the amenities of the house,' but the limits of such amenities must be ascertained with due regard to what is reasonable, and what is the ordinary user in our day" (per Buckley, J., in *S. W. Suburban Water Co. v. St. Marylebone Gdns.*, (1904) 2 K.B. 184). The following have been held to be domestic purposes:—watering private horses, or washing private carriages (*Bushy v. Chesterfield W.W. Co.*, (1858) 27 L.J.M.C. 174), including the supply for washing a motor car used by a medical man in the practice of his profession (*Harrogate Corporation v. Mackay*, (1907) 2 K.B. 611); water for (1) the supply of cisterns for flushing closets, (2) for a constantly running supply for urinals in a large building, (3) to supply fire hydrants used chiefly for washing the yards of such building, (4) to supply boilers for warming the building with hot water, and for heating water for ordinary laundry purposes (*S. W. Suburban Water Co. v. St. Marylebone Gdns.*, *supra*); water for domestic use of inhabitants of a workhouse (*Liskeard Union v. Liskeard W.W. Co.*, (1881) 7 Q.B.D. 505), or of a boarding-house (*Pidgeon v. Gt. Yarmouth Water Co.*, (1902) 1 K.B. 310), or boarding-school (*Frederick v. Bognor Water Co.*, (1909)

<sup>1</sup> Sanitary authorities, and water companies so authorized, may also supply water by measure (Waterworks Act, 1863, s. 14; Public Health Act, 1878, s. 68).

1 Ch. 149), or for the resident employes of a gas company (*S. Suburban Gas Co. v. Met. Water Board*, (1910) 26 T.L.R. 12). The important point is not the character of the house in which, but the character of the purpose for which, the water is used (*ib.*). The following are not domestic purposes:—the use of water for electric, steam, or other power, or for a swimming-bath in a school used for the purpose of making the teaching more effective (per Romer, L.J., in *Barnard Castle v. Wilson*, (1902) 2 Ch 756; per Buckley, J., in *S.W. Suburban Co. v. St. Marylebone Gdns.*, *supra*), or water used for sanitary conveniences at a railway station *Met. Water Board v. L. B. & S. C. Ry. Co.*, (1910) 1 K.B. 804; affirmed on appeal, 26 T.L.R. 676).

Recovery of  
water rents  
and water  
rates.

The Public Health (Ir.) Act, 1878, also (s. 67) incorporates ss. 28–67 of the Waterworks Clauses Act, 1847, and the whole of the Waterworks Clauses Act, 1863. By virtue of this incorporation two justices may, as in the case of the laying down of gas-pipes and electric lines, give directions as to the prevention of interference with drainage by the laying down of water-pipes, &c., in streets where a dispute about such a matter is referred to them (Waterworks Clauses Act, 1847, ss. 31, 52), and they may at their discretion award costs to either party (s. 85; 8 & 9 Vict. ss. 140, 142); they have power to determine, and like power to award costs in, certain disputes between undertakers and consumers as to the pipes connecting the premises of consumers with the pipes of undertakers (Act of 1847, ss. 48, 49, 85; 8 & 9 Vict. c. 20, ss. 140, 142). Where undertakers repair waterfittings that are causing waste on the premises of a consumer they may recover the cost of so doing as damages with costs before two justices (Act of 1847, s. 56; 8 & 9 Vict. c. 20, ss. 140, 142); and the undertakers may recover in the same way that water rates (see *supra*) are recovered, the rents due for water meters supplied to consumers in cases where, the supply of water by measure being authorized by statute, they have hired such meters (Waterworks Clauses Act, 1863, s. 14).

For obtaining payment of an instalment due by any person for a supply of seed potatoes, or seed oats, or both, the county council, or urban district council, as the case may be, shall levy the amount, where the person is rated to the poor rate, by a special rate to be added to the poor rate assessed on the premises occupied by him, and to be collected therewith; where such person is not rated to the poor rate, the council shall make a special rate, recoverable in the same manner, and with the same remedies, by the collectors of the poor rate as if it were poor rate (Seed Potatoes & Seed Oats Supply (Ir.) Act (1908), 8 Ed. 7, c. 19, s. 2). As to summary proceedings for recovery of poor rate, see p. 203.

Recovery of  
seed rate.

The Dogs Act, 1906, 6 Ed. 7, c. 32, s. 1, enacts as follows:—

(1) The owner of a dog shall be liable in damages for injury done to any cattle<sup>1</sup> by that dog; and it shall not be necessary for the person seeking such damages to show a previous mischievous propensity in the dog, or the owner's knowledge of

Damage to  
cattle by  
dogs.

<sup>1</sup> "Cattle" includes horses, mules, asses, sheep, goats, and swine (s. 7). Knowledge of a dog's mischievous habits is still necessary to support an action for *personal* injuries from a dog bite; and it is necessary to show that the dog had, to the defendant's knowledge, bitten or attempted to bite some *person* before it attempted to bite the plaintiff; it is not sufficient to show that the defendant knew it had attacked and bitten another animal (*Osborne v. Chocquet*, (1896) 2 Q.B. 109; *Barnes v. Lucille*, (1907) 96 L.T. 680). As to evidence of *scienter*, see *Applebee v. Percy*, (1874) L.R. 9 C.P. 647; *Parsons v. King*, (1891) 8 T.L.R. 114.



Damage to  
cattle by  
dogs.

such previous propensity, or to show that the injury was attributable to neglect on the part of the owner; (2) where any such injury has been done by a dog, the occupier of any house or premises where the dog was kept or permitted to live or remain at the time of the injury shall be presumed to be the owner of the dog, and shall be liable for the injury unless he proves that he was not the owner of the dog at that time: provided that where there are more occupiers than one in any house or premises let in separate apartments, or lodgings, or otherwise, the occupier of that particular part of the house or premises in which the dog has been kept or permitted to live or remain at the time of the injury shall be presumed to be the owner of the dog; (3) if the damages claimed under this section do not exceed five pounds they may be recovered under the Summary Jurisdiction Acts<sup>1</sup> as a civil debt; (4) where a dog is proved to have injured cattle or chased sheep, it may be dealt with under section 2 of the Dogs Act, 1871, as a dangerous dog.

If a horse is frightened by a dog, and injures itself in consequence, this will apparently be an "injury" within the section (see *Elliott v. Longden*, (1901) 17 T.L.R. 648). The fact that the cattle are trespassing on defendant's land at the time of the injury makes no difference (see *Grange v. Silcock*, (1897) 18 Cox, 644).

Having regard to the application of the Summary Jurisdiction Acts, it is submitted that costs, not exceeding twenty shillings, may be awarded to a successful complainant or defendant under s. 22 (9) of the Petty Sessions Act.

As to destruction of dangerous dogs, see CATALOGUE OF SUMMARY OFFENCES, DOGS.

Entry on lands  
to survey  
new line of  
road.

It shall be lawful for any person or persons to survey and measure any line intended for a new road for the making of which an application is to be made, and for that purpose to enter in and upon any lands or premises through which such intended line may pass, provided that such person or persons shall be thereunto authorized by a certificate in writing under the hand of the county surveyor, stating that such survey and entry to make same, is proper, and that such certificate shall be allowed by two justices of the peace for the county wherein the lands or premises may be situate, such allowance being signified under their hands by endorsement upon such certificate (6 & 7 Wm. 4, c. 116, s. 58; and for County Dublin, 7 & 8 Vict. c. 106, s. 59, both adapted by the Adaptation of Irish Enactments Order, 30th January, 1899).

Entry on  
lands for  
road materials.  
*Jurisdiction.*

The Grand Jury Act, 1836, 6 & 7 William 4, c. 116. s. 162, as applied by the Adaptation of Irish Enactments Order of 30th January, 1899, provides as follows:—

Every county surveyor, and every contractor for any work to be executed in pursuance of a resolution of a county council, shall have power and authority to dig for, raise, and carry away in or out of any lands, not being a deer park, bleach green, orchard, walled garden, haggard or yard, or planted walk, lawn, or avenue to a mansion house, any gravel, stones, sand or other materials, whether the same be found in the same or any adjoining county, which may be wanted for the building, rebuilding, enlarging, or repairing any bridge, arch, gullet, pipe or wall, or for the making, repairing, or preserving of any road or footpath, and such surveyor or contractor is hereby further empowered to make drains in order to carry off water which might injure any bridge, gullet, arch, pipe, wall, or road in or through any lands not being a deer park, bleach green, orchard, walled garden, haggard or yard, or planted walk, lawn, or avenue to a mansion house, and shall make such satisfaction for the damage done thereby, or by taking any such materials as aforesaid, as shall be assessed by three substantial householders, which householders shall view the ground immediately previous to and immediately after such damages shall be committed, one of such householders to be named by the owner or occupier of the land, and another by the surveyor or contractor, and the third by any

<sup>1</sup> As to the meaning of which term see p. 41.

neighbouring justice of the peace, and in case any surveyor or contractor shall refuse, or after four days' notice in writing from such landowner, neglect to name a householder on his part, then one shall be named for him by such justice. and such three householders shall be sworn by such justice of the peace (previous to the damage being committed) to be appraisers of such damages as may occur, and to make a true estimate thereof, in which estimate the value of any stones, gravel, or other material shall not be included, but only the waste committed by breaking the surface and making a passage through the land, unless where such stones, gravel, or materials shall be taken from any quarries and gravel-pits, *bona fide* demised with liberty to work the same,<sup>1</sup> provided nevertheless that it shall not be lawful for any such contractor or surveyor to enter any land for any such purpose against the will of the occupiers thereof, without the previous order of a justice of the peace, which order any such justice is hereby authorized and required to grant, on its being proved, to his satisfaction, that the gravel, stones, or other materials sought cannot be conveniently procured elsewhere, nor such drain otherwise sufficiently made or cleansed.

Entry of  
lands for road  
materials.  
*Jurisdiction.*

This section is extended to authorize the digging for, raising, and carrying away of gravel, stone, sand, or other materials, out of any river or brook at a distance of at least one hundred and fifty feet above or below any bridge, dam, or weir, where the same can be taken away without diverting or interrupting the course of the river or brook, or prejudicing or damaging any building, highway, ford, or spawning bed (*Local Government (Ir.) Act, 1898, s. 12*).

The county of Dublin is governed by the County Dublin Grand Jury Act, 7 & 8 Vict. c. 106, s. 136, which is *verbatim* the same as section 162, with these differences: that the word "appraisers" is used instead of "householders," and that the order must be made by two justices sitting in petty sessions. The provisions of section 12 of the Local Government (Ir.) Act, 1898, *supra*, are not applicable.

An order under section 162, though not necessarily made at petty sessions (see *R. (De Vesçi) v. Queen's Co. JJ.*, (1908) 2 I.R. 285, at p. 302), cannot be made until notice has been given to the occupier of the lands (*Clarke v. Clarke*, (1895) 2 I.R. 451; 29 I.L.T.R. 70). The owner need not be served, and he has no *locus standi* to object (*R. (De Vesçi) v. Queen's Co. JJ.*, *supra*, at p. 302). Where the application is made to the justices at petty sessions, the order under the section is not the entry in the petty sessions book, but the document which is issued to the contractor as his authority to enter<sup>2</sup> (*R. (Murphy) v. Wexford JJ.*, (1894) 2 I.R. 81, 28 I.L.T.R. 17). A contractor has no right to enter without an order for the purpose of taking materials against the will of the occupier, even though the landlord assents (*Sullivan v. Collins*, (1869) 3 I.L.T. and S.J. 638). Though one justice has power to make the order, yet the decision at petty sessions of an application under the section is the decision of the entire then assembled court, and not of one magistrate, and the order should be signed by all the justices who concur in making it (see remarks of Gibson, J., in *R. (De Vesçi) v. Queen's County JJ.*, *supra*, at p. 306). The presence of one biased justice on the bench vitiates the order (*ib.*). When the contractor has obtained the order he is not bound to serve a copy of same on the occupier of the lands, though he

<sup>1</sup> In *Murphy v. Macrory*, (1909) 43 I.L.T.R. 243, it was held by Andrews, J., on case stated by county court judge of Wicklow, that an owner in fee simple is entitled to recover by action the value of the road material taken. This decision follows that of Lawson, J., in *Smith v. M'Ilwainey*, (1886) 20 I.L.T.R. 12, and conflicts with that of Murphy, J., in *La Touche v. Condy*, (1900) 35 I.L.T.R. 44.

<sup>2</sup> For form of order see p. 171, *post*.

Entry on land  
for road  
materials.  
Procedure.

ought to allow the occupier to inspect same if required (*Steward v. Anderson*, (1901) 35 I.L.T.R. 234). If a contractor enters in pursuance of an order which is defective, he will be liable in damages as a trespasser (*Fitzpatrick v. Pine*, (1861) 13 I.C.L.R. 32). A case cannot be stated by justices from an order under the section (*R. (Hale) v. Down JJ.*, unreported, noted Brett's Grand Jury Laws, p. 43; *Collen v. Lord Howth*, (1903) 3 N.I.J.R. 350), nor is there any appeal; but certiorari lies to quash an order *ex facie* bad, or if the justices have wrongfully assumed jurisdiction to make an order in respect of lands of the classes exempted by the section (*R. (De Vescei) v. Queen's Co. JJ.*, *supra*). A justice who, as a member of a county council, takes an active part in promoting and carrying a resolution of the council that the county surveyor shall apply at petty sessions for a certain order under the section, is disqualified by bias from afterwards adjudicating upon the hearing of the application (*ib.*). A grazing tenant is an occupier for the purpose of the section (*R. (Guinness) v. Louth JJ.*, (1898) 2 I.R. 248, 33 I.L.T.R. 9).

The justices should not give a contractor a greater right of entry than he asks for in his summons, so that, where the summons merely asked for an order to take away gravel, the order was held bad because it purported to authorize the contractor to take gravel, stones, sand, and other materials (*R. (Booth) v. Meath JJ.*, (1898) 4 I.W.L.R. 233).

The order must contain all the necessary elements to show jurisdiction, and must negative the statutory exemptions. The following cases show the necessity for care in drawing up an order under the section.

Essentials of  
order.

The order must show that the contractor was a contractor for the repair of the road in pursuance of a resolution of the county council (*R. (May) v. Mayo JJ.*, (1884) 16 L.R.I. 11); the personal representative of the original contractor would probably be deemed to be a contractor within the meaning of the section (*per* Palles, C.B., in *Tracy v. McCabe*, (1893) 32 L.R.I. 21, at p. 29); and that the justice making it is himself satisfied that the materials cannot be conveniently procured elsewhere (*Fitzpatrick v. Pine*, (1861) 13 I.C.L.R. 32). It is not sufficient that the order should state that the justice is satisfied that the lands are the most convenient place for procuring the materials (*Butler v. Leahy*, (1867) 1 I.L.T. and S.J. 477). The right of entry must be limited to a definite time (*R. (Bentham) v. Dublin JJ.*, (1884) 14 L.R.I. 443; *R. (Fitzgerald) v. Limerick JJ.*, (1892) 27 I.L.T.R. 35; *R. (Murphy) v. Wexford JJ.*, (1894) 2 I.R. 81, 28 I.L.T.R. 17). In the last-mentioned case it was held that the time is sufficiently limited by the order, where the order recites that the contract is to continue for a specified time from a given date, and authorizes entry during the period of such contract.<sup>1</sup> But where the order recites the contract, but does not specify the period of time in the contract, this is not sufficient, for the limit of time must appear on the face of the order itself, and not merely by reference to the contract, which the occupier of the lands is not bound to investigate at his own expense (*R. (Guinness) v. Louth JJ.*, (1898) 2 I.R. 248, 33 I.L.T.R. 9). An order under the section can apparently be made for the entire period of the continuance of the contract, and need not be limited to the immediate necessity of the contractor (*R. (Coyle) v. Monaghan JJ.*, (1908) 2 I.R. 1). The order must show that the lands are not lands coming within the exceptions mentioned in the section

<sup>1</sup> See also *R. (Brady) v. Cavan JJ.*, (1907) 2 I.R. 389.



(*R. (Murphy) v. Wexford JJ.*, (1894) 2 I.R. 81, 28 I.L.T.R. 17). If the occupier of the lands has, for the purpose of evading the operation of the section, converted the lands into one of the statutory exceptions, e.g., by planting an orchard, the lands become thereby exempt (*R. (De Vesci) v. Queen's County JJ.*, *supra*, at p. 285). Entry on land for road materials. Essentials of order.

The order should limit the right of entry to a specified place from which the materials are to be taken, so that there be no doubt where the contractor is to operate (*R. (Dove) v. Westmeath JJ.*, (1904) 4 N.I. J.R. 73; *R. (O'Farrell) v. Meath JJ.*, (1910) 44 I.L.T.R. 267), but the order is bad if it prescribes a particular road by which the contractor must enter (*R. (Coyle) v. Monaghan JJ.*, (1908) 2 I.R. 1). The order must authorize the contractor or the surveyor, and an order which empowers a county council through its surveyor is bad (*R. (Maher) v. Kilkenny JJ.*, (1905) 5 N.I.J.R. 113).

The following is the form of order in use :—

Specimen order.

A.B.	Complainant ;	} County of
C.D.		
	Defendant.	Petty Sessions District of

Whereas at the quarterly meeting of the county council of held in and for the county of a presentment to keep in repair perches of a public road from to between and for the period of years, viz., from to , was made by the county council of the said county under the authority of the Act 6 & 7 William IV, chapter 116 (61 & 62 Vict., chapter 37).<sup>1</sup>

And whereas of is the county' council contractor for the execution of such work in the said presentment mentioned.

And whereas it has been proved to the satisfaction of me, the undersigned justice of the peace,<sup>2</sup> that gravel, stones, sand, or other materials wanted for the repair of the said road during the said period cannot be conveniently procured elsewhere than in a certain

part of the lands of now in occupation of in the said county, and which said land is not a deerpark, bleachgreen, orchard, walled garden, haggard or yard, or planted walk, lawn, or avenue to a mansion house.

Now I, the undersigned justice of the peace, in pursuance and exercise of the power and authority in that behalf, given to me by the 162nd section of the said Act 6 & 7 William IV, chapter 116, and 61 and 62 Vict., chapter 37,<sup>3</sup> section 12, sub-section 2, do hereby authorize the said

during the said period specified in the said presentment, should he so long continue county council contractor as aforesaid, or for such portion of said period as he shall so continue, to enter as such contractor, with his assistants, into the said part of the lands of

now in the occupation of hereinbefore mentioned, for the purpose of digging for, raising, and carrying away in and out of the same any gravel, stones, sand, or other materials wanted for the repair of the said road during said period so as aforesaid specified, or for such portion thereof as he may continue to be county council contractor as aforesaid under the said presentment.

Given under my hand at this day of 19 .

Signed, One of His Majesty's justices of the peace for said county.

To of County council contractor for said work.

<sup>1</sup> Or, in co. Dublin, "under the authority of the Act 7 & 8 Vict. c. 106, s. 136."

<sup>2</sup> Add, for Dublin, "sitting at petty sessions at for the above petty sessions district."

<sup>3</sup> In the county of Dublin this would read the 7 & 8 Vict. c. 106, s. 136.

Entry on land for road materials.      The said county of      of occupier of the said land, nominates in said of acting under the authority of this order, given to him pursuant to the aforesaid recited Acts;<sup>1</sup> and the applicant for this order, in the said of road contractor, nominates on his part one of ; and I, as a neighbouring justice of the peace, herein name on my part of in the said county of the three parties so named being substantial householders,<sup>2</sup> who shall, previous to the damage being committed, have been sworn by me to appraise and make a true estimate of such damage as may be occasioned the occupier of the said lands, in and according to the manner prescribed by the 162nd section of 6 & 7 William IV, chapter 116,<sup>3</sup> and who shall view the ground immediately previous to, and immediately after, such damages shall be committed, as by the said statute is required and ordered to be done.

Signed,

*Justice of the peace for the said county.*

*Costs.*

As mentioned above, this order, save in the county Dublin, may be made out of sessions (see *R. (De Vesci) v. Queen's Co. JJ.*, (1908) 2 I.R. 285, at p. 302). It is submitted that costs cannot be given, at all events elsewhere than in county Dublin, and possibly not even there.

Enforcing road contract.

The Grand Jury (Ireland) Act, 1856, 19 & 20 Vict. c. 63, s. 17. as adapted by the Adaptation of Irish Enactments Order of 30th January, 1899, provides as follows:—

If in the opinion of the county council on the report of the county surveyor, the contractor for the repair of any road shall be guilty of neglect or inattention in the performance of his contract, it shall be lawful for such council to summon the said contractor and his sureties before the justices at petty sessions of the district in which such work may be situate; and if such charge of neglect or inattention be established before such justices, it shall be lawful for them to make an order<sup>4</sup> directing the said contractor and his sureties to execute his contract within a period to be stated in such order; and if at the expiration of such order the county council shall still see reason for being dissatisfied with the manner in which such work has been executed, it shall be lawful for them again to summon the contractor and his sureties before the justices at petty sessions, and the justices thereupon shall proceed to enquire into and finally adjudicate upon the complaint; and if it shall appear that such work has been insufficiently executed or contrary to the terms of the contract, it shall be lawful for such justices, having ascertained the amount which it may require for the completion of such work according to the contract, to authorize such council to complete the same, and to levy such amount by warrant of distress upon the goods of such contractor or his sureties, not exceeding the amount of the recognizance or bond of such sureties.<sup>5</sup>

The remedy provided by the above section applies to all contracts for the repair of roads, including maintenance contracts (*R. v. Kerry JJ.*, (1875) I.R. 9 C.L. 471; *Stokes v. Buckley*, (1876) I.R. 10 C.L. 158).

<sup>1</sup> Act, in countv Dublin.

<sup>2</sup> This is apparently not necessary in the county of Dublin; see 7 & 8 Vict. c. 106, s. 136, *supra*, p. 169.

<sup>3</sup> In the county of Dublin this would read the 7 & 8 Vict. c. 106, s. 136.

<sup>4</sup> With, it is submitted, costs not exceeding twenty shillings to either party (Petty Sessions Act, s. 22 (9)).

<sup>5</sup> The County Dublin Grand Jury Act, 1844, 7 & 8 Vict. c. 106, s. 108, contains similar provisions, and applies to contracts for all county work.

The Summary Jurisdiction (Ir.) Act, 1851, s. 9 (*verbatim*, APPENDIX OF STATUTES), empowers the county surveyor or the contractor for the repairing of any public road, if he shall think that the road is prejudiced by any of the neglects or offences mentioned in the section, or by the shade of any hedges or trees (except those planted for ornament or shelter of any dwelling-house, courtyard, or garden), or that any obstruction is caused in any public road by any hedge or tree, to obtain, in manner prescribed by the section, orders for the remedy of the mischief.

Order to cut hedges, &c. Jurisdiction.

The scheme of the section seems (see (*R. (Winder) v. Kildare JJ.*, (1909) 2 I.R. 686), to be as follows:—(1) the county surveyor or contractor shall, by notice in writing, require the person guilty of the neglect or offence, or the owner of the land on which such hedges or trees are growing, to remedy the matter;<sup>1</sup> (2) on default, after ten days from the service of the notice, the contractor may summon such person to appear before the justices at petty sessions to show cause why he has not complied with such request; (3) at the hearing of such summons, the justices, if they shall think fit,<sup>2</sup> may order that such person or owner shall act as required by the notice; (4) if this order be not obeyed within ten days, the justices may make a second order<sup>3</sup> directing the contractor or county surveyor to do the work himself; (5) the county surveyor or contractor, upon complaint to the justices, and proof of the expenses, may obtain a warrant for the levy of the expenses. This warrant, of course, should only be granted after service of a summons or complaint upon the party to be affected thereby, so that then there will be three hearings in a case where the person or owner refuses to do the necessary work himself. The owner of the lands cannot be compelled, nor can any county surveyor or contractor be permitted, to cut or prune any hedge at any other time than between 30th September and 31st March.

The second order, above referred to, may be less extensive than the first, but it cannot be more extensive, so that, where the first order merely directed hedges to be cut, a second order, directing hedges to be cut and trees to be lopped, was held bad (*R. (Winder) v. Kildare JJ.*, (1909) 2 I.R. 686). *Seem*, the first order should not contain a provision that the work be completed “to the satisfaction of the county surveyor” (*ib*). The order should negative the statutory exemptions, that is, it should show that it does not apply to hedges or trees planted for ornament or shelter of any dwellinghouse, courtyard, or garden (*R. (Kennedy) v. Dublin JJ.*, (1909) 43 I.L.T.R. 271). The order should be drawn with great care. Gibson, J., in the last case, said the expression “cut down” had a different meaning from cut. “Lopping” a tree means cutting off the branches laterally, and does not include “topping,” and the section therefore gives no power to a county surveyor or contractor, or to justices, to order the cutting off the tops of any trees (*Unwin v. Hanson*, (1891) 2 Q.B. 115).

It is submitted that the duties of the county surveyor are unaffected

<sup>1</sup> This, of course, is merely a paraphrase: the notice should follow the words of the section that are applicable to the particular case

<sup>2</sup> It is obvious that the opinion of the county surveyor or contractor is not conclusive; the justices are judicially to form an opinion on the merits of the application themselves.

<sup>3</sup> The necessity for this second order seems to have been presumed in *R. (Winder) v. Kildare JJ.*, (1909) 2 I.R. 686.



Order to cut  
hedges, &c.  
Form of  
orders.

by section 72 of the Local Government (Ir.) Act, 1898, and still remain vested in him.

Under the Petty Sessions Act, 1851, s. 12, the entry of the order in the order-book, according to the form in use, is the order; but if a formal order is required, the following are suggested forms, and they at any rate will form a foundation for summonses under the section:—

No. 1.

ORDER No. 1.

County of .

Petty Sessions District of .

Between A.B., *Complainant*; C.D., *Defendant*.

Whereas it has been proved to the satisfaction of us, justices assembled at petty sessions for the above county and district, that the complainant, who is the county surveyor of the said county of (or the contractor for the repairing of the public road at in the above county and district), is of opinion that the public road at in the above county and district is prejudiced by the shade of hedges and trees, and it has also been proved to our satisfaction that said public road is prejudiced by the shade of such hedges and trees, and that the complainant has by notice in writing dated the day of , 19 , and served on the defendant on the day of , 19 , required the defendant, who is the owner of the land on which such hedges and trees are growing, to cut or plash such hedges, and to prune or lop such trees so as that such road may not be prejudiced by the same, and that the defendant has not complied with such request. And whereas the complainant has summoned the defendant before us to show cause why he should not comply with such request. Now we do hereby order that the defendant shall act as required by such notice as aforesaid, that is to say, do cut or plash such hedges, and do prune or lop such trees (except those planted for ornament or shelter of any dwellinghouse, courtyard, or garden<sup>1</sup>) so as that such road may not be prejudiced by the same: Provided that this order shall not extend so as to compel the defendant to cut or prune any hedge at any other time than between the last day of September and the last day of March.

No. 2.

ORDER No. 2.

County of .

Petty Sessions District of .

Between A.B., *Complainant*; and C.D., *Defendant*.

Whereas the complainant, who is the county surveyor of the said county of (or the contractor for the repairing of the public road at in the above county and district), being of opinion that the public road at in the above county and district is prejudiced by the shade of hedges and trees, and having by notice in writing dated day of , 19 , and served on defendant on day of , 19 , required the defendant, who is the owner of the land on which such hedges and trees are growing, to cut or plash such hedges, and to prune or lop such trees so as that such road might not be prejudiced or obstructed by the same, and the defendant not having complied with such request an order was duly made by the justices at the above petty sessions on the day of , 19 , to the following effect, namely, that the defendant should act as required by such notice as aforesaid, that is to say, should cut or plash such hedges and should prune or lop such trees (except those planted for ornament or shelter of any dwellinghouse, courtyard, or garden<sup>1</sup>) so as that such road might not be prejudiced by the same, provided that the said order should not extend so as to compel the defendant to cut or prune any hedge at any other time than between the last day of September and the last day of March. And whereas the defendant has not obeyed such order. Now we hereby direct that it shall be lawful for the complainant to do all or any of the said acts so required by such order and notice as aforesaid for the benefit and improvement of said road to the best of his skill and judgment and at the expense of the defendant.

<sup>1</sup> Where the road is actually obstructed by trees or hedges there are no such exemptions.

## ORDER No. 3.

Orders to cut  
hedges, &c.  
Form of  
orders.  
No. 3.

County of , Petty Sessions District of .

Between A.B., Complainant; and C.D., Defendant.

Whereas the complainant, who is the county surveyor of the said county of (or the contractor for the repairing of the public road at in the above county and district), being of opinion that the public road at in the above county and district is prejudiced by the shade of hedges and trees, and having by notice in writing dated day of , 19 , and served on the defendant on the day of , 19 , required the defendant, who is the owner of the land on which such hedges and trees are growing, to cut or plash such hedges and to prune or lop such trees so that such road might not be prejudiced by the same, and the defendant not having complied with such request, an order was made by the justices at the above petty sessions on the day of , 19 , to the following effect, namely, that the defendant should act as required by such notice as aforesaid, that is to say, should cut or plash such hedges, and should prune or lop such trees (except those planted for ornament or shelter of any dwellinghouse, courtyard, or garden<sup>1</sup>) so as that such road might not be prejudiced by the same, provided that said order should not extend so as to compel the defendant to cut or prune any hedge at any other time than between the last day of September and the last day of March. And whereas, the defendant not having obeyed such order, a further order was duly made on the by the justices at said petty sessions to the following effect, namely, that it should be lawful for the complainant to do all or any of the said acts so required by such order and notice as aforesaid for the benefit and improvement of said road to the best of his skill and judgment and at the expense of the defendant. And whereas the complainant has done the said acts required by such notice and order of the<sup>2</sup> for the benefit and improvement of such road to the best of his skill and judgment. And whereas it has been proved to our satisfaction that he has incurred the sum of £ s. d., expenses in so doing. Now we do hereby order and direct that the defendant do pay to the complainant the said sum of £ s. d., or in default thereof that a warrant do issue for the levying of the said sum by distress and sale of the goods and chattels of the defendant.

Having regard to the provisions of s. 1 of the Summary Jurisdiction Act, 1851, it is submitted that the justices may award costs, not exceeding 20s., to either party under s. 22 (9) of the Petty Sessions Act.

The Poor Relief (Ir.) Act, 1847, 10 & 11 Vict. c. 31, s. 28, provides for the recovery before two justices of the amount of disallowance or reduction by an auditor in the accounts of a union, and the section has been applied to all surcharges under the Local Government (Ir.) Act, 1871 (34 & 35 Vict. c. 109, s. 13). The auditor's certificate is conclusive as to the validity of the disallowance or reduction, and it is imperative on the justices, on proof of non-payment, to order payment of the amounts disallowed or reduced (*R. (Jephson) v. Roscommon JJ.*, (1883) 12 L.R.I. 331; *O'Connor v. O'Neill*, (1903) 3 N.I.J.R. 362). The justices may award costs (Poor Relief (Ir.) Act, 1847, s. 28). There has been no decision as to whether such costs can exceed 20s. (See Petty Sessions Act, s. 22 (9); *Hosford v. Devine*, (1898) 2 I.R. 28).

In cases in which it is applicable, the Lands Clauses Consolidation Act, 1845, 8 & 9 Vict. c. 18, gives two justices power to determine, in case of difference, the amount of compensation payable in respect of lands taken compulsorily. The jurisdiction arises (1) where the amount claimed does not exceed £50 (s. 22), and (2) where lands are in the possession of any person having no greater interest than as tenant for a year or from year to year (s. 121). A tenancy from

<sup>1</sup> See p. 174 n.

<sup>2</sup> The date of the first order.

Jurisdiction as to compulsory acquisition of lands.

year to year, on which a fair rent has been fixed by the Land Commission, is not a yearly tenancy within section 121 (*R. v. Cork J.J.*, (1900) 2 I.R. 105). The hearing is before two justices ss. 22, 121), assembled and sitting together (s. 3), after summons duly issued on the application of either party, and such justices may, in their discretion, award costs to any amount to either party (s. 24). In Ireland, however, the procedure for regulating the compulsory acquisition of land for public purposes is mainly governed by statutes which confer no jurisdiction on justices,<sup>1</sup> and the Lands Clauses Consolidation Act, 1845, will rarely apply.<sup>2</sup>

Salvage jurisdiction.

Jurisdiction to determine summarily the amount of salvage, whether in respect of life or property, is conferred by the Merchant Shipping Act, 1894, 57 & 58 Vict. c. 60, ss. 547-554, in each of the following cases:—(1) where the parties so consent; (2) where the value of the property saved does not exceed £1,000; (3) where the amount claimed does not exceed £200. A claimant who proceeds in the High Court and does not recover more than £200 shall not be entitled to any costs unless the Court certify that the case is a fit one to be tried otherwise than summarily. Apparently, if less than £200 is claimed, the jurisdiction of the High Court is excluded (*The William and John*, (1863) 32 L.J. Adm. 102, 8 L.T. 56). The dispute may be determined on the application of either the salvor or the owner of the property saved or of their respective agents. Where a dispute as to salvage is to be determined summarily, it shall be referred to the arbitration of, and be determined by, two justices of the peace or a stipendiary<sup>3</sup> magistrate, or the recorder of any borough having a recorder, or the chairman of quarter sessions of any county, called the "arbitrators" (s. 547). Where the dispute relates to the salvage of wreck, it shall be referred to a court or arbitrators having jurisdiction at or near the place where the wreck is found; where it relates to salvage in the case of services rendered to any vessel or to the cargo or apparel thereof, or in saving life therefrom, it shall be referred to a court or arbitrators having jurisdiction at or near the place where the vessel is lying, or at or near the port in the United Kingdom into which the vessel is first brought after the occurrence by reason whereof the claim of salvage arises. Any court or arbitrators may call in a nautical assessor, and there shall be paid, as part of the costs of the proceedings, to such assessor, in respect of his services, such sum not exceeding £5 as the Board of Trade may direct (s. 548). A party aggrieved by the decision may appeal to the High Court if the sum in dispute exceeds £50, and the appellant, within ten days from the date of the award, gives notice to the arbitrators of his

<sup>1</sup> Thus, the acquisition of land for railway purposes is governed by the Railways (Ir.) Act, 1851, 14 & 15 Vict. c. 70 (see s. 3), and for Local Government purposes by the second schedule to the Housing of the Working Classes Act, 1890, 53 & 54 Vict. c. 70 (see Labourers (Ir.) Act, 1896, 59 & 60 Vict. c. 53, s. 3; and Labourers (Ir.) Act, 1906, 6 Edw. 7, c. 37, s. 11; Public Health (Ir.) Act, 1896, 59 & 60 Vict. c. 54, s. 8; and Local Government (Ir.) Act, 1898, ss. 10, 27 (4)).

<sup>2</sup> *R. v. Cork J.J.*, *supra*, was a case where the lands were taken by the Secretary of State for War under the Defence Act, 1842 (5 & 6 Vict. c. 94), and the Act of 1845 was made applicable by the Lands Clauses Consolidation Acts Amendment Act, 1860 (23 & 24 Vict. c. 106, s. 7).

<sup>3</sup> This term does not, it is submitted, include a Resident Magistrate; though s. 610 of the same statute enacts that, for the purpose of that section, the term shall include "Resident Magistrate" (see p. 8, *ante*).



intention to appeal, and, within twenty days after the date of the award, takes such proceedings as according to the practice of the High Court are necessary for the institution of an appeal (s. 549 (1)). If the sum in dispute exceeds £50, an appeal lies irrespective of the value of the property (*The Generous*, (1868) 37 L.J. Adm. 37). The sum in dispute does not mean the sum awarded by the arbitrators (*The Andrew Wilson*, (1863) 32 L.J. Adm. 104, 8 L.T. 177). Where the claimants by a written claim demanded £40, but before the arbitrators claimed £200, and they were awarded nothing; *Held*, that the sum in dispute was £40 (*The Mary Ann*, (1865) 34 L.J. Adm. 73, 12 L.T. 238). The term "sum in dispute" means "sum in litigation," which is only another way of saying "the amount claimed" (see Scrutton, 2nd ed., p. 424). The Court will not entertain an appeal upon the mere question of amount unless plainly exorbitant (*The Cuba*, (1860) 6 Jur. N.S. 152), or quite inadequate (*The Harriett*, (1857) Swabey 218, *The Jeune Louise*, (1868) 37 L.J. Adm. 32, *The Andrew Wilson*, *supra*). The court rarely admits new evidence on the hearing of an appeal from an award of arbitrators (*The Generous*, *supra*). The arbitrators shall transmit to the proper officer of the court of appeal a copy on unstamped paper certified under their hands to be a true copy of the proceedings had before them or their umpire (if any), and of the award so made by them or him, accompanied with their or his certificate in writing of the gross value of the article respecting which salvage is claimed, and such copy and certificate shall be admitted in the court of appeal as evidence in the case (s. 549 (2)).<sup>1</sup> The Lord Lieutenant may appoint, out of the justices for any borough or county, a *rota* of justices by whom jurisdiction in salvage cases shall be exercised. Where no such *rota* is appointed, the salvors may, by writing addressed to the justices' clerk, name one justice; and the owner of the property may in like manner name another; and if either party fails to name a justice within a reasonable time, the case may be tried before two or more justices at petty sessions. The justices may appoint an umpire. The award is to be made by the arbitrators within forty-eight hours after the dispute has been referred to them, and the umpire within forty-eight hours after his appointment, with power to the arbitrators or umpire by writing duly signed to extend the time. There shall be paid to every umpire such sum not exceeding £5 as the Board of Trade may direct. All the costs of the arbitration, including any payment to the umpire, shall be paid by the parties in such manner and in such shares and proportions as the arbitrators or umpire may direct by the award. The arbitrators or umpire may call for the production of documents, and may examine the parties and their witnesses on oath, and administer the oath necessary for the purpose. A Secretary of State may determine the scale of costs to be awarded (s. 550).<sup>2</sup> The receiver of wreck may, on the application of either party, appoint a valuer to value the property (s. 551). The receiver shall detain the property until the salvage is paid or process is issued for the arrest or detention thereof by some competent court, or until security given (s. 552), and may sell the property, if amount due not paid within twenty days (s. 553). Where the salvage awarded does not exceed

<sup>1</sup> It would seem to follow from this section that the evidence should be taken in writing.

<sup>2</sup> No scale of costs has at time of writing (31 Dec., 1910) been determined.

Salvage  
jurisdiction.

£200 and a dispute arises between the claimants as to the apportionment, the receiver of wreck may give a valid discharge for the entire amount and apportion it between the claimants (s. 555).

Three things are necessary to found a claim to salvage: that (1) the thing saved was in danger, (2) the service of the salvor was a voluntary and not an obligatory act, and (3) the service was successful. As to the amount of salvage, the elements to be considered are (a) the danger to life of the salvors and those saved, (b) the value of the thing saved, (c) the danger to the thing saved, (d) the labour, skill, and conduct of the salvors, (e) the value of, and the risks to, the salving property, (f) the losses, expenses, and responsibilities of salvors. The limit in practice is half the value of the property saved.

Recovery of  
income tax.

By the Income Tax (Ir.) Act, 1853, 16 & 17 Vict. c. 34, s. 17, the collector of income tax may recover income tax assessed under schedule A, from the landlord or immediate lessor of the premises so assessed, in any of the ways provided by 1 & 2 Vict. c. 56, and 6 & 7 Vict. c. 92, for recovery of poor rates from a lessor primarily liable, that is, by summons before a magistrate at petty sessions.

Poor rate.

As to jurisdiction of justices in valuation, appeals, and recovery of Poor Rate, see **RATING AND VALUATION**, p. 194.

Labourers'  
dwellings.  
Correcting  
Scheme.

The Labourers Act, 1885 (48 & 49 Vict., c. 77), s. 19 (4), incorporates sec. 7 of the Railway Clauses Consolidation Act, 1845 (8 Vict. c. 20), which is as follows:—

If any omission, misstatement or erroneous description shall have been made of any lands or of the owners, lessors, or occupiers of any lands described on the plans or books of reference mentioned in the special Act (*i.e.*, the *Provisional Order*), or in the schedule to the special Act (*i.e.*, the *Provisional Order*), it shall be lawful for the company (*Rural District Council*) after giving ten days' notice to the owners of the lands affected by such proposed correction to apply to two justices for the correction thereof; and if it shall appear to such justices that such omission, misstatement, or erroneous description arose from mistake, they shall certify the same accordingly, and they shall in such certificate state the particulars of any such omission, and in what respect any such matter shall have been misstated or erroneously described. . . .

There is no jurisdiction under this section to make an order purporting to correct the plans deposited, so as to substitute for a plot actually acquired by a rural district council, another plot which had been selected by the sites committee, although the error arises from a *bona fide* mistake of the engineer (*R. (McCarthy) v. Cork JJ.*, (1910) 2 I.R. 421). Similarly, where a council agreed to take a site on the lands of A, but by mistake a site on the lands of B was inspected and purported to be conveyed by A, it was held that the justices had no power to substitute the plot on A's lands for the other (*R. (Casey) v. Cork JJ.*, (1910) 44 I.L.T.R. 134).

Order to  
obtain  
materials.

The sanitary authority, or any person who has contracted with such authority for the carrying out or execution of the buildings or other works provided for in any improvement scheme, or any part thereof, shall have power and authority to dig for, raise, and carry away in or out of any lands, whether within or adjoining the sanitary district, any gravel, stones, sand, or other materials which may be required for any such buildings or works, subject to the following conditions, that is to say:—(1) this section shall not apply in the case of any lands, being an orchard, bleach green, walled garden, haggard, or yard, or planted walk, lawn, demesne, or avenue to a mansion house; (2) this section shall not apply in case the occupier or owner of the lands shall not consent thereto, unless and until the

sanitary authority or such contractor shall have obtained an order granting such power and authority as aforesaid, from a justice of the peace sitting in petty sessions for the petty sessions district, within which such lands are situate, which order such justice is hereby empowered to grant: Provided that a justice shall not grant such order unless after due notice to the occupier of such lands, nor unless he is satisfied that such gravel, stones, sand, or materials cannot be conveniently procured elsewhere: (Labourers Act, 1886, 49 & 50 Vict. c. 59, s. 14).<sup>1</sup>

Labourers' dwellings.  
*Order to obtain materials.*

Where an inspector, on holding an inquiry for a scheme under the Labourers Acts, is of opinion that any house occupied as a dwelling-house by a labourer is unfit for human habitation, and a notice has been served by the sanitary authority on the owner directing him to close it, which notice has not been obeyed, a court of summary jurisdiction may order the house to be demolished, or prohibit the using of the house as a dwelling-house till it has been rendered fit for that purpose; and if this is done they may determine their prior order: penalty for acting contrary to an order of prohibition, not exceeding 10s. a day (Labourers Act, 1885, 48 & 49 Vict. c. 77, s. 17).

*Closing dwellings.*

A sanitary authority shall postpone serving a notice under the section until such time as they are in a position to supply house accommodation for the persons occupying such dwelling-house (*ib.* s. 17 (4)).

The tenancy under a letting by a sanitary authority of any cottage and allotment to an agricultural labourer shall be deemed to be a cottier tenancy within the meaning of the Landlord and Tenant (Ir.) Act, 1860 (23 & 24 Vict. c. 154), notwithstanding that the allotment exceeds half an acre, and that by the terms of such letting the tenant is bound to keep the windows of such cottage and the fences of such allotment in repair, and notwithstanding that the rents reserved in such lettings may exceed the limits prescribed by section 81 of the Landlord and Tenant (Ir.) Act, 1860 (Labourers Act, 1883, 46 & 47 Vict. c. 60, s. 13; Labourers Act, 1896, 59 & 60 Vict. c. 53, s. 5). The effect of this is to give justices jurisdiction in ejectment: see chapter on PROCEEDINGS BY LANDLORD AGAINST TENANT, p. 186.

*Recovery of possession.*

Where an application is made to the Court for the determination of a judicial rent in respect of any holding, the Court, if satisfied that there is a necessity for improving any existing cottages or building any new cottages, or assigning to any such cottages an allotment not exceeding half an acre, for the accommodation of the labourers employed on such holding, may, if it thinks fit, in making the order determining such rent, add thereto the terms as to rent and otherwise on which such accommodation for labourers is to be provided by the person making the application (Land Law (Ireland) Act, 1881, 44 & 45 Vict. c. 49, s. 19).

*Providing for dwellings in fair rent order.*

This section is extended, by section 3 of the Labourers' Cottages and Allotments (Ir.) Act, 1882 (45 & 46 Vict. c. 60), to all cases where an agreement and declaration as to a fair rent is filed, and by section 26 (1) of the Purchase of Land (Ir.) Act, 1891 (54 & 55 Vict. c. 48) to all cases where an advance is made for the purchase of a holding under the Land Purchase Acts.

<sup>1</sup> The sanitary authority or such contractor shall make compensation to the occupier for the waste or injury by entering on the lands, or by breaking the surface, or making a passage through the lands, and to the owner or occupier, according to their respective interests therein, for the value of materials, the amount thereof to be determined in case of dispute, by the county court judge (s. 14). The section authorizes blasting operations if reasonable precautions are taken (*Walker v. M'Gowan*, (1911) I.R. 1).



Labourers' dwellings.  
*Providing for dwellings in fair rent order.*

Where an order shall be made under this Act, or has been made or is made under section nineteen of the principal Act,<sup>1</sup> for providing accommodation for the labourers employed on any holding, and such order has not been complied with within six months from the date of such order, or six months from the passing of this Act, whichever shall last happen, the person failing to comply with such order shall be liable thenceforth to a penalty of one pound for every week during which such order is not complied with, and such penalty shall be recoverable in a summary manner before two or more justices in petty sessions in manner provided by the Petty Sessions (Ireland) Act, 1851, upon the complaint of any labourer employed on the holding, and in whose favour such order has been or shall have been made, and the justices shall award such penalty to the guardians of the poor of the union within which the holding is situate to be applied in aid of the poor rate of such union (Labourers' Cottages and Allotments (Ireland) Act, 1882 (45 & 46 Vict. c. 60), s. 4).

It shall be the duty of the sanitary authority, and of the Local Government Board on the complaint of six householders of the district, to put the provisions of section 4 of the Act of 1882 in force (Labourers (Ir.) Act, 1883, s. 11; Labourers (Ir.) Act, 1891, s. 5).

Orders for support of lunatics.

Where any person shall be confined in any district lunatic asylum as a patient, it shall be lawful for a court of summary jurisdiction,<sup>2</sup> in case it shall be proved to the satisfaction of such court that such patient has an estate applicable to his maintenance and more than sufficient to maintain his family (if any), by order to require the relation or other the person in receipt of the income of such patient, within one month after the service of such order, to pay the charges of the examination, removal, lodging, maintenance, clothing, medicine, and care of such patient, and within one month from the times in such order respectively specified, to continue to pay, so long as such patient shall remain in such district lunatic asylum, the charges which may from time to time be incurred in respect of the lodging, maintenance, clothing, medicine, and care of such patient in such district lunatic asylum; and in case such charges shall not be paid within the times by this section respectively prescribed, it shall be lawful for the resident medical superintendent of such district lunatic asylum . . . to apply to a court of summary jurisdiction,<sup>2</sup> and thereupon it shall be lawful for such court, on proof of the service of such order and of the non-payment of such charges respectively in accordance with the terms of such order, by an order to direct the resident medical superintendent or any officer of such district lunatic asylum to seize so much of any money, and to seize and sell so much of the goods and chattels, and to take and receive so much of the rents and profits of the lands and tenements of such patient, and other income of such patient, as may be necessary to pay such charges, accounting for the same to such court, such charges having been first proved to the satisfaction of such court, and the amount of such charges being set forth in such order; and if any trustee or other person having the possession, custody, or charge of any property of such patient, or if the Governor and Company of the Bank of Ireland, or any other body or person having in their or his hands any stock, interest, dividend, or annuity belonging to or due to such patient, pay any money according to any such order to any person authorized to receive the same to defray such charges, the receipt of the person authorized to receive such money shall be a good discharge to such trustee, governor, and company, or other body or person as aforesaid.

In case any such patient shall not have an estate applicable for the payment of such charges as aforesaid, then and in such case any person who under the Acts for the relief of the destitute poor in Ireland, or under any other Act, would be liable to maintain or support such patient,<sup>3</sup> or to contribute to the main-

<sup>1</sup> That is, section 19 of the Land Act, 1881.

<sup>2</sup> As to which, see p. 335.

<sup>3</sup> The persons liable under the Acts for the relief of the destitute poor in Ireland are—husband or parent for maintenance of wife and children, 1 & 2 Vict. c. 56, s. 53; married women having separate property for maintenance of husband, children, and grandchildren, 45 & 46 Vict. c. 75, ss. 20, 21; children for support of infirm parents, 1 & 2 Vict. c. 56, s. 57; see also CATALOGUE OF SUMMARY OFFENCES, "CHILDREN," "HUSBAND AND WIFE."

tenance or support of such patient if such patient were not in such district lunatic asylum, shall be liable to pay or to contribute to such charges according to his ability; and it shall be lawful for a court of summary jurisdiction, on the application of the resident medical superintendent of such district lunatic asylum, and after seven days' notice of such application to the person so liable, to make an order for the payment from time to time of such charges or such part thereof as to such court shall seem just; and in case of non-payment of such charges, or such part thereof according to the terms of such order, payment of the same shall be recoverable by the resident medical superintendent in like manner as penalties are recoverable under the Acts for the relief of the destitute poor in Ireland (Lunatic Asylums (Ir.) Act, 1875 (38 & 39 Vict. c. 67), s. 16).

Orders for support of lunatics.

The above section is extended to criminal lunatics, and to dangerous lunatics, or dangerous idiots, sent to an asylum<sup>1</sup> in pursuance of section 10 of the Lunacy (Ir.) Act, 1867, 30 & 31 Vict. c. 118, (Lunacy (Ir.) Act, 1901, 1 Edw. 7, c. 17, s. 3 (2)).

The Drainage (Ir.) Act, 1842 (5 & 6 Vict. c. 89, s. 58), provides that any party whose lands may be injured by neglect to maintain the banks or scour the channels of existing drains or streams, may require the proprietors guilty of such neglect to join in effectually cleansing and maintaining the same, and in case of refusal, may do the work necessary and sue for the expense thereof: provided that, in case where the drain or stream is not a boundary between the adjoining lands, a warrant or authority in writing from two or more justices in petty sessions is necessary, such warrant or authority to be granted if upon inquiry, had before justices upon a summons to be served upon the neglecting proprietor or occupier, it shall be proved that the neglect causes injury or prevents improvement.

Drainage Acts.  
5 & 6 Vict.  
c. 89, s. 58.

The Drainage (Ir.) Act, 1846 (9 & 10 Vict. c. 4, s. 42), provides remedies in case aqueducts, culverts, or tunnels under canals, either by reason of original construction or from neglect, are insufficient to discharge the flood waters of the streams or drains upon which they are constructed at a sufficiently low level for the purpose of draining the lands lying above. Where the defect is due to neglect, a fourteen-day notice may be served upon the canal company to whom they belong, and in case such company for ten days after the expiration of the notice neglect or refuse to cleanse same, the justices at petty sessions may, upon the complaint of the injured party, summon before them the canal company and such other persons as they may deem fit, and may order and direct any persons to be named in a warrant to be issued by them to enter and cleanse such aqueduct, culvert, or tunnel, the expense of so doing to be recovered from the canal company by civil bill. If the injury is caused by reason of the original construction, the section provides for a memorial praying alteration, to be presented to the Lord Lieutenant.

9 & 10 Vict.  
c. 4, s. 42.

Under the Drainage (Ir.) Act, 1853<sup>2</sup> (16 & 17 Vict. c. 130, ss. 41-43), trustees having maintenance of works under the Act may appoint a county surveyor or other competent person to be the superintendent of the works (s. 41); in case any proprietor or occupier of land within the district shall complain to such superintendent of any injury to the works or obstruction to the free discharge of the waters in the district, the party complaining may require such

16 & 17 Vict.,  
c. 130, ss. 41-43.

<sup>1</sup> As to which see p. 151.

<sup>2</sup> Which (s. 44) is to be construed as one with the Act of 1846.

Drainage Acts. superintendent to examine into the cause of the complaint and make his report to the trustees thereon (s. 42); in case the trustees shall decline to have the necessary works executed for the removal of the injury or obstruction, the party complaining may apply to the justices at the next petty sessions for the district, who shall hear the matter of the complaint and make such order thereon as they shall deem proper, and may authorize and require such superintendent to remove such injury or obstruction, and thereupon such superintendent may remove such injury or obstruction as if same had been authorized by the trustees (s. 43).

26 & 27 Vict.,  
c. 26.

By the Land Drainage (Ir.) Act, 1863 (26 & 27 Vict. c. 26), persons interested in land who are desirous to drain the same, and in order thereto deem it necessary that new drains should be opened through lands belonging to another owner or owners, or that existing drains in, or immediately adjoining lands belonging to another owner or owners, should be cleansed or otherwise improved, are authorized to seek compulsory powers before justices for the purpose. Section 5 provides for a written application to be served on the owner or owners, and also, if the owner be not the occupier, on the occupier or occupiers, stating the nature of the improvements, and the compensation proposed to be paid, and accompanied by a map. If the adjoining owner assent under his hand and seal, such assent shall (subject to certain provisions if any of the owners are under disability or incapacity) be binding upon all parties interested in the lands, and the occupier or person other than the owner shall be entitled to compensation, to be claimed within twelve months after the completion of the work, the amount to be determined by two or more justices in petty sessions, or if such occupier or other person do not consent to a determination by such justices, then by arbitration (s. 6). The adjoining owner shall be deemed to have dissented if he fails to express his assent within one month, and in the event of such dissent, the following questions shall be decided by two or more justices in petty sessions (unless the adjoining owner requires same within such period of one month to be decided by arbitration):—whether the proposed drains or improvements will cause injury to the adjoining owner or to the occupier or other person interested in such lands, and whether such injury can be fully compensated for in money. If the decision is that no injury will be caused, the applicant may proceed forthwith; if the decision is that injury will be caused, but that the same may be fully compensated for in money, the justices or arbitrator may assess such compensation, and apportion the same amongst the parties in their judgment entitled thereto, and on payment of the said sum so assessed, the applicant may proceed to make the drains or improvements; but if the decision is that injury not admitting of compensation in money will be caused, the applicant shall not be entitled to make the proposed drains (s. 8). The compensation in the case of owners under disability is to be applied under the Land Clauses Consolidation Act, 1845 (ss. 6, 9). If the justices or arbitrators approve of the scheme as proposed or amended by themselves, a map is to be prepared and forwarded to the clerk of the peace (s. 10). The statute gives the applicant power for ever thereafter to enter upon lands for the purpose of cleansing, &c.; if he fails to do so, the owner or occupier of the lands may do so, and recover the expenses thereof in a summary manner at petty sessions



or by civil bill (s. 11). The adjoining owner may fill up or divert drains made in pursuance of the Act on condition of making drains equally efficient, the dispute as to the efficiency to be settled by two or more justices in petty sessions or, if desired by either party, by arbitration (s. 12). The applicant shall bear all reasonable costs of the application (s. 14). Provision is also made by section 15 for the diversion of any brook, river, or watercourse from its ordinary channel upon notice to be published by advertisement, &c., and the owner of any lands apprehensive of injury from drains referred to in the section, upon service of the prescribed notice, shall be entitled to the same privileges as if he were an adjoining owner under the previous section. Section 16 provides for the appointment of arbitrators. A penalty not exceeding £10 for obstructing the making of, or injuring drains, is provided, and is recoverable summarily before two justices at petty sessions (s. 13), who, if it is submitted, can award costs not exceeding 20s. to either party (s. 13).

Drainage Acts.  
26 & 27 Vict.  
c. 26.

The Railway Clauses Consolidation Act, 1845, contains provisions giving certain jurisdiction to justices in the event of railway companies constructing railways being in default in the duties imposed upon such companies of restoration and substitution, &c., of roads injured or destroyed by them, including the following:—"Justices may impose a penalty of £5 a day, payable to the trustees, commissioners, surveyor, or other person having the management of the road interfered with by the company" (or, in case of a private road, to the owner), in case of default to restore or substitute a road within the periods in the Act, or in the special Act provided (Railway Clauses Consolidation Act, 1845, 8 & 9 Vict. c. 20, s. 57).

Railways.  
Orders on com-  
pany to repair  
roads, &c.

If, in the course of making the railway, the company shall use or interfere with any road, they shall from time to time make good all damage done by them to such road;<sup>1</sup> and if any question shall arise as to the damage done to such road by the company, or as to the repair thereof by them, such question shall be referred to the determination of two justices; and such justices may direct such repairs to be made in the state of such road, in respect of the damage done by the company, and within such period as they may think reasonable, and may impose on the company for not carrying into effect such repairs, any penalty not exceeding £5 per day as to such justices<sup>2</sup> shall seem just; and such penalty shall be paid to the surveyor or other person having the management of the roads interfered with by the company, if a public road, and be applied for the purposes of such road, or if a private road the same shall be paid to the owner thereof (s. 58).

Authority may be given to the company to carry the railway across a highway (other than a public carriage road) on the level, on obtaining the consent thereto of two or more justices in petty sessions after application in the prescribed manner (s. 59), with power to any aggrieved party to appeal from such order to quarter sessions (s. 60).

If, where the railway shall cross any highway<sup>3</sup> on the level, the company fail to make convenient ascents and descents or other convenient approaches, and such hand-rails, fences, gates, and stiles as they are required to make, it shall be lawful

<sup>1</sup> This includes damage done by additional traffic brought upon the road by contractors or sub-contractors who are employed by the companies (*West Riding and Grimsby Railway Co. v. Wakefield Board of Health*, (1864) 5 B. & S. 478.)

<sup>2</sup> The same two justices who made the order for repairs (*R. v. Rawson and Horton*, (1866) 15 L.T. 179).

<sup>3</sup> That is to say a highway other than a public carriage road (*R. v. Schofield*, (1894) 58 J. P. 132).

Railways.  
Orders on  
company to  
repair roads.

for two justices, on the application of the surveyor of roads, or of any two householders within the parish or district where such crossing shall be situate, after not less than ten days' notice to the company, to order the company to make such ascent and descent or other approach, or such hand-rails, fences, gates, or stiles as aforesaid, within a period to be limited for that purpose by such justices; and if the company fail to comply with such order they shall forfeit £5 for every day that they fail so to do; and it shall be lawful for the justices by whom such penalty is imposed to order the whole or any part thereof to be applied, in such manner and by such person as they think fit, in executing the work in respect whereof such penalty was incurred (s. 62).

Where, under the provisions of this Act or the special Act, or any Act incorporated therewith, the company are required to maintain or keep in repair any bridge, fence, approach, gate, or other work executed by them, it shall be lawful for two justices, on the application of the surveyor of roads or of any two householders of the parish or district where such work may be situate, complaining that any such work is out of repair, after not less than ten days' notice to the company, to order the company to put such work into complete repair, within a period to be limited for that purpose by such justices; and if the company fail to comply with such order, they shall forfeit £5 for every day that they fail so to do; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be applied, in such manner and by such persons as they think fit, in putting such work into repair (s. 65).

Ascertainment  
of damages,  
etc., under  
Railway  
Clauses Act,  
1845.

"Where any damages, costs, or expenses are, by this or the special Act, or any Act incorporated therewith, directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount, in case of dispute, shall be ascertained and determined by two justices; and if the amount so ascertained be not paid by the company or other party liable to pay the same within seven days after demand, the amount may be recovered by distress of the goods of the company or other party liable as aforesaid," and any justice may issue a warrant so to distrain (s. 140).

If sufficient goods of the company cannot be distrained, then means of enforcing payment from the treasurer of the company are provided (s. 141).

"Where in this Act or the Special Act any question of compensation, expenses, charges, or damages, or other matter, is referred to the determination of any one justice or more, it shall be lawful for any one justice, upon the application of either party, to summon the other party to appear before one justice, or before two justices, as the case may require, at a time and place to be named in such summons; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such one justice, or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses on oath; and the costs of every such inquiry shall be in the discretion of such justices, and they shall determine the amount thereof" (s. 142).

"Every penalty or forfeiture imposed by this or the Special Act, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices" (s. 145). Distress is dealt with in ss. 148, 149. Half of any penalty, the application whereof is not otherwise provided for, is to be awarded to the informer, and the other half is to be awarded, "*to the overseers of the poor of the parish in which the offence shall have been committed*" (s. 150); though, possibly, no effect can be given in Ireland to the words in italics. Witnesses duly summoned failing to appear, or appearing and refusing to give evidence, penalty not exceeding £5 (s. 153).

Dangerous  
trees.

If any tree standing near to a railway shall be in danger of falling on the railway so as to obstruct the traffic, it shall be lawful for any two justices, on the complaint of the company which works such railway, to cause such tree to be removed or otherwise dealt with as such justices may order. And the justices

making such order may award compensation to be paid by the company making such complaint to the owner of the tree so ordered to be removed or otherwise dealt with as such justices shall think proper; and the amount of such compensation shall be recoverable in like manner as compensation recoverable before justices under the Railways Clauses Consolidation Act, 1845 (Regulation of Railways Act, 1868, 31 & 32 Vict. c. 119, s. 24). Railways.

(1) A railway company may enter on any land and do all things reasonably necessary for the purpose of extinguishing or arresting the spread of any fire caused by sparks or cinders emitted from any locomotive engine. (2) A railway company may, for the purpose of preventing or diminishing the risk of fire in a plantation, wood, or orchard, through sparks or cinders emitted from any locomotive engine, enter upon any part of the plantation, wood, or orchard, or on any land adjoining thereto, and cut down and clear away any undergrowth, and take any other precautions reasonably necessary for the purpose; but they shall not, without the consent of the owner, cut down or injure any trees, bushes, or shrubs. (3) A railway company exercising powers under this section shall pay full compensation to any person injuriously affected by the exercise of those powers, including compensation in respect of loss of amenity, and any compensation so payable shall, in case of difference, be determined by two justices in manner provided by s. 24 of the Lands Clauses Consolidation Act, 1845 (Railway Fires Act, 1905 (5 Ed. 7, c. 11), s. 2). *Damage by sparks or cinders.*

Where hurt or damage is caused by the commission of any offence under ss. 12-14 of the Summary Jurisdiction Act, 1851, the justices may award compensation not exceeding 40s. (Summary Jurisdiction Act, 1851, s. 14 (4), *q. v.* APPENDIX OF STATUTES: see also *McGarry v. Fairbairn* and *McNulty v. Hope*, noted p. 312 n.). *Damage by negligence.*

The Lands Clauses Consolidation Act, 1845, 8 & 9 Vict. c. 18, s. 89, which, by s. 16 of the Labourers (Ir.) Act, 1883, is incorporated with the Labourers (Ir.) Acts, provides for a penalty of £10, over and above the amount of damage done, to be paid by undertakers entering without having complied with the necessary statutory requirement as to deposit, &c., and without consent, on lands required for the undertaking, the penalties to be recovered (s. 136) summarily before two justices. After a conviction the undertakers remaining in possession are liable to a penalty of £25 a day, recoverable by action (s. 89). *Wrongful entry on lands compulsorily taken.*

A summary remedy for the recovery of tolls is provided by section 39 of the Markets and Fairs Clauses Act, 1847: but section 1 provides that the Act shall not apply to any fair or market unless incorporated by the special Act authorizing such fair or market. The Act of 1847 has not been incorporated in Dublin (*R. (Dublin Corporation) v. Dublin JJ.*, (1898) 2 I.R. 762). *Recovery of tolls.*



## CHAPTER XIII.

### PROCEEDINGS BY LANDLORD AGAINST TENANT.

	PAGE		PAGE
Statutes conferring jurisdiction in		Landlord and Tenant (Ir.) Act,	
ejectment, . . . . .	186	1860, s. 86—	
Ejectment proceedings, . . . . .	186-192	Ejectment for waste, . . . . .	189
Summary Jurisdiction Act, 1851, . . . . .	186	Ejectment for non-payment of	
s. 15, . . . . .	186	rent, . . . . .	189
Lands held under War Office, . . . . .	188	Determination of cottier tenancy, . . . . .	189
Cottier Tenant Act, 1856, . . . . .	188	Servant, herdsman, or caretaker, . . . . .	189
Landlord and Tenant (Ir.) Act,		Service of summons, . . . . .	190
1860, s. 86, . . . . .	188	Procedure, proof, &c., . . . . .	190
Jurisdiction, . . . . .		Land Law Act, 1881, s. 7, . . . . .	191
Cottier tenements for purpose		Restraining waste, . . . . .	192
of Act, . . . . .	188	Appeal and case stated, . . . . .	193
Application to labourers' cottages	189		

Statutes.

JURISDICTION in ejectment proceedings in respect of certain tenements is given by section 15 of the Summary Jurisdiction Act, 1851 (14 & 15 Vict. c. 92), the Cottier Tenant (Ireland) Act, 1856 (19 & 20 Vict. c. 65), the Landlord and Tenant (Ireland) Act, 1860 (23 & 24 Vict. c. 154, ss. 81, 86, and 87), and the Labourers Act 1883 (46 & 47 Vict. c. 60), s. 13.

Summary  
Jurisdiction  
Act, 1851,  
s. 15.

The Summary Jurisdiction Act, 1851, s. 15 (*verbatim*, APPENDIX OF STATUTES), gives jurisdiction in the case of—

- (1) Any house or any part of a house—
- (2) situate in any city, town, borough, or village in which a fair or market is usually held,
- (3) held by the tenant for any term not exceeding one month,
- (4) at a rent not exceeding the rate of £1 sterling by the month,
- (5) where the term or interest of the tenant has ended or been duly determined by notice to quit.

The term "house" generally includes building, curtilage, orchard, and garden (Coke Litt. 56A and 56B). There is nothing to prevent a house being let by the same landlord to the same tenant in two different takes, so that the rent of each does not exceed the rate of £1 per month; and each of such holdings is within the jurisdiction conferred by the section (*Tuaffe v. Sheridan*, K.B.D., 18th April, 1890, not reported). A tenancy from month to month is a holding for a term not exceeding one month (*Blue v. Fullerton*, (1876) I.R. 10 C.L. 233, 10 I.L.T.R. 138). A month's notice is always sufficient to put an end to a monthly tenancy, and a week's notice to a weekly tenancy (*Beamish v. Cor*, (1885) 16 L.R.I. 276). Strictly speaking, the law only requires *a reasonable notice* to determine the tenancy in such cases (Cherry, 3rd ed., 221). Where a tenant held premises at a weekly rent payable on each Thursday, it was held that a notice served on Thursday, 5th November, to quit, "on or before Friday, 13th November," was sufficient (*Harvey v. Copeland*, (1892)

30 L.R.I. 412, 26 I.L.T.R. 105). It is submitted that it is competent for the landlord's known agent, or receiver, to take out the summons and obtain an order for possession in his own name.<sup>1</sup> Where the title of the landlord has accrued since the letting, proof of the right by which he claims possession must be given. A single justice at petty sessions has jurisdiction to issue a warrant under the section (*Blue v. Fullerton*, (1876) I.R. 10 C.L. 233; 10 I.L.T.R. 138). Sunday must be reckoned in the computation of the time within which the warrant is to be executed (*ib.*) There is no jurisdiction to grant an order under the section unless the summons has been served in manner provided thereby; and therefore, where the summons was served upon a person whom the landlord had accepted and dealt with as tenant, but was not served upon the person in occupation, the landlord being unaware that the last-mentioned person was in occupation at all, the service was held insufficient (*R. v. Cork JJ.*, (1875) I.R. 9 C.L. 203). Every person in possession as tenant or sub-tenant must be served (*Deasy v. Hickey*, (1905) 5 N.I.J.R. 209). The justices have jurisdiction to find as a fact the persons necessary to be served (*ib.*) The words "cannot be found" are not equivalent to "cannot be found in Ireland," but mean cannot with due diligence be found, so that personal service can be effected (*Blue v. Fullerton*, *supra*). If a person gets into possession, as a trespasser, of premises which were let at a rent within the jurisdiction, there is jurisdiction to make the order against such trespasser under the section (*Tullamore R.D.C. v. Burke*, (1902) 2 N.I.J.R. 55). A district inspector may, under sections 25 and 26 of the Petty Sessions Act, endorse a warrant<sup>2</sup> to a constable under his orders, but the constable so appointed has no authority to delegate to others the duty so imposed upon him; therefore, when a warrant is endorsed to constable A, and it was executed by constable B, the execution was held illegal (*Blue v. Fullerton*, *supra*). The jurisdiction conferred by the section is extended to all towns and townships within the Dublin metropolitan police district, although no fair or market be held therein (34 & 35 Vict. c. 76, s. 10). *Semble*, the summons, if issued elsewhere than in the Dublin metropolitan police district, should allege that the town is a market town (*Deasy v. Hickey*, *supra*).

Summary  
Jurisdiction  
Act, 1851,  
s. 15.

By the Defence Act, 1859 (22 Vict. c. 12), s. 6, where any lease or agreement of or concerning land in Ireland, vested in the Secretary of State for War on behalf of the Crown, is determined by expiration, notice, or forfeiture (except for non-payment of rent), possession of such land may be recovered by or on behalf of the said Secretary of State as provided by s. 15 of 14 & 15 Vict. c. 92, and such provision shall be applicable in all cases to the recovery of land in Ireland holden under any such lease or agreement as aforesaid, wherever such land may be situate, and at and for whatever rent and term the same may be holden, and, notwithstanding anything to the contrary in the said provision, the justices authorized to issue a warrant for giving possession may by such warrant authorize such possession to be given forthwith or on or before such day as the justices may think fit to name, and may, if they think fit, issue such warrant notwithstanding the tenant may be willing to give such undertaking as therein mentioned.

Lands held  
under War  
Office, 22 Vict.  
c. 12, s. 6.

<sup>1</sup> Cf. *R. (Corker) v. Cavan JJ.*, (1904) 5 N.I.J.R. 94.

<sup>2</sup> As to addressing warrants, see *R. (Gleeson) v. Tipperary JJ.*, noted p. 75, *ante*.

Cottier Tenant Act, 1856.

Jurisdiction is given by the Cottier Tenant (Ireland) Act, 1856 (19 & 20 Vict. c. 65), (*verbatim*, APPENDIX OF STATUTES), in the case of the overholding of tenements within the Act, *wherever situate*. Jurisdiction arises in case of—(1) any dwellinghouse held with not more than half an acre (if any) of land as a garden or cultivated allotment, (2) of which the tenure is by the year, half year, quarter, month, or week, and (3) of which the rent does not exceed the rate of 12s. a month; provided (4) that the letting is by written or printed agreement as nearly as possible of the form in the schedule to the Act, which agreement shall expressly state whether the tenement and “requisites” shall be maintained in good tenantable condition by the landlord or by the tenant, or what part by each respectively (s. 1); (5) that the tenement has certain primary “requisites” for the comfort and health of the tenant set forth in section 2; (6) that the tenant has made default in observing the obligations set forth in section 2; and (7) that the tenement has been provided by the landlord for the use of the tenant occupying the same (s. 11).

The procedure under section 15 of the Summary Jurisdiction Ireland Act, 1851, is made applicable (s. 2). The overholding tenant is liable to full rent (s. 3); the outgoing tenant is to have compensation for crops, to be fixed by a distinct order of the justices (s. 4). An appeal is provided in the same manner as prescribed by section 24 of the Petty Sessions (Ireland) Act, 1851, with variations as to the length of the notice of appeal, and the amount and conditions of the recognizances (s. 8).

Landlord & Tenant (Ir.) Act, 1860.

—  
Jurisdiction.

The Landlord and Tenant (Ireland) Act, 1860 (23 & 24 Vict. c. 154), confers jurisdiction on justices to order the summary recovery of possession of tenements in the following cases:—

(A.) Overholding. (1) Certain cottier tenements wherever situated (ss. 81, 86); (2) any lands or premises occupied by a servant, herdsman, caretaker (s. 86), including premises occupied by persons who have been converted into caretakers by service of a notice under section 7 of the Land Act, 1887 (50 & 51 Vict. c. 33, s. 7).

(B.) For waste, in case of cottier tenants, or tenants for a shorter period than a month, or at will or by sufferance (s. 84).

(C.) For non-payment of rent, in case of cottier tenements (s. 85).

Cottier tenements for purpose of Act.

Section 81 defines cottier tenements for the purpose of the Act:—

Where any landlord shall by any agreement or memorandum in writing let a tenement, wherever situate, consisting of a dwellinghouse or cottage without land, or with any portion of land not exceeding half an acre statute measure, at a rent not exceeding the rate of £5 by the year for one month or from month to month, or in like manner for any lesser period of time, and shall thereby undertake to keep and maintain the said dwellinghouse or cottage in tenantable condition and repair, such tenancy shall constitute and be deemed to be a cottier tenancy within the meaning of this Act, and shall be subject to the provisions hereafter contained in respect thereof (s. 81), including the provisions as to summary ejectment conferred by sections 84, 85, and 86, *infra*.

An undertaking to keep a house thatched is not a sufficient undertaking to repair to make the tenancy a cottier tenancy within the section (*R. (Connor) v. Londonderry JJ.*, (1894) 28 I.L.T.R. 92). A breach of such undertaking does not preclude a landlord from recovering under s. 86 (*Listowel R.D.C. v. Stack*, (1910) 44 I.L.T.R. 255).



The tenancy under a letting by a sanitary authority of any cottage and allotment to an agricultural labourer shall be deemed to be a cottier tenancy within the Act, notwithstanding that the allotment exceeds half an acre, and that by the terms of such letting the tenant is bound to keep the windows of such cottage and the fences of such allotment in repair (Labourers Act, 1896, s. 5), and notwithstanding that the rents reserved in such lettings may exceed the limits prescribed by s. 81 (Labourers Act, 1883, s. 13).

Landlord & Tenant (Ir.) Act, 1860.  
*Application to labourers' cottages.*

In case any such cottier tenant, or any tenant for a shorter period of time than a month, or at will, or by sufferance, shall maliciously or wilfully injure or destroy, or permit to be injured or destroyed, any part of the premises holden by him, and which the landlord is bound to keep in repair, it shall be lawful for the landlord to make his complaint before any one or more justices of the peace for the county, not being interested in the said premises, at petty sessions, and such justice or justices shall summon the tenant before him or them, and hear and determine such complaint; and if it shall be proved to his or their satisfaction, that such tenant committed or permitted such injury or destruction upon the said premises, the said justice or justices shall, by their warrant in writing, direct any person to be therein named as special bailiff on the part of the landlord to deliver possession of the said premises to the said landlord or owner; and such warrant shall be obeyed and executed by such special bailiff, who shall have full power and authority so to do (Landlord and Tenant (Ir.) Act, 1860, s. 84).

*Ejection for waste.*

In case any gale of rent or compensation reserved or payable upon any such cottier tenement shall be in arrear for the space of forty days, it shall be lawful for the landlord of the premises to exhibit his complaint in respect thereof before a justice or justices of the peace in petty sessions, and to cause the said tenant to be served with a summons in writing, signed by a justice or justices having jurisdiction in the place in which the premises shall be situate, to appear before two or more justices at the petty session or other place in which such justices usually meet for the dispatch of public business, to show cause why possession of the said premises should not be delivered up to his landlord, or his agent or receiver, and such justices, or any two or more of them, shall, in the presence of such tenant, or on proof of the service of the said summons on the said tenant personally, or by leaving a copy of the same at his usual place of abode, determine the matter; and if it shall appear to the said justices that at least one gale of such rent, over and above all just credits and allowances, and any valid set-off claimed by the tenant, is in arrear for the space of forty days aforesaid, the said justices shall cause their warrant to be prepared, directing possession of the said premises to be delivered to the landlord, and to be executed by any special bailiff therein named, and such warrant shall be obeyed and executed by such bailiff, who shall have full power and authority so to do (s. 85).

*Ejection for non-payment of rents.*

In case the term or interest of any tenant in any such cottier tenement shall have ended, or shall have been duly determined by a notice to quit, and such tenant or any person by whom the premises or any part of them shall be then actually occupied shall neglect or refuse to deliver up the possession of the same, or in case any person shall have been put or shall be put into possession of any lands or premises by permission of the owner, as servant, herdsman, or caretaker, and shall refuse or omit to quit and deliver up the possession of the premises on demand made by the owner thereof or his known agent or receiver, it shall be lawful for the landlord or owner of the said premises, or his heirs, executors, or administrators, or his known agent or receiver, to cause the person so neglecting or refusing to quit or deliver up the possession to be served with a summons in writing, signed by a justice or justices not interested in the said premises, but having jurisdiction in the place in which the premises shall be situate, to appear before two or more justices at the petty sessions, town hall, or divisional justice room, or other place in which such justices usually meet for the dispatch of public business of such city, town, district, or other place, to show cause why possession of the said premises should not be delivered up to such landlord or owner or his agent or receiver as aforesaid; and if the said tenant or occupier shall not appear at the time and place appointed, or if such tenant or occupier shall appear and shall not show to the satisfaction of such justices reasonable cause why possession should not be given, and shall still neglect or refuse to deliver up possession of the said premises, or such part of

*Determination of cottier tenancy.*

*Servant, herdsman, or caretaker.*

Landlord &  
Tenant (Ir.)  
Act, 1860.

them as was in his actual occupation at the time of the service of such summons to the said landlord or owner, or his agent or receiver, it shall be lawful for such justices or any two or more of them not interested as aforesaid, on proof being made before them of the holding or permissive possessions, as the case may be, and of its end or determination, and the time and manner thereof, and where the title of the landlord shall have accrued since the letting of the premises, the right by which he claims the possession, to issue a warrant under their hands and seals to any person as a special bailiff in that behalf on the part of the landlord or owner, requiring and authorizing him within a period to be therein named, and not less than seven or more than fourteen clear days from the date of such warrant, to give the possession of the said premises to the said landlord or his agent or receiver; and such warrant shall be a sufficient authority to the said bailiff to enter upon the said premises, with such assistants as he shall deem to be necessary, and to give possession accordingly, provided that no entry shall be made under such warrant on any Sunday, Good Friday, or Christmas Day, or at any time except between the hours of nine in the morning and four in the afternoon; provided also that nothing herein contained shall prejudice or affect the right of any owner of property entrusted to the care of any servant or caretaker peaceably to resume the possession thereof without process of law if he shall so think fit (s. 86).

Service of  
summons.

Such summons as last aforesaid may be served either personally or by leaving the same with some person being in occupation of such house, or part of a house or tenement, and where the tenant of such house or part of a house or tenement shall not reside therein, by serving the same personally, or by leaving the same at the place of abode of the tenant so holding over as aforesaid, four clear days before the day appointed for the hearing of the matter of the said summons: provided that if the person so holding over cannot be found, and admission into the premises so overholden cannot be obtained, and the place of abode of such person shall not be known, the posting of such summons on some conspicuous part of the premises so holden over shall be deemed to be good service of such person (s. 87).

Procedure,  
proofs, etc.

The summons under section 86 must be heard at petty sessions before two or more justices, whereas a single justice at petty sessions has jurisdiction in cases within section 15 of the Summary Jurisdiction (Ireland) Act, 1851 (see *Blue v. Fullerton*, (1876) I.R. 10 C.L. 233). It is a condition precedent to the jurisdiction that the demand and refusal of possession must be made before the summons is issued (*R. (Houlihan) v. King's County JJ.*, (1900) 6 I.W.L.R. 56). It is not, however, necessary that the demand of possession should be made personally by the landlord or his agent. Where an agent signed a written demand of possession, and caused same to be personally served upon the caretaker by a bailiff who was authorized in writing to take over possession, it was held that there was a sufficient demand of possession within the section (*Massareene v. Bellew*, (1889) 24 L.R.I. 420, 24 I.L.T.R. 74). Where a bailiff who for many years had acted in that capacity on the estate of the landlord, and as such was personally known to the tenant, was verbally authorized by the landlord to demand possession, and did demand possession. Held, that the section was sufficiently complied with (*Murphy v. Grady*, (1903) 37 I.L.T.R. 161). If a person gets into possession as a trespasser of premises which were let at a rent within the jurisdiction of justices, they can make the order against such trespasser if he has been served (*Tullamore R.D.C. v. Burke*, (1902) 2 N.I.J.R. 55).

Where a person who has been put out of possession under writ of ejectment for non-payment of rent is afterwards readmitted as a caretaker, he is estopped from disputing the regularity of the proceedings in the ejectment (*Ford v. Byrne*, (1863) 8 Ir. Jur. N.S. 65).



If the case was originally one to which the jurisdiction of the justices under the section would attach, that jurisdiction is apparently not taken away by an allegation of matters subsequent relied upon as constituting a question of title for the purpose of ousting the jurisdiction of the justices. Where an evicted tenant who had been put back into possession as a caretaker alleged a subsequent agreement for a new tenancy, which was denied, it was held that the justices had jurisdiction to determine whether or not such new agreement had been entered into (*R. (Quinn) v. Tipperary JJ.*, (1883) 12 L.R.I. 393; *R. (Power) v. Tipperary JJ.*, (1895) 1 I.W.L.R. 173). Where a petty sessions comprises part of two counties, a justice of the district may adjudicate as to any lands within the district, even though such lands are not within the county for which he is in commission (14 & 15 Vict. c. 93, s. 74; *R. (Houlihan) v. King's County JJ.*, (1900) 6 I.W.L.R. 56)). It is not necessary that the warrant should be signed at the time the adjudication is made (*R. (Byrne) v. Knox*, (1888) 22 L.R.I. 599). The entry in the petty sessions book is a final adjudication of the case, and the issue of the warrant is merely a ministerial act (*ib.*). Proceedings under s. 86 can be brought either in the name of the landlord or agent; but under s. 85 can be brought only in the name of the landlord (*R. (Corker) v. Cavan JJ.*, (1904) 5 N.I.J.R. 94).

Landlord &  
Tenant (Ir.)  
Act, 1860.  
Procedure,  
proofs, etc.

In proceedings under section 86 of the Landlord and Tenant (Ireland) Act, 1860, to recover possession from a permissive occupier, it is unnecessary, either in the complaint or in the order of the justices, to distinguish the precise character of the occupation—namely, whether the occupier is in occupation as a servant or herdsman, or caretaker, or otherwise particularly to specify the precise character of the occupation; where the complaint stated that the occupation was as “herd, servant or caretaker,” and the justices simply gave an order for possession, it was held that the order was good on its face (*R. (Mahony) v. Cork JJ.*, (1910) 2 I.R. 38, 43 I.L.T.R. 194).

A stay of execution of the warrant for fourteen days shall be granted in case the tenant appears and gives an undertaking (to be entered in writing by the clerk of the court) quietly and peaceably to deliver up possession within fourteen days (s. 88). A mere irregularity or informality in the proceedings shall not make the landlord or any person acting on his behalf a trespasser (s. 89).

As to appeal and case stated, see p. 193.

In the case of any agricultural or pastoral holding for which a judgment in ejectment for non-payment of rent has been recovered, where the rent does not exceed £100 per year, and in every other case of judgment in ejectment for non-payment of rent in which the plaintiff shall elect to take advantage of the section, the plaintiff may, by adopting the procedure indicated by the Land Law (Ireland) Act, 1887 (50 & 51 Vict. c. 33, s. 7), recover possession of lands by proceedings before justices at petty sessions.

Land Law  
Act, 1887, s. 7

The following is a summary of the procedure (see Cherry, 3rd ed., 407):—

(1) Judgment or decree in ejectment; (2) notice prescribed by section 7 to be served by registered letter not earlier than six weeks, unless the High Court



Land Law  
Act 1887,  
s. 7.

otherwise allow;<sup>1</sup> (3) summary of notice to be posted on police barrack or courthouse in the district<sup>2</sup> within fourteen days of service; (4) copy of notice to be filed in the court from which the writ of summons or process issued within twenty-one days of service.

The tenancy is then determined, and the former tenant becomes a caretaker. He may be removed from possession after one month by taking the following steps (Cherry, 3rd ed., p. 407):—

(5) Demand of possession; (6) service of summons under section 86, in the prescribed manner, either four clear days<sup>3</sup> before the day of the petty sessions, if personal service is effected (s. 87), or seven days before the same date, if the service is effected (under High Court Order 47, Rule 9, or County Court Order 24, Rule 14), by posting one copy of the summons in manner prescribed regarding the summary, *supra*, and by sending another copy of the summons by post to the person to be served, in a registered letter addressed to him at his usual place of residence; (7) warrant of justices at petty sessions to give possession to sheriff or special bailiff; (8) where there is an inhabited dwelling-house on the lands, notice to relieving officer forty-eight hours before execution of warrant (11 & 12 Vict. c. 47, s. 2); (9) execution of warrant and delivery of possession to landlord not less than seven days nor more than two months from the issue thereof.

Restraining  
waste.

Where any person shall be in possession of lands, or of any dwellinghouse, outhouse, or buildings as tenant thereof, or as a servant or caretaker of any owner, or having obtained the possession thereof from any such tenant, servant, or caretaker, and the landlord, or owner, or other person interested in the preservation of the premises, or any agent acting on his behalf, shall, by affidavit, satisfy any justice of the peace of the county, not being a party interested in the said premises (who is hereby authorized and required to take such affidavit), that there exists probable and just grounds of suspicion that such person is about to commit, or to permit or suffer, any unlawful waste, injury, alteration, destruction upon, or removal from any such dwellinghouse, outhouse, or other building, or intends unlawfully to burn or break up any part of the soil or surface or subsoil of the lands, or unlawfully to remove the soil or surface or subsoil of the said lands, or unlawfully to cut down, top, lop, or grub any trees, woods or underwoods growing on the said lands, or otherwise use or misuse the premises or any part thereof contrary to his agreement, or that he is in the act of doing or suffering any of the aforesaid matters, it shall be lawful for such justice of the peace to issue his precept in writing under his hand and seal stating that information had been received that such waste or injury is intended to be, or is in the act of being, done or permitted, and commanding all such persons and all other persons whomsoever to desist from such waste or injury, and not to continue the same until special leave and authority for that purpose shall be first procured from the magistrate who shall have signed such precept, or until the subject-matter of the said information be inquired into at the next petty sessions of the district in which the said premises are situate, or such other time as may be therein mentioned, and such precept may be according to the Form No. 1 in the Schedule (A) to this act annexed, and shall be served on every or any person by whom it shall be suspected that such waste or injury is intended to be, or is being committed, by delivering a copy thereof to such person if he can be found, and if not, by affixing a copy thereof on the principal door or entrance to the dwellinghouse, outhouse, or other building; and, if there be no such house or building, on some conspicuous part of the premises, and the said persons shall and may attend at the petty sessions, and such order may be made thereat by the court of petty sessions for annulling or continuing for a limited period the said precept or otherwise as may be agreeable to justice (Landlord and Tenant Act (Ireland), 1860, s. 35).

<sup>1</sup> If no person who has been served with the writ of summons or process is in possession, service is to be effected by posting a copy of the notice in manner prescribed regarding the summary, *infra*, Cherry, 3rd ed., p. 409.

<sup>2</sup> The word "district" does not necessarily mean "petty sessions district." It means either the "civil bill district," or more probably the county or neighbourhood generally (*Birmingham v. Turner*, (1889) 24 L.R.I. 321).

<sup>3</sup> The mere appearance at petty sessions will not, it is submitted, be a waiver of the necessity of service four clear days before the sessions.

An information which, after referring to past acts of waste, avers that the tenant "persists in committing acts of unlawful waste" (without specifying them), and does not aver what future acts of waste are apprehended, is insufficient to ground a good precept (*Brady v. Slator*, (1864) 9 Ir. Jur. N.S. 152). The affidavit is not sufficient if it merely states that the deponent has just grounds of suspicion that waste is about to be committed; it must aver facts warranting the suspicion (*Ex parte Donaghy*, (1867) I.R. 2 C.L. 22). The act of waste must be committed upon the demised premises; cutting turf upon adjoining lands is not within the section (*Kelly v. Drought*, (1887) 21 I.L.T.R. 31). Restraining waste.

If any person shall after the service or posting of such precept, in disobedience thereto, without such leave and authority as aforesaid, proceed with or continue to do the act prohibited by such precept, or wilfully aid, abet, or assist in so doing, he shall on conviction thereof before two or more justices of the peace at petty sessions, be liable to be imprisoned for a period not exceeding one calendar month, and all the provisions of the Petty Sessions (Ireland) Act respecting summary convictions before justices at petty sessions, and respecting appeals therefrom, shall be applicable to every conviction under this section<sup>1</sup> (s. 36).

The precept, or order, or conviction in relation thereto, may be annulled by any of the Superior Courts of Law or Equity in Ireland, or any judge thereof, or the going judge of assize, or the chairman of the county, on a summary application on behalf of the person aggrieved by such precept, order, or conviction, of which due notice shall be given to the opposite party (s. 37). Apparently the words "going judge of assize" are not confined to the *next* going judge of assize (*Kelly v. Drought*, (1887) 21 I.L.T.R. 31).

There is no appeal under any of the foregoing statutes except s. 37 of the Act of 1860; but either party may apply for a case stated on a question of law.<sup>2</sup> Appeal and case stated.

An appeal does not lie from the decision of the King's Bench Division in a case stated from the decision of the justices in connection with ejectment proceedings (*Kean v. Robinson*, (1910) 2 I.R. 306). If, however, an order is challenged on certiorari as being without jurisdiction, an appeal lies to the Court of Appeal.

<sup>1</sup> It is doubtful whether these words give a right of appeal from *any* sentence of imprisonment imposed under this action.

<sup>2</sup> Lord Justice Cherry points out that, if the justices agree to state a case from a decision granting an order under the ejectment jurisdiction, their proper course is to make an order to put the landlord or owner into possession, but not to issue a warrant; for if they issue a warrant at once, as it only remains in force fourteen days in ordinary cases, and two months in cases under the seventh section of the Land Act, 1887, it will probably be out of date before the case stated is disposed of (Irish Land Law Acts, 3rd ed., p. 144). As to the power of justices to issue the warrant after the decision in favour of the plaintiff of the High Court, or if the case stated is not proceeded with by the appellant, see CASE STATED, p. 244.

## CHAPTER XIV.

### RATING AND VALUATION.

	PAGE		PAGE
Jurisdiction, . . . . .	194	Valuation—	
Valuation, . . . . .	194-201	Case stated, . . . . .	199
Tenements subject to annual re-		Net annual value, . . . . .	200
vision, . . . . .	194	Rating appeal, . . . . .	201
Annual revision, . . . . .	194	Liability for poor rate, . . . . .	202
Procedure to have valuation re-		Recovery of poor rate, . . . . .	203
vised, and appeal, . . . . .	197	Towns Improvement Act, . . . . .	204
General revaluation of borough, . . . . .	198		

**Jurisdiction.** JUSTICES of the peace have certain jurisdiction as to rating and valuation :—(1) appeals at quarter sessions on questions of valuation ; (2) appeals at quarter sessions as to rating ; (3) recovery of poor rate at petty sessions.

The various Valuation Acts referred to in this chapter are those Acts, as amended by the Adaptation of Enactments Order of 30th January, 1899, made pursuant to the Local Government (Ir.) Act, 1898.

**Tenements subject to annual revision.** An annual revision of valuation is made by the commissioner of valuation. This revision comprises two classes of tenements—(a) tenements the limits whereof have been altered ; (b) tenements the annual value of which is liable to frequent alteration, including buildings (Valuation (Ireland) Act, 1854, 17 & 18 Vict. c. 8, s. 4).

It is now definitely settled that the valuation of any building, though there has been no alteration in its area or otherwise, may be annually revised (*McCusker v. Commissioner of Valuation*, (1902) 36 I.L.T.R. 176). As regards land, there is power to revise the valuation of any separate unit of land within each denomination, the valuation to depend on the price of produce ; but as the total valuation of the townland or other denomination cannot be varied, no revision of valuation takes place unless where the area of the tenement has been altered (15 & 16 Vict. c. 63, s. 11 ; 17 & 18 Vict. c. 8, s. 5).<sup>1</sup>

**Annual revision of valuation.** The poor rate collector in each county and urban district is obliged, under a penalty of £5, to make out and send each year before the 15th June, to the secretary of the county council, or clerk of the urban district council, as the case may be, a list of all the tenements or hereditaments within his district, which require revision “for any of the reasons aforesaid, or in respect of any property the annual value of which is liable to frequent alteration as aforesaid” (17 & 18 Vict. c. 8, s. 4).<sup>2</sup> Furthermore, any ratepayer within any part of the county (including any urban county district in the county) may send to the same officer, on or before the said date, a list of

<sup>1</sup> Provision is made by the Finance (1909-1910) Act, 1910, 10 Ed. 7, c. 8, s. 26, for a general valuation of land for the purposes of that Act.

<sup>2</sup> This section is obscure. In a preceding portion it speaks of “providing for the necessary revision of the valuation of the rateable tenements and hereditaments, the limits whereof have been altered, and also of rateable tenements or hereditaments the annual



tenements which in the opinion of such ratepayer may require revision (17 & 18 Vict. c. 8, s. 4).

Annual  
revision of  
valuation.

These lists are left open for public inspection at the office of the secretary of the county council or clerk of the urban district council for a period of ten days, during which extracts may be made. On or before the 27th June, such secretary or clerk shall make out a full and complete list of all tenements and property mentioned in such lists, and transmit same to the commissioner of valuation, with the opinion of his council whether such revision is necessary on account of such changes or alterations (*ib.*). It has been held that, where the secretary of a county council had omitted to lay the lists before the council and take the opinion of his council thereon, and had sent forward the lists to the commissioner without such opinion, the commissioner had jurisdiction to revise the valuation (*McCusker v. Commissioner of Valuation*, (1902) 36 I.L.T.R. 176). As regards tenements not included in the list sent forward, if, before the revision is actually begun, the secretary of the county council or the clerk of the urban district council gives notice to the commissioner of any tenements or hereditaments the valuation of which requires revision, the commissioner may proceed with the revision of the valuation of these tenements or hereditaments as if they were included in the original list<sup>1</sup> (Order of 30th January, 1899, art. 37). The commissioner of valuation has no power, *proprio motu*, to make a valuation of any property other than that included in the list sent to him (*Switzer v. Commissioner of Valuation*, (1902) 2 I.R. 275, 35 I.L.T.R. 235, 2 N.I.J.R. 15); but the right to take advantage of such a point may be lost by the conduct of the party, e.g., by an appeal to quarter sessions founded upon a notice in which the point as to jurisdiction is not taken (see *R. (Kildare County Council) v. Commissioner of Valuation*, (1901) 2 I.R. 215).

Transmitting  
lists to  
commissioner.

What tene-  
ments commis-  
sioner may  
revise.

The procedure in connection with the ordinary annual revision is as follows:—the commissioner, working on the materials (the lists), supplied to him as aforesaid, commences the revaluation in July, and completes it before the 1st March. Before the latter date, he transmits to the secretary of the county council and clerk of the urban district council a copy<sup>2</sup> of the revised list; he also sends to the county council secretary for use in the several rural districts a statement for each rural district of any changes made (17 & 18 Vict. c. 8, s. 5, Order 30th January, 1899, art. 37). For the information of the public, notices are published by the secretary of the county council, the clerks of the urban district councils, and the clerks of the rural district councils, of the receipt of the lists, and that the lists lie at the office of said

Revision by the  
commissioner.

Retransmission  
of lists by  
commissioner.

value of which is liable to frequent alteration, such as fisheries, railways, canals, tolls of roads, bridges, mines, gas and water-works, and buildings." The practice, which has been judicially approved of (see judgment of Fitzgibbon, L.J., in *Switzer v. Commissioner of Valuation*, (1902) 2 I.R. 275, at p. 307), is not to include in this list all buildings or other variable tenements, but only such as, in the opinion of the poor rate collector, may require revision.

<sup>1</sup> As appears from the instructions issued from the valuation office, the commissioner will deal with such supplemental cases where (a) some time has elapsed between the receipt of the list proper and the supplemental list; (b) where there exist reasonable grounds for the omission of the additional tenements from the original list; and (c) when such supplemental list is received before a date fixed each year by the commissioner of valuation, and of which each secretary of county council and clerk of urban district council gets due notice.

<sup>2</sup> In actual practice the changes are made in coloured ink on the old copy of the lists.

Annual  
revision of  
valuation.

Notice by  
person  
aggrieved.

Reconsidera-  
tion by  
commissioner.

Appeal by  
party  
aggrieved.

Who are  
respondents.

Recognizance.

officials for inspection. These lists are posted on the doors of the Episcopalian church, Roman Catholic chapel, and Presbyterian meeting house in each district. The lists are open for inspection for twenty-one days, and extracts may be taken (15 & 16 Vict. c. 63, s. 18). Within twenty-eight days after the receipt of the revised valuation lists by the secretary of the county council or the clerk of the urban district council, any person aggrieved by reason of the valuation of any tenement contained in such lists<sup>1</sup> may send by post or deliver to the secretary of the county council or clerk of the urban district council in which the tenement is situate, a notice in writing signed by him or his known agent, setting forth the grounds of such grievance; and all such notices shall forthwith be forwarded to the commissioner of valuation (15 & 16 Vict. c. 63, s. 19).

The commissioner of valuation then reconsiders the cases in which such notice has been given, and may alter or amend the original valuation (15 & 16 Vict. c. 63, s. 20), and returns the list of cases, unaltered or altered as the case may be, to the secretary of the county council and the urban district clerk (s. 21) by whom the same shall be published, within three days from receipt, in the same manner as the revised lists are published (*ib*; Order, 30th January, 1899, art. 37). At any time within twenty-one days after the receipt of such last-mentioned lists by the county council secretary, or the urban district clerk, any person (or county or urban district council in case of an appeal by them)<sup>2</sup> feeling aggrieved by the valuation may serve notice of appeal to the next quarter sessions for the division of the county, or county of borough<sup>3</sup> in which the tenement is situate. Such notice shall be in writing and signed by the appellant or his known agent, and shall state the grounds of the appeal; but in case the next quarter sessions shall commence within forty days from the receipt of such last mentioned lists, the appeal shall be to the second next quarter sessions. The notice of appeal is to be sent to the secretary of the county council or the clerk of the urban district council within the twenty-one days specified, and to be by him forwarded to the commissioner of valuation, who shall be the respondent (15 & 16 Vict. c. 63, s. 22). In any appeal to quarter sessions by the county council or urban district council, the occupier of the hereditament and the commissioner of valuation shall be the respondents (27 & 28 Vict. c. 52, s. 2). If the cause of appeal shall be such as to require alteration to be made in the valuation of any tenement for which any other person or persons is or are liable to be rated, the appellant shall give like notice to such other person or persons, who shall, if he or they so desire, be heard upon such appeal (15 & 16 Vict. c. 63, s. 22). Any ratepayer appealing must, within five days after giving notice of appeal, enter into a recognizance of £5 before a justice of the peace with sufficient sureties conditioned to try the appeal and to abide the order of the court (15 & 16 Vict. c. 63, s. 22). Where such recognizance appears to the court of quarter sessions to have been insufficiently entered into, or to be otherwise defective or invalid, such court may permit the substitu-

<sup>1</sup> That is, apparently, the list of *revised* tenements.

<sup>2</sup> The county council or urban district council, with the sanction of the Local Government Board (Local Government Board (Ir.) Act, 1872, 35 & 36 Vict. c. 69, s. 2), have the same right of appeal as an owner or occupier of a rateable hereditament (27 & 28 Vict. c. 52, s. 1).

<sup>3</sup> See L. G. Act, 1898, s. 21.

tion of a new and sufficient recognizance, or new and sufficient recognizances, to be entered into before such court in the place of such insufficient, invalid, or defective recognizance, allowing such time, and making such order, as to payment of costs to the respondent or respondents as to such court seems just and reasonable (Civil Bill Courts (Ir.) Act, 1864, 27 & 28 Vict. c. 99, s. 50). It is not necessary for a council appealing to quarter sessions against a revised valuation to enter into any recognizance (27 & 28 Vict. c. 52, s. 4). The recognizance shall be forwarded by the justice or clerk of petty sessions to the clerk of the peace. The decision of the quarter sessions as to a question of value shall be final (s. 23). On a question of law the appellant or respondent may require the chairman to state a case for the opinion of the High Court (23 & 24 Vict. c. 4, s. 10). As to appeal to Court of Appeal, see p. 200.

Annual  
revision of  
valuation.

Quarter  
sessions final.

Case stated.

The court of quarter sessions has power to hear "all parties who may be directly or indirectly interested in the cause of such appeal," and to award such costs to the appellant or respondent, "or to any other person who shall be brought before the said court on the hearing of such appeal, as it shall think proper, and whether the appellant prosecutes his appeal or not" (15 & 16 Vict. c. 63, s. 22).

Who may be  
heard.

Costs.

The following is a summary of the procedure, under the enactments above set forth, to be adopted by a person who wishes to have the valuation of premises revised:—

Procedure to  
have valuation  
revised, and  
appeal.

(1) Before the 15th June, serve notice in the form No. 1, *infra*, on the secretary of the county council, or clerk of the urban district council, as the case may be.

(2) The revised lists will be completed before the 1st March, and published on that date. Within twenty-eight days from the time of their receipt, serve notice No. 2 on the secretary of the county council or clerk of the urban district council.

(3) The commissioner will then again have the matter gone into, and the final lists will be sent by him to the secretary or clerk, and published within three days. Serve notice No. 3 on the secretary of the county council, or clerk of the urban district council as the case may be.

(4) Appellant must enter into a recognizance of £5 (see form, *infra*), with sufficient sureties conditioned to try the appeal and to pay such costs as may be awarded. Within three days from the date of the recognizance the magistrate before whom such recognizance shall have been entered into, or the clerk of the petty sessions, shall forward the recognizance to the clerk of the peace; and

(5) The appeal will come on at the next quarter sessions held after the expiration of forty days from the receipt of the last mentioned list.

#### NOTICE No. 1.

County of  
Urban (or Rural) District of

In the matter of the valuation of a house, yard, and premises known as No. 1 Park Lane, in the urban (or rural) district and county aforesaid. Take notice that I, A. B., of , a ratepayer in the said district, am of opinion that the valuation of the hereditaments mentioned above requires revision, and I request that same will be revised accordingly.

(Signed),

Dated      day of  
To the secretary of the county council of      (or clerk of  
the urban district of      [as the case may be]).



Procedure to  
have valuation  
revised, and  
appeal.

## NOTICE No. 2.

County of  
Urban (or Rural) District of

In the matter of the valuation of a house, yard, and premises, known as No. 1 Park Lane, in the urban (or rural) district and county aforesaid.

Take notice that I, A. B., of \_\_\_\_\_, the occupier of the above-mentioned premises [or as the case may be], am a person aggrieved by reason of the valuation thereof, on the ground that said valuation is excessive, and I require that said valuation may be inquired into and revised accordingly.

(Signed),

Dated \_\_\_\_\_ day of \_\_\_\_\_  
To the secretary of the county council of \_\_\_\_\_ (or clerk of  
the urban district of \_\_\_\_\_ [as the case may be]).

## NOTICE No. 3.

County of  
Urban (or Rural) District of

In the matter of the valuation of a house, yard, and premises known as No. 1 Park Lane, in the urban (or rural) district and county aforesaid.

Take notice that I, A. B., of \_\_\_\_\_, the occupier of the above mentioned premises [or as the case may be], am aggrieved by the valuation thereof, and I intend to appeal against the same to the next quarter sessions of the peace, held after the expiration of forty days from the receipt by you of the finally revised list of tenements from the commissioner of valuation, on the ground that such valuation is excessive.

(Signed),

Dated \_\_\_\_\_ day of \_\_\_\_\_  
To the secretary of the county council of \_\_\_\_\_  
(or the clerk of the urban district council of \_\_\_\_\_ [as the case may be]).

## FORM OF RECOGNIZANCE.

County of  
Urban (or Rural) District of

In the matter of the valuation of a house, yard, and premises known as No. 1 Park Lane, in the urban (or rural) district and county aforesaid.

Whereas the undersigned A. B., of \_\_\_\_\_, is appellant in an appeal to the next quarter sessions of the peace for the county aforesaid against a valuation of the above mentioned premises, and has duly served notice of his said appeal:

Now know all men by these presents that the said A. B. and C. D., of \_\_\_\_\_, and E. F. of \_\_\_\_\_, are jointly and severally bound unto our Sovereign Lord the King, his heirs and successors, in the sum of five pounds.

The condition of this obligation is that if the said A. B. shall try such appeal, and shall abide the order of and pay such costs as shall be awarded by the court at such sessions, this recognizance to be void and of no effect, but otherwise to remain in full force and virtue. As witness our hands this \_\_\_\_\_ day of \_\_\_\_\_

A. B. C. D. E. F.

Taken and subscribed before me, a justice of the peace for said county, G. H.

General re-  
valuation of  
borough.

A general revaluation of premises within a county borough may be made on the application of the borough council, and, upon such general revaluation, the land shall be valued in the same manner as buildings (Local Government (Ireland) Act, (1898) s. 65). Where under section 65 (1) of the Local Government (Ir.) Act, 1898, application was made for a general revaluation of rateable hereditaments, and

the municipal council struck the municipal rate for the year upon the list supplied to them by the commissioner of valuation in response to this application, and no separate list on the basis of an annual revision was furnished:—*Held*, that art. 37 (n) of the Adaptation of Irish Enactments Order applies only to an annual revision, and does not contemplate or include general revaluations or revisions, and accordingly that the rate in question, having been struck upon a list that was irregular and illegal, should be quashed (*R. (M'Curker) v. Belfast Corporation*, (1901) 35 I.L.T.R. 198, 1 N.I.J.R. 241). On an application for a writ of mandamus directed to the commissioner of valuation to proceed with the revaluation of the city of Dublin as directed by the Dublin Corporation Act, 1900, s. 60:—*Held*, that the 60th section was mandatory, and cast upon the commissioner of valuation a duty to proceed within a reasonable time to carry out the revaluation; that there had been a refusal on his part to perform the statutory duty imposed on him, as he had not taken steps to make the necessary arrangements within a reasonable time; and that, though the commissioner was appointed by the treasury, he was for this purpose an independent officer against whom a writ of mandamus could be granted (*R. (Bradshaw) v. Commissioner of Valuation*, (1906) 40 I.L.T.R. 174).

General re-valuation of borough.

Within three months after the hearing and decision by any court of general or quarter sessions of any appeal against any valuation or exemption, the commissioner of valuation, or any other party to such appeal, if dissatisfied with the decision of such court, may by notice in writing, signed by the said commissioner, or by such other party, or by the attorney of such commissioner or other party, require the chairman of such court of general or quarter sessions to state and sign a case, setting forth the facts and grounds of such decision for the opinion thereon of one of the superior courts of law at Dublin, and such chairman shall state such case in writing, and sign the same, and transmit it to the commissioner of valuation within twenty-one days after the receipt of such notice, and such commissioner shall transmit the same to one of the superior courts of law at Dublin, first giving notice in writing of such appeal, with a copy of the case so stated and signed, to the other party to the proceedings in respect of which the decision was given (23 & 24 Vict. c. 4, s. 10). The superior court to which a case is transmitted under the Act shall hear and determine the question or questions of law arising thereon, and shall thereupon reverse, affirm, or amend the decision in respect of which the case has been stated, or remit the matter to the court of general or quarter sessions with the decision of such superior court thereon, or may make such other order in relation to the matter, and to the costs thereof, as to such superior court may seem meet; and such superior court may send back the case for amendment, and thereupon the same shall be amended by such chairman accordingly, and judgment shall be delivered after it shall have been so amended: provided always that the decision of the court of general or quarter sessions shall be binding and conclusive on all parties,<sup>1</sup> and shall be acted on, notwithstanding the pendency of any such case, until such decision shall have been reversed or altered by the decision of such superior court (s. 11).

Case stated.

<sup>1</sup> This provision apparently does not take away the right of a party sued for rates to deny his liability *in toto* (*Dublin Cemeteries Committee v. Commissioner of Valuation*, (1897) 2 I.R. 157).

Case stated.

Apparently, even if the appeal is by the ratepayer, the commissioner has carriage of the case stated, and serves notice of appeal and copy case stated on the opposite party (23 & 24 Vict. c. 4, s. 10).

Now by 60 & 61 Vict. c. 17, an appeal lies to the Court of Appeal from the decision on a case stated under the Act (see, for instances, *Commissioner of Valuation v. Sligo Harbour Commissioners*, (1899) 2 I.R. 214; and *Switzer v. Commissioner of Valuation*, (1902) 2 I.R. 275, 35 I.L.T.R. 235, 2 N.I.J.R. 15).

Net annual  
value.

The valuation in regard to houses and buildings<sup>1</sup> shall be made upon an estimate of the net annual value thereof, that is to say, the rent for which, one year with another, the same might in their actual state be reasonably expected to let from year to year, the probable average annual cost of repairs, insurance, and other expenses (if any) necessary to maintain the hereditaments in their actual state, and all rates, taxes, and public charges, if any (except tithe-rent charge), being paid by the tenant (Valuation Act, 1852, 15 & 16 Vict. c. 63, s. 11; see also s. 20 as to duty of commissioner to have regard to value of adjoining houses).<sup>2</sup>

In case of a general valuation of a county borough, on the application of the borough council, the land within the borough shall be valued in the same way as buildings are valued under 15 & 16 Vict. c. 63, s. 11 (Local Government (Ireland) Act, 1898, s. 65).

In estimating the annual value of premises to which a licence for the sale of intoxicating liquors is attached, the premises must be valued as licensed premises (*Armstrong v. Commissioner of Valuation*, (1905) 2 I. R. 448).

The cost of construction of the building may afford a rough test of the valuation in some cases, e.g., where the place is occupied by the owner himself (*R. v. London School Board*, (1885) 55 L.J.M.C. 33); but in most cases, though it is admissible in evidence, it is not the sole test, nor even a good test (*Fletcher v. Commissioner of Valuation*, (1907) 2 I.R. 112). Where several sets of premises, held under different takes, are thrown together, they must, nevertheless, be separately valued (*Switzer v. Commissioner of Valuation*, (1902) 2 I.R. 275, 35 I.L.T.R. 235, 2 N.I.J.R. 15; see also *Wheeler & McCutcheon v. Commissioner of Valuation*, (1902) 2 N.I.J.R. 17). "In my opinion, the unit of valuation of premises in the occupation of tenants is such hereditaments, of the descriptions in s. 12 of the Act of 1852, as are in the occupation of the same occupier, holding from the same immediate lessor, under the same lease or contract of tenancy. In this definition the expressions "occupier" and "immediate lessor" may include a plurality of persons being joint occupiers, or joint immediate lessors, who between them may constitute one occupier or one immediate lessor. But, if premises (1) are in the occupation of several distinct occupiers; or, (2) although in the occupation of the same persons, are held under separate immediate lessors; or, (3) although in the occupation

<sup>1</sup> As to the valuation of land, see p. 194.

<sup>2</sup> In England, by the Union Assessment Committee Act, 1862, s. 15, net annual value is defined as the rent at which the hereditaments might reasonably be expected to let from year to year, free of all usual tenant's rates and taxes, and tithe commutation rent charges (if any), and deducting therefrom the probable average annual cost of the repairs, insurance and other expenses (if any), necessary to maintain them in a state to command such rent.



of the same person, and held under the same immediate lessor, are so held under several distinct leases or contracts of tenancy, *each* of those premises is a separate rateable hereditament, and more than one of them cannot be included in any one single valuation. In other words, in my opinion, the characteristic of a tenement to be separately valued is a tenement, all of which is in the occupation of the same occupier, under the same immediate lessor, under one contract of tenancy" (*per Palles, C.B., in Switzer v. Commissioner of Valuation, supra, at p. 281*).

Net annual value.

The foregoing remarks deal with the question of valuation, that is, the assessment of the value of the rateable property. The statute also provides a rating appeal, that is an appeal in respect of the liability of a person to be rated, or the principle of his liability.

Rating appeal.

If any person is aggrieved by any rate made under the Poor Relief (Ireland) Act, 1838, 1 & 2 Vict. c. 56, or shall have any material objection to any person or persons being put in or left out of such rate, or to the sum charged on any person therein, it shall be lawful for such person to appeal to the quarter sessions for the county in which the rate shall have been made, within four calendar months next after the cause of complaint shall have arisen, or, if such sessions shall be held before the expiration of one calendar month next after such cause of complaint, then such appeal shall be made to the next following sessions (1 & 2 Vict. c. 56, s. 106; see also 2 & 3 Vict. c. 1, s. 9). The court of quarter sessions are empowered to hear and finally determine the appeal, to order the name of a person to be inserted or struck out, or the sum at which any person is rated to be altered, or to quash the entire rate (1 & 2 Vict. c. 56, s. 107). This section does not apply to any poor rate assessed upon any property in conformity with the valuation thereof made pursuant to 15 & 16 Vict. c. 63, s. 28. If any person shall, previous to the appeal, have paid any sum with which he ought not to have been charged, the quarter sessions shall order every such sum to be repaid, together with all reasonable costs, charges, and expenses (1 & 2 Vict. c. 56, s. 108). Fourteen days' notice in writing of the intention to appeal, and of the matter or cause thereof, shall be given to the secretary of the county council or clerk of the urban district council, or the respondent or respondents; and the quarter sessions shall not examine or inquire into any other cause or ground of appeal than such as is stated in the notice of appeal; and the appellant shall also give notice of the appeal to any person interested or concerned in the appeal who shall have the right to be heard (s. 109). The known agent of the appellant, appointed under his hand, may sign the notice and enter into the recognizances (1 & 2 Vict. c. 56, s. 84; 12 & 13 Vict. c. 104, s. 22). Costs may be awarded against either party (1 & 2 Vict. c. 56, s. 112). If the rateable hereditament is situate wholly within any county at large, or wholly within any county of a borough<sup>1</sup> or town for which a quarter sessions shall be held, the appeal shall be to the sessions of the county or county of the borough within which such hereditament shall be situated; and if the hereditament shall be situate or arise partly within a county at large and partly within a county of a city or town, then to the sessions of such county at large or such

Appeal to quarter sessions.

Power of quarter sessions.

Notice of appeal.

To what sessions.

<sup>1</sup> See L. G. Act, 1898, s. 21.

**Rating appeal.** county of a city or town to which the appellant shall choose to appeal (6 & 7 Vict. c. 92, s. 8). The appellant shall, within five days from the giving of the notice of appeal, enter into a recognizance before a justice of the peace, with sufficient sureties conditioned to try the appeal and to abide the order of and to pay such costs as shall be awarded on the appeal (12 & 13 Vict. c. 104, s. 23). The chairman or Recorder, if he shall so think fit, may correct or amend any variance, clerical error, or irregularity not affecting the substantial merits of the question to be tried, and which may be found in the notices, recognizances, processes, decrees, or other forms or instruments of a like kind (12 & 13 Vict. c. 104, s. 29).

**Liability for poor rate.**

The occupier is primarily liable to the poor rate, except (1) where under section 4 of the Poor Relief (Ireland) Act, 1843, the rate is made on the landlord as the immediate lessor of a house let in separate apartments or lodgings, and (2) except where made in respect of a half rent under section 63 of the Poor Relief (Ireland) Act, 1838, and the enactments amending the same<sup>1</sup> (Local Government (Ir.) Act, 1898, s. 52 (1)).

In case the person primarily liable to pay the rate fails to do so, then on his default the rate shall be paid by the subsequent occupier (1 & 2 Vict. c. 56, s. 71). Where the rate is made on the immediate lessor, and is not paid by him within thirty-one days of making thereof, such rate may be recovered from the occupier or occupiers of the lodgings or apartments, who may deduct same from their rent (6 & 7 Vict. c. 92, s. 4). No proceedings can be commenced against any persons not primarily liable unless within the two years next after the making and publishing of the rate<sup>2</sup> (12 & 13 Vict. c. 104, s. 19). In any given case the rating authority, that is, the county or urban district council, may determine that the persons primarily liable, and the subsequent owner or occupier shall be liable respectively only for the portion of the rate proportionate to the period during which each such person was owner or occupier of the property (53 & 54 Vict. c. 30, s. 2, Local Government Act, 1898, s. 62).

Unoccupied buildings are exempt from rates if unoccupied during the whole of the period for which the rate is made, but if occupied during any part of such period the occupier or immediate lessor shall be liable for the portion of the rate proportionate to the time of occupation (25 & 26 Vict. c. 83, s. 12).<sup>3</sup> The poor rate is now levied in the city of Dublin in like manner as in the rest of Ireland, and any enactments in respect of making, levying, collecting, and recovering the poor rate shall apply accordingly (Local Government Act, 1898, s. 66 (1)); and accordingly a subsequent occupier is liable in Dublin as elsewhere (*Farrell v. Ryan*, (1904) 2 I.R. 596, 4 N.I.J.R. 193).

A person, who is not an occupier, is at liberty to deny his liability, even though his name appears in the rate books and he has not

<sup>1</sup> Persons receiving rent in respect of premises used for charitable or public purposes are liable to be rated in respect of half such rent (Poor Relief Act, 1838, 1 & 2 Vict. c. 56; 15 & 16 Vict. c. 63, s. 12; 17 & 18 Vict. c. 8, s. 2).

<sup>2</sup> The rate is deemed to be made at the time of the signature of its allowance by the chairman of the day and two or more members of the rating authority (6 & 7 Vict. c. 92, s. 10).

<sup>3</sup> As to what are unoccupied buildings, see *Guardians of North Dublin Union v. Scott*, (1850) 1 I.C.L.R. 76; *Guardians of New Ross Union v. Byrne*, (1892) 30 L.R.I. 160; *Stanton v. Powell*, (1867) I.R. 1 C.L. 182; *Guardians of Limerick Union v. White*, (1852) 2 I.C.L.R. 630.

appealed from the assessment (see *Lemon v. McIntyre*, (1877) I.R. 11 C.L. 479); and, *semble*, the decision of the King's Bench Division, upon a case stated for their opinion upon a question of valuation or exemption, "though final and conclusive on all parties as to amount," still leaves it open to a person assessed in pursuance thereof to question his liability when sued for rates (*ib.*).

By the Poor Relief (Ireland) Act, 1838, 1 & 2 Vict. c. 56, s. 73, collectors of county cess became collectors of poor rate, and were authorized to collect, on warrant from the guardians, the poor rate in the same way as county cess. County cess was recoverable by summary proceedings before a justice of the peace, under section 152 of the Grand Jury Act, 1836, 6 & 7 Wm. 4, c. 116. By the last named statute a collector may leave at the house of the party chargeable a notice, bearing the date of service, and subscribed with the name and abode of the collector, demanding payment within six days, and on failure of payment may prefer a complaint to a justice of the peace for the county in which the party may reside; and such justice may order the payment of the sum found due with such sum for costs<sup>1</sup> as to the justices shall seem meet, and in default may issue a distress warrant, which may be made available in another county. This section disappears as a substantive enactment in consequence of its repeal by the Local Government (Ireland) Act, 1898 (s. 110, 6th schedule); but its procedure is incorporated in the 73rd section of 1 & 2 Vict. c. 56, and may be still followed, the complaint being made in the name of the collector (*County Council of Clare v. M'Inerney*, (1902) 2 I.R. 536, 35 I.L.T.R. 158, 1 N.I.J.R. 230). The exemption of instruments of husbandry from a distress for rent does not extend to an execution under a justice's warrant (*Swan v. Sloan*, (1894) 29 I.L.T.R. 109, Co. Court). The only statute which limits the right of distress under a distress warrant is 11 & 12 Vict. c. 28, s. 9, which protects wearing apparel and bedding and tools and implements of trade not exceeding £5 in value, from seizure under any execution or order of any court.<sup>2</sup>

Proceedings  
for recovery of  
poor rate, 1 & 2  
Vict. c. 56.

A justice of the peace may act as such in matters relating to the poor law and local rates, notwithstanding that he is rated for or chargeable with rates affected by such matter (6 & 7 Vict. c. 8, s. 1); but, nevertheless, a justice was held disqualified by bias where the decision of a question by the court of which he was a member ruled a rating appeal of his own to be heard at the same quarter sessions (*R. v. Great Yarmouth JJ.*, (1882) 8 Q.B.D. 525). Where any poor rate has been made, allowed, and published, and a warrant of distress issued against any person named and rated, no action shall be brought against the justice or justices issuing such warrant by reason of any irregularity or defect in the rate or non-liability of the person rated (12 & 13 Vict. c. 16, s. 4).

The warrant of execution may be directed to the constabulary (*R. (Moore) v. Dublin JJ.*, (1910) 2 I.R. 681, noted fully p. 75, *ante*).

<sup>1</sup> The costs of distress, where the sum due does not exceed £20, are regulated by 9 & 10 Vict. c. 111, ss. 15 & 18, and schedule B, and if greater expenses are exacted, the party aggrieved may issue a summons before the justices at petty sessions, and may recover from the defendant treble the amount of the moneys unlawfully paid (*ib.* s. 16).

<sup>2</sup> A rate collector may, without any justice's order or warrant, distrain by virtue of his own collecting warrant; but such distraint is limited to goods on the premises.



Towns Im-  
provement  
Act.

Under s. 60 of the Towns Improvement Act (Ir.) 1854 (17 & 18 Vict. c. 103) provision is made for an annual assessment for rating purposes under that Act, and by s. 63<sup>1</sup> it is provided that if any person assessed refuses or neglects to pay the rate for ten days after demand, it shall be lawful for the collector to levy the same by distress and sale of goods and chattels and to satisfy the rate with costs of distraining not exceeding 12*d.* in the £1, or in the alternative, the collector may serve a notice bearing the date of service, and his name and abode requiring the payment of the rate within ten days, and on default may prefer a complaint to any justice of the peace having jurisdiction in such town. The justice shall summon the party complained against to appear before him or any other justice at the petty sessions, and at the time specified in the summons, examine into the matter on oath, and shall direct the payment of such sum as is found due, together with a sum certain for costs; in default of appearance, or on refusal or neglect to pay the sum or sums so directed to be paid, any justice of the peace having jurisdiction in the town may issue a warrant for levying the sum or sums so due by distress or sale, the overplus on such sale to be rendered to the party complained against less the necessary charges and expenses of distraining as directed by the justice. The collector is bound to keep the warrants of such seizures or sales, and to enter in a book kept for that purpose the names of the parties proceeded against, the assessment due, the expense of proceedings, and the true proceeds of sale, and the book is to be open for inspection by parties interested for three months after such sale. At any time within three months after the sale any party aggrieved may by petition subscribed by the complainant complain to any such justices as above mentioned, of anything done unjustly or oppressively in regard of such seizure or sale, on which petition the decision of the justices is final. If the goods or other effects seized or sold under such warrant are *bona fide* the property, or in the lawful possession, of the person actually liable to the payment of the assessment under the Act, any mistake, informality, or misnomer shall not enable a person to sue or take any action or proceeding against the commissioners, collectors, officers, or other persons employed in executing any warrant in reference to any assessment under the Act. The "ten days" which must elapse between demand and seizure or summons are computed inclusive of the first and exclusive of the last, and also exclusive of Sunday, Christmas Day, or Good Friday where any of these days occur in the period (Towns Improvement Act (Ir.), 1854, 17 & 18 Vict. c. 103, s. 1). Under the similar provisions of the repealed s. 152 of the Grand Jury Act (6 & 7 Wm. 4, c. 116) it was held that growing crops were not distrainable for grand jury cess (*M Namara v. Apjohn*, (1850) 13 I.L.R. 394); and, where a Court receiver was in occupation managing the lands, it was held that cattle grazing on the lands could not be seized without leave of the court appointing the receiver (*Harvey v. Wallis*, (1851) 3 Ir. Jur. 409). Where the rate before the justice is good on its face, the justice can only inquire whether it has been paid, and if not he should make an order for payment, his functions being merely ministerial (*Buckley v.*

<sup>1</sup> In s. 254 of the Public Health (Ir.) Act, 1878 (41 & 42 Vict. c. 52) there are provisions somewhat similar to those in this section. See PUBLIC HEALTH.

*Finucane*, (1897) 31 I.L.T.R. 124). In order to test the validity of the rate, an appeal to quarter sessions should be made under s. 29 of the Local Government Act, 1871, 34 & 35 Vict. c. 109).<sup>1</sup> Where distress is under a warrant in the nature of an execution by a particular statute, instruments of husbandry are not exempt (*Swan v. Sloan*, (1895) 29 I.L.T.R. 109 (Co. Ct.).

<sup>1</sup> Note s. 30 as to applicability of s. 29 in towns having a special Act.

## CHAPTER XV.

### JURISDICTION OUSTED BY QUESTION OF TITLE.

	PAGE		PAGE
Distinction between ouster of jurisdiction at common law and by statute, . . . . .	206	Examples :—	
Common law rule, . . . . .	206	Trespass in pursuit of game, . . . . .	210
Statutory provisions—		Fishery laws, . . . . .	211
Trespass, . . . . .	207	Assault, . . . . .	211
Assault, . . . . .	207	Trespass to land, . . . . .	212
Injuries to property, . . . . .	207	Obstruction of highway, . . . . .	213
Malicious Damage Act, 1861, . . . . .	207	Injury to property, . . . . .	214
ss. 1-51, . . . . .	208	Power to determine title necessary under statute, . . . . .	214
Malicious Damage Act, 1861, . . . . .	209	When point should be taken, . . . . .	214
ss. 52-53, . . . . .	209	Adjournment to adduce evidence, . . . . .	214
		No power to award costs, . . . . .	214

Distinction between ouster of jurisdiction at common law and by statute.

APART altogether from statute, the rule at common law is that the jurisdiction of justices is ousted by a *bona fide* question of title raised before them. Several statutes also contain enactments to the like effect. It is very important, in considering whether the jurisdiction is ousted, to note whether the case is one governed by the common law doctrine, hereinafter stated, or whether the construction of the particular statute is the governing principle. For the law is, that where there is an express statutory provision, such provision will override the common law rule (*White v. Frost*, (1872) L.R. 7 Q.B. 353, *R. (White) v. Wicklow JJ.*, (1900) 1 N.I.J.R. 6); and confusion frequently arises by endeavouring to apply the common law rule to statutory offences, to which, in reality, it has no application.

Another source of confusion on the subject arises from a failure to remember that, in cases in which *mens rea*, or malice, is an ingredient in the offence charged, (a) the presence or absence of such *mens rea* is the question the justices have to try; (b) if such *mens rea* is present, the duty of the justices<sup>1</sup> is to convict, and (c) if such *mens rea* is absent, *the jurisdiction is not ousted*, but such absence entitles the defendant to an acquittal. The rule as to *mens rea*, is discussed *infra*, p. 208; and the remarks there made are applicable to all cases where *mens rea*, whether under the common law or by statute, is necessary to constitute the offence.

Common law rule.

The rule that a *bona fide* question of title ousts the jurisdiction of justices "does not arise from any legislative enactment, but is an old legal maxim applicable to summary trials in general, which has been so generally applied for ages that it is assumed to be intended to be applied by every Act relating to such matters, though not specifically mentioned, unless a contrary intention is clearly indicated" (Palles, C.B., in *Johnston v. Meldon*, (1891) 30 L.R.I. 15, at p. 27, citing *R. v. Cridland*, (1857) 7 E. & B. 853; *R. v. Stimpson*, (1863) 4 B. & S. 301). The rule was thus laid down by Blackburn, J., in *R. v. Stimpson*, *supra* (at p. 309):—"The general rule of law applicable to justices exercising summary jurisdiction is that they are not to

<sup>1</sup> Assuming, of course, that the other matters necessary to constitute the offence, are duly proved.



convict where a real question as to the right of property is raised between the parties; then their jurisdiction ceases, and the question of right must be settled by a higher tribunal; for the justices would be settling a question of title, conclusively and without remedy, if their decision happened to be wrong." In order, however, to oust the jurisdiction, the right claimed must be one that is possible in law (*Leatt v. Vine*, (1861) 30 L.J. (M.C.) 207; *Cornwell v. Sanders*, (1862) 3 B. & S. 206, 32 L.J. (M.C.) 6; *R. v. Westmeath JJ.*, (1866) 11 Ir. Jur., (N.S.) 405, 15 W.R. 59; *Simpson v. Wells*, (1872) L.R. 7 Q.B. 214; *Hargreaves v. Diddams*, (1875) L.R. 10 Q.B. 582; *Mussett v. Burch*, (1876) 35 L.T. 486; *Hudson v. McRae*, (1863) 4 B. & S. 585; *Watkins v. Major*, (1875) L.R. 10 C.P. 662). And even if the claim is possible in law, yet, if it is vague and improbable, and not substantially supported by evidence, the jurisdiction is not ousted (*l. c.*; see also *Reece v. Miller*, (1882) 8 Q.B.D. 626). There must be "some colour or show of reason for the claim" (per Cockburn, C.J., in *Cornwell v. Sanders*, (1862) 3 B. & S. 206, at p. 212). The justices should go sufficiently into the case to satisfy themselves that there is a question of title, and if so satisfied then proceed no further (*R. (Punch) v. Cork JJ.*, (1898) 32 I.L.T.R. 179).

(a) Common law rule.

The title relied on by the defendant as justifying his action must be a right in himself, and not a right in a third party (*Cornwell v. Sanders*, (1862) 3 B. & S. 206), that is, it is submitted, if complainant proves possession or a *prima facie* right.

As already pointed out (*supra*), a statutory provision, purporting to take away jurisdiction from justices in case a question of title is raised before them, overrides the common law doctrine. The following are the principal of such statutory provisions:—

Statutory provisions.

A. *Trespass*.—"Nothing herein contained shall extend to any case where the party trespassing acted under a fair and reasonable supposition that he had a right to go into or upon any such place" (Summary Jurisdiction (Ir.) Act, 1851, s. 8.) The test in each case will be: did the defendant act under a fair and reasonable supposition that he had a right to go into or upon such place? (see *White v. Feast*, (1872) L.R. 7 Q.B. 353; *R. (Ryan) v. Wicklow JJ.*, (1900) 1 N.I.J.R. 6). As to the application of this test, see remarks, *infra*, p. 209, on ss. 52 and 53 of the Malicious Damage Act, 1861; see also examples *infra*.

*Trespass*.

B. *Assault*.—"Nothing shall authorize any justice to hear and determine any case of assault and battery in which any question shall arise as to the title to any lands, tenements, or hereditaments, or any interest therein or accruing therefrom" (Offences against the Person Act, 1861, 24 & 25 Vict. c. 100, s. 46.) The question in each case, on the principle of *White v. Feast* (*supra*), will be: did a question as to the title arise in the assault? (see examples, including *R. v. Pearson*, *infra*).

*Assault*.

C. *Injuries to Property*.—With regard to offences of this character, it is important to note under what section the prosecution is brought.

*Injuries to property*.

Statutory  
provisions.

Sections 1 to 51, inclusive,<sup>1</sup> of the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), deal with injuries to certain specified classes of property; and the words of the sections<sup>2</sup> are, "whosoever shall unlawfully *and* maliciously." These sections contain no special provisions as to a question of title. Section 52 deals with damage to property in any case not provided for in the previous sections, and the words of the section, are "wilfully *or* maliciously," and the section contains the following provision:—"Provided that nothing herein contained shall extend to any case where the party acted under a fair and reasonable supposition that he had a right to do the act complained of." Section 53 provides for injuries to trees, &c., for which no punishment is thereinbefore provided, and the provisions of s. 52 are applicable.

Malicious  
Damage Act,  
1861, ss. 1-51.

It will be noted that under ss. 1-51, malice, or *mens rea*, is of the essence of the offence. In any case brought under any of these sections dealing with a summary offence<sup>3</sup> the test as to whether an offence has been committed is the same as that laid down in respect of an indictable offence under s. 51 by Lord Russell of Killowen, L.C.J., in *R. v. Clemens*, (1898) 1 Q.B. 556, at p. 559: "It seems to me that the proper direction to give to a jury in such a case is that they should ask themselves this question: Did the defendants do what they did in the exercise of a supposed right?" adding, "that if, on the facts before them, the jury come to the conclusion that the defendants did more damage than they could reasonably suppose to be necessary for the assertion or protection of that right, then the jury might probably and ought to find the defendants guilty of malicious damage under s. 51."

In *R. v. Clemens*, a hotel company proceeded to build upon land leased to the company, but which the defendants claimed as a common. The defendants entered upon the land, pulled therefrom a wooden building, used as an office, and *smashed same up and threw the pieces into the sea*. On a charge under s. 51 the jury found the defendants guilty, and explained their verdict by saying that they found that the defendants acted in the assertion of a right in the first place, but that, by destroying the wooden building, they did more than was necessary to be done in asserting that right. The conviction was sustained. To give another example: suppose a defendant, charged under s. 25 with breaking a fence, claimed a right to break the fence to assert a right of way, such claim could in no way be held to warrant him in breaking the fence at places other than that where he claimed the right; and no justice could reasonably hold him to have acted in his exercise of his supposed right in so doing (see *Heaven v. Crutchley*, *infra*, p. 214). But the justices are not warranted in convicting in cases under these sections merely because the title or right claimed is ill-founded, or even absurd (see *Watkins v. Major*, (1875) L.R. 10 C.P. 662, at p. 666). if they believe (1) that defendant believed in the right, and (2) that defendant did the act complained of in assertion of the right. What is the gist of the offence is the *conscious wrongdoing of the defendant*.<sup>4</sup>

The following are instances showing the necessity of establishing

<sup>1</sup> Except s. 50, which deals with threatening letters.

<sup>2</sup> Except ss. 11, 12, 36, 47, 50.

<sup>3</sup> Ss. 22 (trees), 23 (fruit, &c.), 24 (vegetables, &c.), 25 (fences), 37 (telegraph wires), 41 (animals), are the only sections dealing with summary offences.

<sup>4</sup> See further, as to meaning of malice, MALICIOUS DAMAGE.

malice in proceedings under these sections. A gamekeeper, acting *bona fide* in the protection of his master's property, and in the belief that no other means were adequate to protect it, shot a dog. *Held*, that he was not guilty of the offence, under s. 41, of wilfully and maliciously killing the dog (*Miles v. Hutchings*, (1903) 2 K.B. 714).

Statutory provisions.  
Malicious Damage Act,  
1861, ss. 1-51.

The occupier of land sown with seed shot domestic fowls that were trespassing; he had previously warned the owner of the fowls that unless they were kept off his land he would shoot them. *Held*, that he could not be convicted of an offence under section 41 (*Smith v. Williams*, (1892) 56 J.P. 840; 9 T.L.R. 9). Apparently the laying of poison on one's own land for the purpose of killing a trespassing dog, in the belief that same is justified, is not an offence against section 41 of 24 & 25 Vict. c. 17, enacting penalties on who-soever shall unlawfully and maliciously kill any dog<sup>1</sup> (*Daniel v. Jones*, (1877) 2 C.P.D. 351).

From what has been stated, it will be seen that the above cases, which are decisions on the merits in respect of offences under ss. 1-51 of the Malicious Damage Act, 1861, and not on the question of jurisdiction, have little, if any, bearing on the question of ouster of jurisdiction by a claim of title, either at common law, or under the statutory provisions above mentioned.

In cases brought under ss. 52 and 53, the test is, did the party act under a fair and reasonable supposition that he had a right to do the act complained of? (*White v. Feast*, (1872) L.R. 7 Q.B. 353). If he did, the jurisdiction of the justices is ousted. It should be noted that, in respect of these offences, two questions arise:—(a) did the defendant act under the supposition that he had a right to do the act? and (b) was that supposition a fair and reasonable supposition, having regard to all the circumstances? There are, therefore, two distinctions between cases under ss. 52 and 53, and cases under ss. 1 to 51 of the Act. In cases under ss. 1 to 51, a *bona fide* belief, however unfounded, in the right to do the thing complained of affords a defence, not by way of plea to the jurisdiction, but by way of answer on the merits. In cases under ss. 52 and 53, the belief must not only be *bona fide*, but must be fair and reasonable; and if these things co-exist, they establish a plea to the jurisdiction. Whether such fair and reasonable supposition under ss. 52 and 53 exists is, in all cases, within reasonable limits, a question of fact for the justices (*R. v. Dodson*, (1839) 9 A. & E. 704; *Charter v. Greame*, (1849) 13 Q.B. 216); and the High Court will not interfere where there is evidence to support a finding by justices that the defendant charged under these sections did not (*White v. Feast*, (1872) L.R. 7 Q.B. 353; *R. (White) v. Wicklow JJ.*, (1900) 1 N.I.J.R. 6), or did (*R. (Dowd) v. Cavan JJ.*, (1900) 6 I.W.L.R. 33), act under such fair and reasonable supposition.

Malicious Damage Act,  
1861, ss. 52  
& 53.

But the High Court have interfered in cases where the finding of the justices as to the supposition of right was so obviously wrong that it was apparent the justices could not have properly understood the question which they had to consider. Thus, where the justices found that the defendant, a county surveyor acting in the discharge of his duty, had, in respect of damage that he was summoned for under s. 52,

<sup>1</sup> But unless the required formalities are complied with, an offence will be committed under the Poisoned Flesh Prohibition Act, 1864, 27 & 28 Vict. c. 115.



Statutory provisions.  
*Malicious Damage Act, 1861, ss. 52, 55.*

acted *bona fide*, but that he did not act under a fair and reasonable supposition that he had a right to do the act complained of, it was held that the justices were wrong; and, *semble*, they should upon the facts stated have inferred and found a fair and reasonable supposition within the statute (*Denny v. Thwaites*, (1876) 2 Ex. D. 21). In the following case also the right alleged was so palpably unsustainable that the Court held that jurisdiction was not taken away under the section. The conservators of M. common and certain lords of manors authorized and licensed a company to form and use golf links on the common. That company transferred all its rights to trustees for the conservators. The appellants, by permission of the M. parish council, who were the owners of the lamp-posts on certain highways crossing M. common, affixed to certain of these lamp-posts, boards on which the following notice was printed:—"Croydon Rural District Council.—Persons are requested to refrain from playing golf on or across the public highway." A golf club, which had obtained a licence from the conservators of M. common to play golf thereon before such notices were affixed, contended that these notice-boards constituted a slander upon their title to play golf over the common and roads, and asked the appellants to remove them. The appellants did not remove the notice-boards, and the respondents, acting on the golf club's instructions, removed the notice-boards. At the hearing of an information against the respondents for wilfully and maliciously damaging the notice-boards, under section 52 of the Malicious Damage Act, 1861, the respondents contended that they had acted in the exercise of a *bona fide* claim of right, and under a fair and reasonable supposition that they had a right to do the acts complained of, and that, therefore, the jurisdiction of the justices was ousted. *Held*, that the right claimed by the respondents was wholly unsustainable, because (1) the club had no right (as agents of the trustees of the conservators) to interfere with the lamp-posts, which did not belong to the trustees, but to the parish council, and (2) the alternative right suggested—to remove the boards on the ground that they constituted a slander of title—did not exist in law, and that, therefore, the jurisdiction was not ousted (*Croydon R.D. Council v. Cowley*, (1909) 25 T.L.R. 306).

Examples.

The following are instances of the application of the common law rules, or of statutory provisions:—

#### TRESPASS IN PURSUIT OF GAME.

*Trespass in pursuit of game*

*Leatt v. Vine*, (1861), 30 L.J. (M.C.) 207, 8 L.T. 581. The mere assertion by a defendant that he, as a member of the general public, had a right to shoot, on the ground that any person who chose had always shot on the land in question until recent acts of interruption. *Held* not sufficient to oust the jurisdiction, such a right being unsustainable in law.

*Watkins v. Major*, (1875) L.R., 10 C.P. 662. The defendant honestly believed that he had a right to shoot over a certain common, forming part of the complainant's manor; but his document of title, consisting of a lease of lands near the common, was silent as to such a right, and there was no evidence of any custom of shooting over the common. *Held*, that the justices were right in trying the case.

*Adams v. Masters*, (1871) 24 L.T. 502. Complainant proved a grant to him from the lords of the manor, made in 1815, of a right of shooting which enured to the time of the complaint. Defendant relied on a lease of the lands dated 1859 not reserving the right to game. *Held*, that the jurisdiction was ousted.

## JURISDICTION OUSTED BY QUESTION OF TITLE.

The preliminary circular announcing the publication of this volume was accompanied by a copy of the chapter "Jurisdiction Ousted by Question of Title." A number of readers have written to put the following query—How far is the jurisdiction ousted by a question of title where the complaint is one of abusive and threatening language, and the application is one to bind to the peace?

As, perhaps, the matter is not made quite clear by the case of *R. v. French*, (1902) 1 K B. 637, and the note thereto, the following opinion is submitted:—

It is difficult to conceive a case occurring in which a question of title is involved in the determination by the justices of a complaint of abusive and threatening language. If A said to B, "I own Blackacre, and I will use force to prevent you crossing Blackacre," no justice could be so misguided as to bind A to the peace for using such words, because if A were really entitled to Blackacre, and B had no right to cross it (matters which the justices could not decide), A's use of the language would be perfectly legal and justifiable.

But the ordinary case of abusive and threatening language, where the defendant raises a question of title, is far removed from the case above supposed. The complaint is usually made where a scolding match has been occasioned by the fact that the parties owe each other a spite arising out of a dispute over land. In such a case the mere fact that the dispute is the origin of the abusive and threatening language, or that the language is used in the place which is the subject of the dispute, does not oust the jurisdiction.

As pointed out (p. 34, *ante*), the jurisdiction to bind to the peace or to be of good behaviour is very wide. It is also very salutary; and justices should not easily be diverted from it by the suggestion that the decision of a complaint of abusive and threatening language involves a question of title. In most, if not all, cases such suggestion is not well founded.





## FISHERY LAWS.

*R. Graham v. Antrim J.J.*, (1862) 7 Ir. Jur. (N.S.) 237. Plaintiff claimed a several fishery, and produced patents granting same to his predecessors in title, and a record of the Court showing former convictions against various persons (of whom the defendant was not one) for trespass upon the fishery. Whether the several fishery granted was the fishery in question did not appear from the documents. The defendant gave evidence of long user of the fishery, and offered security for costs in case plaintiff would institute a civil action. *Held*, that the jurisdiction was ousted (cf. *R. (Gillen) v. Donegal J.J.*, (1860) 5 I.J. (N.S.) 185). Examples.  
Fishery Laws.

*R. v. Stimpson*, (1863) 4 B. & S. 301, 32 L.J. (M.C.) 208. In a prosecution for a trespass on a several fishery, defendants showed that the *locus in quo* was a navigable river, subject to the ebb or flow of the tide, and that he and others had for over forty years exercised, without molestation, the right of fishing there. *Held*, that the jurisdiction was ousted. (See also *Paley v. Birch*, (1867) 8 B. & S. 336, 16 L.T. 410; *Johnston v. Meldon*, (1892) 30 L.R.I. 15.)

*Reece v. Miller*, (1882) 8 Q.B.D. 626. Where the evidence was that the river was navigable, and that at the place in question the water was not salt, and that in ordinary tides it was unaffected by any tidal influence, but that on the occasion of very high tides, the rising of the salt water in the lower part of the river dammed back the fresh water, and caused it upon these occasions to rise and fall with the flow of the tide. *Held*, that the river at the place in question could not be considered as tidal within the meaning of the rule of law which gives the public a right to fish in navigable tidal rivers, and that therefore there was no claim of title set up sufficient to oust the justices' jurisdiction. (See also *Murphy v. Ryan*, (1867) I.R. 2 C.L. 143.)

*Johnston v. Meldon*, (1891) 30 L.R.I. 15. Evidence of long user by defendant of a fishery claimed by the complainant as a several fishery, and that the river was a tidal navigable river, will oust the jurisdiction. (See also *R. (Sheehy) v. Kerry J.J.*, (1896) 30 I.L.T.R. 167.)

## ASSAULT.

*R. v. Pearson*, (1870) L.R. 5 Q.B. 237. If a *bona fide* question of title be involved, the justices cannot inquire into and determine by summary conviction any excess of force alleged to have been used in the assertion of the title.<sup>1</sup> Assault.

*R. v. French*, (1902) 1 K.B. 637. An assault was committed by one commoner upon another commoner in the course of a dispute as to whether the latter was or was not at the time of the assault in the act of using the common land in a manner in excess of the right of common. *Held*, that there was no question raised as to the title to any lands or interest in lands within s. 46 of the Offences Against the Person Act, 1861, and that the justices' jurisdiction was not ousted. In this case both complainant and defendant had a right of common upon Aspoll Green. The defendant was of opinion that the complainant, as a commoner, had no right to take a horse and cart across the green, except along a road, and he considered that the taking of a cart over the turf caused damage to his right of pasture. On the day in question, while the complainant was carting produce across the turf, the defendant went up to him and told him that what he was doing was illegal, and ordered him to remove the horse and cart off the turf on to the roadway. The complainant did not comply, and an altercation followed, in the course of which the defendant struck the complainant with a whip. "I do not think that the section<sup>2</sup> can be construed as meaning that any question as to any interest in land, whenever raised, and however raised, is sufficient to oust the jurisdiction of the justices. Their jurisdiction is ousted when in the course of the proceedings before them a question arises as to the title to land or to any interest therein; but it does not, in my opinion, make a question of title arise in the proceedings merely because the defendant says that he was in the possession of land, and that the complainant was upon the land when the assault was committed. In the present case no question arose as to the title to land or as to the title to any interest in land. Both parties were admittedly commoners, and had rights in the land. . . . The reason given in

<sup>1</sup> Of course, in such a case, there is nothing to prevent the justices from sending forward the case for trial.

<sup>2</sup> That is s. 46 of the Offences Against the Person Act, 1861, *supra*.

Examples.  
Assault.

the judgments in the old authorities for ousting the jurisdiction of the magistrates in such cases is that, unless it were ousted, the justices would indirectly decide a question of right and title between the parties.<sup>1</sup> Now in the present case it is clear that no question of a right in either one or the other party arose, it was merely a question of an assault being committed at a place where both parties had a right to be" (*per* Lord Alverstone, C.J., pp. 641, 642). "It seems to me that to hold otherwise than my lord has expressed would be to determine that justices could never commit for an assault if the assault were committed in any quarrel concerning land, and this even if the parties were not on the land at the time of the assault" (*per* Darling, J., p. 642). "I only wish to make it clear that our judgment in this case proceeds on the footing that the proviso to s. 46 must be read so that the word 'title' governs not only the words 'lands, tenements, or hereditaments,' but also the words 'any interest therein or accruing therefrom.' In the case before us no question was raised as to the title to an interest in land or accruing therefrom" (*per* Channel, J., pp. 642, 643). The phrasing of these judgments is not happy. Obviously the Court cannot have meant to hold that there was no dispute between the parties in which a title to lands or to any interest therein was involved. One of the parties alleged a right to cross the common with a laden cart, and the other denied the right. That dispute involved a question of the title to an interest in land. If A and B dispute as to whether the interest of B in certain lands is interest X or interest Y, this is as much a dispute concerning an interest in land as if A and B had a dispute as to whether B had any or no interest in the lands. And if the decision of the case decided such a question, "the justices would indirectly decide a question of right and title between the parties." The real meaning of the case is, that the complainant and defendant having met, and having angry words, the words led to blows, and so the assault was committed. No question arose *in the assault* as to title. The fact that the angry words had to do with a dispute as to the land was immaterial. But it would be different had the complainant insisted on taking his horse and cart across the turf by force, and had defendant, in enforcing what he believed to be his legal rights, resisted him by force; such an assault would clearly be one in which a question of title arose; and to determine whether same was justifiable or not would involve the determination of the right, which would be outside the jurisdiction of the justices.

*R. (Mahony) v. Cork JJ.*, (1908) 42 I.L.T.R. 237. The justices have power to determine the fact of the *locus* of an assault, and when they find that it was committed in a place concerning which no question of jurisdiction arose, the Court will not interfere (*cf. R. (Dunne) v. Cavan JJ.*, (1908) 42 I.L.T.R. 89).

*R. (Mahon) v. Antrim JJ.*, (1907) 41 I.L.T.R. 225. Where a defendant in a summons for assault raised a *bona fide* question of title, but the justices bound him over to keep the peace, and also fined him, the order binding him to the peace and the conviction were both quashed.

#### TRESPASS TO LAND.

Trespass to  
land.

*Foulger v. Steadman*, (1872) L.R. 8 Q.B. 65. A railway company who were possessed of a thoroughfare which had the appearance of a public street, allowed certain cabs to stand there, upon payment of a weekly sum. The defendant would not pay, and persisted in standing his cab in the thoroughfare. *Held*, notwithstanding that the defendant *bona fide* believed he was within his rights, he was a wilful trespasser within 3 & 4 Vict. c. 97, s. 16,<sup>2</sup> and must be convicted.

*R. (Kealy) v. Louth JJ.*, (1900) 35 I.L.T.R. 43. The complainant charged defendant with trespass to a fence, and proved that he had been in possession of the ground on which the fence was for several years, and that the defendant had never made any claim to it till about a year before the proceedings. The defendant gave no evidence. *Held*, that the justices were right in deciding the case, because they were entitled upon the evidence before them to decide whether the claim of title was *bona fide*, and because defendant, not having given any evidence as to his having acted under a fair and reasonable supposition of right, had not brought himself within sect. 8 of the Summary Jurisdiction Act, 1851, which contains the following proviso:—"Provided always that

<sup>1</sup> See *R. v. Stimpson*, (1863) 4 B. & S. 301, at p. 309, noted at p. 207, *supra*.

<sup>2</sup> The section provides that if any person shall "wilfully trespass" on the premises connected with any railway he shall be guilty of an offence.



nothing herein contained shall extend to any case where the party trespassing acted under a fair and reasonable supposition that he had a right to go into or upon such place." (See also *Brooks v. Hamlyn*, (1899) 19 Cox, 231.)

*R. (White) v. Wicklow JJ.*, (1900) 1 N.I.J.R. 6. The facts of this case are complicated and would take up a great deal of space. The prosecution was one for trespass. *Held*, applying the doctrine of *White v. Feast*, (1872), L.R. 7 Q.B. 353, to cases under the Summary Jurisdiction Act, that, there being evidence from which the justices could infer that the party trespassing did not act under a fair and reasonable supposition that he had a right to do the act complained of, the court would not interfere with the conviction.

Examples.  
*Trespass to land.*

*R. (Donnelly) v. Kerry JJ.*, (1902) 2 N.I.J.R. 175. Where on the hearing of a complaint at petty sessions for trespass, the defendants raised a question of title, and the justices decided that no question of title could be raised, as the title of the complainant was established by a judgment at assizes in an action between other parties, and convicted the defendants. *Held*, on certiorari, that the conviction must be quashed on the ground that the justices had not considered the *bona fides* of the claim of right. *Semble*, that the decision at the assizes was an element which the justices could consider in deciding as to the reasonableness of the claim of title.

*R. (Cassidy) v. Galway JJ.*, (1903), 3 N.I.J.R. 134. A person was summoned before justices on a complaint in respect of the trespass of six cattle on the complainant's lands. The defendant made a claim of title to the right to graze four cattle on the lands. The Court considered that on the facts that claim was *bona fide*. *Held*, that as the complainant persisted in his complaint as regards the alleged trespass of all the six cattle, the jurisdiction of the justices was ousted, although the claim of title was only in respect of four cattle.

*Barton v. Hudson*, (1909) 2 K.B. 564. Under the powers conferred by section 14 of the Harbours Act, 1814 (54 Geo. 3, c. 159), the Board of Trade made an order prohibiting the taking or removing of shingle from the shores or banks of the sea between certain points. The respondents' predecessors in title had previously purchased from the Crown a piece of land, a foreshore lying between high and low water-mark, and the respondent had been in the habit of taking and selling sand and shingle from a part of this foreshore which had been so purchased from the Crown. As soon as the order was published the respondent gave the Board notice that he was the owner of his part of the seashore, that he disputed the validity of the order, and that he would continue to remove the shingle. On a prosecution being taken. *Held*, that the jurisdiction was ousted.

*R. (FitzGerald) v. Cork JJ.*, (1910) 44 I.L.T.R. 110. A workman occupying a portion of his employer's house used, in going to his work, a right of way enjoyed by his employer for himself and his workmen. At the end of the right of way was a garden, over which it was necessary to pass in order to get from the right of way to a public lane. In a prosecution of the workman at the suit of the owner of this garden, for trespass, it was held that the employer of the workmen having a right of way over a portion of the route to the public lane, there was a *bona fide* question of title involved as to the right to pass across the garden, and the justices had no jurisdiction to convict (cf. *R. (White) v. Wicklow JJ.*, (1900), 1 N.I.J.R. 6).

#### OBSTRUCTION TO HIGHWAY.

*R. (Christie) v. Londonderry JJ.*, (1902) 2 I.R. 266, 35 I.L.T.R. 127. There may be a limited dedication of a highway, and if, upon the hearing of a charge of obstruction to a footpath, evidence is given that the dedication was subject to the right of the defendant to commit the acts complained of, this will oust the jurisdiction, but such evidence should be of a cogent character (cf. *Leicester Urban Sanitary Authority v. Holland*, (1888) 57 J.L.M.C. 75; *Ex parte Vaughan*, (1866) L.R. 2 Q.B. 114).

*Obstruction to highway.*

*Collen v. Ellis*, (1893) 32 L.R.I. 491. All the space between fences abutting on the highway forms part of the highway, and therefore no question of title arises on a prosecution by a county surveyor for obstructing the highway by the erection of a barbed wire or fence, so as to jut out into the space between the fences.

#### INJURY TO PROPERTY.

*Evison v. Marshall*, (1868) 32 J.P. 691. Where a defendant, in the assertion of an alleged right of way, broke down more of a fence than was necessary to

*Injury to property.*



Examples.  
Injury to  
property.

make a passage, the K.B.D. held that the justices were wrong in convicting him under the Malicious Damage Act, 1861, s. 25. their jurisdiction being ousted by the question of title. (This decision is submitted was erroneous. Cf. *Heaven v. Crutchley*, *infra*, and *R. v. Clemens*, *supra*.)

*R. (Monahan) v. Tyrone JJ.*, (1901) 1 N.I.J.R. 171. The defendant was charged, under section 52 of the Malicious Damage Act, and the evidence showed that in alleged assertion of a right of way he removed a gate from the right of way to a space some yards distant, and there smashed it. *Held*, that as the defendant did more damage than he himself could have supposed to be necessary for the assertion of his right, the conviction was good, but the order would be so framed as not to prevent him raising the question of title again, or prejudicing that question when raised.

*Heaven v. Crutchley*, (1903) 68 J.P. 53. The defendants, who in the exercise of a supposed public right of recreation over unenclosed lands, trampled down and rooted up the entire vegetable produce of a small enclosed garden forming part of such lands, doing more damage than could reasonably be supposed necessary for the protection or assertion of the alleged right, were convicted of unlawfully and maliciously damaging the plants in question under section 23 of the Malicious Damage Act, 1861. *Held*, that the jurisdiction was not ousted. (See also *R. v. Clemens*, *supra*.)

Power to  
determine title  
necessary  
under statute.

The statute may, however, impliedly give the justices power to decide the question of title involved. Thus, where a statute gives the justices jurisdiction to decide offences as to obstruction, &c., on the public street, this gives them power to decide as to whether the place in question is or is not a street (*R. v. Young*, (1883) 52 L.J. (M.C.) 55; see also *Leicester Urban Sanitary Authority v. Holland*, (1888) 57 L.J. (M.C.) 75; *Williams v. Adams*, (1862) 2 B. & S. 312). And where, as in cases in which jurisdiction in ejectment is given to justices, the question as to who is entitled to possession of lands or houses is precisely the question that the justices have to decide, then their jurisdiction is of course not ousted by the raising of that question (*R. v. Llanfillo JJ.*, (1866) 15 L.T. 277; *Ex parte Vaughan*, (1866) L.R. 2 Q.B. 114; *R. (Ryan) v. Limerick JJ.*, 2 N.I.J.R. 2).

When point  
should be  
taken.

The point that a question of title is involved should be taken before the justices, and it is more regular to take it before the case is gone into, but it must be taken at all events before their decision is pronounced (see *R. v. Salop JJ.*, (1859) 2 E. & E. 386; *Ex parte Mannering*, (1862) 2 B. & S. 431). If the point is taken, the defendant does not waive it by going into the merits (*R. v. Tonggood*, (1871) 35 J.P. 791). Where there was no objection made to the justices' jurisdiction, but, on a case stated, it was quite clear that the question in controversy was a question of title, the King's Bench Division directed the conviction to be quashed (*Mathews v. Carpenter*, (1885) 16 L.R.I. 420).

Adjournment  
to adduce  
evidence.

Where defendant raises a *bona fide* question of title, and asks for an adjournment to adduce evidence in support of his claim, the justices should not adjudicate, but adjourn (*R. v. Cridland*, (1857) 7 E. and B. 853).

No power to  
award costs.

Justices have, it is submitted, no power to award costs in a case in which their jurisdiction is ousted by a question of title being raised, their order being simply "no jurisdiction."<sup>1</sup>

<sup>1</sup>The observations of Gibson, J., in *Enniskillen Loan Society v. Green*, (1898) 2 I.R. 103, at p. 14, have, it is submitted, reference only to the particular statute under consideration in that case.

## CHAPTER XVI.

### DISQUALIFICATION OF JUSTICES BY INTEREST OR BIAS.

	PAGE		PAGE
Disqualification by—		Disqualified justice remaining on	
(1) Pecuniary interest, . . . . .	215	bench, . . . . .	221
(2) Bias, . . . . .	215	Immaterial whether result affected, . . . . .	221
Examples—		Statutory disqualifications, . . . . .	221
(a) Justice held disqualified, . . . . .	216	Enabling statutes, . . . . .	222
(b) Justice held not disqualified, . . . . .	218	Acts voidable, not void, . . . . .	222
Waiver of objection, . . . . .	220	Costs, . . . . .	222

JUSTICES may, in a matter which would otherwise be within their jurisdiction, be disqualified from acting, by reason of bias, actual or presumed. The reason for such disqualification is thus stated by Field, J., in *R. v. Great Yarmouth JJ.*, (1882) 8 Q.B.D. 525, at p. 527:—"The administration of justice ought not only to be pure in itself, and capable of being demonstrated to be so, but nothing should be done by those who are administering it to throw on it a substantial doubt. It is not enough that the conclusion arrived at was right, and that it has been arrived at on right principles, for every person having a personal interest in any litigation, or having a direct or indirect motive for desiring a particular decision to be come to, should abstain from putting himself in such a position as that, unconsciously to himself, a bias adverse to the due administration of justice might take possession of his mind."

Any direct pecuniary interest, however small, in the subject-matter of the inquiry disqualifies a justice from acting judicially (*per* Blackburn, J., in *R. v. Rand*, (1866) L.R. 1 Q.B. 230, 232; see also *R. v. Gaisford*, (1892) 1 Q.B. 381; *R. (Grant) v. Armagh JJ.*, (1902) 2 N.I.J.R. 175), even though his interest be merely that of a shareholder trustee (*R. v. Gee*, (1901) 17 T.L.R. 374).

Apart from pecuniary interest, if a justice is biased in a matter that comes before him for adjudication, he is disqualified from acting. In the administration of justice, whether by a recognized legal court or by persons who, although not a legal public court, are acting in a similar capacity, public policy requires that, in order that there should be no doubt about the purity of the administration, any person who is to take part in it should not be in such a position that he might be suspected of being biased (Lord Esher, M.R., in *Allinson v. General Council of Medical Education*, (1894) 1 Q.B. 750, 758). The test is, whether there is a reasonable apprehension of bias (*per* Wills, J., in *R. v. Huggins*, (1895) 1 Q.B. 363; *R. v. Sunderland JJ.*, (1901) 2 K.B. 357, 364). An objection to an adjudication by a justice on the ground of bias must be supported by evidence to show some reasonable likelihood of bias (*R. (Drohan) v. Waterford JJ.*, (1901) 2 I.R. 548).

(2) Bias.

The interest or bias which disqualifies must be real and substantial, and such as is likely to influence the mind, not a mere interest in humanity or the welfare of society or an interest in the protection of animals from cruelty. Such an interest would no more disqualify a magistrate than an interest in the suppression of vice. The interest or bias which disqualifies must be an interest or bias in the matter to be litigated—that is, in this case, whether the person prosecuted had been guilty of cruelty to animals. A mere general interest in the object to be pursued would not disqualify a magistrate. All magistrates and all judges have general sympathies and feelings of this kind—feelings in favour of the protection of the innocent or the helpless—feelings in favour of the punishment of crime; but these general feelings or sympathies do not disqualify from sitting in a criminal case. The interest or bias which disqualifies is an interest or bias in the particular case—something reasonably likely to bias or influence their minds in the particular case (Lord Field in *R. v. Deal Corporation*, (1881) 45 L.T. 439, at p. 441). “By ‘bias’ I understand a real likelihood of an operative prejudice, whether conscious or unconscious. There must, in my opinion, be reasonable evidence to satisfy us that there was a real likelihood of bias” (per Lord O’Brien, L.C.J., in *R. (De Vesci) v. Queen’s County JJ.*, (1908) 2 I.R. 285, at p. 294).

Many statutes authorize justices who are members of corporations or public bodies to adjudicate in prosecutions brought forward by or at the instance of the corporation or public body; but, notwithstanding such a provision, the justice will be disqualified if he takes part in the resolution or proceedings leading to the prosecution in the particular case (*R. v. Milledge*, (1879) 4 Q.B.D. 332, and other cases cited *infra*).

Manifest express malice to one of the parties may disqualify a justice (*R. (Donoghue) v. Cork JJ.*, (1910) 2 I.R. 271, noted *infra*: see also *Enoch & Zuretsky, Bock, & Co.’s Arbitration*, (1910) 1 K.B. 327).

The following are instances of the application of the above rules:—

(1) Examples.  
*Justices held  
disqualified.*

#### I.—JUSTICES HELD DISQUALIFIED.

*R. (Gollock) v. Cork JJ.*, (1857) 7 I.C.L.R. 244. Upon an application to quarter sessions for the reduction of tithe rent-charge, a justice, who was himself one of the payers of the tithe rent-charge, was present on the bench for a considerable time during the hearing of the application. *Held*, that the court was improperly constituted, and the order should be quashed (see also cases cited *infra*, and cf. *R. (Porter) v. Tyrone JJ.*, (1860) 12 I.C.L.R. 91).

*R. v. Hammond*, (1863) 9 L.T. 423. A justice who is a shareholder in a railway company cannot adjudicate upon the hearing of a charge for travelling without a ticket on the railway of that company.

*R. v. Milledge*, (1879) 4 Q.B.D. 332. Two members of a borough council took an active part in a discussion which led to a prosecution under the Public Health Act, which authorizes a member of the council to adjudicate. These two members afterwards adjudicated. *Held* that they were disqualified. For same principle see *R. v. Lee*, (1882) 9 Q.B.D. 394; *R. v. Meyer*, (1875) 1 Q.B.D. 173; *R. v. Henley*, (1892) 1 Q.B. 504; *R. v. Allan*, (1864) 4 B. and S. 915; *R. v. Gaisford*, (1892) 1 Q.B. 381; *R. v. Spedding*, (1885) 49 J.P. 804; *R. (Casey) v. Louth JJ.*, (1896) 31 I.L.T. and S.J. 241; *R. (Poe) v. Cork JJ.*, (1906) 40 I.L.T.R. 121.

*R. v. Great Yarmouth JJ.*, (1881) 8 Q.B.D. 525. A justice was personally interested in a rating appeal. *Held*, he was thereby disqualified from adjudicating at the same sessions in cases in which the same point was involved (cf. *Ex parte Overseers of Workington*, (1894) 1 Q.B. 416).



*R. (Townley) v. Louth JJ.*, (1888) 23 I.L.T.R. 40. T, the tenant of a house licensed for the sale of intoxicating liquor, was convicted of a breach of the licensing laws and fined. B was the landlord of the premises, which were situate close to B's demesne wall, and B, by certain acts of his, had previously evinced a desire to extinguish the licence attached to the house, amongst other things having at one time made an offer of an annuity to the former licensee of the premises if he would allow the licence to drop. It was held by a majority of the court that the conviction was bad. Examples.  
Justices held  
disqualified.

*R. v. London County Council*, (1892) 1 Q.B. 190. The London county council delegated to a committee of their body the hearing of applications for music and dancing licences. The committee by a majority recommended that a certain licence should not be granted. The applicant thereupon applied to the county council for the licence. At the hearing before the county council, certain members of that body, who were also members of the committee and had voted in the majority against granting a licence at the hearing before the committee, instructed counsel to represent them before the county council and oppose the application for the licence. The councillors so instructing counsel were present at the hearing, but did not vote. *Held*, that the proceedings were vitiated (cf. *R. (Findlater) v. Dublin JJ.*, (1904) 2 I.R. 75, noted *infra*, p. 219).

*Guardians of Mitchelstown Union v. Duffy*, (1893) 28 I.L.T.R. 20. Justices who are members of a poor law board cannot adjudicate in a prosecution by the board under the Malicious Damage Act, 1861.

*R. v. Fraser*, (1893) 57 J.P. 500. A justice attended a meeting of a temperance society at which allusion was made to a certain licensing application, but left the meeting before the passing of a resolution to oppose the licence. *Held*, that the justice was disqualified from adjudicating on the application (cf. *R. (Findlater) v. Dublin JJ.*, (1904) 2 I.R. 75, and *Goodall v. Bilsland*, (1909) S.C. 1152, noted *infra*, pp. 219, 220).

*R. v. Huggins*, (1895) 1 Q.B. 563. A justice who was a licensed pilot was held disqualified from adjudicating upon a summons brought against an unqualified person for acting as a pilot. The ground of the decision was "that the magistrate belonged to a small class of privileged persons for whose protection the proceedings were taken" (*per* Lawrance, J., in *R. v. Burton*, (1897) 2 Q.B. 468, at p. 471).

*R. v. Hain*, (1896) 12 T.L.R. 323. Three justices were directors of a company which had for its object the establishing of a hotel. The manager of the company applied for a licence, which was granted, and confirmed by the committee. The justices were members of the committee, but, before acting on the committee, resigned their seats as directors and sold their shares. The order granting the licence was quashed.

*R. (Burke) v. Galway JJ.*, (1897) 31 I.L.T.R. 160. Where a justice has caused a prosecution to be instituted, and is a witness against the accused, he is disqualified, and should not sit near the justices adjudicating, but should take his place in the body of the court as an ordinary witness.

*R. v. Sunderland JJ.*, (1901) 2 K.B. 357. A bargain was made between a brewery company and a corporation, that the company, who were about to apply for a licence for certain premises would pay the corporation £10,000: in consideration whereof, on the granting of the licence to the company, the corporation would extinguish a licence attached to premises, their property. Certain members of the corporation who had taken an active part in bringing about the agreement, afterwards took part in deciding the brewery company's application for a licence. *Held* that the order should be quashed, as under the circumstances there was a real likelihood of bias on the part of those members of the corporation (cf. *Lord Mayor of Leeds v. Ryder*, (1907) A.C. 420, noted *infra*, p. 219).

*R. (Malone) v. Tyrone JJ.*, (1903) 37 I.L.T.R. 55. Justices were canvassed in reference to the granting of certain licences, and in some cases there was evidence that their car fare to attend the sessions had been paid. *Held*, that there was such a grave suspicion of bias that the orders should be quashed.

*R. (De Vesci) v. Queen's Co. JJ.*, (1908) 2 I.R. 285. The chairman and another member of a county council, who were justices of the peace, took an active part in promoting and carrying a resolution that the county surveyor

Examples.  
Justices held  
disqualified.

should be directed to apply for an order authorizing him to enter certain lands for the purpose of obtaining road material. These two members subsequently persisted in adjudicating upon the county surveyor's application. *Held*, that they were disqualified, and the order was set aside with costs as against them.

*R. (Donoghue) v. Cork JJ.*, (1910) 2 I.R. 271. Summonses were issued on the complaint of a district inspector of the Royal Irish Constabulary, against three persons named D, members of the same family, as defendants, charging them with obstructing the police, and calling on them to show cause why they should not enter into recognizances to be of good behaviour. The summonses were heard before two justices. The defendants objected to one of the justices, B, adjudicating, on the ground that a bad feeling existed between him and them. B insisted on adjudicating; and orders were made requiring the defendants to enter into recognizances to be of good behaviour. A conditional order for a writ of certiorari to quash the orders of the justices was obtained by the defendants, grounded on affidavits made by them alleging that a bad feeling had for years existed between the D family and B, and that on the day after the orders had been made by the justices, B was overheard to say that he would not leave any member of the D family in the district. Cause against making the conditional order absolute was shown on behalf of the Crown, but no cause was shown by B individually, and he did not deny the allegations in the defendant's affidavit. *Held* that the conditional order for a writ of certiorari should be made absolute. *Held*, also, that B should pay the costs of the defendants in the certiorari proceedings (see also *R. (Kingston) v. Cork JJ.*, (1910) 2 I.R. 658, 44 I.L.T.R. 216).

## II.—JUSTICES HELD NOT DISQUALIFIED.

Justices held  
not dis-  
qualified.

*Ex parte Chamberlain*, (1870) 34 J.P. 773. Subscription to a fund for paying the costs of an application in bastardy. *Held*, not to disqualify a magistrate who had merely acted from the desire to see justice done to the woman.

*R. v. Huntingdon JJ.*, (1879) 4 Q.B.D. 522. Three justices who were members of the borough council, and as such had taken part in the making of an order or regulation under the Dogs Act, 1871, sat to hear a complaint of non-observance of the order. *Held*, not disqualified (see also *Ex parte Pettitmanjin*, (1864) 33 L.J.M.C. 99 n.).

*R. v. Deal Corporation*, (1881) 45 L.T. 439. Magistrates who were subscribers to a branch of the Society for the Prevention of Cruelty to Animals took part in the hearing of a prosecution which had been directed by the secretary of the society. *Held*, that they were not disqualified.

*R. v. Handsley*, (1881) 8 Q.B.D. 383. Where a statute authorizes a member of the borough council to act as a justice in matters arising under the Act, in order to disqualify him from so acting, it is not sufficient to show that, as a member of the council, he has a pecuniary interest in the result.

*R. v. Tooke*, (1884) 32 W.R. 753, 48 J.P. 661. The mere fact of a subpoena having been served upon a justice who is not alleged to be biassed or otherwise disqualified does not necessarily disqualify him from adjudicating upon the case. The justice in this case was subpoenaed to produce an old town charter in his custody, and persisted in adjudicating, whereupon the prosecution offered no evidence, the justices dismissed the case, and an application for a certiorari was refused.

*R. v. Farrant*, (1887) 20 Q.B.D. 58. A justice who was a surgeon attended a person who was a complainant in an assault case. He endeavoured to induce his patient not to prosecute for the assault, and conveyed to him a message sent by the person who had committed the assault, offering an apology and suggesting a settlement. He was subpoenaed by the prosecution to give evidence, and a writ of prohibition was applied for to prevent him adjudicating. *Held*, that he was not disqualified, and that the writ of prohibition should be set aside.<sup>1</sup>

<sup>1</sup> In this case the decision (which was that of Stephen and Charles, JJ.) turned almost altogether upon the question whether the justice "had such a substantial interest, other than pecuniary, as to make it likely that he would have a real bias" (per Stephen, J.). That question the court decided in the negative. Generally speaking, the proper course appears to be that a judge who has become a witness should leave the bench and

*R. v. Bollingbroke*, (1893) 2 Q.B. 347. A justice held not disqualified from Examples. acting at special sessions in the determination of rating appeals, by reason of *Justices held* the fact that he was a ratepayer in the parish in which the rate appealed against *not dis-* was made (see *Ex parte Overseers of Workington*, (1894) 1 Q.B. 416). *qualified.*

*R. v. Dublin JJ.*, (1894) 2 I.R. 527. A county surveyor successfully prosecuted a defendant on two occasions for obstructing the highway by erecting a barbed wire on his fence, the prosecution on the first occasion having been directed by the county council finance committee, but in the second having been undertaken by the surveyor of his own motion. X, who was a member of the finance committee, adjudicated on the hearing of the second charge. *Held*, that X was not disqualified.

*R. v. Burton*, (1897) 2 Q.B. 468. On the hearing of a summons for falsely pretending to be a solicitor, contrary to the Attorneys and Solicitors Act, 1874, s. 12, a justice who was a practising solicitor and an ordinary member of the Incorporated Law Society, sat and adjudicated. The proceedings were taken by the council of the Incorporated Law Society, who alone had power to direct prosecutions, ordinary members having no control over the proceedings of the society. *Held*, that the circumstances did not show any probability of bias on the part of the justice, that he was not disqualified by his membership of the Incorporated Law Society, either as having a pecuniary interest in the proceedings, or as being a prosecutor.

*R. v. Tempest*, (1902) 86 L.T. 585, 66 J.P. 472. On an application to a licensing committee for a removal of a licence to new premises, the applicant suggested that if the application were granted he would cancel another licence and place certain property at the disposal of the borough council for the improvement of the town. The committee, amongst whom were three justices who were members of the borough council, and one who held shares in a brewery that sold beer in the district, granted the application. *Held*, that there was not such likelihood of bias on the part of the three justices as to render the order invalid, and that the fourth justice, though under a penalty for acting, was not disqualified, having regard to section 60 of the Licensing Act, 1872 (see also *R. v. Stockport JJ.*, (1896) 60 J.P. 552).

*Ex parte Wilder*, (1902) 66 J.P. 761. An allegation that a justice held, and had frequently expressed from the bench, strong views on the subject-matter of the offence, to wit, the driving of motor cars at excessive speed, *held*, not sufficient to disqualify.

*R. (Findlater) v. Dublin JJ.*, (1904) 2 I.R. 75. Inasmuch as power is given to a justice by the licensing statute 3 and 4 Wm. 4, c. 68, ss. 2-5, to be an objector to an application at quarter sessions for a publican's licensing certificate, members of the executive committee of a temperance association, which has decided to oppose a licence, are not debarred from adjudicating on the application; nor will the sending out of a circular to attend the sessions disqualify. See, however, remarks of Gibson J. on this case in *R. (Perry) v. Tyrone JJ.*, (1904) 38 I.L.T.R. 26; and see *Allinson v. General Council of Medical Education*, (1894) 1 Q.B. 750; *R. v. London JJ.*, (1896) 45 W.R. 58; *R. v. London County Council*, (1892) 1 Q.B. 190; *R. v. Frazer*, (1893) 57 J.P. 500, noted *supra*; *R. v. Ferguson*, (1890) 54 J.P. 101; and *Goodall v. Bilsland*, (1909) S.C. 1152, noted *infra*.

*Lord Mayor of Leeds v. Ryder*, (1907) A.C. 420. A county borough corporation, under statutory powers for the improvement of a district, bought land in the borough, including licensed premises, dismantled the premises, and put caretakers therein, with a view to suppressing unnecessary licensed premises on payment of compensation to the corporation under the English Licensing Act, 1904. At the next annual licensing sessions, the caretakers, in pursuance of an arrangement between the corporation and the justices, applied for renewal licences, which were provisionally granted, subject to a reference to quarter sessions, the compensation authority under the Act of 1904. Some of the justices

take no further judicial part in the trial, because he can hardly be deemed capable of impartially deciding on the admissibility of his own testimony, or weighing it against that of another (Taylor, 10th ed. 987, citing *Trial of the Regicides*, (1660) Kel. 12; *R. v. Thanet*, (1793) 27 How St. Tr. 845); but this only applies where the evidence is really material (see *R. (Donnelly) v. Tyrone JJ.*, (1910) 44 I.L.T.R., 264).



Examples.  
Justices held  
not dis-  
qualified.

who granted the renewals were members of the corporation, and parties to the arrangement. *Held*, that the justices, under the Act of 1904, act administratively, and that, as in this case they had acted *bona fide* and honestly, the order would not be set aside on an allegation of bias. This case, it should be noted, was decided upon the particular jurisdiction under the Licensing Act, 1904, and there is no corresponding jurisdiction in Ireland.

*R. v. Middlesex JJ.*, (1908) 72 J.P. 251. A tramway company appealed against a poor rate to Middlesex quarter sessions. Some of the justices who were members of the court of quarter sessions were also members of the Middlesex county council, who were the owners of the tramways, and had leased them to the tramway company on the terms that the council were to receive (*inter alia*) 45 per cent. of the net income, *Held*, that the justices who were members of the county council, being mere trustees for the ratepayers, were not disqualified by interest from adjudicating, and that on the facts proved, the allegation that there would be, in the minds of reasonable people, a possibility of bias had not been made out.

*R. (Murphy) v. Kilkenny JJ.*, (1908) 42 I.L.T.R. 135. The mere fact that a justice is a director of a local brewery company is not evidence of bias in a prosecution for unlawfully keeping drink for sale.<sup>1</sup>

*R. (Tavener) v. Tyrone JJ.*, (1909) 2 I.R. 763, 43 I.L.T.R. 262. Two of the justices who adjudicated upon the hearing of a charge of assault, brought against the defendant by a person who claimed to be entitled to a church pew which the defendant had forcibly entered, were members of the select vestry of the church. *Held*, that there was no real likelihood of bias.

*R. v. Sparks*, (1909) 73 J.P. 485. On the hearing of a charge under the Motor Car Acts, the defendant's solicitor stated there had been previous convictions against the defendant; the justices appeared to have understood him to say that there were no previous convictions and looked in the book, which showed previous convictions. *Held*, that the justices were not disqualified by bias.

*Goodall v. Bisland*, (1909) S.C. 1152, Ct. of Sess. Certain members of a licensing appeal court were subscribers to an association, one of whose principal objects was to affect a reduction in the number of licences by opposing the granting or renewal thereof at the licensing courts. *Semble*, that subscriptions to the funds of the association did not constitute membership thereof, and did not disqualify the subscribers from acting as members of the licensing appeal court. Whether membership of the association would have operated as a disqualification, *quære*.

*R. (Donnelly) v. Tyrone JJ.*, 44 I.L.T.R., 264. During the hearing of a charge of assault, the complainant's solicitor called as a witness one of the justices (who had been previously summoned), apparently in the belief that the justice would depose that the defendant had been, in the justice's view, guilty of drunken and rowdy conduct on the occasion in question; but the justice, on being sworn, could not identify the defendant in any way. *Held*, that the evidence of the justice being immaterial, he was not disqualified from adjudicating.

Waiver of  
objection.

A complainant or defendant may so act as to waive any question of disqualification. Thus, where the complainant not alone did not protest against an interested justice adjudicating, but asked him to remain and adjudicate, it was held, on an application for a writ of certiorari, that the objection could not be allowed (*R. (Giant's Causeway Tramway Co.) v. Antrim JJ.*, (1895) 2 I.R. 603). The rule seems to be, that if a party is aware of the alleged disqualification, and yet acquiesces in the justice acting, the King's Bench Division will not interfere; and the applicant for a certiorari should

<sup>1</sup> But *semble* in such case, if the magistrate sits on the bench, knowing he is subject to a penalty for so doing he should not get the costs of an unsuccessful motion for certiorari to quash the decision of the bench (*ib.*, *per* Palles, C.B.).

show by affidavit that neither he nor his advocate knew of the objection at the time of the hearing (*R. v. Richmond JJ.*, (1860) 8 Cox 314; *R. v. Kent JJ.*, (1880) 44 J.P. 298; *Wakefield Local Board v. West Riding and Grimsby Railway Co.*, (1865) L.R. 1 Q.B. 84, see also *R. (Poe) v. Cork JJ.*, (1906) 40 I.L.T.R. 121).

A justice who is disqualified should not remain on the bench or hold any conversation with any member of the court; and if he does so, the order will be liable to be quashed (*Ex parte Clarke*, (1890) 26 L.R.I. 1; *R. v. Suffolk JJ.*, (1852) 18 Q.B. 416; *R. v. London County Council*, (1892) 1 Q.B. 190; *R. v. Lancashire JJ.*, (1906) 94 L.T. 481, 70 J.P. 337; *R. (Hickey) v. Clare JJ.*, (1857) 7 I.C.L.R. 211; *R. (Gollock) v. Cork JJ.*, (1857) 7 I.C.L.R. 244; but see *R. (Porter) v. Tyrone JJ.*, (1860) 12 I.C.L.R. 91). Where a justice, who had caused the prosecution to be instituted against the defendant, upon being challenged, stated he would not adjudicate, but only moved his chair from his previous position beside the other justices, it was held that a conviction had against the defendant should be quashed (*R. (Burke) v. Galway JJ.*, (1897) 31 I.L.T.R. 160). A disqualified justice, on the case being called, withdrew from the bench and retired to the justices' room, but after a time, and while the case was at hearing, returned to his original seat. The clerk of the petty sessions sent him a note recommending him to withdraw, whereupon he left his seat, whispered something (an invitation to lunch) to the Resident Magistrate, and withdrew from the bench. *Held*, that the order was not invalidated, but that the magistrate having acted indiscreetly, no costs should be given (*R. (Meehan) v. Louth JJ.*, (1905) 39 I.L.T.R. 23).

If any one of the justices is disqualified, the Court is improperly constituted, and an order made by them will be quashed on certiorari; and it is immaterial as to whether the vote of the disqualified justice affects the result, nor is it any answer that the interested justice withdrew before the decision, if he appear to have joined in discussing the matter with the other magistrates (*R. v. Hertfordshire JJ.*, (1845) 6 Q.B. 753).

In some cases a statute prohibits certain justices from acting under a penalty, e.g., section 60 of the Licensing Act of 1872, which subjects to a penalty of £100 any justice, interested in licensed premises in the district, who adjudicates in licensing matters. But the section expressly enacts that such interest alone will not invalidate the order (see *R. v. Tempest*, (1902) 86 L.T. 585, 66 J.P. 472; *R. (Murphy) v. Kilkenny JJ.*, (1908) 42 I.L.T.R. 135, noted *supra*, p. 220.) A justice who acts innocently—e.g., in forgetfulness of the fact that he holds shares in a brewery owning licensed premises in the district—is nevertheless liable to the penalty (*A.-G. v. Ball*, (1902) 66 J.P. 553). In certain other cases, justices are altogether disqualified by statute. Thus, a person who is a master, or father, son, or brother of a master, in the particular trade, manufacture, or business in or in connection with which an offence is charged under the Trades Union Act, 1871 (34 & 35 Vict. c. 31, s. 22) cannot adjudicate; a person who is the owner, agent, or manager of any mine, or a miner or miner's agent, or the father, son, or brother, or father-in-law, son-in-law, or brother-in-law of such owner, agent, or manager, or of a miner or miner's agent, or who is a director of a

Disqualified  
justice remain-  
ing on bench.

Immaterial  
whether result  
affected.

Statutory dis-  
qualifications.

Statutory dis-  
qualification.

mining company, cannot, except with the consent of both parties, act as a court or member of a court of summary jurisdiction in respect of any offences against the Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58, s. 69). A master in a trade concerning which an offence is charged (43 Geo. 3, c. 86 (Ir.) s. 12), commissioners or officers of excise in excise cases, or traders in excise cases as to their trades (7 & 8 Geo. 4, c. 53, s. 68), are disqualified. Where a proceeding is taken before a court of summary jurisdiction with respect to an offence against the Factory and Workshops Act, 1901, alleged to have been committed in or with reference to a factory or workshop, the occupier of the factory or workshop, and the father, son, or brother of such occupier, shall not be qualified to act as a member of the court (1 Ed. 7, c. 22, s. 144); a person engaged in or being an officer of any association of persons engaged in the same trade or occupation as a person charged with an offence under the Act shall not act as a justice of the peace in determining the charge (*ib.*).

A justice is disqualified by section 73 of the County Officers and Courts Act, 1877, from taking any part in the hearing or decision of an appeal from a decision in which he took part (see *Ex parte Clarke*, (1890) 26 L.R.I. 1).

Enabling  
statutes.

It is expressly provided by section 256 of the Public Health (Ir.) Act, 1878, that no justice of the peace shall be deemed incapable of acting in cases arising under the Act by reason of his being a member of any sanitary authority, or by reason of his being, as one of several ratepayers, or as one of any other class of persons, liable in common with the others to contribute to or to be benefited by any rate or fund out of which any expenses incurred by such authority are, under the Act, to be defrayed. The Towns Improvement (Ir.) Act, 1854, 17 & 18 Vict. c. 103, s. 91, enables town commissioners to act at petty sessions. The Justices of the Peace Act, 1867, 30 & 31 Vict. c. 115, s. 2, provides that a justice shall not be incapable of acting as a justice at petty or quarter sessions on the trial of an offence arising under an Act to be put in execution by a municipal corporation or a local board of health, or improvement commissioners, or trustees, or any other local authority, by reason only of his being as one of several ratepayers, or as one of any other class of persons, liable in common with the others to contribute to, or to be benefited by, any fund to the account of which the penalty payable in respect of such offence is directed to be carried, or of which it will form part, or to contribute to any rate or expenses in diminution of which such penalty will go. But, notwithstanding such provisions, members of a board who are present when a resolution to prosecute is passed are disqualified from adjudicating on the hearing (*R. v. Milledge*, (1879) 4 Q.B.D. 332; *R. v. Lee*, (1882) 9 Q.B.D. 394; *R. v. Henley*, (1892) 1 Q.B. 504; *R. (Poe) v. Cork JJ.*, (1906) 40 I.L.T.R. 121).

Acts voidable,  
not void.  
Costs of set-  
ting aside  
order.

The orders of a biased tribunal are merely voidable, not void (*R. (Hastings) v. Galway JJ.*, (1906) 2 I.R. 499).

Costs may be given against a disqualified justice who persists in adjudicating notwithstanding objection (*R. v. Harrison*, (1875) 1 Q.B.D. 172; *R. (De Vesci) v. Queen's Co. JJ.*, (1908) 2 I.R. 285; *R. (Kingston) v. Cork JJ.*, (1910) 2 I.R. 658), even though such justice has not shown cause against making absolute the conditional order for certiorari (*R. (Donoghue) v. Cork JJ.*, (1910) 2 I.R. 271).



## CHAPTER XVII.

### CERTIORARI.

	PAGE		PAGE
Definition, . . . . .	223	Not <i>ex debito justitiæ</i> , . . . . .	227
Grounds for, . . . . .	223	Merely administrative orders, . . . . .	227
Allegation of no evidence, . . . . .	224	Payment of fine, . . . . .	228
Cases where question of want of evidence will be entertained—		Appeal to quarter sessions, . . . . .	229
(1) Disregard of essentials of justice, . . . . .	225	Does petty sessions order merge in quarter sessions order? . . . . .	229
(2) Defendant not duly summoned, . . . . .	225	After case stated, . . . . .	231
(3) Want of subject-matter, . . . . .	225	Acquittal, . . . . .	231
(4) Sureties of peace and good behaviour, . . . . .	226	Time for application, . . . . .	231
Statute taking away certiorari, . . . . .	226	Procedure, . . . . .	231
Unaffected by appeal, . . . . .	227	Death of applicant, . . . . .	233
Where <i>mandamus</i> proper remedy, . . . . .	227	Amendment of order, . . . . .	234
Indictable offence, . . . . .	227	Appeal to Court of Appeal, . . . . .	234
		Costs, . . . . .	234

THE writ of certiorari is the process by which the King's Bench Division, in the exercise of its superintending power over inferior jurisdictions, requires the judges or officers of such jurisdictions to certify or send proceedings before them into the King's Bench Division, whether for the purpose of examining into the legality of such proceedings, or for giving fuller or more satisfactory effect to them than could be done by the court below (Short and Mellor, 2nd ed., 14).<sup>1</sup> This chapter is solely concerned with what is probably the most frequent application of the writ—namely, to bring up for the purpose of being quashed the erroneous orders of courts of summary jurisdiction.<sup>2</sup>

The jurisdiction of the King's Bench is limited to bringing up the proceedings of an inferior court for the purpose of being quashed upon the ground that the proceedings are void or voidable as being without, or in excess of, jurisdiction (*per Palles, C.B.*, in *In re Heaphy*, (1888) 22 L.R.I. 500, at p. 511). Thus, the writ may be applied for on any of the following grounds:—(1) Illegal constitution of, or bias on the part of, the tribunal (as to which see p. 215); (2) that the subject-matter was not within the scope of the jurisdiction of the tribunal, for example, that the justices had wrongfully taken upon themselves to determine a question of title;<sup>3</sup> (3) that the order was not such as the statute authorized;<sup>4</sup> (4) that the order was obtained by fraud; and (5) that the order is bad upon its face for uncertainty, duplicity, failing to contain all necessary averments to constitute the offence, failing to show jurisdiction or otherwise (as to which see

Definition of certiorari.

Grounds for certiorari.

<sup>1</sup> It may, however, be observed that a party is not estopped in subsequent proceedings from going behind an order of magistrates, which he had failed to quash on certiorari, at all events where the order is inherently bad on grounds other than those brought before the court on the application for certiorari (*O'Grady v. Synan*, (1900) 6 I.W.L.R. 85).

<sup>2</sup> The writ is, of course, available for many other purposes, e.g., the removal of indictments, coroners' inquisitions, county court decrees, &c.

<sup>3</sup> See p. 206.

<sup>4</sup> See p. 90.

Grounds for  
certiorari.

pp. 84 to 88). In *R. (Martin) v. Mahony*, (1910) 2 I.R. 695, Gibson, J., (p. 731) enumerates the following cases in which certiorari will lie:— (1) where there is want or excess of jurisdiction when the inquiry begins,<sup>1</sup> or during its progress;<sup>2</sup> (2) where in the exercise of jurisdiction there is error on the face of the adjudication;<sup>3</sup> (3) where there has been an abuse of jurisdiction, as by misstating the complaint, &c., or disregard of the essentials of justice, or of the conditions regulating the functions and duty of the tribunal;<sup>4</sup> (4) where the court is shown to be disqualified by likelihood of bias or by interest;<sup>5</sup> (5) where there is fraud.

Allegation of  
no evidence to  
support order.

As regards orders of quarter sessions, it was always laid down that an application for certiorari was not sustainable on the ground that there was no evidence to sustain the order (*Re Russell*, (1888) 22 L.R.I. 487; *Overseers of Walsall v. L. & N. W. Ry. Co.*, (1878, 4 A.C. 30). As to orders made at petty sessions, the matter remained, until lately, in doubt, there having been conflicting decisions of the Exchequer and Queen's Bench Divisions on the point in *In re Heaphy*, (1888) 22 L.R.I. 500. But the point is now finally settled by the decision in *R. (Martin) v. Mahony*,<sup>6</sup> (1910) 2 I.R. 695, which, though decided in reference to a conviction in the Dublin metropolitan police district, seems equally applicable to all penal cases of summary jurisdiction. The question was thus propounded by Lord O'Brien, L.C.J., in that case:—"What then is the question we have to determine, and what is the law? The question we have to determine is whether, in a case of a criminal or penal nature<sup>7</sup> within the summary jurisdiction of magistrates, mere insufficiency of evidence to warrant a conviction or order destroys *jurisdiction*. That is the question before us. What is the law? It is conceded, the argument proceeds on the conventional basis, that the charge is adequate, properly laid, and within jurisdiction; that there is authority to enter upon the case and to commence the inquiry; but it is contended that the fact that the evidence, such as it was, did not authorize a conviction, ousts, destroys, jurisdiction. I emphasise the word '*jurisdiction*.'" The question was thus answered by the Lord Chief Justice in the negative:—"To grant certiorari merely on the ground of *want of jurisdiction* because there was no evidence to warrant a conviction, confounds, as I have said, want of jurisdiction with error in the exercise of it. The contention that mere want of evidence to authorize a conviction creates cesser of jurisdiction, involves, in my opinion, the unsustainable proposition that a magistrate has, in the case I put, jurisdiction only to go right, and that though he had

<sup>1</sup> For example, if justices proceeded to hear and determine a summary offence in which, by reason of the place of offence or the residence of the defendant, they have no jurisdiction.

<sup>2</sup> For example, where the jurisdiction is ousted by a question of title.

<sup>3</sup> For example, where the order is bad on its face.

<sup>4</sup> For example, if the justices refused to hear defendant's witness, see *R. v. Russell*, (1869) 10 B. & S. 91, at pp. 111, 117, and other cases noted, p. 225, *post*. Probably cases such as *R. (Cunningham) v. Tyrone J.J.*, (1902) 36 I.L.T.R. 101; *Re Penny*, (1857) 7 E. & B. 660, where orders were set aside on the ground that matters wholly extraneous to the jurisdiction had been considered, would come under this head.

<sup>5</sup> See p. 215.

<sup>6</sup> Heard before the full King's Bench Division, specially summoned to consider the question.

<sup>7</sup> The reasoning of the judgment seems applicable to all cases of summary jurisdiction, though possibly in civil cases, the absence of what is, on the construction of the statute, a condition precedent, will frequently occur, as in cases of an application to enter a quarry.

jurisdiction to enter upon an inquiry, mere miscarriage in drawing an unwarrantable conclusion from the evidence such as it was, makes the magistrate act without and in excess of jurisdiction" (at pp. 705, 707). The other members of the court concurred.<sup>1</sup>

The cases enumerated by Gibson, J. (*supra*), as cases in which certiorari lies, include the following cases in which the court will go into the question of evidence—(1) where the essentials of justice have been disregarded; (2) where the defendant has not been duly summoned to appear, and has been convicted in his absence; (3) cases in which there is no proper subject-matter for the jurisdiction of the justices to operate upon, e.g., licensing cases, applications to enter a quarry, or the like; (4) applications for sureties of the peace or of good behaviour.

The writ lies, and evidence upon the point will be considered by the Superior Courts, where the essentials of justice have been disregarded, e.g., if the court refuse to hear witnesses for the complainant or for the defendant (*per* Gibson, J., in *R. (Martin) v. Dublin JJ.*, at p. 742, *supra*, citing *R. v. Russell*, (1869) 10 B. & S. 111, 117; *R. v. Morris*, (1909) 26 T.L.R. 419; *R. v. Marsham*, (1892) 1 Q.B. 375, 378).<sup>2</sup>

The case in which a defendant has been convicted without having been summoned to appear is not a real exception to the rule established by *R. (Martin) v. Dublin JJ.*, *supra*. The summons is a condition precedent to the jurisdiction (see remarks of Gibson, J., in *R. (Daly) v. Cork JJ.*, (1898) 2 I.R., at p. 697), and consequently there is an absence of jurisdiction at the commencement of the inquiry. In such a case the court will receive and act upon evidence other than the evidence before the justices (*R. v. Bolton*, (1841) 1 Q.B. 66; *R. v. Evans*, (1850) 19 L.J.M.C. 151; *R. v. Anwyl*, (1909) 73 J. P. 485; *R. (Dickie) v. Donegal JJ.*, (1910) 44 I.L.T.R., 222).

Licensing cases, applications to enter a quarry, and the like, are also, apparently, not real exceptions to the rule now definitely settled in *R. (Martin) v. Dublin JJ.*, *supra*. Take a familiar example. An application is made for a hotel licence for premises under the Act of 1902. If the premises do not contain ten apartments set apart as required by section 2 (2) of that Act, there is no subject-matter within the statute with regard to which the court may exercise its discretion to grant a licence, and, therefore, a condition precedent to the exercise of the jurisdiction is absent at the outset of the inquiry. Upon this ground Palles, C.B., in *R. (Burke) v. Galway JJ.*, (1906) 2 I.R. 446, explained the application of the writ to such licensing cases as *R. (Marshall) v. Tyrone JJ.*, (1894) 2 I.R. 246. In *R. (Martin) v.*

<sup>1</sup> The judgment of Palles, C.B., is, however, made expressly applicable only to cases "where the statute authorizes a form of conviction which does not state or refer to the evidence upon which it is founded." Apparently, therefore, cases under the Crimes Act, or under the Petty Sessions Act where the parties exercise their right under s. 20 (4) of that Act to have the evidence taken in writing, are possible exceptions, in the opinion of the Lord Chief Baron; but this was not the opinion of the other members of the court. See also on this point, *R. v. McNaghten*, (1846) 9 I.L.R. 93, referred to, however, by Gibson, J., in *R. (Martin) v. Dublin JJ.*, *supra*, at p. 748, as an unsatisfactory decision.

<sup>2</sup> A recent instance of a certiorari being granted, upon the ground above mentioned, is to be found in *R. (Hickey) v. Meath JJ.*, K.B.D. (Ir.), 1908, June 18, before Palles, C.B., and Johnson, J. The defendant was charged with selling intoxicating liquor at a place not authorized by her publican's licence, namely, a house closely adjoining her dwelling-house, though not under the same roof. The question at issue was the ambit of the licensed premises. The justices at quarter sessions refused to admit the defendant's licence in evidence. *Held*, that the conviction should be quashed on certiorari.



Cases in which question of evidence will be entertained.

(4) *Sureties of the peace and of good behaviour.*

Effect of statute taking away certiorari.

*Dublin JJ.*, *supra*, Gibson, J., said that such cases "either represent a case outside *R. v. Bolton* (which is my opinion), or if in conflict with that decision, and with the unbroken chain of authorities since on the same lines, were decided in oversight, and cannot be taken to overrule them"<sup>1</sup> (p. 730).

The High Court will, upon certiorari, consider the question whether there was any evidence to support an order binding to the peace or not (*R. (Orr) v. Londonderry JJ.*, (1891) 28 L.R.I. 440).<sup>2</sup> In stating the reason for this exceptional jurisdiction, Lord O'Brien, L.C.J., in *R. (Martin) v. Dublin JJ.*, *supra*, expresses the view that such cases do not conflict with the general principle enunciated by him, as the jurisdiction attaches only "when the facts or circumstances, on being examined, show that there is a probability of a breach of the peace or of misbehaviour" (p. 718). Palles, C.B., said that the *ratio decidendi* of such cases was "the anomalous nature of the procedure in relation to compelling such sureties to be found—a procedure according to which the person sought to be compelled to provide sureties is not permitted to produce witnesses to contradict the case made against him" (p. 721); and Gibson, J., said that the ground of the exception was that the "jurisdiction is wholly exceptional. The hearing was essentially *ex parte*, the defendant could not call evidence, there was no appeal, and there could probably be no case stated"<sup>3</sup> (p. 748).

Many statutes provide that convictions and orders made thereunder shall not be removable by certiorari. Unless the Crown is specially mentioned, this provision is not binding on a prosecutor on behalf of the Crown. Such a proviso will not prevent the writ being granted where the tribunal is illegally constituted or biassed, or where there is an absence of jurisdiction appearing on the face of the order (*Ex parte Bradlaugh*, (1878) 3 Q.B.D. 509); or where the order is bad upon its face, for uncertainty or otherwise (*R. (Collins) v. Waterford JJ.*, (1892) 27 I.L.T.R. 54; *R. (Bunting) v. Antrim JJ.*, (1905) 39 I.L.T.R. 82); or where it has been obtained by fraud (*R. v. Gillyard*, (1848) 12 Q.B. 527; *Colonial Bank v. Willan*, (1874) L.R. 5 P.C. 417). The want of jurisdiction which is fatal where certiorari is taken away, must be either a want of jurisdiction to inquire or a want of jurisdiction apparent upon the face of the proceedings (*In re Heaphy*, (1888) 22 L.R.I., at p. 515, *per* Palles, C.B.). Where, also, though the order was good upon its face, it appeared by affidavit that the justices entirely departed from the jurisdiction conferred on them by statute, and decided the case upon considerations wholly foreign to that jurisdiction, it was held by the Court of Appeal that certiorari would lie (*R. (Cunningham) v. Tyrone JJ.*, (1902) 36 I.L.T.R. 101), in which case the justice declined to go into the merits of a complaint brought to recover a loan under the Loan Funds Acts,<sup>4</sup> but dismissed the case on the ground that same was settled by a compromise which the Court held was invalid: but see *Ex parte Hopwood*, (1850) 15 Q.B. 121). Where a statute enacts that a conviction shall not be removed by certiorari, it seems that the

<sup>1</sup> See observations of Vaughan Williams, L.J., in *R. v. Woodhouse*, (1906) 2 K.B. 501, at pp. 515, 516.

<sup>2</sup> In such cases the court will not allow the evidence before the justices to be supplemented by affidavit (*R. (Reynolds) v. Cork JJ.*, (1882) 10 L.R.I. 1).

<sup>3</sup> In *R. v. Barry*, (1889) 26 L.R.I. 40, it was held that a case stated lay from an order binding to the peace and to be of good behaviour. See also *Wise v. Dunning*, (1902) 1 K.B. 167, decided, however, on the terms of the English section, noted *post*, p. 235 n.

<sup>4</sup> Which expressly take away certiorari.

justices at quarter sessions cannot, on a conviction, take the opinion of the Superior Court on a question of law, by making up a "speaking order" and having same removed by certiorari in manner indicated at p. 237 (*R. v. Chantrell*, (1875) L.R. 10 Q.B. 587; *R. v. Dickenson*, (1857, 7 E. & B. 831); but a statute taking away certiorari in case of a conviction has no reference to an *acquittal*, so that an acquittal of quarter sessions may be brought up on certiorari, where the quarter sessions make a "speaking order" with a view of having same reviewed by the King's Bench Division (*R. (King) v. Antrim JJ.*, (1906) 2 I.R. 298; *R. (Hosford) v. Limerick JJ.*, 1908, 42 I.L.T.R. 105).

Effect of statute taking away certiorari.

The right to certiorari is not taken away by the fact that an alternative remedy by way of appeal exists (*R. v. Blathwayt*, (1846) 15 L.J.M.C. 48; *R. (Collins) v. Waterford JJ.*, (1892) 27 I.L.T.R. 54, nor by words empowering the justices to hear and determine finally (*R. v. Plowright*, (1686) 3 Mod. 95; *R. v. Moreley*, (1760) 2 Burr 1040); but the last two cases apply only where there is an apparent error in law, and if they have any larger meaning they are opposed to all modern authority (Gibson, J., in *R. (Martin) v. Mahony*, (1910) 2 I.R. 695).

Unaffected by right to appeal.

Mandamus, and not certiorari, is the proper remedy where the justices have declined jurisdiction, or their adjudication is incomplete (*R. v. Kent JJ.*, (1880) 44 J.P. 298). But where justices dismiss a charge on the ground that the proper complainant is not before them, it seems that a case stated, and not mandamus or certiorari, is the proper remedy (*R. (Thompson) v. Roscommon JJ.*, (1900) 34 I.L.T.R. 203).

Where mandamus proper remedy.

An order made by justices sending for trial a person charged with an indictable offence cannot be removed upon certiorari (*R. (Blakeney) v. Roscommon JJ.*, (1894) 2 I.R. 158; *R. (Hastings) v. Galway JJ.*, (1909) 43 I.L.T.R. 185).

Indictable offence.

A writ of certiorari is not a writ of course (*Re Mayo Presentments*, (1861) 14 I.C.L.R. 392), and may be refused unless where the applicant has a peculiar grievance of his own, in which case the general course is to award the writ as of common right (*In re Lord Listowel's Fishery*, (1875) I.R. 9 C.L. 46; *R. v. Surrey JJ.*, (1870) L.R. 5 Q.B. 466; *R. v. Drury*, (1894) 2 I.R. 489; *R. v. Nicholson*, (1899) 2 Q.B. 455, at p. 470). An applicant who would otherwise be entitled to the writ may have his application refused if, on the application for the conditional order, he does not exhibit *uberrima fides* to the court (per Palles, C.B., in *McDonogh v. Davies*, (1875) I.R. 9 C.L. at p. 302; *R. (Marshall) v. Tyrone JJ.*, (1892) 32 L.R.I. 201, 205, 27 I.L.T.R. 50; *R. (Shannon) v. Carroll JJ.*, (1902) 2 I.R. 142, 34 I.L.T.R. 186, 1 N.I.J.R. 20; *R. (Cross) v. Tyrone JJ.*, (1908) 42 I.L.T.R. 112). Where an order directing a defendant to give up possession was bad upon its face, but possession had been taken under it, and the quashing of it would not enable defendant to get back possession, a writ of certiorari was refused in the discretion of the court (*R. (McSwiggan) v. Londonderry JJ.*, (1905) 2 I.R. 318). "Certiorari, in cases like the present, is granted in the exercise of discretion, and not *ex debito justitiæ*. If a right is involved, or if a wrong is continuing, or if liberty or character is at issue, or if a defective order is operating in any way, it may be otherwise" (*ib.*, per Fitz Gibbon, L.J.; and see also *R. v. Newborough*, (1869) L.R. 4 Q.B. 585). The Attorney-General is

Certiorari not *ex debito justitiæ*.

Does not lie in respect of merely administrative orders.

absolutely entitled to the writ in all cases (Paley, 8th ed., 451), save where certiorari is taken away from the Crown.

Certiorari will not lie in respect of an order which is merely ministerial, and is not the order of a tribunal performing a judicial act, such as granting a licence to a waterman (*Reg v. Waterman's Co.*, (1897) 1 Q.B. 659), or the grant by the solicitor of excise of a licence to sell intoxicating liquor (*R. v. Overseers of Salford*, (1852) 18 Q.B. 687). The making of a poor rate (*R. (McEvoy) v. Dublin Corporation*, (1878) 2 L.R.I. 371), the determination by the Local Government Board of the increase of salary to which a county surveyor was entitled on the passing of the Local Government Act, 1898 (*R. (Wexford County Council) v. Local Government Board*, (1902) 2 I.R. 349; see also *R. (County Council of Monaghan) v. Local Government Board*, (1900) 34 I.L.T.R. 196), or the withdrawal by the same body of an old age pension (*R. (Pawley) v. L.G.B.*, (1910) 2 I.R. 440) have been held to be reviewable on certiorari. An order of a constabulary court of inquiry (*R. v. Considine*, (1902) 36 I.L.T. & S.J. 78), a resolution of a board of guardians wrongfully charging against a particular electoral division certain legal expenses (*R. (O'Ferrall) v. Sheehan*, (1898) 2 I.R. 683), a resolution of a county council accepting a tender (*R. (Quinnell) v. Kerry Co. Council*, (1905) 2 I.R. 299, 5 N.I.J.R. 95) have been held not to be the subject of certiorari. It was held that the granting, in England, of a publican's licence by a licensing meeting was not a judicial act, and therefore could not be brought up on certiorari (*R. v. Sharman*, (1898) 1 Q.B. 578). This question was, however, thus discussed by Vaughan Williams, L.J., in *R. v. Sunderland JJ.*, (1901) 2 Q.B. 357, at p. 370: "I do not think it necessarily follows from the decision in *Boulter v. Kent JJ.*, (1897) A.C. 556, that a writ of certiorari will not lie in respect of proceedings before the licensing committee on the ground that a certiorari will only lie to bring up an order of a court properly so called . . . . Having regard to the general principles of the common law, I should have been disposed to think that, wherever a body such as justices have under the provisions of a statute to grant or withhold a certificate such as a certificate for a licence, and it appears from the statute that they have to exercise a judicial discretion in so doing, a certiorari would lie to bring up the proceedings before them, in the case of erroneous exercise or excess of jurisdiction, whether they could or could not be said to have acted as a court in the strict sense of the term." The decision in *R. v. Sharman*, (1898) 1 Q.B. 578, was not followed in *R. v. Woodhouse*, (1906) 2 K.B. 501,<sup>1</sup> where the Court of Appeal held that certiorari lies to bring up an order made by licensing justices under the Licensing Act, 1906, s. 1 (2); and in *R. v. Johnston*, (1905) 2 K.B. 59, it was held that the granting of a licensing exemption order was a judicial act, and capable of being reviewed on certiorari. The granting or withholding of a publican's licence is a judicial order in Ireland, and the subject of certiorari (*R. (Findlater) v. Dublin JJ.*, (1904) 2 I.R. 75, 37 I.L.T.R. 202, 3 N.I.J.R. 354).

A writ of certiorari has been granted to quash a subpoena not *bona fide* obtained for the purpose of procuring the evidence of the

<sup>1</sup> Reversed, but on grounds which do not affect the statement in the text—(1907), A.C. 420.



witness, but for an improper and indirect purpose (*R. v. Baines*, (1909) 1 K.B. 258), to quash a warrant to compel the appearance of defendant where such warrant was granted without jurisdiction (*R. v. Thompson*, (1909) 2 K.B. 614; *R. v. Montgomery*, (1910) 102 L.T. 325), to quash a warrant of commitment, where it appeared upon the face of the conviction that the jurisdiction to issue it depended upon payment, by the defendant, of the fine and costs before a certain day, and it appeared the fine and costs had been paid in due time (*R. v. Doherty*, (1910) 74 J.P. 304); and to quash a warrant for possession addressed to the wrong person (*R. (Gleeson) v. Tipperary JJ.*, noted, p. 75, *ante*).

Does not lie in respect of merely administrative orders.

A conviction may be quashed even though the fine has been paid (*R. v. Slade*, (1895) 59 J.P. 279).

Payment of fine.

Pending an appeal, a writ of certiorari will not be granted (*R. v. Sparrow*, (1788) 2 T.R. 196, n.; *R. v. Barnes*, (1910) 74 J.P. 231); but it is submitted that, if, after notice of appeal has been served, the appellant withdraws the appeal, it is competent for him to apply for certiorari (see *R. (Bridges) v. Armagh JJ.*, (1897) 2 I.R. at p. 240).

Appeal to quarter sessions.

The question arises, what is the effect upon an order of petty sessions of an order of quarter sessions made upon appeal? Does the petty sessions order merge in the quarter sessions order for all purposes, so that certiorari need only be applied for in respect of the order made upon appeal? The opinion is expressed in Short and Mellor's "Crown Practice" (2nd ed., p. 61), that an order quashing an order of quarter sessions which quashes an original order in effect confirms the original order, and an order quashing an order of quarter sessions which confirms an original order in effect quashes such original order.<sup>1</sup>

Does petty sessions order merge in quarter sessions order?

As to the Irish cases, in *R. (Walsh) v. Waterford JJ.*, (1869) 18 W.R. 164, the original order and the affirmance on appeal were both before the court on certiorari, and the orders of the two inferior courts were treated as separate orders. In *R. (M'Arde) v. Louth JJ.*, (1904) 2 I.R. 64, Kenny, J., said:—"The applicant now seeks to have the order of quarter sessions quashed. He does not quarrel in his affidavit with the magistrates' order at petty sessions, which, if we accede to this application, will remain untouched, but will still be subject to appeal after continuances have been entered." In *R. (Burke) v. Galway JJ.*, (1906) 2 I.R. 446, Palles, C.B., referred to a quarter sessions affirmance as "the effective determination"; and in *R. (Fleming) v. Londonderry JJ.*, (1908) 42 I.L.T.R. 205, he

<sup>1</sup> The cases cited, *Suffolk County Asylum v. Stow*, (1897) 76 L.T. 494; *R. v. Latchford*, (1844) 6 Q.B. 567; and *R. v. Brickhall*, (1864) 12 W.R. 909, do not appear to be authorities for the above proposition, but they seem to establish (1) that where an order of quarter sessions made on appeal confirms an order of petty sessions, and the order of quarter sessions is quashed on grounds relating to the constitution of the quarter sessions, the quashing of the affirmance does not affect the validity of the original order; and (2), that the court will not in terms affirm or quash an order not expressly brought before it. Other English cases tending to show that there is no merger are:—*R. v. Jukes*, (1800) 8 T.R. 542; *R. v. Morrice*, (1845) 1 N. Sess. Ca. 585, 2 D. & L. 952; *R. v. Blathwayt*, (1846) 3 D. & L. 542; *R. v. Cornwall JJ.*, (1844) 1 N. Sess. Ca. 414; *R. v. Middlesex JJ.*, (1839) 9 A. & E. 540; *R. v. Surrey JJ.*, (1870) L.R. 5 Q.B. 466. See also Paley, 8th ed. 455.

<sup>2</sup> These observations are, however, not decisive of the questions, being merely *obiter*; and, further, the facts in this case, which is noted p. 97, *ante*, were peculiar, for in it the petty sessions order was never properly before the quarter sessions at all, because, by a slip in the preparation of Form H, a wrong order was returned to quarter sessions, so that the entire proceedings at quarter sessions seem to have been *coram non jure*.

Does petty sessions order merge in quarter sessions order?

said:—"When an appeal is taken and the order at quarter sessions is not identical with the order at petty sessions, the effect is that the latter order ceases to exist. This is so where any alteration is made, and it may be so also where no alteration is made. In other words, the effective order capable of being brought up here is the decision of the appellate tribunal, and not of the magistrates below." The question under discussion is, in most cases, of academic interest, for by far the most frequent defect in orders quashed upon certiorari is that they are bad upon their face, and this defect is usually common to both the order in the court below and the order on appeal. But in the less frequent cases, where the order of quarter sessions is impeachable upon the ground of an infirmity which does not exist in the petty sessions order, the question may arise. It is submitted that clearly no merger takes place where the order of the court of quarter sessions is quashed upon the ground of the improper constitution of that tribunal (*Suffolk County Asylum v. Stow*, (1897) 76 L.T. 494; *R. v. Morrice*, (1845) 1 N. Sess. Ca. 585, 2 D. & L. 952, and where the order which is the subject of the appeal (as in the case of *R. (M'Ardle) v. Louth JJ.*, *supra*) was not properly before the quarter sessions. Further, in other cases, the principle of the matter—namely, that orders are set aside as being without, and in excess of, jurisdiction, and as being absolutely void and not merely voidable (see p. 223)—as well as the English practice and the other English cases cited (p. 229 n., *ante*), and the fact that the decision below stands in case of an even decision of the appellate tribunal (see p. 137, *ante*), show that no merger takes place.<sup>1</sup> It is submitted that in order to obviate all difficulty, the conditional order for the writ should be an order to quash the order of quarter sessions, "together with all matters and things thereto belonging," which seems to have the effect of bringing all the orders before the court (see *R. v. Cornwall JJ.*, (1844) 1 N.S. Cas. 414; form in Short and Mellor, 2nd ed. 509).

But, although no merger takes place, yet, having regard to the Petty Sessions Act, 1851, the enforcement of the original order is, perhaps, impossible when an appeal has been taken and prosecuted, and the decision on appeal has been quashed. Section 23 of that Act provides a stay of execution pending the "decision" of the appeal; and section 24 (6) prescribes the procedure, whereby the clerk of the peace or the proper officer of the Recorder's court certifies the result of the appeal to the court below, whereupon (s. 24 (7)) the justices may issue a warrant for the execution of the order. The County Officers and Courts (Ir.) Act, 1877, 40 & 41 Vict. c. 56. s. 72, as an alternative, enables the appellate court, in its discretion, to issue the warrant. But, inasmuch as the decision of the appellate court has itself been quashed, it is clear that such court cannot itself issue the warrant, nor can its officer certify the result of the "decision" to the court below, so that no warrant (as a result of a decision) can be issued by either court. Does the applicant for the certiorari therefore go scot-free? It would seem so, unless his failure to have continuances entered up and his appeal prosecuted to

<sup>1</sup> This is a different thing from saying that when the order of quarter sessions is quashed the original order is thereby confirmed, to use the expression in Short and Mellor (*ante*, p. 229). It is left untouched, but is not confirmed, and it may be that the procedure indicated by Kenny, J., in *R. (M'Ardle) v. Louth JJ.*, (1904) 2 I.R. 64, is open to either party—namely, by mandamus or otherwise to have continuances entered up and the appeal effectively determined.

a legal and effective conclusion can be accounted a failure to perform the condition of his recognizance within section 24. If it is so, proceedings may be had to have the recognizance estreated, or, after the lapse of a reasonable time, the clerk of the peace or proper officer of the Recorder's court may give a certificate under section 24 (6) of non-prosecution of the appeal, upon receiving which the justices of the court below may issue a warrant (s. 24 (7)). But whether the appellant would be held, by not proceeding afresh with his appeal, to have committed a breach of his recognizance, is very doubtful.

Does petty sessions order merge in quarter sessions order?

Certiorari will lie after a case has been stated, even while same is pending (*R. v. Allan*, (1864) 4 B. and S. 915; *Short and Mellor*, 2nd ed., p. 38; *Paley*, 8th ed., p. 455; and see *R. (McNarry) v. Down J.J.*, (1908) 42 I.L.T.R. 260, where the point was raised, but not decided).

After case stated.

Certiorari does not lie in case of an acquittal (*R. (Giants' Causeway Tramway Co.) v. Antrim J.J.*, (1895) 2 I.R. 603), even though the tribunal is biassed, for an order made by a biassed tribunal is voidable and not void, and therefore the defendant has been in jeopardy (*R. (Hastings) v. Galway J.J.*, (1906) 2 I.R. 499); but this does not apply to a decision by a tribunal wholly unauthorized, or to a decision which, for any other reason is void *ab initio* (*ib. per Palles, C.B.*, at p. 508), or to a case where the justices, through a mistake in law, refuse to enter upon the inquiry, and dismiss the charge (*R. (McGrath) v. Clare J.J.*, (1905) 2 I.R. 510). Further, certiorari lies to bring up a "speaking order" of the quarter sessions, even in case of an acquittal, where that tribunal wishes to state a case for the determination of the High Court (*R. (King) v. Antrim J.J.*, (1906) 2 I.R. 298; *R. (Hosford) v. Limerick J.J.*, (1908) 42 I.L.T.R. 105). An order for dismissal was brought up on certiorari and quashed, because upon its face it showed an excess of jurisdiction in awarding costs against the Crown (*R. v. Foley*, (1896) 2 I.W.L.R. 69).

Does not lie in case of an acquittal.

No writ of certiorari shall be granted, issued, or allowed to review any judgment, order, conviction, or other proceeding had or made by or before a justice or justices of the peace of any county, city, borough, or town corporate, or the respective general or quarter sessions thereof, unless such writ of certiorari be applied for within six calendar months next after such judgment, order, conviction, or other proceeding, shall be so had or made (Order 84, R. 13).<sup>1</sup> The time runs from the date when the justices make the order, not from the date when they sign it (*Ex parte Johnson*, (1863) 3 B. & S. 947). In the case of a petty sessions order confirmed at quarter sessions, the time runs from the date of the order at quarter sessions (*R. v. Morrice*, (1845) 2 D. & L. 952; *R. v. Middlesex J.J.*, (1836) 5 A. & E. 626). The court, however, has a general jurisdiction to extend the time prescribed by the rules (Order 84, R. 244, applying Order 64, R. 7).

Time for application.

In special circumstances, the court or judge may order the writ to issue on an *ex parte* application. But the ordinary procedure is as follows:—Application is made, *ex parte*, for a conditional order, and the application, when the court is not sitting, which may be made to any judge of the High Court (Order 84, R. 8), must, as a

Procedure to obtain writ. Application *ex parte*.

<sup>1</sup> There is no statutory limit for the application of certiorari in regard to other orders or proceedings.



Procedure to  
obtain writ.

general rule, be made by counsel, though in a few instances (e.g., *R. v. Bradlaugh*, (1878) 3 Q.B.D. 509) the court, where the application related to a conviction, has allowed the application to be made by the defendant in person (Short and Mellor, 2nd ed., p. 52); but no person other than the person directly interested can in any case make the application either personally or by counsel (*R. v. Riall*, (1860) 11 I.C.L.R. 279, at p. 291). The application is grounded on an affidavit entitled "In the High Court of Justice in Ireland, King's Bench Division, Crown side," without more (Order 84, R. 6, referring to the conviction or order, a copy of which must be handed, or its absence accounted for, to the officer of the court before the motion is made Order 84, R. 14), and the title of the proceedings in the inferior court must not appear in the title of the affidavit. The affidavit should state all the material facts, and refer to all the necessary documents. *R. v. Riall*, *supra*, is not an authority for the proposition in Molloy, pp. 315-6, that the affidavit must be made by the applicant; and the affidavit is in fact frequently made by the solicitor for the applicant. The conditional order directs the persons to be served, and to whom notice shall be given (Order 84, R. 246), usually the clerk of the petty sessions or the clerk of the peace and the opposite party. No objection on account of any omission or mistake in any judgment or order of any justice of the peace, court of summary jurisdiction, or quarter sessions, brought up upon a return to writ of certiorari, and filed at the Crown office, shall be allowed, unless such omission or mistake shall have been specified in the order for issuing such certiorari (Order 84, R. 17).<sup>1</sup> The practice is that all objections are set forth in the conditional order, and the court will not, as a rule, allow any point to be taken which is not mentioned in the conditional order (*R. (Conroy), v. Dublin J.J.*, (1910) 44 I.L.T.R. 231).<sup>2</sup> The Customs Laws Consolidation Act, 1876, 39 & 40 Vict. c. 36, s. 243, specially provides that the affidavit upon which the motion for certiorari is made shall set forth the grounds of the objection, and that no objection shall be entertained by the court other than as stated in the affidavit.

Affidavit.

Conditional  
order.

Service of  
conditional  
order.

Showing cause.

The conditional order must be served within ten days from the day that it is pronounced,<sup>3</sup> unless further time be allowed by the court; in default of such service the order stands discharged. And a party desiring to show cause has ten days, or such further time as may have been allowed by the court, from the date of service upon him to do so (Order 84, Rr. 247, 248). Any person not directed to be served, if he can make it appear that he is affected, may by leave of the court or a judge show cause (Order 84, R. 248). Cause may be shown by filing, where there is no controversy arising on the applicant's affidavit, a notice of motion to show cause, or, where the party showing cause desires to contradict, explain, or supplement the applicant's statements of the facts, by filing an affidavit by way of cause and serving notice thereof, (Order 84,

<sup>1</sup> It is submitted that the order here referred to is the absolute order (but see Short and Mellor, 2nd ed., p. 52). It not infrequently arises that the objection to the order will not become apparent until the formal order or conviction is exhibited in the affidavits showing cause. In *R. v. Wilkins*, (1907) 2 K.B. 380, the objection to a point on the ground that it was not stated in the rule *nisi* is incidentally mentioned at p. 384.

<sup>2</sup> But cf. *R. v. Campbell*, (1853) 3 I.C.L.R. 586; *R. v. M'Naghten*, (1845) 9 I.L.R. 98.

<sup>3</sup> Not, it will be observed, from the day that it is taken out.

Rr. 249, 250).<sup>1</sup> As a rule no further affidavits will be allowed, without leave, to be read on the hearing of the motion to make the conditional order absolute (Order 84, R. 7). The applicant for the certiorari must, within six days from the notice of affidavit of cause, serve a notice upon the party showing cause that he intends to apply to the court to make absolute the conditional order notwithstanding cause shown; and if the applicant do not give such notice and make such application in due course, the party showing cause is entitled to take out a side-bar order allowing the cause shown (Order 84, Rr. 249, 250).

Procedure to obtain writ.

The matter then comes on for argument. In Ireland the practice now is that the party moving for the writ begins; the converse is the practice in England. If no affidavit or notice of motion to show cause is filed within the time allowed, the conditional order is made absolute in the office, upon affidavit of due service of the conditional order and upon certificate of no cause shown, unless the Court shall have otherwise directed in the conditional order (Order 84, R. 251, in which case an application must be made *ex parte* to have the order made absolute. The writ when issued, directs the justices to return the proceedings to the King's Bench Division, and the return is made by the justice endorsing on the back of the writ the following: "The execution of this writ appears by the schedules hereunto annexed. The answer of A.B., one of the justices within mentioned," and signing and sealing same. The schedule comprises the orders and documents in the case. The court, where cause shown has been disallowed (Order 84, R. 15), or where, even though no cause has been shown, application *ex parte* has, as above mentioned, to be made, has power to make an order bringing up and quashing at the same time. Where, however, no cause has been shown, and the order has been made absolute in the office merely upon affidavit of due service and certificate of no cause, the order of the court below will be brought up on the certiorari; but no order to quash it having been made, application must be made in the office for a side-bar order fixing a day to set down the return to the writ of certiorari for argument as to whether the order brought up on the writ shall be quashed. The day so fixed must be not less than eight clear days after the issue of the side-bar order. The side-bar order is to be served "forthwith," which may be taken to mean "without unreasonable delay"; and an affidavit of due service must be filed before the day fixed in the side-bar order; and the person served with the order may, without filing any affidavit or giving any notice, come in on the argument of the matter.

Making conditional order absolute.

Return to writ.

Quashing conviction.

The rules applicable to the service of writs of summons and notices of motions, so far as applicable, apply to the service of the conditional order for certiorari and of any subsequent notice of motion in the matter.

Service.

It should be noted that under the Crown office rules now in force (for which see Order 84) there must be at least two clear days between the service of a notice of motion in a certiorari matter and the day on which the motion is heard, unless the court or a judge give leave.<sup>2</sup>

The death of one of two applicants for the writ will not cause the proceedings to abate (*R. v. Yorkshire JJ.*, (1827; 9 D. & R. 204). Where the conditional order has been obtained, and the party suing out the writ of certiorari dies, the proceedings

Death of applicant.

<sup>1</sup> This and any subsequent affidavit or notice of motion must of course be entitled as the conditional order is entitled.

<sup>2</sup> The practice, it is believed, is correctly given in this and the preceding page, though portion of it is not the subject of express rule. For the rules, see Order 84.

Death of  
applicant.

will not abate if the order sought to be quashed is one that affects not alone the person against whom the order is made, but his successors (*R. (Arnott) v. Cork JJ.*, (1898) 4 I.W.L.R. 183). Where the defendant died after obtaining the conditional order, and before the argument on the application to make absolute, the court allowed the case to proceed, and affirmed the conviction (*R. v. Roberts*, (1744) 2 Str. 937).

Amendment  
of order.

An entry in the order book at petty sessions cannot, it seems, be amended after the justices adjudicating have separated (*R. (Burke) v. Cork JJ.*, (1905) 2 I.R. 309). The law is different with respect to minutes made in cases not within the Petty Sessions Act, for a correct formal order may be drawn up therefrom (see pp. 77, 99); but this cannot be done where a conviction bad in form has once been filed (*Ex parte Austin*, (1880) 50 L.J. (M.C.) 8; *Ex parte Kenyon*, (1881) 45 J.P. 303).

Appeal to  
Court of  
Appeal.

There is no appeal from an order of the High Court in a criminal cause or matter, save for some error of law apparent upon the record (Judicature (Ir.) Act, 1877, 40 & 41 Vict. c. 57, s. 50). No appeal lies to the Court of Appeal from an order of the King's Bench Division upon an application to quash a conviction on the ground that same is bad upon its face, such an order not being an error on the record (see *R. v. Fletcher*, (1876) 2 Q.B.D. 43; *Blake v. Beech*, (1877) 2 Ex. D. 335; *Burnett v. Berry*, (1876) 12 T.L.R. 464).<sup>1</sup> The same principle was laid down by the Court of Appeal in Ireland in an unreported case.<sup>2</sup>

But in civil matters, e.g., in the case of an application in reference to the grant or refusal of a licence, there is an appeal to the Court of Appeal, but not to the House of Lords (*R. v. Barton*, (1902) A.C. 268). As to what is a criminal cause or matter, see p. 65.

Costs.

There are decisions in several Irish cases that the court has no jurisdiction to order costs to a successful applicant in a criminal matter for the writ of certiorari (see *R. (Burke) v. Galway JJ.*, (1897) 31 I.L.T.R. 160; *R. (Geraghty) v. Dublin JJ.*, (1901) 1 N.I.J.R. 172; but see *R. (Collins) v. Waterford JJ.*, (1892) 27 I.L.T.R. 54, and *R. (Shannon) v. Hollywood U.D.C.*, (1905) 2 I.R. 154, at p. 166).<sup>3</sup>

It is now settled that costs may be given to either party on an application in a civil matter for the writ (*R. (Shannon) v. Hollywood U.D.C.*, (1905) 2 I.R. 154, at pp. 165, 166; and see *R. v. Woodhouse*, (1906) 2 K.B. 501). Costs are usually not given against justices unless their conduct has been deserving of censure, e.g., where justices disqualified by bias have persisted in adjudicating notwithstanding objection made (*R. (de Vesci) v. Queen's Co. JJ.*, (1908) 2 I.R. 285; *R. (Donoghue) v. Cork JJ.*, (1910) 2 I.R. 271; *R. v. Meyer*, (1875) 1 Q.B.D. 173).

<sup>1</sup> The words "error on the record" apply only to matters which could have gone to the Exchequer Chamber by writ of error. Writ of error does not lie upon a summary conviction (*Groenvelt v. Burwell*, (1699) 1 Ld. Raym. 454, 469; *Payne v. Wright*, (1892) 61 L.J.M.C. 114).

<sup>2</sup> *Ex rel. A. A. Dickie, Barrister-at-Law*.

<sup>3</sup> In *R. (Collins) v. Waterford JJ.*, where the magistrates showed cause against an order which was bad upon its face, costs were awarded against the magistrates; but this order was unusual, and where an order is upset upon a technical point costs will not, it is submitted, be given against justices unless they wilfully persist in making an order which to their knowledge must be bad, or are otherwise guilty of contumacious conduct. In *R. (Donoghue) v. Longford JJ.*, (1864) 15 I.C.L.R., App. vii, the court gave the prosecutor an option of losing his costs in certiorari or accepting them on the terms of not bringing an action for false imprisonment suffered by him under a conviction afterwards set aside.



## CHAPTER XVIII.

### CASE STATED.

	PAGE		PAGE
Jurisdiction to state case, . . . . .	235	Powers of High Court, . . . . .	241
Question of law only, . . . . .	236	Remitting case for amendment, . . . . .	242
Case stated from dismiss, . . . . .	237	Effect of order of High Court, . . . . .	242
Case stated from quarter sessions, . . . . .	237	Costs, . . . . .	243
Procedure to obtain . . . . .	238-241	Death of respondent, . . . . .	243
(1) Application for case, . . . . .	238	Forfeiting recognizances, . . . . .	243
(2) Recognizance, . . . . .	238	Effect upon certiorari, . . . . .	243
(3) By whom case to be prepared, . . . . .	239	Hearing in Q.B.D. . . . .	244
(4) Signature of justices, . . . . .	239	Generally, no appeal to Court of	
(5) Transmission and notice, . . . . .	239	Appeal, . . . . .	244
(6) Payment of fees, . . . . .	241	Return of case to justices, . . . . .	244
(7) Setting down for argument, . . . . .	241	Hearing of case remitted to justices, . . . . .	244
Appellant to be liberated, . . . . .	241	Issue of warrant, . . . . .	244
Refusal to state case, . . . . .	241	Form and specimen of case, . . . . .	244
Rule to justices to state case, . . . . .	241		

AFTER the hearing and determination by a justice or justices of the peace of any information or complaint which he or they have power to determine in a summary way, either party to the proceeding may, if dissatisfied with the determination as being erroneous in point of law, apply to the justices to state a case for the opinion of the High Court (20 & 21 Vict. c. 43, s. 2).<sup>1</sup> The word justice includes a Dublin metropolitan police magistrate (s. 12). Where a later statute makes the justices' decision "final," there is no jurisdiction to state a case (*Mayor of Westminster v. Gordon Hotels, Ltd.*, (1908) A.C. 142, cf. *It. v. Bridge*, (1890) 24 Q.B.D. 609; *Kydd v. Watch Committee of Liverpool*, (1907) 2 K.B. 591).

The matter must be an information and complaint, so that a case cannot be stated on an application to renew a licence (*Re Dillon*, (1859) 11 I.C.L.R. 232). "The term 'information' is understood to be the initiatory step in proceedings of a criminal nature which are to be disposed of summarily, while I apprehend the term 'complaint' designates the initiatory step in summary proceedings of a civil nature" (*ib.*, per Hayes, J.). Therefore a case can be stated, for instance, on the determination of a process under the Small Debts Act, or a summary proceeding by a landlord against a tenant to recover possession of a holding (see, for instance, *Massereene v. Bellem*, (1889) 24 L.R.I. 420), or proceedings under the Married Women's (Maintenance in case of Desertion) Act, 1886 (see *R. (McNarry) v. Down JJ.*, (1908) 42 I.L.T.R. 260). A case can be stated to test the validity of an order binding to the peace and to be of good behaviour (*R. v. Barry*, (1889) 26 L.R.I. 40; *Wise v. Dunning*, (1902) 1 K.B. 167).<sup>2</sup> It has been held that there is no jurisdiction to state a case in the following cases:—application for an order authorizing the

<sup>1</sup> The statute will be found *verbatim* in APPENDIX OF STATUTES.

<sup>2</sup> See, however, remarks of Gibson, J., in *R. (Martin) v. Mahony*, (1910) 2 I.R. 695, at p. 748. In England the provisions of 20 & 21 Vict. c. 43, have been supplemented by the

Jurisdiction  
to state case.

entry, for the purpose of the Public Health Act (England), 1875, 38 & 39 Vict. c. 55, s. 305, of a local authority upon the lands of a person who had refused to permit such entry (*Diss Urban Sanitary Authority v. Aldrich*, (1877) 2 Q.B.D. 179); application for the issue of a warrant of distress to enforce a rate, on the ground that the issuing of the warrant is merely ministerial (*Sweetman v. Guest*, (1868) L.R. 3 Q.B. 262); an application under section 162 of the Grand Jury Act, 1836, to enter lands for the purpose of obtaining road material (*Collen v. Lord Howth*, (1903) 3 N.I.J.R. 350); the decision of justices under 21 & 22 Vict. c. 101, s. 5, of a dispute which had been referred to them pursuant to the rules of a benefit society (*Callaghan v. Dolwin*, (1869) L.R. 4 C.P. 288); an order made by justices under section 299 of the English Lunacy Act, 1890, enabling justices to make the property of a lunatic available for his support in the union (*In re Bethel*, (1899) 19 Cox, 262). Though "no rule" is not a proper order for justices to make, yet if they have heard and determined the case and made an order of "no rule," that amounts to such a determination of the case as entitles the complainant to a case stated, but it will be otherwise if the justices have declined jurisdiction to hear the case and marked it no rule, in which event an application for a mandamus would be the appropriate remedy (*Stevenson v. O'Neill*, (1877) I.R. 11 C.L. 134). Where justices dismiss a complaint on the ground that they have no jurisdiction to convict (*Muir v. Hore*, (1877) 37 L.T. 315), or that the proper complainant is not before them (*R. (Thomson) v. Roscommon JJ.*, (1900) 34 I.L.T.R. 203), a case can be stated, and neither certiorari nor mandamus lies. Justices have no jurisdiction to state a case on the point as to whether one of their number is disqualified by interest or not (*Wakefield Local Board v. West Riding and Grimsby Railway Company*, (1866) 6 B. & S. 794).<sup>1</sup>

Question of  
law only.

A case can be stated only on a question of law. An application for a rule to compel justices to state a case on the ground that they had received illegal evidence was refused, it being held that mere proof of the admission of illegal evidence is not sufficient to justify the court interfering, and that, to enable the court to interfere, it must appear that the determination of the justices was wrong (*R. v. Macclesfield JJ.*, (1860) 2 L.T. 352). The books, however, contain many cases in which a case has been stated upon the question whether evidence was properly admissible or not (e.g., *Webb v. Catchlove*, (1886) 50 J.P. 798), and it is quite clear the High Court has jurisdiction to compel justices to state a case upon the question of such admissibility. Probably, in *R. v. Macclesfield JJ.*, *supra* (which is very meagrely reported), the court inferred that the evidence which was alleged to be improperly admitted did not materially affect the result. In *Dwyer v. Larkin*, (1904) 5 N.I.J.R. 25, the sole evidence against a publican consisted of admissions by his servant, made two days after the date of the alleged offence. The King's Bench Division entertained a case

English Summary Jurisdiction Act, 1879, which by section 33 enacts as follows:—"Any person aggrieved, who desires to question a conviction, order, determination, or other proceeding of a court of summary jurisdiction, on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to the court to state a special case."

<sup>1</sup> Apparently, in an earlier stage of the proceedings between the same parties, the King's Bench Division, without objection, decided a question raised on a case stated as to whether a certain justice was disqualified or not (*Wakefield Local Board v. West Riding and Grimsby Railway Co.*, (1865) L.R. 1 Q.B. 84).

stated upon the question whether the evidence was admissible or not, and quashed the conviction. The question whether ashes were "refuse of trade or business" was held to be a question of law, on the ground that the real question in controversy was the interpretation of those words as used in a particular statute (*R. v. Bridge*, (1890) 24 Q.B.D. 609; see also *Lord Mayor, &c., of Dublin v. Irish Church Missions*, (1901) 2 I.R. 387). The fact that the statute gives a right of appeal to quarter sessions does not take away a right to have a case stated (*Muir v. Hore*, (1877) 37 L.T. 315).

Question of law only.

The statute applies to a dismiss as well as to a conviction (*Davys v. Douglas*, (1859) 4 H. & N. 180). In *Ferens v. O'Brien*, (1883) 11 Q.B.D. 21, the defendant was charged with an offence triable either by indictment or summarily, and he elected to be tried summarily. The justices declined to convict, but stated a case on a question of law, and the case was remitted to the justices with a direction to convict. No point as to jurisdiction was taken; but it is submitted, notwithstanding the doubts expressed in *Foss v. Best*, (1906) 2 K.B. 105, that there is clearly jurisdiction to entertain a case stated from a dismiss of any offence tried summarily, whether the offence be triable only summarily, or triable by indictment or summarily. But there is no jurisdiction to state a case from a decision of justices refusing informations in an indictable offence (see *Foss v. Best*, *supra*).

Case stated from a dismiss.

Justices at quarter sessions have no power to state a case under the Act.<sup>1</sup> But the justices at quarter sessions can, if they so wish, render their decision on a question of law reviewable in the King's Bench Division, by making up what has been called a "speaking" order, that is, by reciting in the order that the facts were so and so, and then stating the grounds of their decision. "If that which was so stated on the face of the order in the opinion of any party was not such as to warrant that order, then that party might go to the court of Queen's Bench and point to the order as one which told its own story, and ask the court of Queen's Bench to remove it by certiorari, and when so removed, to pass judgment upon it, whether it should or should not be quashed" (*Overseers of Walsall v. L. & N.W.R.Co.*, (1878) 4 A.C. 40; see also *R. (King) v. Antrim JJ.*, (1906) 2 I.R. 298; *R. (Burke) v. Galway JJ.*, (1906) 2 I.R. 448). This procedure cannot be adopted in case of a conviction under a statute which takes away certiorari<sup>2</sup> (*R. v. Chantrell*, (1875) L.R. 10 Q.B. 587), but is apparently available notwithstanding that the statute under which the order is made makes the order of quarter sessions "final"<sup>3</sup> (*Kydd v. Watch Committee of Liverpool*, (1907) 2 K.B. 591). The order of quarter sessions sent up to the High Court should state that a case has been stated by them (*L. & N.W.R. v. Amptill Union*, (1906) 94 L.T. 314). The case must be stated by the quarter sessions, and not merely by the county court judge; and, therefore, where the county court judge, who in fact was the sole justice at quarter sessions, purported to sign and state the case as county court judge, the case was held to be informal, and was sent back for amendment (*R. (King) v. Antrim JJ.*, *supra*).

Case stated from quarter sessions.

<sup>1</sup> There are, however, particular statutes enabling justices at quarter sessions to state a case; see, for instance, 7 & 8 Vict. c. 53, s. 84.

<sup>2</sup> As to case of acquittal, see *R. (King) v. Antrim JJ.*, (1906) 2 I.R. 298, p. 227, *ante*.

<sup>3</sup> Cf. *Mayor of Westmeath v. Gordon Hotels*, (1908) A.C. 142.



Procedure to  
obtain case  
stated.

The procedure to obtain a case stated must be strictly complied with, as otherwise there is no jurisdiction to entertain the case, even though the respondent is willing to waive any objection (*Morgan v. Edwards*, (1860) 5 H. & N. 415); and even though every effort has been made to comply with the directions of the statute (*Foss v. Best*, *supra*; *Westmore v. Pain*, (1891) 1 Q.B. 482). The following is the procedure:—

(1) *Applica-  
tion for case.*

(1) The appellant must apply in writing for the case within three days (s. 2), serving the application upon each of the justices by delivering the same personally or at his place of residence. Service on some only of the justices (*Westmore v. Pain*, (1891) 1 Q.B. 482), or on their clerk (*Lockhart v. St. Albans*, (1888) 21 Q.B.D. 188), is not sufficient. Sunday counts, even though it is the last day (*Wynne v. Ronaldson*, (1865) 12 L.T. 711; *Peacock v. R.*, (1858) 27 L.J.C.P. 224).

The following is a form of notice requiring a case to be stated:—

County of .  
Petty Sessions District of .

In the matter of an information or complaint wherein A.B. was complainant and C.D. was defendant.

Take Notice that I, A.B., of , the above-named complainant (or defendant), being dissatisfied with your determination of the above information or complaint as being erroneous in point of law, do hereby apply to you to state and sign a case setting forth the facts and grounds of such determination for the opinion thereon of the King's Bench Division of the High Court of Justice in Ireland.

Dated  
Signed

To A., B., C., & D., the justices who determined said information or complaint.

(2) *Recogni-  
zance.*

(2) The appellant must at the time of making the application, and before the case has been stated and signed, enter into a recognizance to prosecute the appeal (s. 3). The recognizance need not be entered into within the three days, but must be entered into before the case is given out by the justices (*Stanhope v. Thorsby*, (1866) L.R. 1 C.P. 423; see also *Chapman v. Robinson*, (1858) 1 El. & El. 25; *Walker v. Delacampo*, (1894) 63 L.J.M.C. 77). The recognizance may be validly entered into where a justice has refused to state a case, but before the hearing of the rule to compel him to do so, and is not invalidated by the death of the surety and the bankruptcy of the principal before the case is delivered out (*R. v. Kettle*, (1905) 1 K.B. 212). In the case of a limited company, the recognizance may apparently be entered into by a director or member of the company,<sup>1</sup> (*Southern Counties Deposit Bank v. Boaler*, (1895) 73 L.T. 155). An appeal by way of case stated was dismissed on the ground that the recognizance was late. *Held*, that, though late, the recognizance could be estreated (*R. v. Glamorganshire J.J.*, 1890 17 Cox, 45). The recognizance is to be in such sum as to the justice or justices may seem meet (s. 3).<sup>2</sup>

<sup>1</sup> As to corporations entering into recognizances, see observations of Palks, C.B., in *R. v. Antrim J.J.*, (1906) 2 I.R. 328, noted, p. 134, *ante*.

<sup>2</sup> If the justices, however, fix an excessive amount by way of security, the High Court has jurisdiction to order them to fix a reasonable amount, and this has been done in an unreported case (*Ex rel. William McGrath, Barrister-at-Law*).

(3) The statement of the case is the duty of the justices, and not of the parties; and there is no rule of law or practice to oblige them to show the case, or to prevent them from showing it, to the parties before it is signed (*Whelan v. Fisher*, (1890) 26 L.R.I., at p. 356). It is, however, advisable to have the facts agreed to between the parties, and, in case of dispute, settled by the justices (*per Barry, L.J.*, in *R. v. Knox*, (1888) 22 L.R.I., at p. 603). The court will rely on the justices and accept their findings of fact, and will not allow affidavits to contradict the facts as found (*Musther v. Musther*, (1894) 58 J.P. 53); but the court may, where it sees fit to do so, disregard the facts as stated where they differ from the facts appearing in a note, taken at the hearing, by the justices or by a person directed by the justices to take such note (*R. v. Boyle*, (1900) 6 I.W.L.R. 141). For specimen of case stated, see p. 245, *post*.

Procedure to obtain case stated.  
(3) By whom case to be prepared.

(4) It is now definitely settled that all the justices who took part in the decision must sign the case stated, even though some of their number may have dissented from the judgment of the court (*Fogarty v. G.S. & W. Ry. Co.*, K.B.D. (Ir.), 26 April, 1911; *Barker v. Hodgson*, (1904) 68 J.P. 310; see also *Nantyglo U.D.C. v. Ebley*, (1905) 69 J.P. 40; *Westmore v. Pain*, (1891) 1 Q.B. 482). But of course the fact that a minority dissented should be stated in the case.

(4) Signature of justices.

A case stated will not, however, abate if circumstances render the signature by all the justices impossible. Thus, where A, B, and C, the three justices adjudicating, unanimously dismissed a summons, but agreed to state a case, it was held that there was jurisdiction to entertain the case which A and B approved of, and which A signed, but which B, owing to his death, never signed, and which C, owing to his death also, never either approved of or signed (*Kean v. Robinson*, (1910) 2 I.R. 306).

(5) The appellant must, within three days after receiving the case, transmit the same to the King's Bench Division, first giving the respondent notice in writing, together with a copy of the case (s. 2). The doing of these things is a condition precedent to the jurisdiction of the court, and an objection for omission to do either or both cannot be waived (*Morgan v. Edwards*, (1860) 5 H. & N. 415). Sunday is counted as one of the three days (*Pennell v. Uxbridge Overseers*, (1862) 5 L.T. 685). If, after the expiration of three days, the case lies in the hands of the appellant, it becomes absolutely inoperative, and if he then takes it back to the justices for amendment and they amend it, the appellant does not gain a further period of three days from the date of the amendment for transmitting the case to the court (*Gloucester Local Board v. Chandler*, (1863) 7 L.T. 722). Service of the notice as well as a copy of the case stated is necessary (*Little v. Donnelly*, (1871) I.R. 5 C.L. 1; *Rust v. Churchwardens of St. Botolph*, (1906) 94 L.T. 575; and unless there is compliance with the section by serving the notices before the lodgment of the case, there is no jurisdiction to hear the case stated (*Guardians of South Dublin Union v. Jones*, (1883) 12 L.R.I. 358; *Edwards v. Roberts*, (1891) 1 Q.B.D. 302), though the court may award costs against the appellant who has not complied with the requisite formalities (*Guardians of South Dublin Union v. Jones*, *supra*).

(5) Transmission of case to K. B. D., and notice to respondent.

It has been said to be a compliance with the section where the notice and copy case reach the respondent on the same day as that on

Procedure to obtain case stated.

(5) *Transmission of case to K. B. D., and notice to respondent.*

which the case is lodged in the Crown office, though at a later hour (*per* Wightman, J., in *Ashdown v. Curtis*, (1862) 6 L.T. 331). A notice to the effect that the appellant had applied for a case stated, and that the justices had stated the same, and that a copy was annexed, was held sufficient (*Provincial Motor Car Co. v. Dunning*, (1909) 2 K.B. 599). The appellants sent to the respondent a copy of the case stated, and copy of the notice served on the justices, asking them to state a case, with a letter in the following terms:—"Enclosed we send you copy notice asking the justices to state case, and copy of the case stated." *Held*, a sufficient compliance with the section (*Dickeson v. Mayes*, (1910) 1 K.B. 452).

The following notice will be sufficient:—

County of

Petty Sessions District of

In the matter of an information or complaint wherein A. B. was complainant and C. D. was defendant, heard and determined on the                      day of                      , 19                      .

Take Notice, that I, the above-named complainant (or defendant), do hereby give you notice of an appeal by me by way of case stated under 20 & 21 Vict. c. 43, from the determination of the justices on the hearing of said information or complaint; and I send herewith a copy of the case stated thereon delivered to me in pursuance of my application in that behalf. Dated the                      day of                      19                      .

The case must be lodged by the appellant at the Crown office within the three days (*Aspinall v. Sutton*, (1894) 2 Q.B. 349). It was held by the King's Bench Division in England that lodging a case in the letter-box of the High Court before midnight on the third day is a sufficient compliance with the statute (*Arnold v. Townsend*, May 1st, 1906, unreported, noted Stone's Justices' Manual, 43rd ed., 86). Where the appellant received the case from the justices on Good Friday, and transmitted it on Wednesday (being the first day the offices were open), this was held to be in time (*Mayer v. Harding*, (1867) L.R. 2 Q.B. 410). Service by registered letter upon the solicitor who had acted for the opposite party, and had approved of the draft case on his behalf, but had since ceased to act for him, was held good service (*Masscreene v. Bellew*, (1889) 24 L.R.I. 420); but it has been held in England that, in ordinary circumstances, service on the respondent's solicitor is not sufficient (*Hill v. Wright*, (1896) 60 J.P. 312; *Edwards v. Roberts*, (1891) 1 Q.B. 302—see, however, *Syred v. Carruthers*, (1858) E. B. & E. 469). Where a respondent, after the hearing by the justices, had disappeared, and the notice had not been served upon him, it was held in England that there was no jurisdiction to hear the case (*Foss v. Best*, (1906) 2 K.B. 105); and the defect is not cured by the respondent's solicitor accepting service (*Rust v. Botolph Churchwardens*, (1906) 94 L.T. 575). But the rule that personal service is essential is not inflexible, and each case must be judged on its own merits. Where it was impossible to serve the defendant with the notice and case, he being a master mariner at sea, but the same were served, in due time, on the solicitor who had represented him before the justices, but had ceased to do so, and the defendant was personally served some months later, it was held that the statute was sufficiently complied with (*Anderson v. Reid*, (1902) 86 L.T. 713; see also *Syred v. Carruthers*, *supra*). And



in *Teddington Urban Council v. Vile*, (1906) 70 J.P. 381, the court heard the case, notwithstanding the non-service of the notice, being satisfied that every effort had been made to serve the respondent, and that the respondent knew of the appeal. The law is now settled in Ireland by *Clarke v. M'Guire*, (1909) 2 I.R. 681, 43 I.L.T.R. 52, in which it was held that where the non-service on the respondent was the result of the defendant's own act in leaving the country, and where everything had been done that could reasonably be done to serve him, an actual service upon the solicitor who appeared for him at petty sessions was sufficient.

Procedure to obtain case stated.

The appellant, before the case is delivered to him, must pay the fees directed by section 3 and schedule A:—for case and copy not exceeding five folios, ten shillings; where case exceeds five folios, one shilling per additional folio; for recognizance, five shillings.

(6) Payment of fees.

Formerly the practice as to setting down a case stated by justices was the same as that in setting down demurrers, and if the case was not set down for argument within ten days after it was lodged, it could not afterwards be set down, or appear in the list for argument (*Guardians of South Dublin Union v. Jones*, (1883) 12 L.R.I. 359); but now the registrar of the division to which a case shall be transmitted, shall, upon receiving same, set it down for hearing, but it shall not appear in the day list until the expiration of four days after it shall have been so received (Order 59, R. 60).

(7) Setting case down for argument.

The appellant, if in custody, is to be liberated pending the determination of the case stated (s. 3).

Appellant to be liberated.

The justices may, except where the case is applied for by, or by direction of, the Attorney-General, refuse to state a case if they think the application frivolous, and shall deliver a certificate of the refusal to the applicant (s. 4). A justice cannot refuse to state a case on a point which, though not formally raised before him, goes to the root of the whole matter and must have been considered by him in determining the case (*Ex parte Markham*, (1869) 21 L.T. 748).

Refusal to state case.

Application may be made to the High Court for a rule to compel them to state the case (s. 5). The High Court may, however, even where the justices have come to an erroneous determination, refuse to order a case to be stated. "We are entitled to consider whether the circumstances are such that we ought to direct a case to be stated. It seems to me that where the person accused has been acquitted, but ought to have been convicted in a nominal penalty, it is not worth while to insist on a case being stated. If the party has been convicted, the case is of course different" (per Channell, J., in *R. v. Davey*, (1899) 2 Q.B. 301). A justice ought not be ordered to state a case when he has decided in accordance with a previous decision of the Queen's Bench Division from which there was no right of appeal (*R. v. Sheril*, (1900) 19 Cox 507). Costs of a rule may be given against justices who refuse an application to state a case, and yet refuse to give a certificate that it is frivolous (*R. v. Bell*, (1899) 15 T.L.R. 487).

Rule to justices to state case.

The High Court may reverse, affirm, or amend the justices' determination, or may remit the matter to the justices with the opinion of the court thereon (s. 6) or for amendment (s. 7). In a recent case, in which the question at issue was whether a place was a public highway, the court remitted the case to the justices to consider documentary evidence discovered since the hearing (*Vyner v. Wirrall JJ.*, (1909) 73 J.P. 242). Points of law which arise on the facts stated, but which

Powers of High Court.

Powers of  
High Court.

were not considered before the justices, may be considered by the High Court (*Knight v. Halliwell*, (1874) L.R. 9 Q.B. 412; *Kavanagh v. Glorney*, (1876) I.R. 10 C.L. 210; *Guardians of Enniskillen Union v. Hilliard*, (1884) 14 L.R.I. 214 at p. 220; *Matthews v. Carpenter*, (1885) 16 L.R.I. 420; *London, Edinburgh, and Glasgow Assurance Co., Ltd. v. Partington*, (1903) 88 L.T. 732); but this has in a recent English case been held to apply only to cases where the circumstances and nature of the case stated compel the High Court to take cognizance of the fresh point (*Smith's Dock Co., Ltd. v. Tynemouth Corporation*, (1908) 1 K.B. 315, 948; and see *Newport Union v. Stead*, (1907) 2 K.B. 460, at p. 465; *Marshall v. Smith*, (1873) L.R. 8 C.P. 416).

In a recent case, *Keenan v. Costelloe*, (1910) 44 I.L.T.R. 218, the King's Bench Division, on a case stated from a dismiss, amended the summons by substituting a different charge, and remitted the case to the justices with a direction to convict on the summons as amended (see that case fully noted and discussed p. 97, *ante*). But in *Perry v. Bowen*, (1904) 38 I.L.T.R. 37, Gibson, J., expressed the view that the court should not entertain a point which could have been the subject of evidence or amendment in the court below (see also *Smith v. Baker*, (1891) A.C., at p. 333).

Where the appellant withdrew from a case stated, an application of his surety to be heard on the argument or to be substituted as a prosecutor was refused, even though there was a suggestion that the withdrawal of the case was collusive (*White v. Hearne*, (1900) 6 I.W.L.R. 101).

There is no jurisdiction to interfere with the finding of justices on matters of fact (*R. v. Jones*, (1907) 96 L.T. 723). In *Tyrrell v. Flanagan*, (1901) 2 I.R. 423 where justices stated on the face of the case not only a conclusion of fact, but also the grounds of fact leading them to that conclusion, it was held by Boyd and Madden, J.J., that it was open to the court to consider whether these grounds were sufficient to support the determination. In that case, however, Lord O'Brien, L.C.J., delivered a dissenting judgment, to which it is difficult to see any satisfactory answer; and, at all events, the case, which was decided upon its own peculiar facts, cannot, it is submitted, be relied on as qualifying or detracting from the well-established principle that where there is evidence to support the finding of justices, the High Court will not interfere with such finding.

Remitting  
case for  
amendment.

If a case is not properly stated by the justices, an application can forthwith be made, without waiting for the hearing, to have it sent back for amendment (*Unkles v. Attorney-General*, (1873) I.R. 7 C.L. 462; *Yorkshire Tire Co. v. Rotherham*, (1858) 4 C.B.N.S. 362).

Effect of order  
of High Court.

The order of the High Court is conclusive (s. 6). A defendant was charged in one summons upon two counts. Upon the first count he was convicted, no order being made on the second count, as the justices were of opinion that, though the facts warranted a conviction on the second count, they could not as a matter of law convict upon both counts. On a case stated at the instance of the defendant, the King's Bench Division held that the conviction on the first count was wrong, but remitted the case to the justices with a direction to convict on the second count. The justices accordingly convicted on the second count. *Held*, that the defendant was entitled to appeal to quarter sessions, for, though the order of the King's Bench Division



was final and conclusive, the conviction was a different thing from the order to convict, and subsequent to it, and was therefore appealable (*R. (Drohan) v. Waterford JJ.*, (1900) 2 I.R. 307). "But where a case is stated in such a shape as to enable the court to make a complete and final adjudication, and where the court makes such adjudication, the party who obtains the case loses his right to appeal, if any" (*ib.*, per Gibson, J., p. 318). The defendant in a fishery prosecution, having been convicted, took a case stated to the Queen's Bench, which affirmed the conviction. He thereupon applied on the Chancery side for a writ of prohibition to the justices, alleging that the matter in dispute (the legality of a certain weir) was not within the jurisdiction of the justices, but was within the exclusive jurisdiction of the Fishery Commissioners. *Held*, that the writ of prohibition should be refused (*Devonshire v. Foot*, Exchequer Chamber, 1872, reported (1900) 2 I.R. 211).

Effect of order  
of High Court.

The costs of a case stated are in the discretion of the High Court (s. 6) and are sometimes given against a police officer (*Walsh v. Somerville*, (1888) 22 L.R.I. 314; *Conlon v. Muldowney*, (1904) 2 I.R. 498, 4 N.I.J.R. 40; *Dwyer v. Larkin*, (1904) 5 N.I.J.R. 25). Costs may be given against the Crown in any case to which it is a party (*Moore v. Smith*, (1859) 1 El. & El. 597);<sup>1</sup> but the justices are not liable for costs s. 6). Costs may be given against a respondent who does not appear, where the case stated has been occasioned by an objection made by him (*Robinson v. Gregory*, (1905) 1 K.B. 534; *Usk U.D.C. v. Mortimer*, (1903) 20 T.L.R. 96). Costs were given against an appellant where the case was heard and remitted to the justices, but not returned to the High Court within the time required by the English rules (*Crowther v. Boulton*, (1884) 13 Q.B.D. 680); also where the appellant did not lodge the case within the three days allowed, but nevertheless set it down for hearing (*G. N. R. Co. v. Inett*, (1877) 2 Q.B.D. 284). The practice in Ireland formerly was not to allow costs antecedent to the lodgment of the case in the High Court (*Banbridge U.D.C. v. Gracey*, (1905) 39 I.L.T.R. 106). But, immediately after the decision of the last cited case, it was unanimously resolved at a meeting of the judges that the preliminary costs of case stated should be allowed as in England, such costs to include costs properly and necessarily incurred in connection with the settlement of the case by the solicitors, but, unless by special order not to include the costs of the settlement of the case by counsel (39 I.L.T.R. 106).<sup>2</sup>

Costs of case  
stated.

The case stated will apparently be allowed to proceed notwithstanding the death of the respondent (*Garnsworthy v. Pyne*, (1870) 35 J.P. 21). The same rule applies on certiorari (see *R. v. Roberts*, (1733) 2 Str. 937).

Death of  
respondent.

Where the conditions in the recognizances or any of them have not been complied with, proceedings may be taken thereon on a certificate of a justice endorsed thereon, stating in what respect the conditions have not been observed (s. 13), see p. 238, *ante*.

Forfeiting  
recognizances.

In *R. (M'Narry) v. Down JJ.*, (1908) 42 I.L.T.R. 260, the point was raised, but not decided, as to whether the hearing of a case stated disentitled a party from subsequent proceedings by certiorari, taken upon the ground that the order of the justices was bad upon its face. It is submitted that the party is not so disentitled. See p. 231.

Effect upon  
certiorari.

<sup>1</sup> For principle of this decision, see p. 78, *ante*.

<sup>2</sup> Thus making the Irish and English practice uniform. See *Glover v. Booth*, (1862) 31 L.J.M.C. 270.



Hearing.

The appellant begins, and junior counsel opens, the argument. The justices cannot be heard (*Smith v. Butler*, (1885) 16 Q.B.D. 349; *McGann v. Kelly*, (1894) 2 I.R. 8); though cases have occurred in England in which counsel for the justices has been heard as *amicus curiae* (*Stanton v. Brown*, (1900) 1 Q.B. 674 n.).

Generally, no appeal to Court of Appeal.

No appeal lies from the decision of the King's Bench Division in a case stated by justices, whether in a criminal (*Ex parte Brosnan*, (1888) 22 L.R.I. 334) or a civil matter (*Harvey v. Copeland*, (1892) 32 L.R.I. 419), unless in the cases specifically mentioned in the Supreme Court of Judicature (Ireland) Act, 1897 (60 & 61 Vict. c. 17), namely,—orders or decisions under section 11 of the Annual Revision of Rateable Property (Ireland) Amendment Act, 1860 (23 & 24 Vict. c. 4, section 14 of the Salmon Fisheries (Ireland) Act, 1863 (26 & 27 Vict. c. 114), section 7 of the Railway Act (Ireland), 1864 (27 & 28 Vict. c. 71), and section 36 of the Civil Bill Courts Procedure Amendment Act (Ireland), 1864 (27 & 28 Vict. c. 99) (see *Kean v. Robinson*, (1910) 2 I.R. 306). An order on a case stated is interlocutory (*Corporation of Peterborough v. Overseers of Wilsthorpe*, (1884) 32 W.R. 548), and the appeal must be taken within twenty-one days Order 58, R. 15) on a four-day notice (Order 58, R. 3).

Return of case to justices.

Where the opinion of the court has been given upon the case, it is the duty of the appellant's solicitor to return the case to the justices (*Squire v. Sweeny*, (1900) 6 I.W.L.R. 210).

Hearing of case remitted.

If a case be sent back to the justices, it must be reheard, and further evidence may be taken; and a new order may be made on the rehearing (*R. v. Bloam*, (1836) 1 A. & E. 386<sup>1</sup>), that is, of course, in the absence of a positive direction in the order of the High Court to acquit or convict. In *R. (Hastings) v. Galway JJ.*, (1907) 2 I.R. 18, the court adjudged that the justices were wrong in dismissing the complaint, and remitted the case to the justices with a direction to convict. Thereupon the complainant served the order of the High Court on both the justices and the defendant, and served notice upon the defendant that an application would, on a particular day named therein, be made to the justices to rehear the complaint. Held, that such services were sufficient to bring the defendant again before the justices, and that a conviction following thereon was good.

Issue of warrant.

After the decision of the Superior Court, the justices who stated the case, or any other justices exercising the same jurisdiction, have the same authority to enforce any conviction or order affirmed, amended, or made by the Superior Court, as the justices who originally decided the case would have had to enforce their determination had it not been appealed from; and no action or proceeding can be taken against the justices for enforcing such conviction or order by reason of any defect therein (s. 9).

Where an order was made determining the question at issue, but, pending the hearing of a case stated, a stay was put upon the warrant, and the appellant afterwards abandoned the case stated, it was held that the justices were bound to issue the warrant, this being a merely ministerial act (*R. (Byrne) v. Knox*, (1888) 22 L.R.I. 599).

Form of case stated.

The conclusions of fact at which the justices have arrived, and not the evidence, should be stated (*R. v. St. Cuthbert, Wells*, (1834) 3 N. & M. 100; *Betts v. Stevens*, (1909) 26 T.L.R. 5).

<sup>1</sup> See also *Moreton v. Reeve*, (1907) 2 K.B. 401, at p. 406.

The following is a specimen of a case stated<sup>1</sup>:—

Specimen  
case stated.

County of .  
Petty Sessions District of

Between

A.B., Complainant  
and  
C.D., Defendant.

This is a case stated by us, the justices sitting at petty sessions, pursuant to 20 & 21 Vict. c. 43, for the opinion of the King's Bench Division of the High Court of Justice in Ireland.

At the petty sessions held on the day of , 19 , the complainant, who is a district inspector of constabulary, charged the defendant, who is a licensed hotel proprietor, that the defendant did on the day of , 19 , open his licensed premises at for the sale of intoxicating liquors at a time prohibited by law, namely, Sunday, the day of , 19 .

The facts, as proved or admitted, were as follows:—

The defendant is the proprietor of a seven-day licensed hotel at . The hotel adjoins the public road at , and the hall-door of the hotel, which is the only means of ingress to the hotel, opens upon the said road. The hotel, which is situate in a picturesque position of the country, is much frequented in the summer months by guests who lodge therein, more particularly by guests who lodge therein for the week end. On the Sunday in question there were twenty-five guests staying in the hotel. The hall-door of the hotel was allowed to remain wide open on the date of the alleged offence from 10 a.m. till 7 p.m. There is a bar at a distance of some seven or eight yards from the hall-door. This bar, which was the only place where intoxicating liquors were kept or stored, was kept locked save as hereinafter mentioned. The defendant swore, and we find as a fact, that the hall-door was opened and kept open merely for the accommodation of the guests then staying in the house: that these guests had complained of the want of light and air in the hotel when the hall-door was shut, and also of the inconvenience they were put to by reason of having to knock at the hall-door if kept shut, and that to remedy this state of things he had allowed the hall-door to remain open; that the bar was usually locked, and was only opened when liquors were required for the use of the guests or bona fide travellers; that bona fide travellers were served in a room off the hall, the liquors being brought from the bar, which was unlocked for that purpose; that he did not keep open the premises for the purpose of sale of intoxicating liquors, but merely for the comfort and convenience of his guests. We believed the defendant, and accepted his statement of the facts, and also inferred and believed that any person other than a guest or bona fide traveller demanding to have been served with intoxicating liquor or to have entered the hotel would have been refused admittance. We also find that it was not absolutely necessary for the carrying on of defendant's business that the hall-door should have been kept open during the hours above stated, and that, had he wished, he could have kept said door closed except during the intervals necessary for the ingress or egress of hotel guests or bona fide travellers, but that his doing so would have been inconvenient to his guests and staff, and injurious to his business.

The complainant contended that his keeping open of the hall-door under the circumstances was a breach of the statute, and relied on *R. (Williams) v. Doherty*, 33 I.L.T.R. 170, and *Hyland v. Hamilton*, 36 I.L.T.R. 193; *Lock v. Ryan*, 43 I.L.T.R. 110. We held the contrary view, and dismissed the summons.

And the opinion of the Court is sought as to whether we were right in law in dismissing said complaint.

As witness our hands this day of , 19 .

<sup>1</sup> The specimen case deals with actual facts in the knowledge of the writer, though embodied in an imaginary case. It is a curious circumstance that since the above was printed a case very like the specimen case was stated by the justices of Listowel, who had dismissed a charge of opening and keeping open licensed premises, and came on for hearing before the K.B.D. (Lord O'Brien, L.C.J., and Gibson, J.) on the 29th June, 1910, when the court, after hearing counsel for the Crown, who did not press for a decision, merely struck the case out, there being no appearance for the defendant, and the decision accordingly stood. (See report in *Freeman's Journal* of 30th June, 1910.)

## CHAPTER XIX.

### WRIT OF MANDAMUS.

	PAGE		PAGE
Mandamus defined, . . . . .	246	Effect of writ, . . . . .	248
When it lies, . . . . .	246	Rule to justices, . . . . .	249
Writ discretionary, . . . . .	247	Appeal, . . . . .	249
Does not direct manner of performance, . . . . .	247	Costs, . . . . .	249
When other remedy available, . . . . .	248	Second application for writ, . . . . .	249
Procedure, . . . . .	248	No action for obeying writ, . . . . .	250
		Enforcing obedience, . . . . .	250

Mandamus defined.

THE prerogative<sup>1</sup> writ of mandamus may be defined as a high prerogative writ, issuing from the Crown side of the King's Bench Division, whereby the court, in the King's name, commands the person to whom it is addressed to perform some public or quasi-public legal duty which he has refused to perform, and the performance of which cannot be enforced by any other adequate legal remedy (Short and Mellor, 2nd ed., 197).

When it lies.

Amongst other instances, the writ lies where justices decline to act in a matter in which a duty to act is imposed on them by virtue of their office. Thus, if justices, before whom an offender is brought, yield to a preliminary objection which is bad in law, and decline to adjudicate, the writ of mandamus will lie. The writ will not issue where the justices have considered the matter and adjudicated, even though the adjudication is wrong (*R. v. Carnarvon JJ.*, (1820) 4 B. & Ald. 86; *R. v. Dayman*, (1857) 7 E. & B. 672; *R. v. Brown*, (1857) 7 E. & B. 757; *Ex parte Williams*, (1890) 7 T.L.R. 79). Therefore, a case stated and not a mandamus is the proper remedy where the justices dismiss the complaint on the ground that on the opening statement of counsel for the complainant the case was not made out (*R. (Lynch) v. Dublin JJ.*, (1871) I.R. 5 C. L. 548); or, that the complainant is not a competent complainant (*R. (Thompson) v. Roscommon JJ.*, (1900) 34 I.L.T.R. 203). In every case in which the writ is sought, it must be made clear that the tribunal was asked to exercise its jurisdiction and refused (*R. v. Leicester JJ.*, (1825) 4 B. & C. 891; *R. v. Wilts and Dorset Canal Co.*, (1840) 8 D.P.C. 623; *R. v. Bristol and Exeter Railway Co.*, (1843) 12 L.J.Q.B. 106). The demand must be sufficiently specific to call upon the justices to do that which they are bound by law to do (*R. (Stafford) v. Fermanagh JJ.*, (1908) 42 I.L.T.R. 117). Where an application for a summons was made to the clerk to the justices and refused by him, and no application was made to the justices themselves, the court refused a mandamus to the justices (*Ex parte Andrews*, (1901) 65 J.P. 490). The writ will not issue to compel justices to rehear a case in which

<sup>1</sup> Writs of mandamus, prohibition, habeas corpus, and certiorari, are called prerogative, because they are supposed to issue on the part of the King (*per* Lord Mansfield in *R. v. Cowle*, (1759) 2 Burr., at p. 855).



they have already adjudicated, on the ground that they have refused to admit proper evidence (*R. v. Yorkshire JJ.*, (1885) 34 W.R. 108, 53 L.T., 728); but in cases in which the refusal to hear the evidence amounts to a declining to enter upon the inquiry, the writ will issue (*R. v. Marsham*, (1892) 1 Q.B. 371; cf. *R. (Hickey) v. Meath JJ.*, K.B.D., 10th June, 1908, unreported, noted p. 225n, as to certiorari on the same ground). So also, where justices take into consideration and act upon matters altogether foreign to the scope of their jurisdiction, mandamus may issue (*R. v. Bowman*, (1898) 1 Q.B. 663; *R. v. Cotham*, (1898) 1 Q.B. 802; *R. v. Mayor of Stepney*, (1902) 1 K.B. 317; *R. (Mulliner) v. Cork JJ.*, (1905) 39 I.L.T.R. 117; *R. (Deeny v. Tyrone JJ.*, (1909) 2 I.R. 400). Apparently the High Court can issue the writ to compel a justice to withdraw a warrant improperly issued for the arrest of a person (*R. v. Crossman*, (1908) 98 L.T. 760). Where an application to enter a quarry, after a full investigation, was refused by justices, who afterwards declined to hear a second application of the same character, no fresh circumstances having intervened. *Held*, that the justices had acted reasonably, and that an application for a writ of mandamus should be refused (*R. (Farrell) v. Queen's Co. JJ.*, (1905) 39 I.L.T.R. 91). The court may grant a writ of mandamus where justices have adjourned the matter for a lengthened period, for reasons not warranting that course (*R. (Mulliner) v. Cork JJ.*, (1905) 39 I.L.T.R., 117; *R. (Deeny) v. Tyrone JJ.*, (1909) 2 I.R. 400, 43 I.L.T.R., 72; *R. (Regan) v. Monaghan JJ.*, (1911) 45 I.L.T.R. 11. When the quarter sessions in England wrongly refused to entertain an application for costs, a writ of mandamus was granted (*R. v. Cornwall JJ.*, (1903) 2 K.B. 178).

The applicant for a mandamus must have a legal specific right to enforce the performance of the duties which he complains are not performed (*R. v. Lewisham Union*, (1897) 1 Q.B. 498; *R. (Creedon) v. Macroom Guardians*, (1904) 4 N.I.J.R. 169).

The writ is a discretionary writ, and cannot be demanded *ex debito justitiæ* (*R. v. Garland*, (1870) L.R. 5 Q.B. 272); and in exercising their discretion, the court will take all the circumstances into account, including delay and the question whether, though irregularities have been committed, any substantial injustice has really been done (*R. (Carty) v. Newry U.D.C.*, (1909) 43 I.L.T.R. 172). On the principle that the court will not act in vain, the writ will not be granted unless, at the time it is applied for, the duty is legally possible (*Re Bristol and North Somerset Railway Co.*, (1877) 3 Q.B.D. 10); and its performance can be thereby secured (*R. v. Griffiths*, (1822) 5 B. and Ald. 731; *R. (Whitley) v. Cork JJ.*, (1909) 43 I.L.T.R. 133). In the last-mentioned case the applicant sought the writ to compel the justices to declare him duly elected to the position of petty sessions clerk. After the election, the result of which was in dispute, the Lord Lieutenant signified his pleasure that neither of the candidates should hold the office under the election, and ordered a new election to take place. *Held*, that as the office was held during the pleasure of the justices and the Lord Lieutenant, the court would not allow the mandamus to issue, as the writ would be ineffectual.

The court will not by mandamus order a judicial tribunal to act in a particular way, unless it is quite plain that what it has to do is

When it lies.

Writ discretionary.

Does not direct manner of performance.

purely ministerial and not judicial (*R. v. Farquhar*, (1874) L.R. 9 Q.B. 258; *R. v. Kingston JJ.*, (1902) 86 L.T. 589).

When other  
remedy avail-  
able.

It is well settled that where there is a remedy equally convenient, beneficial, and effectual, a mandamus will not be granted. This is not a rule of law, but a rule regulating the discretion of the court in granting writs of mandamus; and unless the court can see clearly that there is another remedy equally convenient, beneficial, and effectual, the writ of mandamus will be granted, provided the circumstances are such in other respects as to warrant the granting of the writ *per* Hill, J., in *Re Barlow*, (1861) 30 L.J. Q.B. 271; cited with approval in *R. v. Leicester Union*, (1899) 2 Q.B. 632, at p. 639; and see judgment of Walker, L.J., in *R. (McKenney) v. Antrim JJ.*, (1901) 2 L.R. 133, 176).

Procedure.

The application shall, during the sittings, be made to the Divisional Court by motion for a conditional order to show cause; and in the vacation, or where there is no sitting of the Divisional Court, by a similar motion to a judge, upon its being shown to the satisfaction of such judge that the matter is urgent (Order 84, Rule 33). The affidavit grounding the application must state that the motion is made on behalf of deponent as prosecutor (Order 84, Rule 46); in the case of a corporation the affidavit may be made by an officer, but should state that it is made at the instance of the corporation (*R. v. Dublin County Council*, (1905) 5 N.I.J. R. 273). The observations (at p. 232) as to title and contents of affidavit in case of certiorari apply in case of mandamus. Every application for a writ of mandamus to justices to enter continuances and hear an appeal shall be made within two calendar months after the first day of the sessions at which the refusal to hear took place, unless further time be allowed by the court or a judge, or unless special circumstances appear by affidavit to account for the delay to the satisfaction of the court (Order 84, Rule 48).

This is the only express rule as to time. But in every case the application must be made promptly after the refusal, and great delay must be accounted for (Short and Mellor, p. 219). It is suggested in Short and Mellor, 219, that the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), providing that all proceedings for acts done in pursuance, or execution or intended execution, of any Act of Parliament, or of any public duty, authority, or in respect of any alleged neglect or default in the execution of any such act, duty, or authority, must be commenced within six months from the act, neglect, or default complained of, applies to an application for a writ of mandamus. The application must be made by counsel, and cannot be made by the applicant in person, and this applies to a rule in the nature of a mandamus under 11 & 12 Vict. c. 44, corresponding to the Irish 12 & 13 Vict. c. 16 *Ex parte Wallace*, (1902) 2 K.B. 488).

Effect of writ.

The writ of mandamus commands the person to whom it is addressed, by a day therein expressed, called the "return day," either to execute the command of the writ or to signify to the court some reason to the contrary (Tapping on "Mandamus," p. 6). The return must show either compliance with the writ, or an excuse for non-compliance, or that the prosecutor is not entitled to the relief sought (Short and Mellor, 2nd ed., 238).

When a return is made, the applicant may plead to the return within such time and in like manner as if the return were a statement of defence delivered in an action; and, subject to the rules of the order, this pleading and all subsequent proceedings, including pleadings, trial, judgment, and execution, shall proceed and may be had and taken as if in an action (Order 84, Rule 104). Effect of writ.

The court can, however, in its discretion direct that the writ of mandamus shall be peremptory in the first instance (Order 84, Rule 37). When this is done, no further litigation is possible, the only return which can be made being one of obedience to the writ (*Pritchard v. Mayor of Bangor*, (1888) 13 A.C. 241, 246).

Where a peremptory writ of mandamus issues to compel justices to state a case, they must not only state a case accordingly, but make a formal return to the writ (*R. v. Boyle*, (1900) 6 I.W.L.R. 141).

A concurrent and alternative remedy lies against justices under 12 & 13 Vict. c. 16, s. 5, under which a rule may be applied for calling upon a justice to perform any act relating to his duties as justice of the peace, and his obedience to such a rule shall not subject him to any action. The principles governing the granting of such a rule are the same as in the case of mandamus. Further, a rule in the nature of a mandamus may issue directed to justices to compel them to state a case (20 & 21 Vict. c. 43, s. 5<sup>1</sup>), and application for such a rule is by motion for a conditional order (Order 84, Rule 49). Rule to justices.

In a criminal cause or matter, no appeal lies from an order of the King's Bench Division refusing or granting a writ of mandamus (Judicature Act (Ireland), s. 50). In other cases—for instance, on an application for a writ of mandamus to hear and determine an application for a licensing certificate—an appeal lies to the Court of Appeal from the grant or refusal of the writ. No appeal lies to the House of Lords from an order of the Court of Appeal refusing a mandamus; but should the Court of Appeal grant the writ (not being a peremptory writ), and a return is made thereto, an appeal may be taken to the House of Lords as in an ordinary action. An order of the K.B.D. granting or refusing an application to make absolute a conditional order for a writ of mandamus is interlocutory, and an appeal to the Court of Appeal should be taken within twenty-one days (O. 58, R. 15) on a four-day notice (O. 58, R. 3.) Appeal.

The costs of an application for a writ of mandamus are in the discretion of the court, and it is the general rule of the court to order the person unsuccessfully resisting an application to make absolute a conditional order for a writ of mandamus to pay the costs (*R. (Rogers) v. Antrim JJ.*, (1900) 2 I.R. 388, 34 I.L.T.R. 8, 57). Every application for the costs of a mandamus shall, unless the court or a judge shall otherwise order, be made before the fifth day of the sitting next after that in which the right to make such application accrued, and shall be on notice of motion (Order 84, Rule 47). Costs.

It seems that where an application for the writ has been made and refused, on the ground that there was no demand and refusal, a second application cannot be made, even though there has meanwhile Second application for writ.

<sup>1</sup> *Verbatim*, APPENDIX OF STATUTES.



been a demand and refusal (*R. v. Bodmin JJ.*, (1892) 2 Q.B. 21; *Ex parte Thompson*, (1845) 6 Q.B. 721): but in *R. (Credon v. Macroom Guardians*, (1904) 4 N.I.J.R. 169, where an application was unsuccessful on the ground that there had been no proper demand and refusal, the court made an order of no rule on the motion, without prejudice to a renewal of the application.

No action for  
obeying writ.

No action, suit, or other proceeding is maintainable against any person for or by reason of anything done in obedience to a peremptory writ of mandamus (Order 84, Rule 42). No action lies against a justice of the peace for observing a rule in the nature of a mandamus (12 & 13 Vict. c. 16, s. 5).

Enforcing  
obedience.

Obedience to a writ of mandamus may be enforced by attachment.

## CHAPTER XX.

### WRIT OF HABEAS CORPUS.

	PAGE		PAGE
Various kinds of writ, . . . . .	251	Procedure, . . . . .	252
Habeas Corpus <i>ad subjiciendum</i> , . . . . .	251	No appeal, . . . . .	253
Lies though conviction not quashed, . . . . .	252		

THERE are four principal kinds of writs of habeas corpus :— Various kinds  
 (1) habeas corpus *ad subjiciendum* ; (2) habeas corpus *ad testificandum* ; of writs of  
 (3) habeas corpus *ad respondendum* ; (4) habeas corpus *ad deliberandum* habeas  
 and *recipias*. corpus.

The habeas corpus *ad testificandum* is a writ which lies at common law for the purpose of bringing up to give evidence a witness who is detained in prison. The habeas corpus *ad respondendum* was applicable where one person had a cause of action against another who was confined in jail under process of an inferior court, so as to remove the prisoner for the purpose of charging him with a new cause of action in the superior court. The writ is still used for the purpose of bringing up persons in custody before magistrates or courts of record, for trial or examination on any other charge. The habeas corpus *ad deliberandum* and *recipias* consisted really of two writs, used to remove prisoners from one custody to another for the purpose of trial, the writ *ad deliberandum* being served upon the gaoler to deliver the prisoner, and the writ *recipias* to the other gaoler to receive him.

The writ of habeas corpus, however, which is usually spoken of is the writ of habeas corpus *ad subjiciendum*. This writ is used for protecting the liberty of the subject by examining into the legality of commitments for criminal or supposed criminal matters, or of any other forcible detention, including impressments, and also for admitting to bail prisoners legally committed (Short & Mellor, 2nd ed., 305). It is a writ of right, to which a person unlawfully detained is entitled *ex debito justitiæ* (4 Bac. Abr. "Habeas Corpus," 114, and see also Irish Habeas Corpus Act, 21 and 22 Geo. 3, c. 11). Habeas corpus  
*ad subjicien-*  
*dum*.

The court may, on the argument of the conditional order or on the application on notice for the writ, direct an order to be drawn up for the prisoner's discharge, instead of waiting for the return of the writ (see Order 84, Rule 200). But, where this is not done, the writ is to be served personally, if possible, upon the party to whom it is directed ; or, if not possible, or if the writ be directed to a gaoler or other public official, by leaving it with the servant or agent of the person confining or restraining at the place where the prisoner is confined or restrained (Rule 195). The writ commands the person to whom it is addressed to produce in the King's Bench Division the body of the person in custody, together





tion shall, during the sittings, be made to the divisional court. On the argument of the conditional order, or on the application on notice for the writ, the court or judge may, in their or his discretion, direct an order to be drawn up for the prisoner's discharge, instead of waiting for the return of the writ. The application should be grounded on an affidavit made by the prisoner, or some one on his behalf, setting out the circumstances and referring to the documents (for title, &c., of affidavit on the Crown side, see p. 232). The court may order the person's immediate discharge from custody by telegram (*R. (Crilly, v. Londonderry J.J.*, (1904) 38 I.L.T.R. 136). As a rule, the application must be moved by counsel; but the rule has sometimes been departed from, e.g., a wife has been allowed to move on behalf of her husband (*Cobbett v. Hudson*, (1850) 15 Q.B. 988). Procedure.

The determination of an application for a writ of habeas corpus in a criminal case or matter by the King's Bench Division is final, and no appeal lies to the Court of Appeal (Judicature Act, s. 50; see *Ex parte Woodhall*, (1888) 20 Q.B.D. 832). An order made by the bankruptcy judge committing a person to prison for unsatisfactory answering is not made in a criminal cause or matter, and an appeal lies therefrom to the court of appeal (*In re Keller*, (1887) 22 L.R.I. 158). No appeal.

## CHAPTER XXI.

### WRIT OF PROHIBITION.

	PAGE		PAGE
Definition, . . . . .	254	Procedure, . . . . .	254
When granted, . . . . .	254		

**Definition.** A WRIT of prohibition is a judicial writ issuing out of a court of superior jurisdiction and directed to an inferior court for the purpose of preventing the inferior court from usurping a jurisdiction with which it is not legally vested (Short & Mellor, 2nd ed., 252).

**When granted.** The writ will only be issued for the purpose of restraining an inferior court from acting without jurisdiction or in excess of jurisdiction. It lies, for instance, to petty sessions (*R. v. Bromley JJ.*, (1890) 38 W.R. 253), to quarter sessions (*R. v. Middlesex JJ.*, (1881) 45 J.P. 420), and to a Recorder (*Liverpool United Gas Light Company v. Overseers of the Poor of Everton*, (1871) L.R. 6 C.P. 414).

The following are instances in which the writ was granted:—To restrain one of two justices having co-ordinate jurisdiction with his colleague from giving a licensing certificate where his colleague had been in favour of refusing it (*R. (Bourke) v. Dublin JJ.*, (1903) 2 I.R. 429); to restrain a county court judge from issuing a decree in a case in which the party had applied for and was entitled to a jury, but, the jury having disagreed, the judge had heard the case himself (*Doran v. Doyle*, (1896) 30 I.L.T.R. 138); to restrain proceedings in the county court against a friendly society, the Friendly Societies Acts enacting that all such proceedings should be taken in a court of summary jurisdiction (*Jones v. Slee*, (1886) 32 C.D. 585); to prohibit interested justices from adjudicating (*R. v. Farrant*, (1888) 20 Q.B.D. 58).

**Procedure.** The procedure on application for the writ is prescribed by Order 84, Rules 50 and 51. The application shall be made during the sittings to the divisional court by motion for a conditional order to show cause; and in the vacation, or where there is no sitting of the divisional court, by similar motion to the judge, upon its being shown to the satisfaction of the judge that the matter is urgent; and, in civil proceedings on the Crown side, shall be made to a judge for a conditional order to show cause. The order may be made absolute *ex parte* in the first instance, on special circumstances being shown, in the discretion of the court or judge. When a rule is made absolute for a writ of prohibition, there is power in the court to award costs (*R. v. London JJ.*, (1894) 1 Q.B. 453, which was a civil case).

## CHAPTER XXII.

### CRIMINAL CAPACITY.

	PAGE		PAGE
Children, . . . . .	255	Drunkenness, . . . . .	257
Insanity, . . . . .	256		

A CHILD under the age of seven years cannot commit a crime Children.  
 (1 Hale, P. C., 27, 28, *Marsh v. Loader*, (1863) 14 C.B. (N.S.) 535). Between the ages of seven and fourteen years the law requires strict affirmative proof that the child, at the time of the offence, had a guilty knowledge that he or she was doing wrong (*R. v. Smith*, (1845) 1 Cox 260; *R. v. Owen*, (1830) 4 C. & P. 236; and see 47 & 48 Vict. c. 19, s. 4 (5)). The question of guilty knowledge is for the jury (Hale, P.C., 26, 27; *R. v. Owen*, (1830) 4 C. & P. 236), and the jury should acquit if guilty knowledge is not proved (*R. v. Smith*; *R. v. Owen*, *supra*). A child should not be convicted on its own confession (Hale, P. C., 26, 27). Of course what amounts to guilty knowledge must vary with the circumstances of each case; but as a general rule if the child be proved to have told lies in regard to the act complained of, this may be considered as evidence of guilty knowledge. Thus in *R. v. Kershaw*, (1902) 18 T.L.R. 357, a boy of thirteen was indicted for the murder of a companion; it was proved that he had lied about his movements on the day of the murder, and he was found guilty of manslaughter (see also *R. v. Vamplew*, (1862) 3 F. & F. 520, and *R. v. Wild*, (1835) 1 Mood, C.C. 452).

It is an irrebuttable presumption of law that a boy under the age of fourteen years is incapable of committing rape (*R. v. Groombridge*, (1836) 7 C. & P. 582), and the presumption has been held to extend to assault with intent to ravish (*R. v. Phillips*, (1839) 8 C. & P. 736), but, subject to guilty knowledge being proved, he can be guilty as principal in the second degree of rape, i.e., by aiding and abetting (*R. v. Eldershaw*, (1828) 3 C. & P. 396). This presumption has been applied to the offences created by the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69). A boy under fourteen, indicted under sect. 4 of that Act, must be acquitted (*R. v. Waite*, (1892) 2 Q.B. 600), but he may be convicted under sect. 9 of an indecent assault (*R. v. Williams*, (1893) 1 Q.B. 320). It has been doubted whether a boy can be convicted of an attempt to commit an offence under s. 4, but it is submitted that it is the better opinion that he can be so convicted (*R. v. Brown*, (1889) 24 Q.B.D. 357; and see judgment of Hawkins, J., in *R. v. Williams*, *supra*). A girl under the age of sixteen cannot be found guilty of aiding and abetting the commission of an offence under sect. 5 with herself (*R. v. Tyrrell*, (1894) 1 Q.B. 710). An infant cannot be convicted of an offence under section 12 of the Debtors



## Children.

Act (Ireland), 1872 or sect. 12 of the Debtors Act, 1869, (the English Act), unless as to debts for necessities, as he cannot be lawfully adjudicated bankrupt except as to such debts (*R. v. Wilson*, (1879) 5 Q.B.D. 28). But an infant can be convicted of larceny as a bailee, though he cannot enter into a contract of bailment (*R. v. McDonald*, (1885) 15 Q.B.D. 323). As to the power of justices when dealing with children, see CATALOGUE OF SUMMARY OFFENCES, CHILDREN.

## Insanity.

The presumption of law is that every man is sane (*R. v. Oxford*, (1840) 9 C. & P. 525 at p. 546, *per* Lord Denman, C.J.) until the contrary is proved. A grand jury should never ignore a bill on account of the prisoner's insanity, otherwise there would be no security to the public by the confinement of the insane person (*per* Alderson, B., in *R. v. Hodges*, (1838) 8 C. & P. 195). Lunacy may be classified as being either *a nativitate*, arising at birth, and being a permanent state, or being of an adventitious character proceeding from divers causes, and may result in a partial insanity of mind, or a total insanity (1 Hale 29, 30). The former state is that of idiots, and the latter is nowadays called insanity. The question of idiocy or insanity as regards an accused is one for a jury by the testimony of witnesses *viva voce* in the presence of the judge and jury, and by the inspection and direction of the judge (1 Hale 33). The inquiry should be as to the incapacity of the prisoner, and whether it be to such a degree as to excuse from the guilt of the offence (*ib.*). There has been much conflict of opinion as to the test to be applied in deciding this question of insanity. In *M'Naghten's Case*, (1843) 10 C. & F. 200, the judges laid down a series of rules in answer to certain questions put by the House of Lords, and these rules have ever since been accepted as setting forth what are the elements constituting insanity,<sup>1</sup> with reference to criminal responsibility. These rules may be epitomized as follows:—

(a) If a man, sane in all other respects, suffers from partial delusions, and under the influence of such delusions thinks he is redressing or revenging some grievance or wrong, or producing a public benefit, and so does the act complained of, knowing that such act was against the law, he is guilty.

(b) If the partial delusions be as to an existing state of facts, and as a consequence the act complained of be done, then the guilt of the accused will depend on whether, if the actual state of facts corresponded with the delusions as to such facts, the act complained of would be justified in law.

(c) The jury should be directed that to prove insanity it should be proved that the prisoner at the time of committing the act was so diseased in mind as not to know the *nature* and *quality* of the act, or if he did know it, that he did not know he was doing wrong.<sup>2</sup>

Insanity is a question of fact which it is for the jury to determine. A medical witness cannot give in evidence his opinion as to the prisoner's responsibility; he can only state from his knowledge of the

<sup>1</sup> As to loss of self-control, see *R. v. Burton*, (1863) 3 F & F. 772, Stephens' "History of Criminal Law," vol. ii., p. 167.

<sup>2</sup> See *R. v. Smith*, (1910) 26 T.L.R. 614.

prisoner, and the evidence, his opinion as a skilled witness of the state of the prisoner's mind (*R. v. Richards*, (1858) 1 F. & F. 87). Insanity.

The questions that may be put to a medical witness are thus succinctly put by Mellor, J.: "You must put specific facts to him to raise a question of science, that is, whether such and such facts are symptoms of insanity. But you cannot put all the facts to the witness, and ask his general opinion on the whole case, which is for the jury" (*R. v. Southey*, (1865) 4 F. & F. 864, at p. 887). When the defence of insanity is established, the jury must return a special verdict to the effect that the accused was guilty of the act or omission charged against him, but was insane at the time when he did the act or made the omission (Trial of Lunatics Act, 1883, 46 & 47 Vict. c. 38, s. 2 (1)). On such special verdict the court orders the accused to be kept in custody as a criminal lunatic during the pleasure of the Lord Lieutenant (*ib.*, s. 2 (2)).

The time to decide whether a prisoner is fit to be tried is before he is called on to plead. If the question should arise in the course of the trial, the jury should be re-sworn to try this issue; and the two questions should be left to the jury: whether the prisoner was in a fit state to be tried, and whether he was guilty or not guilty (*per* Mellor, J., *R. v. Southey*, (1865) 4 F. & F., at p. 878).

Drunkenness affords no excuse for crime, but delirium tremens, arising from excessive drinking, is an excuse if its effect is so to obscure the mental faculties as to render the prisoner unable to distinguish between right and wrong, and while in that state he commits the crime (*R. v. Davis*, (1881) 14 Cox 563). In crimes where intent is of the essence, drunkenness may be a defence to rebut the intention. The rule is thus laid down by Darling, J.: "A man is taken to intend the natural consequences of his acts . . . This presumption . . . may be rebutted in the case of a man who is drunk, by showing his mind to have been so affected by the drink he had taken that he was incapable of knowing that what he was doing was dangerous, i.e., likely to inflict serious injury" (*R. v. Meade*, (1909) 1 K.B. 899, delivering the judgment of the Court of Criminal Appeal). Drunkenness.

A person who in a drunken sleep does an act which causes the death of another is not criminally liable (*R. v. Byron*, (1863) cited Lord Halsbury's "Laws of England," vol. 9, p. 243).

Upon the preliminary investigation of an indictable offence, the justices have no jurisdiction to inquire into the sanity of the accused, their function being to return the accused for trial if a proper case is made out, and otherwise to discharge him (see p. 25, *ante*). The question of the sanity of an accused person can be determined only by the jury which tries the case (see Trial of Lunatics Act, 1883, 46 & 47 Vict. c. 38, s. 2); and even a grand jury cannot throw out a bill on the ground of insanity (*R. v. Hodges*, (1838) 8 C. & P. 195). On the hearing of a summary offence, where *mens rea* is of the essence of the offence, the question of the capacity of the defendant may have to be considered by the justices to enable them to conclude whether an offence has been committed or not;<sup>1</sup> but the occasion for such consideration will rarely arise. Justices and the defence of insanity.

<sup>1</sup> E.g., if a person of unsound mind travelled by train without having paid his fare, the justices would have to consider whether he was capable of an intent to defraud.

## CHAPTER XXIII.

### EVIDENCE.

	PAGE
Form of oath, . . . . .	258
Affirmation in lieu of oath, . . . . .	259
Certain witnesses need not be sworn, . . . . .	259
Deaf and dumb witnesses, . . . . .	260
Incompetent witnesses, . . . . .	260-262
Defendant, . . . . .	260
Husband or wife of defendant, . . . . .	260
Children, . . . . .	262
Persons mentally incapable, . . . . .	262
Relevant evidence only admissible, . . . . .	262
<i>Res inter alios actæ</i> inadmissible, . . . . .	263
Exceptions—	
(1) <i>Res gestæ</i> , . . . . .	263
(2) Statements by servants, . . . . .	264
(3) Conspiracy, . . . . .	266
(4) Proof of intent, . . . . .	266
(5) Statutory provisions, . . . . .	268
(6) Offences against women, . . . . .	268
(7) Character, . . . . .	269
(8) Dying declarations, . . . . .	270
Evidence of several offences, . . . . .	271
Statement in presence of accused, . . . . .	271
Confession or statement by accused, . . . . .	
General principles, . . . . .	272
Examples, . . . . .	273
Statements to police, . . . . .	274
Confession, <i>per se</i> , sufficient proof, . . . . .	274
Statements during preliminary investigation, . . . . .	275
Evidence of opinion, . . . . .	276
Leading questions, . . . . .	276
Refreshing memory by memoranda, . . . . .	276
Documentary evidence, . . . . .	276-282
General principles, . . . . .	276
Evidence Act, 1845, . . . . .	276
Evidence Act, 1851, . . . . .	277
Documentary Evidence Act, 1868, . . . . .	277
"                       "                       1882, . . . . .	277
Further extension of Act of 1868, . . . . .	277
Private or local Acts, . . . . .	278
L.G.B. Orders, . . . . .	278
Bye-laws, generally, . . . . .	278
"         of railway company, . . . . .	279
"         under Towns Improvement Act, . . . . .	279
"         under Public Health Act, . . . . .	279
"         of county council, . . . . .	279

	PAGE
Documentary evidence—	
Miscellaneous provisions as to	
bye-laws, &c., . . . . .	279
Regulations under Medical Acts, . . . . .	280
Proof of population, . . . . .	280
Newspapers evidence against	
proprietors and others, . . . . .	280
Certificates, &c., made evidence, . . . . .	280
Secondary evidence of documents, . . . . .	281
Publication of orders when a con-	
dition precedent, . . . . .	281
Previous convictions, &c., . . . . .	281
Unstamped documents, . . . . .	282
Dublin Gazette, . . . . .	282
Seizure of documents, . . . . .	282
Cross-examination, . . . . .	
Generally, . . . . .	283
As to bias, . . . . .	283
As to credit, . . . . .	283
Proof of previous conviction, . . . . .	283
Proof of previous inconsistent	
statement, . . . . .	284
Discrediting one's own witness, . . . . .	284
Cross-examining one's own wit-	
ness, . . . . .	284
Witness not bound to incriminate	
himself, . . . . .	284
Claim of privilege, . . . . .	285
Re-examination, . . . . .	285
Witness not subpoenaed, . . . . .	286
Accomplices, . . . . .	286
Public policy, . . . . .	286
Deposition, when evidence at trial—	
Statutory provisions, . . . . .	287
Common law rule, . . . . .	288
Deposition on one charge, trial on	
another, . . . . .	288
Statute must be complied with, . . . . .	288
Can deposition be contradicted, . . . . .	289
Depositions before coroner, . . . . .	290
Merchant Shipping Act, . . . . .	290
Admissibility of evidence given at	
previous trial, . . . . .	290
Identification of accused . . . . .	290
Presumption as to public officers, . . . . .	291
Exclusion of witnesses from court, . . . . .	291
Compelling witness to attend and	
answer, . . . . .	291
No evidence at close of case for	
prosecution, . . . . .	291

Form of oath.

An oath may be administered and taken:

(1.) As prescribed by the Oaths Act, 1909, 9 Edw. 7, c. 39. The witness, if a Christian, holds the New Testament, or, if a Jew, the Old Testament, in his uplifted hand, and says, or repeats after the officer administering the oath, the words: "I swear by Almighty God that my evidence will be the truth, the whole truth, and nothing but the truth."



(2.) In the method used before the Oaths Act, 1909, the witness Form of oath. holds the book, the New Testament or the Old Testament, in his hands; the officer says, "The evidence you shall give shall be the truth, the whole truth, and nothing but the truth, so Help You God," and the witness then kisses the Testament. When the oath is taken in this form by a Jew, he does so with head covered.

(3.) In the Scotch form, if the witness so desires, the witness holds up his right hand (no book being used), and says, "I, A. B., swear by God himself, as I shall answer to Him at the great day of Judgment, that the evidence I shall give shall be the truth, the whole truth, and nothing but the truth."

(4.) In the case of any person who objects to take the oath in the usual way, the oath may be taken in any manner which the witness declares to be binding on his conscience (1 & 2 Vict. c. 105, s. 1).

Unless the witness otherwise requests, the oath shall be administered in the manner prescribed by the Oaths Act, 1909 (see s. 3).

There are some exceptions to the rule that all witnesses shall be examined upon oath.

If a witness has no religious belief, or if, having a religious belief, Affirmation in lieu of oath. he objects to be sworn, and states as the ground of such objection that the taking of an oath is contrary to his religious belief, he will be allowed to affirm (Oaths Act, 1884, 51 & 52 Vict. c. 46, s. 1). The form of affirmation is:—"I, A. B., do solemnly, sincerely, and truly declare and affirm that the evidence I shall give to the court shall be the truth, the whole truth, and nothing but the truth." It is the duty of the judge, before permitting a witness to affirm under this section, to inquire into his ground of objection, and to ascertain whether he objects because he has no religious belief, or because the taking of an oath is contrary to his religious belief (*R. v. Moore*, (1892) 61 L.J.M.C. 80).

A witness called merely for the purpose of producing a document need not be sworn (*Perry v. Gibson*, (1834) 1 A. and E. 48). As to dying declaration, see p. 270, *post*. Certain witnesses need not be sworn.

The Children Act, 1908, 8 Edw. 7, c. 67, s. 30, provides that on the hearing of certain charges the unsworn evidence of the child in respect of whom the offence is charged to have been committed, or any other child of tender years, shall be admissible if the court is satisfied that the child does not understand the nature of an oath, but is possessed of sufficient intelligence to justify the reception of the evidence, and to understand the duty of speaking the truth. The cases in which such unsworn testimony is allowable are as follows:—Offences against Part I. of the Children Act, 1908; any offence under ss. 27, 55, or 56 of the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100); any offence against a child or young person<sup>1</sup> under ss. 5, 42, 43, 52, or 62 of the Offences against the Person Act, 1861, or under the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69); any offence under the Dangerous Performances Acts, 1879 and 1897 (42 & 43 Vict. c. 34, 60 & 61 Vict. c. 52), and any other

<sup>1</sup> For the purposes of the Act "child" means a person under fourteen; "young person" means a person fourteen or upwards and under sixteen, s. 131.

Certain witnesses need not be sworn.

offence involving bodily injury to a child or young person. To warrant a conviction, the evidence must be corroborated (*Children Act, 1908, s. 30*). The giving of false evidence is punishable as perjury (*ib.*). The Prevention of Cruelty to Children Act, 1904, 4 Edw. 7, c. 15, s. 15, enacts similar provisions in respect of any offence under that Act. As to when children may be sworn, see p. 262, *post*.

Deaf and dumb witnesses.

A deaf and dumb person is a competent witness, and may be examined through an interpreter, if he is capable of conversing by signs, and understands the nature and obligation of an oath (*Ruston's Case, (1786) Leach 408*). If he is able to communicate his ideas perfectly by writing, that method is to be adopted (*Morrison v. Leonard, (1827) 3 C. and P. 127*).

The form of oath of the interpreter is as follows:—"I swear by Almighty God that I will well and truly interpret and explanation make to the court [and jury] and the witness of all such matters and things as shall be required of me, to the best of my skill and understanding."

An interpreter should also be sworn in case the prisoner or witness does not understand the English language.

Incompetent witnesses.  
Defendant:  
husband or wife of defendant.

The general rule in criminal cases<sup>1</sup> is, that husband and wife are not competent witnesses either for or against each other,<sup>2</sup> nor can a wife be a witness for or against any person indicted and tried jointly with her husband (*R. v. Thompson, (1872) L.R. 1 C.C.R. 377*), or *vice versa* (*R. v. Brittleton (1884) 12 Q.B.D. 266*). The rule does not apply when the husband or wife of the person tendered as a witness has already been acquitted or convicted, or is not included in the indictment, or is not being tried on it (*Russell, 7th ed. 2279; R. v. Williams, (1838) 8 C. & P. 284; R. v. Thompson, (1863) 3 F. & F. 824*).

The following are exceptions to the rule. In high treason,<sup>3</sup> cases of personal injury by husband upon wife, or by wife upon husband (1 Hale 301, charges of forcible abduction and subsequent marriage<sup>4</sup>; 2 Hawk, c. 46, s. 78), charges of larceny by one spouse from another under the Married Women's Property Act, 1882 (45 & 46 Vict. c. 45, s. 12; 47 & 48 Vict. c. 14, s. 1), the spouse of the party charged is a competent and compellable witness for the prosecution, but not for the defence. In charges of bigamy, the second wife or husband of the accused, on the first marriage and the existence of the first wife or husband being proved, can be examined like any other witness either for the defence or the prosecution (1 Hale 693; *R. v. Young, (1847) 2 Cox 291*).

The following are instances of statutory exceptions making it lawful for the defendant or the husband or wife of the defendant to be examined for the defence, but not, it is submitted, for the prosecution<sup>5</sup>:—Licensing Acts (see Licensing Act, 1872, s. 51);

<sup>1</sup> As to what are criminal cases, see p. 65, *ante*.

<sup>2</sup> This was so, even in civil cases, until 1853, the date of the passing of the 16 & 17 Vict. c. 83.

<sup>3</sup> Taylor (10th ed., p. 796) appears to consider the question as to high treason not definitely settled.

<sup>4</sup> Even though the marriage is valid.

<sup>5</sup> Some of the above statutes, e.g., the Law of Libel Amendment Act, 1888, expressly enact that the defendant and the husband or wife of the defendant shall be competent, but not compellable, witnesses. The other statutes are not so express, but their language, it is submitted (e.g., "if he think fit," "competent witness," "competent to give evidence") bears out the statement in the text. See also the Criminal Evidence (E.) Act, 1898, s. 1.

Sale of Food and Drugs Act, 1875 (s. 21); Conspiracy and Protection of Property Act, 1875, 38 & 39 Vict. c. 86, s. 11 (as to proceedings under ss. 4, 5, and 6 of that Act); Army Act, 1881, 44 & 45 Vict. c. 58, s. 156 (3) (as to offences under s. 156); the Explosives Act, 1883, 46 Vict. c. 3, s. 4 (as to indictments under that section); the Corrupt and Illegal Practices Act, 1883, 46 & 47 Vict. c. 51, s. 53; the Criminal Law Amendment Act, 1885, 46 & 47 Vict. c. 69, s. 20 (as to offences under that Act, and ss. 48 and 52 to 55 of the Offences against the Person Act, 1861, 24 & 25 Vict. c. 100; Merchandise Marks Act, 1887 (s. 10); Law of Libel Amendment Act, 1888, 51 & 52 Vict. c. 64, s. 9; Betting and Loans (Infants) Act, 1892, 55 & 56 Vict. c. 4, s. 6; Building Societies Act, 1894, 57 & 58 Vict. c. 47, s. 24; False Alarms of Fire Act, 1895, 58 & 59 Vict. c. 28, s. 2; Corrupt and Illegal Practices Prevention Act, 1895, 58 & 59 Vict. c. 40, s. 2; Chaff-cutting Machines (Accidents) Act, 1897, 60 & 61 Vict. c. 60, s. 5; the Motor Car Act, 1903, 3 Edw. 7, c. 36, s. 19 (4); Children Act, 1908, 8 Edw. 7, c. 67, s. 133 (28) (as to offences under Part II. of the Act, or any of the offences mentioned in the first schedule to the Act); Summary Jurisdiction (Ireland) Act, 1908, 8 Edw. 7, c. 24, s. 12.

Incompetent witnesses.  
Defendant: husband or wife of defendant.

A defendant<sup>2</sup> is made a competent but not a compellable witness under the following statutes:—Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77, s. 34); Explosives Act, 1875, 38 & 39 Vict. c. 17, s. 87 (as to charges specified in that section); Coal Mines Regulation Act, 1881, 50 & 51 Vict. c. 58, s. 62 (ii); Diseases of Animals Act, 1894, 57 & 58 Vict. c. 57, s. 57 (3); Merchant Shipping Act, 1894, 57 & 58 Vict. c. 60, s. 45 (1) (2) (as to indictments for sending or taking an unseaworthy ship to sea).

Under the Law of Evidence Act, 1877, 40 & 41 Vict. c. 14, s. 1, the wife or husband of any defendant is made a competent and compellable witness in the following cases,<sup>3</sup> i.e.:—any indictment or proceeding for the non-repair of any public highway or bridge, or nuisance to any public highway, river, or bridge, or indictment or proceeding instituted for the purpose of trying or enforcing a civil right only.

The exclusion of a husband or wife extends only to lawful marriage (see *Batthews v. Galindo*, (1828) 4 Bing. 610). Taylor (Evidence, 10th ed., p. 971) suggests that a husband or wife can be examined on the *voir dire* as to the validity of the marriage. The wife of the prosecutor is not excluded as a witness for the Crown or defendant (Taylor, 10th ed., p. 970).

There is no statutory provision as to whether, in cases in which the defendant is a competent witness, the prosecutor or the judge, in the case of the non-production of the defendant, is entitled to comment upon the fact. The Criminal Evidence Act (England), 1898, which enables the prisoner in all cases to go into the witness-box, expressly forbids (s. 1) the prosecutor to comment upon the fact that the prisoner has not seen fit to tender himself as a witness, but this does not prevent the judge from doing so (*R. v. Saunders*,

<sup>1</sup> As to which, see APPENDIX OF STATUTES.

<sup>2</sup> As to whether these statutes impliedly make the husband or wife of defendant a competent witness, *quaere*; note the presumed necessity in civil cases for 16 & 17 Vict. c. 83.

<sup>3</sup> Which are civil, rather than criminal, in their nature.



Incompetent  
witnesses.

(1898 63 J.P. 24; *R. v. Rhodes*, (1899) 1 Q.B. 77. Strictly speaking, it seems that in Ireland the judge and counsel for the Crown are at liberty to comment on the non-production of the defendant in a case<sup>1</sup> in which he is a competent witness.

Children.

No age limit, statutable or otherwise, is laid down to determine the competency of children to be sworn and give evidence. The competency depends, in each particular case, on whether, in the opinion of the court, the child understands the nature of an oath. The court must be satisfied that the child feels the binding obligation of an oath from the general course of his religious<sup>2</sup> education; the effect of the oath upon the conscience of the child should arise from religious feelings of a permanent nature, and not merely from instructions, confined to the nature of an oath, recently communicated to him for the purpose of the trial (Russell, 7th ed., 2267; *R. v. Williams*, (1836) 7 C. & P. 321). As to when the unsworn testimony of children may be admitted, see p. 259, *ante*.

Persons  
mentally  
incapable.

If a question arises as to the competency of a witness by reason of an allegation of mental incapacity, this is for the court to determine. The objection should be taken before the witness is sworn, or during his examination, at either of which times witnesses may be called to prove or rebut the allegation; but the objection cannot be taken after the conclusion of the witness's examination (Russell, 7th ed., 2262; *R. v. Whithead*, (1866) L.R. 1 C.C.R., 33). Deaf and dumb persons were formerly, in presumption of law, idiots (*R. v. Steel*, (1787) 1 Leach 451), but this is not so now (*Harrod v. Harrod*, (1854) 1 K. & J. 4), though care should be taken in the admission of their testimony. As to the admissibility of the deposition of a witness who has become permanently insane before the trial, see p. 288, *post*. The onus of proving incompetency on the ground of mental incapacity lies on the party objecting to the witness (*Harrod v. Harrod*, *supra*).

As has been seen, in an application to bind to the peace, the defendant cannot produce any evidence (*Lort v. Hutton*, (1876) 33 L.T. 730; *Ex parte Tanner*, (1889) Judgments of the Superior Courts, 340, noted p. 37, *ante*); and, strictly speaking, the defendant is not entitled, on the preliminary investigation of an indictable offence, to call evidence (see p. 23, *ante*).

Relevant  
evidence only  
admissible.

Some observations are necessary as to what is admissible evidence, and the manner of examination. A criminal charge is perhaps more often proved by circumstantial than by direct evidence. A is charged with housebreaking; a constable swears he saw A break into the house; that is direct evidence. But no person having seen A break into the house, proof is given (1 that A had, shortly before the date of the offence, bought a housebreaking implement, (2) that such implement was found in the house broken into, (3) that foot-

<sup>1</sup> The Criminal Evidence Act, 1898, also forbids the cross-examination of the prisoner as to character or previous conviction, unless (*inter alia*) where he has given evidence of his own good character; but there seems to be nothing to prevent a prosecutor in Ireland from cross-examining a prisoner who is examined as to character and previous convictions. The Criminal Evidence Act, 1898, applies to prosecutions under the Motor Car Act, 1903 (see s. 19 (4) of that Act), but this seems the only instance of its application in Ireland.

<sup>2</sup> As to the admissibility of the evidence of a child who has received an ethical, but not a religious, education, *quære*.

prints in the garden corresponded with prints made by boots found in A's possession: this evidence is circumstantial.

Relevant  
evidence only  
admissible.

In the case above given, the connection between the facts proved by the circumstantial evidence and the principal fact, or fact to be proved (the housebreaking), is obvious, and the evidence therefore is clearly relevant. But where evidence is tendered to prove facts which have no apparent connection with the fact to be proved, or where the suggested connection is too remote, the evidence is irrelevant and inadmissible. The general rule is that the evidence should be confined to matters relevant to the issue, and that all evidence of collateral facts, which are incapable of affording any reasonable presumption as to the principal matters in dispute, shall be excluded (Taylor, 10th ed., p. 250). For instance, if the charge be one of selling adulterated milk to A, evidence that the defendant sold adulterated or unadulterated milk to B, would not be evidence either to prove or disprove the charge (see *Holcombe v. Hewson*, (1810) 2 Camp. 391), unless there was evidence to show that the milk sold to A and the milk sold to B formed portion of the same bulk. On the ground of irrelevancy, evidence that the prisoner has, on previous occasions, been guilty of similar offences is generally inadmissible (*R. v. Butler*, (1846) 2 C. & K. 221; *Makin v. A.-G. of N.S. Wales*, (1894) A.C. 57).

On the ground of irrelevancy, and also on the ground that the law requires the best evidence, proof of *res inter alios actae*, that is, acts and declarations of persons, other than the accused, to which the accused is neither party nor privy (Best, 10th ed. p. 95), is generally inadmissible. *Res inter alios actae.*

There are some apparent, and some real, exceptions to the rule that proof of *res inter alios actae* is not admissible:—(1) declarations forming part of the *res gestae*, which term may be defined as meaning all facts so connected with the fact in issue as to introduce it, explain its nature, or form in connection with it one continuous transaction; (2) in certain cases, statements made by a servant in the course of his master's business, though not forming part of the *res gestae*, are probably admissible;<sup>1</sup> (3) on a charge of conspiracy, evidence of acts or declarations by one conspirator is admissible;<sup>2</sup> (4) evidence is admissible for the purpose of showing knowledge, intent, or a systematic course of dealing;<sup>3</sup> (5) evidence of acts other than those actually charged are sometimes made admissible by statute;<sup>4</sup> (6) on a charge of offences against women, the character of the prosecutrix, and complaints made by her, are admissible;<sup>5</sup> (7) evidence of character may be given on behalf of a prisoner;<sup>6</sup> and (8) dying declarations.<sup>7</sup>

If a statement explains, and is contemporaneous with, a material fact, it is admissible; and this has been extended to cases where the statement, though not absolutely contemporaneous with the fact, is made so soon after it as to be "an incident of the event under consideration" (Taylor, 10th ed. 412). In such a case, the statement is said to form part of the *res gestae*. Thus, on the trial of Lord George Gordon for treason,<sup>8</sup> the cry of the mob who accompanied the prisoner, was received in evidence, as forming part of the *res gestae*, Exceptions:  
(1) *Res gestae*

<sup>1</sup> See p. 264.

<sup>2</sup> See p. 266.

<sup>3</sup> See p. 266.

<sup>4</sup> See p. 268.

<sup>5</sup> See p. 269.

<sup>6</sup> See p. 269.

<sup>7</sup> See p. 270.

<sup>8</sup> 1781, 21 St. Tr. 514.

(1) *Res gestae*. and showing the character of the principal fact. But what is part of the *res gestae* has been the subject of considerable divergence of judicial opinion. In *R. v. Foster*, (1834) 6 C. & P. 325, it was held, on the hearing of a charge of manslaughter, that a statement as to how the accident happened, made by the deceased immediately after he was knocked down, was admissible (see also *R. v. Tunny*, (1852) 6 Cox 477). In *R. v. Bedingfield*, (1879) 14 Cox 341, the deceased, with her throat cut, ran out of a house, in which the prisoner was, shouting, "See what Harry Bedingfield has done," and Cockburn, C. J., refused to admit the exclamation in evidence (see also *R. v. Goddard*, (1882) 15 Cox 7). Statements made by the deceased immediately after an assault on him, and while fleeing from his assailant, while under apprehension of further danger, were considered by the Supreme Court of Canada to form part of the *res gestae* (*Gilbert v. R.*, (1907) 38 Canada S. C. 284; and see *Aveson v. Kinnaird*, (1805) 6 East 188, 193). The fact of a statement having been made, though in the absence of the accused, is, of course, always admissible, though the statement itself is not; the form in which the question is put being, "Did X make a statement to you?" "In consequence of that statement did you arrest the prisoner?" (see *R. v. Wainwright*, (1875) 13 Cox 171).

(2) *Statements by servant*. A master is, in certain cases, criminally responsible for the acts of his servant, the principle of the liability being that, having regard to the language, scope, and objects of the statute in question, the legislature intended to fix criminal responsibility upon the master for acts done by his servant in the course of his employment, although such acts were not authorized by the master, and might have been expressly forbidden by him (see judgment of Lord Russell of Killowen, C. J., in *Coppen v. Moore* (No. 2), (1898) 2 Q. B. 306). Instances of the liability are found in the Licensing Acts (*Commissioners of Police v. Cartman*, (1896) 1 Q. B. 615), and the Merchandise Marks Act, 1887 (*Coppen v. Moore*, *supra*); see further, chapter MASTER AND SERVANT, p. 292. It follows from this that acts and declarations of the servant, forming part of the *res gestae* of the occurrence, are admissible in evidence against the master. In *A.-G. v. Good*, (1825) M.C. & Y. 286, customs officers went to the defendant's house to search. The defendant's wife opened the door, and being asked if her husband was at home, answered, contrary to the fact, that he was in the country. The officers then entered and found the defendant and others within. It was held that the wife's statement was admissible as a proof of a denial being falsely made, and part of the *res gestae*.

Generally speaking, however, the acts and declarations of a servant are not admissible unless they form part of the *res gestae*, on the principle that "the admission or declaration of an agent binds his principal only when made during the continuance of the agency in regard to a transaction then depending, *et dum ferret opus*" (Taylor, 10th ed., 424). But it is submitted that, where a master entrusts the carrying on of his business to a servant, and is charged with an offence in respect of the act of such servant, the acts and declarations of the servant, though not forming part of the *res gestae* of the offence charged, are admissible, if such acts and declarations are done or made under such circumstances as lead to the inference that the servant is impliedly authorized to do or make them. In an



action against a pawnbroker and another for detention of the plaintiff's plate, value for £200, the sole evidence against the pawnbroker was that of a witness who stated that, at the house of the plaintiff's attorney, he heard the pawnbroker's shopman say that it was a hard case, for his master had advanced all the money on the plate, at 5 per cent. Tyndal, C.J., in holding that the evidence was not admissible, said—"If the transaction out of which this suit arises had been one in the ordinary trade or business of the defendant as a pawnbroker, in which trade the shopman was agent or servant to the defendant, a declaration of such agent that his master had received the goods, might probably have been evidence against the master, as it might be held to be within the scope of such agent's authority to give an answer to such an inquiry made by any person interested in the goods deposited with the pawnbroker" (*Garth v. Howard*, (1832) 8 Bing. 451, at p. 453). In revenue and licensing cases, in which the master is very closely identified with the acts of his servant (see *A.-G. v. Allen*, (1850) Ct. Exch. 29th November; <sup>1</sup> *Massey v. Morris*, (1894) 2 Q.B. 412, 414; see also p. 293, *post*), it is probable that an implied authority to do the act or make the declaration would be more freely inferred than in other cases. In *A.-G. v. Williams*, (1813) cited Manning's Exchequer, at p. 277, in an information for pressing the couch, discovered by suddenly forcing open the malt-house door, Gibbs, C.B., admitted declarations made by the defendant's maltmen to one another, though on a subsequent day, with reference to the means of discovery.

The reasons for the admission of such evidence seem to be particularly strong where the evidence is tendered for the purpose of explaining the nature and quality of the act charged, in cases in which the act is an offence or not, according to the state of mind or belief of the person doing it—that is, in the instances under discussion, the servant. Thus, on a charge against A, a licensed publican, of permitting drunkenness, proof is given that B, the manager in charge of A's shop, and in A's absence, allowed X, who was drunk, to enter and remain in the shop. This will be an offence according as B knew or did not know of the condition of X. A police constable afterwards calls to A's shop to investigate the occurrence, and, in answer to the constable's inquiries, B states that he noticed that X. was drunk when he entered the shop. It is submitted that evidence of such statement is admissible in chief<sup>2</sup> for the purpose of showing guilty knowledge on the part of B, for which guilty knowledge the master is<sup>3</sup> responsible.<sup>4</sup> In *Worth v. Brown*, (1898) noted 62 J.P. 658, the defendant was charged with permitting drunkenness. The defendant was not himself in charge of the bar, but his barmaid was. It was held that statements made in the presence of the barmaid at the time the drunken person was found were evidence.

<sup>1</sup> Noted Highmore Excise Laws, 2nd ed., p. 7.

<sup>2</sup> Such evidence would, at any rate, be admissible should B swear he did not know X was drunk, on the principle that, for the purpose of discrediting a witness, evidence can be given to show that the witness made statements, on previous occasions, inconsistent with his sworn testimony, as to a relevant fact. See p. 284, *post*.

<sup>3</sup> *Redgate v. Haynes*, (1876) 1 Q.B.D. 89.

<sup>4</sup> The fact that the statute (Licensing (Ir.) Act, 1874, s. 23) gives a constable a right to enter licensed premises for the purpose of preventing or detecting any breach of the law would, perhaps, provide an additional reason why answers to such constable, by the person in charge, should be admitted.

(2) *Statements by servant.* The admission of this evidence was clearly right upon the ground that it formed part of the *res gestae*; but the observations of Collins, J., in the course of the argument, are pertinent to the question under discussion. "Substitute the knowledge of the barmaid for the knowledge of the licensed person, then anything said in the presence of the substituted person is the same as if it were said in the presence of the licensed person"; and again, "Evidence of knowledge in the shape of statements made in her presence, not contradicted by her, become admissible. Put the master out of the case for the purposes of this discussion, she is now substituted for the master, and her knowledge is substituted for his. Anything that proves her knowledge is admissible."

The proposition submitted, that, in certain cases, statements made by a servant, in the absence of his master, and not forming part of the *res gestae*, are admissible as evidence against the master does not conflict in any way with *Dwyer v. Larkin*, (1904) 39 I.L.T.R. 40, 5 N.I.J.R. 25. In that case a publican was charged with having sold drink to a drunken man on the 24th July. The man having died, an inquest was held on the 25th July, at which the publican's assistants, who were examined as witnesses, admitted they supplied the deceased with drink on the previous day. *Held*, that evidence of such admissions was not admissible. "We are all of opinion that these assistants had not on the occasion in question any authority in reference to a transaction that was passed and gone to make a statement so as to affect the publican with liability, the statement being made at an inquest" (*ib.*, per Lord O'Brien, L.C.J.).

(3) *Conspiracy* Where several are proved to have acted in concert in the preparation or commission of a crime, the acts and declarations of one in furtherance of that design may be received in evidence against another, though not present when the acts were done or the declarations made; and it makes no difference as to the admissibility of the act or declaration of one conspirator against another, whether the former is or is not indicted or tried with the latter (Russell, 7th ed. 2097). When the evidence of a criminal conspiracy is proved, evidence of acts committed in pursuance of the criminal purpose prior to the date when the defendant joined may be given in evidence, not for the purpose of fixing him with responsibility for such acts, but to show the nature of the conspiracy (*R. (Shaw) v. Dwyer*, (1890) 24 I.L.T.R. 111; *O'Keeffe v. Walsh*, (1903) 2 I.R. 651).

(4) *Intent, &c.* Evidence of facts not directly relating to the transaction charged is admissible for the purpose of showing knowledge, intent, or a systematic course of dealing, or to rebut evidence of accident or the like. On a charge against a woman of poisoning her husband by arsenic, evidence was held to be rightly received of the deaths at other times of her sons, whose food she had prepared, from arsenical poisoning (*R. v. Geering*, (1849) 18 L.J.M.C. 215; see also *R. v. Cotton*, (1873) 12 Cox 400, *R. v. Roden*, (1874) 12 Cox 630, *R. v. Colclough*, (1882) 10 L.R.I. 241, *Budd v. Lucas*, (1891) 1 Q.B. 408). In *R. v. Neill*, (1892) Sessions Papers CXVI., 1417 (Kenny's Criminal Law Cases, p. 483), on an indictment for the murder of a woman by strychnine, evidence that the prisoner had caused the deaths of three other women by strychnine, and attempted to administer the poison to a fourth, was held admissible. On a charge of knowingly uttering forged bank notes or spurious coin, possession

of other forged notes or bad coin is admissible as showing (4) *Intent, &c.* guilty knowledge (*R. v. Forster*, (1855) Dears 456). On a charge of obtaining money by the false pretence, contained in an advertisement, that the person would find employment for those who answered the advertisement and sent a fee, letters found upon him, and letters addressed to him, but intercepted by the postal authorities, though not from the parties in respect of whom the specific charge was made, were held admissible (*R. v. Cooper*, (1875) 1 Q.B.D. 19). Such documents are admissible without proof of their authenticity (*ib.*); as also are papers found in prisoner's possession without proof that they are in his handwriting (1 East P.C. 119). On a charge of feloniously using instruments with intent to procure miscarriage, evidence was tendered to show that the prisoner some nine months before had used similar instruments upon another woman with the avowed intention of producing miscarriage, and had then used expressions tending to show he was in the habit of performing similar operations for the same illegal purpose. On a case stated, it was held by Kennedy, Darling, Jelf, Bray, and Lawrence, JJ., Alverstone, C.J., and Ridley, J., *diss.*, that the evidence was rightly admitted (*R. v. Bond*, (1906) 2 K.B. 389). The various cases in which previous similar acts have been allowed to be proved are very fully discussed in the judgments in the last case.<sup>1</sup>

In a prosecution against workmen for wrongfully and without legal authority besetting, as the intention of the defendants is in question, the justices are entitled to receive and act upon evidence of previous acts of the accused, and should consider the character of the meeting and of the circumstances of the acts, and determine whether the parties were acting merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or to abstain from work (*Toppin v. Ferron*, (1909) 43 I.L.T.R. 190).

On a charge of obtaining credit by fraud, it was proved that the defendant hired furnished apartments from the prosecutrix for three days, when he left without paying for them or the food supplied to him. Evidence was held rightly admitted that a short time previously the defendant had gone to several houses and hired apartments and left without paying, and that he still owed the money when he went to the house of the prosecutrix, on the ground that the evidence tended to establish a systematic course of conduct, and negated any accident or mistake, or the existence of any reasonable or honest motive, on the part of the defendant (*R. v. Wyatt*, (1904) 1 K.B. 188; see also *R. v. Francis*, (1874) L.R. 2 C.C.R. 128).

But a prisoner who is charged with swindling in a particular manner cannot be proved guilty by showing that, on other occasions,

<sup>1</sup> In a recent licensing prosecution at Bray, Co. Wicklow, for selling liquor on a certain Sunday, evidence was given that the same persons came in, Sunday after Sunday, from outside the three-mile limit, and spent most of their time in Bray in drinking in defendant's premises. It is clear, it is submitted, that such evidence was clearly admissible, both for the purpose of showing that they came merely for the purpose of drink, and of showing that the defendant knew it (see *Penn v. Alexander*, (1893) 1 Q.B. 532, noted in CATALOGUE OF SUMMARY OFFENCES—"INTOXICATING LIQUOR"). And it is further submitted that in a like prosecution evidence of a general rush of alleged "travellers," Sunday after Sunday, into a tavern, even without proof that they were the same persons every Sunday, is some evidence—though opinions would probably differ widely as to the weight of it—on the question of the knowledge of the defendant that the alleged "travel" by such persons was a mere sham for the purpose of enabling them to get drink.



(4) *Intent, &c.* he was guilty of swindling in an entirely different manner. A defendant was charged with obtaining a pony and trap by the false pretence that he wanted them for his sick wife who could not come to select them herself. The prosecution gave evidence that he had obtained oats and provender from two other people by the false pretence that he was living at a certain address to which stables were attached. *Held* that such evidence did not go to prove that he was guilty of the charge laid, and was inadmissible (*R. v. Fisher*, (1910) 1 K.B. 149; see also *R. v. Ellis*, (1910) 2 K.B. 746).<sup>1</sup>

The fact that such previous transactions have themselves been the subject of a charge upon which the defendant has been acquitted does not render them inadmissible (*R. v. Ollis*, (1900) 2 Q.B. 758).

Where the offence charged is one of a continuing character, e.g., using premises for the purposes of betting, evidence of user of the premises on occasions other than that charged is not alone admissible (*R. v. Mean*, (1904) 21 T.L.R. 172), but necessary (*McConnell v Brennan*, (1908) 2 I.R. 411) to sustain the charge. On an application to bind to the peace, evidence may be given of the defendant's general course of conduct (*R. v. Dunn*, (1840) 12 A. & E. 599; *Ex parte Hulsc*, (1851) 21 L.J.M.C. 21; *R. v. Queen's Co. JJ.*, (1882) 10 L.R.I. 294).

In a prosecution under the Weights and Measures Act, 1878, s. 26, against a grocer for fraud in weighing tea by adding the paper wrapper to the tea in the pan of the scales, it was held that evidence of an alleged custom of grocers to weigh tea in the wrapper should have been admitted as bearing on the question of fraud under the section (*R. v. Spencer*, (1904) 20 Cox 692).

(5) *Statutory provisions as to acts other than those charged.*

A person shall not be summarily convicted of an offence against Part II. of the Children Act, 1908, or of an offence mentioned in the First Schedule to the Act, unless the offence was wholly or partly committed within six months before the information was laid: but, subject as aforesaid, evidence may be taken of acts constituting, or contributing to constitute, the offence, and committed at a previous time (Children Act, 1908, 8 Edw. 7, c. 67, s. 32 (3)).

Where proceedings are taken against any person for having received goods, knowing them to be stolen, or for having in his possession stolen property, evidence may be given at any stage of the proceedings that there was found in the possession of such person other property stolen within the preceding period of twelve months: and on the like charge, if evidence has been given that the stolen property has been found in his possession, then if such person has within five years immediately preceding been convicted of any offence involving fraud or dishonesty, evidence of such previous conviction may be given at any stage of the proceedings, provided that not less than seven days' previous notice in writing shall have been given to the accused that proof is intended to be given of such previous conviction (Prevention of Crime Act, 1871, 34 & 35 Vict. c. 112, s. 19). Service of such notice and proof of the previous conviction do not relieve the prosecution from the necessity of proving that the prisoner knew the goods were stolen (*R. v. Davis*, (1870) L.R. 1 C.C.R. 272). The words "preceding period of twelve months" refer to the twelve months preceding the commencement of the proceedings against the accused, and not to

<sup>1</sup> Cf. *R. v. A.B.*, (1910) W.N. 255.

the period preceding the commission of the offence charged (*R. v. Harding* (No. 2), (1909) 53 S.J. 762).

The law as to statements made by persons upon whom a rape or indecent assault has been attempted or perpetrated is definitely settled by the cases of *R. v. Lillyman*, (1896) 2 Q.B. 167, and *R. v. Osborne*, (1905) 1 K.B. 551, which establish the following rules:— (1) where a complaint has been made within a short time after the occurrence, *the fact* of the complaint having been made *and the particulars* of such complaint are admissible, though they form no part of the *res gestae*; (2) they are so admissible whether consent is or is not a material element in the charge; (3) they are so admissible where the statement or complaint is made in answer to such natural questions as “What is the matter?” or “Why are you crying?”; (4) but are not so admissible if made in answer to questions of a suggestive or leading character, such as “Did A. B. assault you?” “Did he do this and that to you?” The principle upon which such statements are admitted has been said to be, not that they are evidence of the acts complained of, but that they are evidence of the consistency of the conduct of the prosecutrix with the story told by her in the witness-box, and are inconsistent with her consent to that of which she complains (*per* Hawkins, J., in *R. v. Lillyman*, *supra*, at p. 170). As to the time within which the complaint must be made, the rule is, that it must be made, not on the earliest *possible* opportunity, but on the first opportunity which *reasonably* offers (*R. v. Osborne*, (1905) 1 K.B. 551, 561; *R. v. Kiddle*, (1898) 19 Cox 77). A complaint made on Monday, Saturday being the date of the alleged offence, and there having been reasonable opportunities of making the complaint in the meantime, was held too late (*R. v. Ingrey*, (1900) 64 J.P. 106).

When the prosecutrix is not produced, apparently the evidence is not admissible (*R. v. Guttridge*, (1840) 9 C. & P. 471; *R. v. Cuffe*, (1904) 4 N.I.J.R. 144).

In prosecutions for rape, or attempted rape, the character of the prosecutrix is relevant, and may be impeached by general evidence (*R. v. Clarke*, (1817) 2 Starke N.P. 241), as, for instance, that she had been seen on the town as a reputed prostitute (*R. v. Clay*, (1851) 5 Cox 146). Where such evidence is given, rebutting evidence is allowable (*R. v. Tessington*, (1843) 1 Cox 48). If the prosecutrix denies having had previous immoral relations with the prisoner, evidence can be given to contradict her (*R. v. Riley*, (1887) 18 Q.B.D. 481), but the prisoner is bound by her answer denying immoral relations with other men (*R. v. Holmes*, (1871) L.R. 1 C.C.R. 334).

The term “character” does not mean “disposition,” but reputation amongst one’s neighbours (*R. v. Rowton*, (1865) 34 L.J.M.C. 57; *Leader v. Yell*, (1864) 16 C.B.N.S. 595). The prisoner is entitled to call evidence of his good character, that is, his general reputation, evidence of particular acts or the particular opinion of the witness being inadmissible (*J. Anson v. Stuart*, (1787) 1 T.R. 754). If the prisoner gives such evidence, the prosecutor may call evidence of the prisoner’s general reputation for bad character (*R. v. Rowton*, *supra*). For the purpose of impeaching the credibility of a witness, evidence may be produced of the general reputation of the witness for lying (Taylor, 10th ed., 1065); and it seems unsettled whether, in such a case, evidence as to the witness’s entire moral character can be given

(6) *Offences against women.*

(7) *Character.*

(*ib.* 1066). But evidence that the witness has a reputation for veracity will thereupon be allowed (Taylor, 10th ed., p. 1070).

The wording of section 20 of the Petty Sessions Act seems to give the prosecutor, in cases triable summarily, power to call evidence in reply, save where the defendant's evidence has been confined to his general character.

(8) *Dying  
declarations.*

The admissibility of dying declarations furnishes an exception, not alone to the rule that statements made behind the back of the prisoner cannot be given in evidence against him, but also to the rule that all evidence must be given on oath. In cases of homicide, the declaration of the deceased, after the mortal blow, as to the fact itself and the party by whom it was committed is admissible, if at the time of making such declaration the declarant had an unqualified and hopeless belief in the nearness of death. It must be shown that at the time the statement was made, the death of the declarant was imminent, and that he had abandoned all hope of living, i.e., believed that the death must follow; but it is not necessary to prove that the declarant believed that death would ensue immediately (*R. v. Perry*, (1909) 2 K.B. 697; cf. *R. v. Curmane*, (1903) 4 N.L.J.R. 49). It is not, however, necessary that the declaration should show upon its face that it was made under such circumstances as would render it admissible in evidence as a dying declaration; that is a fact *dehors* the declaration, and may be proved by parol testimony *R. v. Hunt*, (1847) 2 Cox (239). The declaration may be oral or in writing, and need not be made to a justice of the peace. The fact that the declaration consists of answers to leading questions does not make it inadmissible (*R. v. Smith*, (1865) 10 Cox 82; *R. v. FitzPatrick*, 22 Nov., 1910, C.C.R. (Ir.) unreported;<sup>1</sup> see also *R. v. Whitmarsh*, (1898) 62 J.P. 711; & cf. *R. v. Smith*, (1901) 17 T.L.R. 522). But where a written statement was brought to a justice by the father of the dying person, and the justice interrogated the dying person thereon paragraph by paragraph, the declaration was held inadmissible, because the justice should not have trusted to the relation of a third party, but should have taken down the deceased's declaration from her own lips, or at least have taken it down in her presence (*R. v. FitzGerald*, (1841) Ir. Cir. R. 168).

The fact that the declaration is made upon oath will not render it inadmissible (*R. v. Woodcock*, (1789) 1 East P.C. 356; *R. v. Dingley*, (1791) 2 Leach 561; *R. v. Callaghan*, (1793) McNally Ev. 385).

The dying declaration of a child of ten has been admitted (*R. v. Perkins*, (1840) 2 Moo. C.C. 135).

The fact that a declaration was made as the result of earnest solicitations does not make it inadmissible (*R. v. Whitworth*, (1858) 1 F. & F. 382).

Evidence of this description is only admissible where the death of the deceased is the subject of the charge, and the circumstances of the death the subject of the declaration (*Mead's Case*, (1824) 2 B. & C. 605, 608; *R. v. Hutchinson*, (1822) 2 B. & C., 608 n; *R. v. Hind*, (1860) 8 Cox 300). Where a charge of murder was preferred against A, a dying declaration made by B, confessing that he had committed the murder in question, was held not admissible (*R. v. Gray*, (1841) Ir. Cir. R. 76). Dying declarations which are in the favour of the party charged are admissible (*R. v. Seafie*, (1836) 1 Moo. & Rob. 551).

<sup>1</sup> At time of going to press, but see INDEX OF CASES.



Dying declarations are only admissible as to facts as to which the deceased declarant could have testified in the matter, and must be confined to what is relevant to the issue (Taylor, 10th ed., p. 512). Opinions as to the motive of the party charged expressed in the dying declaration would appear admissible (*R. v. Scrafe, supra*).

Whenever a dying declaration is admitted in evidence, all matters may be proved in order to contradict it, or in order to impeach or confirm the credit of the person who made it, which might have been proved if that person had been called as a witness, and had denied in cross-examination the truth of the matter suggested (Stephen, Evidence, 5th ed., p. 151.)

Where several offences are all parts of one entire transaction, evidence of all is admissible on the trial for any one of them, but where the offences are separate or distinct, it is not competent to prove the prisoner guilty of the crime charged by proving him guilty of another distinct offence, and the court may call on the prosecutor to elect as to which offence they will proceed with (Russell, 7th ed., pp. 2101, 2102).

As regards statements made in the presence of the accused, Hawkins, J., in a case where it was sought to put in evidence a statement of a co-prisoner read over by a police officer to the prisoner, laid down that a statement made in the accused's presence is not admissible unless evidence can be adduced which would justify the jury in finding that the accused, having heard the statement, and having the opportunity of explaining or denying it, and the occasion being one upon which he might reasonably be expected to make some observation, explanation, or denial, by his silence, conduct, or demeanour, or by the character of any observations or explanations he thought fit to make, *substantially admitted the truth of the whole or some portion of it* (*R. v. Smith*, (1897) 18 Cox, 470). But this statement of the law has since been disapproved by the Court of Criminal Appeal in England in *R. v. Thompson*, (1910) 1 K.B. 640, in which a statement made by a co-prisoner, and read over to the prisoner, who said it was a pack of lies, was admitted; but the court approved of the direction of the judge at the trial, who warned the jury that they were not to accept, even provisionally, anything in the statement as true, and must not allow it to prejudice them against the prisoner. The proper direction to a jury in such a case was again discussed by the Court of Criminal Appeal in England in *R. v. Norton*, (1910) 2 K.B. 496, and the following rules laid down:—The fact that a statement has been made in the presence of a prisoner upon an occasion on which he might reasonably be expected to make some observation, explanation, or denial may be given in evidence as introductory to or explanatory of the answer given by the prisoner. If the answer given, either by words or conduct, is such that an acknowledgment of the truth of a statement may be inferred, its contents may be given in evidence, and the question left to the jury whether or not the prisoner did in fact admit the truth of the statement. If the answer is not evidence from which such an acknowledgment may be inferred, the contents should be excluded. The contents of a statement should not be given unless the judge is satisfied that there is evidence fit to be submitted to the jury that the prisoner by his answer, whether given by words or conduct, acknowledged its truth in whole or in part. Unless the jury find

(8) *Dying declarations.*

Evidence of several offences.

Statements in presence of the accused.

as a fact that there was such an acknowledgment, they should be told to disregard the statement altogether.

The mere non-denial of an offence by a prisoner when formally charged on his arrest is not necessarily corroborative evidence (*R. v. Tate*, (1908) 2 K.B. 680, cf. *R. v. Cramp*, (1880) 14 Cox 390).

Confession or  
statement by  
accused.  
General  
principles.

A confession, to be admissible, must be free and voluntary. If it proceeds from remorse and a desire to make reparation for the crime, it is admissible. If it flows from hope or fear, incited by a person in authority, it is inadmissible. On this point the authorities are unanimous (per Cave, J., in *R. v. Thompson*, (1893) 2 Q.B. 12, 15). The prosecutor must show affirmatively, to the satisfaction of the judge, that the statement was not made under the influence of an improper inducement; and the judge, in the event of any doubt subsisting on this head, will reject the confession (*R. v. Warringham*, (1851) 2 Den. C.C. 447 n.; *R. v. Thompson*, (1893) 2 Q.B. 12, 16). In the last-named case the prisoner was tried for embezzling the money of a company. It was proved at the trial that, on being taxed with the crime by the chairman of the company, he said, "Yes, I took the money," and afterwards made out a list of the sums which he had embezzled, and with the assistance of his brother paid to the company a part of such sums. The chairman stated that at the time of the confession no threat was used, and no promise made, as regards the prosecution of the prisoner, but admitted that, before receiving it, he had said to the prisoner's brother, "It will be the right thing for your brother to make a statement," and the court drew the inference that the prisoner, when he made the confession, knew that the chairman had spoken these words to his brother. It was held that the confession of the prisoner had not been satisfactorily proved to be free and voluntary, and that, therefore, evidence of the confession ought not to have been received. As to the person by whom the inducement is offered, if the promise or threat be made *by anyone having authority* over the prisoner in connection with the prosecution—as, for instance, by the prosecutor, the master or mistress of the prisoner when the offence concerns such master or mistress, or by the relations and neighbours of the master and prosecutor, the chairman of the company which is prosecuting him, the constable or other officer having him in custody, a searcher of female prisoners who had no other duties or authority in gaol, a magistrate, or the like—the confession will be rejected as not being voluntary. The same rule will prevail, though the inducement was not actually offered by the person in authority, if it were held out by anyone in his presence, and he by his silence sanctioned it (Taylor, 10th ed., p. 614). If a threat or inducement is held out by a person not in authority, the confession is clearly admissible (*R. v. Moore*, (1852) 2 Den. 522). When promises or threats have been once used of such a nature as to render a confession inadmissible, all subsequent admissions of the same or the like facts will be rejected, unless from the length of time intervening, from proper warning of the consequences, or from other circumstances, there is good reason to presume that the delusive hope or fear which influenced the first confession has been effectually dispelled (Joy on Conf. 69). Where, however, it appears, to the satisfaction of the judge, that the improper influence was totally done away with before the confession was made, the evidence will be received (Taylor, 10th ed., p. 618). In the following case the effect

of the original inducement was held to have been removed. A prisoner was told by the constable that it would be better for him to confess. On the hearing before the magistrate he asked if a confession would be beneficial to him; the magistrate replied that he could not say it would. On the way to prison the prisoner confessed to another constable, and when in prison to another magistrate (*R. v. Rosier*, (1821) 1 Phillips Ev., 10th ed. p. 414, see also *R. v. Lingate*, (1815, *ib.*). In the following case the effect of the inducement was held to continue. A prisoner at 10 a.m. was told by a constable that it would be better for him to confess. At 6 p.m. on the same day he confessed to another constable, after the latter had cautioned him (*R. v. Doherty*, (1874) 8 I.L.T.R. 192).

Confession or  
statement by  
accused

To exclude evidence of a confession, the inducement must relate to the actual charge, and be such as is calculated to influence the prisoner's mind with respect to his escape from the charge. A promise of some merely collateral benefit, e.g., to give the prisoner some spirits, or an inducement by spiritual exhortations, will not exclude the confession (Taylor, 10th ed., p. 619). The inducement, however, need not be made directly to the prisoner (*R. v. Thompson*, (1893) 2 Q.B. 12).

The admissibility depends upon the special facts in each case (*R. v. Knight*, (1905) 20 Cox 711). The following are further instances:—

*Held admissible:—*

Examples.  
(1) Admissible.

*R. v. Row*, (1809) Russ & Ry, 153. Persons who had nothing to do with the arrest or examination of the accused admonished him in the presence of a constable to tell the truth.

*R. v. Derrington*, (1826) 2 C. & P. 418. Confession contained in a letter written by prisoner to his father, and handed by him to the turnkey who promised to post it, but instead sent it on to the prosecutor.

*R. v. Gilham*, (1828) 1 Moo. C.C. 186. Confession induced by persuasion of clergyman.

*R. v. Simons*, (1834) 6 C. & P. 541. What the accused has been *overheard* muttering to himself, or saying to his wife, or to any other person in confidence.

*R. v. Parker*, (1861) 8 Cox 465. Inducement held out by fellow-prisoner.

*R. v. Jarvis*, (1867) L.R. 1 C.C.R. 96. Prosecutor, the master of the prisoner, advised prisoner to answer any question truthfully.

*R. v. Reeves*, (1867) L.R. 1 C.C.R. 362. Mother telling her son to speak the truth. (See also *R. v. Edwards*, (1868) 33 J.P. 119.)

*Held inadmissible:—*

(2) Inad-  
missible.

*R. v. Cass*, (1784) 1 Leach, 2931 N. Prosecutor said, "I am in great distress about my irons, and if you will tell me where they are, I will be favourable to you."

*R. v. Jones*, (1809) R. & R. 152. "I only want my money; and if you give me that, you may go to the devil."

*R. v. Partridge*, (1836) 7 C. & P. 551. "If you will not tell all you know about it, of course we can do nothing."

*R. v. Windsor*, (1864) 4 F. & F. 360. Prisoner, who was charged with murder, said to female searcher, who was in room for purpose of searching her, but had no other duties or authority in the gaol: "If I tell the truth, shall I be hung?" and the searcher replied, "No; nonsense; you will not be hung."



Confession or  
statement by  
accused.

*R. v. Fennell*, (1881) 7 Q.B.D. 147. Prisoner's employer said to prisoner, "He" (the police inspector who was present) "tells me you are making housebreaking implements; if that is so, you had better tell the truth, it may be better for you."

*R. v. Hatts*, (1883) 49 L.T. 780, 48 J.P. 248. Employer said to prisoner, in presence of two police officers, "I know what has been going on. You had better speak the truth."

*R. v. Mayorisk*, (1898) 32 I.L.T.R. 56. A police constable arrested a woman on a charge of infanticide, and gave her the usual caution; some time after he urged her "to tell the truth" or "she had better tell the truth," and in consequence she made a statement to him. Madden, J., rejected the evidence.

*R. v. Dennehy*, (1902) 3 N.I.J.R. 154. The answers of a bankrupt to a series of questions put to him by the court messenger who, in the words of Barton, J., cross-examined him in a very searching way, and also the evidence given by the bankrupt before the Bankruptcy Court, which, when reduced to a deposition, the bankrupt had refused to sign, on the ground that he might incriminate himself, were rejected.

If a confession be made under improper inducement, so much thereof as relates clearly to any fact that may be discovered as the result of such confession may be proved. Thus, where a prisoner was improperly induced to make a confession of a burglary, in the course of which he said that he had thrown a lantern into a pond, the fact that he said so and the fact that the lantern was found there, were held admissible (*R. v. Gould*, (1840) 9 C. & P. 364; cf. *R. v. Justices*, (1822) R. & R. 492).

Statements made by a prisoner in an information, with a view to his being examined as a Crown witness, are not admissible in evidence for the purpose of implicating him in the offence the subject of the information (*R. v. M'Hugh*, (1857) 7 Cox 483). In that case the prisoner had made an information charging others with being engaged in an illegal conspiracy. The information was made while the prisoner was in custody. He sent for the magistrate, before whom he made the information voluntarily. Neither threat nor inducement had been used to procure a statement from the prisoner, neither was there any caution given him. The information was given in evidence against the prisoner when on trial for being engaged in the illegal conspiracy, for the purpose of corroborating an approver. *Held*, that the evidence should have been rejected.<sup>1</sup>

Statements by  
accused to  
police.

Questions frequently arise as to the admissibility of statements made by an accused person to a police officer. If the statement be a free and voluntary statement, not made in reply to questions, the evidence is admissible, whether the statement was before, at, or after arrest, and whether the accused was cautioned or not (*R. v. Gibney*, (1822) Jebb, C.C. 15; *R. v. Lavin*, (1843) Ir. Cr. R. 813; *R. v. Martin*, (1841) Arm. Mac. and Og. 197; *R. v. Long*, (1833) 6 C. and P. 179). If the statement be made *after caution*, in reply to questions put by a police officer, the evidence has been held to be admissible, both after arrest (*R. v. Best*, 1909 1 K.B. 692, and, *a fortiori*, before arrest (*R. v. Brackenbury*, (1893) 17 Cox 628).<sup>2</sup> In *R. v. Johnston*, (1864)

<sup>1</sup> This case and a similar decision in *R. v. Gillis*, (1866) 11 Cox 69, rest upon the principle that "the prisoner made the deposition under the expectation that he would be relieved from penal consequences of his guilt by being accepted as an approver" (11 Cox, at p. 71).

<sup>2</sup> *R. v. Gavin*, (1885) 15 Cox 656, is overruled by *R. v. Brackenbury*, *supra*. In the circuit case of *R. v. Devine*, (1904) 38 I.L.T.R. 227, Palles, C.B., refused to admit such a statement, on the ground that it was not affirmatively proved to have been voluntary, and remarked that the English cases afford very little help, the relative positions of an Irish constable and English constable being different. As to what amounts to being in custody, see *R. v. Booth*, (1910) 74 J.P. 475.

15 I.C.L.R. 60, statements made by the accused, *without caution*, to a police constable in answer to questions put by him were held admissible, the case being apparently discussed, by the majority of the judges at all events, on the basis that the prisoner was not under arrest at the time (see judgment of Hayes, J., at p. 86; see also *R. v. Dougal*, (1903) 67 J.P. 325, *R. v. Kershaw*, (1902) 18 T.L.R. 357). In *R. v. Hested*, (1899) 19 Cox 16, Hawkins, J., refused to admit evidence of statements made by an accused person in prison, without caution, in answer to questions put by a police officer; but this point cannot be said to be settled.<sup>1</sup>

A confession, admission, or statement, although extra-judicial, if made by a person charged with a crime, is sufficient without independent proof of the commission of the crime to sustain a conviction (*R. (Reddy) v. Sullivan*, (1887) 16 Cox 347, 20 L.R.I. 550; *R. v. Unkles*, (1873) I.R. 8 C.L. 50). In cases of murder or manslaughter, a confession should not be acted upon without evidence of the *corpus delicti* by proof of the act done, or of the body being found dead, and found dead under circumstances which raise a presumption that the deceased came by his death by unlawful means (*R. (Reddy) v. Sullivan*, 20 L.R.I., at p. 570; *R. v. Kersey*, (1908) 21 Cox 690).

By the Petty Sessions Act, 1851, s. 14, when the examination of the witnesses for the prosecution shall have been completed, the justices shall read, or cause to be read, to the accused person the several depositions, and then take down in writing the statement of such person (having first cautioned him that he is not obliged to say anything unless he desires to do so, but that whatever he does say will be taken down in writing, and may be given in evidence against him on his trial); and whatever statement the said person shall then make in answer to the charge, shall, when taken down in writing, be read over to him and signed by the justice, and shall be forwarded with the depositions, and may be given in evidence without any further proof. If the caution be not given, the statement cannot be used against the prisoner (see *R. v. Sansome*, (1850) 3 C. & K. 332). These provisions apply only to the formal statement which may be made by the accused after the depositions are complete, and do not prevent any statement made by him before the depositions are completed being given in parol evidence against him (Taylor, 10th ed., p. 630, *R. v. Stripp*, (1850) Dears, 648).

But statements made in answer to questions put by the justices, without caution, are not admissible (*R. v. Pettit*, (1850) 4 Cox 164; *R. v. Berriman*, (1854) 6 Cox 388).

<sup>1</sup> In *R. v. Male*, (1893) 17 Cox 689, Cave, J., thus stated the duties of police officers on the point:—"It is quite right for a police constable or any other police officer when he takes a person into custody to charge him and let him know what it is he is taken up for; but the prisoner should be previously cautioned, because the very fact of charging induces a prisoner to make a statement, and he should have been informed that such statement may be used against him. The law does not allow the judge or a jury to put questions in open court to prisoners, and it would be monstrous if the law permitted a police officer to go, without anyone being present to see how the matter was conducted, and put a prisoner through an examination, and then produce the effects of the examination against him. Under these circumstances, a policeman should keep his mouth shut and his ears open. He is not bound to stop a prisoner in making a statement; his duty is to listen and report, but it is quite another thing that he should put questions to prisoners. A policeman is not to discourage a statement, and certainly not to encourage one. It is no business of a policeman to put questions which may lead a prisoner to give answers on the spur of the moment, thinking perhaps he may get out of a difficulty by telling lies."

Evidence of  
opinion.

What a witness thinks is, generally speaking, not evidence. But opinions by expert or scientific witnesses are admissible, and when the belief of the witness is a relevant fact (e.g., the belief of the prosecutor, on a charge of obtaining money by false pretences) evidence of the witness's state of mind can be given. Evidence of character which may be given on behalf of a prisoner is also an exception.

Opinions are receivable in the evidence of experts, also in the case of non-experts, to prove (1) age (*R. v. Cow*, (1898) 1 Q.B. 179); (2) meaning of a threatening letter, *semble* also of a libel (*R. v. Hendy*, (1850) 4 Cox. 243; 3) handwriting; (4) identity of things or persons (Taylor, 10th ed., p. 1021).

Leading  
questions.

In the examination by a party of his own witnesses, called the direct examination, or examination in chief, what are called "leading questions" are not usually allowed. A "leading question" is one which suggests to the witness the answer desired, or which, embodying a material fact, admits of a conclusive answer by a simple negative or affirmative (Taylor, 10th ed. p. 1011). But in matters that are really not in controversy, it is usual and proper for the advocate to lead the witness, as otherwise much time would be wasted, and sometimes, moreover, the nature of the subject-matter may require that a question be put in a more or less leading form.

Refreshing  
memory by  
memoranda

A witness may be allowed to refresh his memory by reference to an entry or record made either (1) by the witness himself, or (2) by some other person, and read or examined by the witness and found by him to be correct, while the facts are fresh in his memory. While it is not essential that the memorandum or entry should be made or examined at the time of the transaction, it must have been either made or examined by the witness at a time when the facts were fresh in his recollection. The document will not be allowed to be used if it is made merely for the purpose of the case. The document does not itself become evidence, the only purpose for which its use is allowable being to enable the witness to refresh his memory.

Documentary  
evidence.  
*General  
principle.*

On the principle that the best evidence is required to prove any document, the original must be produced,<sup>1</sup> unless it has been lost or destroyed, or unless it is in the possession or power of the opposite party, who withholds it at the trial, and a written notice to produce the original has been duly served. After proof of the loss, &c., secondary evidence of its contents may be given.<sup>2</sup> A witness may be subpoenaed to produce documents (Petty Sessions Act, 1851, s. 13), and a witness who is subpoenaed merely to produce documents need not be sworn (*Perry v. Gibson*, (1834) 1. A. & E. 48). A magistrate, sitting in petty sessions, or in Dublin, in one of the Dublin metropolitan police courts, has jurisdiction under section 7 of the Bankers' Books Evidence Act, 1879, in a criminal proceeding, to make an order for the prosecutor to inspect and take copies of entries in the books of a bank at which the defendant keeps an account (*R. v. Kinghorn*, (1908) 2 K.B. 949).

*Evidence Act*,  
1845.

By the Evidence Act, 1845, 8 & 9 Vict. c. 113, s. 3, a copy purporting to be printed by the King's printers is sufficient

<sup>1</sup> This statement is subject to certain statutory exceptions, e.g. bankers' books.

<sup>2</sup> It should, however, be noted that if a stranger to the proceedings has been subpoenaed to produce a document in his possession; and does not do so, this does not let in secondary evidence of the document; the remedy is to adjourn and commit the witness.



evidence of local, private, and personal Acts of Parliament. By the same statute, where any certificate, official or public document or documents, or proceeding of any corporation or joint stock or other company, or any certified copy of any document, bye-law, entry in any register or other book, or of any other proceeding, shall be admissible, they shall be admitted, if they purport to be sealed or impressed with a stamp, or sealed and signed, or signed alone as required, or impressed with a stamp and signed, as directed by the statute, without proof of the seal or stamp or signature, as the case may be, or of the official character of the person appearing to have signed the same. *Evidence Act, 1845.*

By the Evidence Act, 1851, 14 & 15 Vict. c. 99, s. 14, whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no statute exists which renders its contents provable by means of a copy, any copy thereof or extract therefrom is admissible in evidence, provided it be proved to be an examined copy or extract, or provided it purport to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted; every such officer must furnish such certified copy or extract to any person applying at a reasonable time for the same, upon payment of a reasonable sum for the same, not exceeding fourpence per folio of ninety words.<sup>1</sup> *Evidence Act, 1851.*

By the Documentary Evidence Act, 1868, 31 & 32 Vict. c. 37, *prima facie* evidence of any proclamation, order, or regulation of the Sovereign, the Privy Council, the Commissioners of the Treasury, the Admiralty, Secretaries of State, Board of Trade, Poor Law Board, may be given by (1) a copy of the Gazette, or (2) a government printer's copy, or (3) in the case of a proclamation, order, or regulation of the Sovereign or Privy Council, by a certified copy certified by the clerk to the Privy Council, or by one of the Lords of the Privy Council, or (4) in the case of a proclamation, order, or regulation of the other departments named, a copy certified by the officials mentioned in the Schedule to the Act (s. 2). No proof is required of the handwriting or official position of the person giving the certificate (*ib.*). Gazette includes Dublin Gazette (s. 5). *Documentary Evidence Act, 1868.*

By the Documentary Evidence Act, 1882, 45 & 46 Vict. c. 9, the Act of 1868 is applied to proclamations, orders, or regulations of the Lord Lieutenant, acting either alone or with the advice of the Privy Council in Ireland; and it is enacted that the term "Privy Council" shall include the Privy Council in Ireland, or any committee thereof, and that the term "government printer" shall include any government printer in Ireland and any printer printing in Ireland under the authority of the government stationery office (s. 4). *Documentary Evidence Act, 1882.*

The Act of 1868 is extended to regulations, &c., of the Postmaster-General or any secretary or assistant secretary of the post office, and to Treasury warrants under the Post Office Acts by 8 Ed. 7, c. 48, s. 36, and, as amended by the Act of 1882, to orders, licences, certificates, and other instruments of the Department of Agriculture in Ireland by section 22 of the Agricultural and Technical Instruction (Ireland) Act, 1899, 62 & 63 Vict. c. 50, s. 21. The Act has been applied to rules, orders, or regulations of the English Local Govern- *Further extension of Act of 1868.*

<sup>1</sup> Public documents have been defined as the "acts of public functionaries in the executive, legislative, and judicial departments of government" (1 Greenl. Ev., s. 470; for examples see Phipson, 4th ed., p. 309, *et seq.*). The original of a public document needs no proof.

Documentary  
evidence.

ment Board by section 5 of the Local Government Board Act, 1871 (34 & 35 Vict., c. 70), but has not been extended to the Irish Local Government Board.

*Proof of  
private, or  
local and  
personal acts.*

Every Act passed since 1851 is to be deemed a public Act and judicially noticed without any proof, unless the contrary is expressly provided (Evidence Act, 1845, s. 3). Local and personal, or private, Acts passed before 1851, and containing no clause declaring them to be public, can be proved by production of a copy purporting to be a King's printer's copy (*ib.*, s. 7; Documentary Evidence Act, 1882, s. 2).

*Orders &c., of  
Local Govern-  
ment Board.*

The Local Government Board for Ireland has an official seal (Local Government Board (Ir.) Act, 1872, 35 & 36 Vict. c. 69, s. 4). Any act to be done or instrument to be executed by or on behalf of the Local Government Board may be done or executed in the name of that board by the president, or by the under-secretary to the Lord Lieutenant, or by the vice-president, or by any person appointed by the president or vice-president to act on behalf of the vice-president. A rule, order, or regulation made by the Local Government Board shall be valid if it is made under the seal of the board, and signed by any of the above-mentioned persons.

Every document purporting to be a rule, order, or regulation of the Local Government Board, and to be sealed and signed by the president or the under-secretary to the Lord Lieutenant, or by the vice-president or by any person appointed by the president or vice-president to act on behalf of the vice-president, shall be received in evidence and be deemed to be a rule, order, or regulation duly made by the Board, unless the contrary is shown (Local Government (Ireland) Act, 1898, 61 & 62 Vict. c. 37, s. 102). This section, however, only applies to the original document. There is no Irish section enacting that orders, &c., of the Local Government Board may be evidenced by a printer's copy; and therefore such orders, &c., must be proved either by (1) production of the original, (2) a certified copy under the Evidence Act, 1851,<sup>1</sup> or (3) the Gazette under the Public Health Act, 1878 (see next paragraph).

Under the Public Health (Ireland) Act, 1878, 41 & 42 Vict. c. 52, s. 265, the production of the Dublin Gazette containing the publication of any order of the Local Government Board shall be conclusive evidence of the making of the order, and all such facts and circumstances as were or shall be necessary to authorize the making of such order.<sup>2</sup>

*Bye-laws,  
generally.*

The statute conferring the power to make bye-laws usually directs the method of proof of (1) the making and (2) the publication; and compliance, therefore, with the particular statute is sufficient. Where a statute enacts that a written copy of the bye-law, if authenticated by the corporate seal of the body making the same, shall be *prima facie* evidence of the due making and existence of the bye law, such copy is evidence, not merely that the bye-law has been duly made, but also that all conditions precedent to its becoming a valid operative bye-law, such as the fixing of a copy of the bye-law for forty days on the town hall before it can come into force, have been complied with (*Robinson v. Gregory*, (1905) 1 K.B. 534).

<sup>1</sup> Apparently an order of the Local Government Board would be a "public document"; see p. 277 n.

<sup>2</sup> *Quære* application of this section to orders other than those under Public Health Acts. At any rate, the section will only apply where the orders, &c., are published in the Gazette.

The due making of the bye-laws of a railway company may be proved by an examined or certified copy under the hand of the secretary of the company in whose custody they are, and the due publication by proof that copies were affixed at the station or place where the offence was committed (*Motteram v. Eastern Counties Ry. Co.*, (1859) 29 L.J.M.C. 57).<sup>1</sup>

Documentary evidence.  
*Bye-laws of railway company.*

Proof of publication of the order of confirmation in a local newspaper is the proper evidence of the making, existence, and confirmation of bye-laws under the Towns Improvement Act, 1854, 17 & 18 Vict. c. 103, s. 57.

*Bye-laws under Towns Improvement Act.*

The Public Health (Ir.) Act, 1878, 41 & 42 Vict. c. 52, s. 223, provides that a copy of any bye-laws made under the Act by a sanitary authority, signed and certified by the clerk of such authority to be a true copy, and to have been duly confirmed, shall be evidence, until the contrary is proved, in all legal proceedings of the due making, confirmation, and existence of such bye-laws without further or other proof.

*Bye-laws under Public Health Acts.*

A county council have the same power of making bye-laws in relation to their county, or to any specified part or parts thereof, as the council of a borough have of making bye-laws in relation to their borough under sections 125-127 of the Municipal Corporations (Ir.) Act, 1840, 3 & 4 Vict. c. 108; and section 224 of the Public Health (Ir.) Act, 1878, shall apply to such bye-laws (Local Government (Ir.) Act, 1898, s. 16). Neither sections 125-127, nor any other sections of the Municipal Corporations (Ir.) Act, 1840, make any provision for the proof of bye-laws. Section 224 of the Public Health (Ir.) Act, 1878, is as follows:—"Bye-laws made by the council of any borough under the provisions of s. 125 of 3 & 4 Vict. c. 108, for the prevention and suppression of certain nuisances, shall not be required to be sent to the Lord Lieutenant, nor shall they be subject to the disallowance in that section mentioned; but all the provisions of this Act relating to bye-laws shall apply to the bye-laws so made, as if they were made under this Act." The effect of the above sections is that county councils have power to make two classes of bye-laws, that is to say, bye-laws for the good rule and government of the county, and bye-laws for the prevention and suppression of certain nuisances. Now, it will be noted that section 224 of the Public Health Act, 1878, only relates to bye-laws for the prevention and suppression of certain nuisances, and that, therefore, the application by it of "all the provisions of this Act," including section 223 of the Public Health (Ir.) Act, 1878, only extends to bye-laws as to nuisances. Consequently, while bye-laws as to nuisances may be evidenced as prescribed by s. 223 of the Public Health Act, 1878 (see *supra*), it would seem that, for the purpose of proving other bye-laws, the production of the original bye-law with the seal of the county council is requisite (see *Timothy v. Fenn*, (1910) 74 J. P. 123).

*Bye-laws of county council.*

Amongst statutes containing special provision for proof of bye-laws, regulations, orders, and entries are:—Fertilizers Act, 1906, 6 Edw. 7, c. 27, s. 3 (5), as to analyst's certificate, s. 8; Companies

*Miscellaneous statutory provisions as to bye-laws, &c.*

<sup>1</sup> As to bye-laws made between 9th November, 1846, and 10th November, 1851, a further proof seems to be requisite, namely, that a certified copy was sent to the Commissioners of Railways or Board of Trade, and that the bye-law has not been disallowed (Taylor, 10th ed., p. 1190).



Documentary  
evidence.

Consolidation Act, 1908, 8 Edw. 7, c. 69, s. 243 (6), (7); Newspaper Libel and Registration Act, 1881, 44 & 45 Vict. c. 60, s. 15; The Evidence Act, 1845, 8 & 9 Vict. c. 113, s. 1; Law of Evidence Amendment Act, 1851, 14 & 15 Vict. c. 99, ss. 9, 10, as to public documents: Bankers' Books Evidence Acts, 42 & 43 Vict. c. 11, 45 & 46 Vict. c. 72, s. 11, 56 & 57 Vict. c. 69, s. 6; Land Law (Ireland) Act, 1881, 44 & 45 Vict. c. 49, ss. 42, 48 (3); Registration of Births and Deaths (Ir.) Act, 1863, 26 & 27 Vict. c. 11, s. 5; Assurance Companies Act, 1909, 9 Ed. 7, c. 49, s. 21; Children Act, 1908, 8 Ed. 7, c. 67, s. 124, as to entries in wages books; Diseases of Animals Act, 1894, 57 & 58 Vict. c. 57, s. 37, as to orders and regulations of local authority.

Regulations  
under Medical  
Acts.

Regulations under the Medical Acts cannot be proved by printed copies (*R. v. Haddock*, (1902) 2 N.I.J.R. 257); but printed copies of the register of pharmaceutical chemists, purporting to be printed and published in accordance with section 27 of the Pharmacy (Ireland) Act, 1875, 38 & 39 Vict. c. 57, are admissible without being certified by the registrar or countersigned by the president or members of the Pharmaceutical Society (*Barrett v. Henry*, (1904) 2 I.R. 693, 5 N.I.J.R. 8).

Proof of  
population.

A certificate purporting to be signed by the Registrar-General of Births, Deaths, and Marriages, is evidence of the population of any county, borough, town, district, or other area to which it refers (Census (Ir.) Act, 1910, 10 Ed. 7, & 1 Geo. 5, c. 8).

Newspapers  
evidence  
against pro-  
prietors and  
others.

A return under section 9 of the Newspaper Libel and Registration Act, 1881, 44 & 45 Vict. c. 60, is evidence of proprietorship, on the principle of the presumed continuance of a state of facts once proved (*R. (Jennings) v. Lynham*, 1902) 2 N.I.J.R. 292). The production of a copy of a newspaper purchased from a firm of news-agents, described in an advertisement in the paper as wholesale agents, and who were proved to have been supplied with the newspapers in pursuance of a wholesale order, and which advertisement stated that the paper had agents for sale throughout Ireland, is sufficient evidence of circulation to prove that incitement to conspiracy contained in the newspaper reached persons intended to be incited (*R. (Lanktree) v. McCarthy*, (1903) 2 I.R. 146).

In a prosecution against a newspaper proprietor for having unlawfully published a notice of the proceedings of an illegal association, with a view to promoting the objects of the association, passages in the defendant's newspaper were held to be evidence of the meeting of the association (*R. (Reddy) v. Sullivan*, (1887) 20 L.R.I. 550).

On a charge of using premises for betting purposes, a newspaper found therein is evidence of a public announcement that a certain race mentioned in the newspaper is to be run and that certain horses are to take part in; it and no evidence that the race was run is necessary (*Bannon v. Breen*, 17th November, 1910, K.B.D., Ireland, unreported<sup>1</sup>).

Certificates,  
&c., made  
evidence.

In *R. v. Smith*, (1896) 1 Q.B. 596, at p. 603, Hawkins, J., referring to an analyst's certificate under the Food and Drugs Acts, pointed out that it was the analyst's duty merely to analyze and report the result of the analysis, that the analyst had no right to report extraneous facts unconnected with the analysis, and that a certificate

<sup>1</sup> At time of going to press, but see INDEX OF CASES.

containing such extraneous facts would be inadmissible *as evidence of such facts*. And so, although, under the Diseases of Animals Act, 1894, 57 & 58 Vict. c. 57, s. 267, a certificate of the veterinary inspector under the Act, that an animal is or was affected with a disease specified in the certificate, is conclusive evidence of the matter certified (see *Leonard v. Richards*, (1891) 25 I.L.T.R. 58); it is clear that a statement in such certificate of, for instance, words spoken by the defendant at the time of the examination would not be evidence of such words, or of the ownership of the animal.

Secondary evidence of a document which has been destroyed is admissible (*Oakey v. Stretton*, (1884) 48 J.P. 709). *Documentary evidence.*  
*Secondary evidence of documents.*

Where a document is in the possession of the accused, the rule that notice to produce should be served before secondary evidence of the contents is admissible applies to criminal as well as to civil cases (Taylor, 10th ed., p. 338), but this does not apply where, as in the case of a charge of larceny of a bill, or other written instrument, the defendant must know that he will be charged with possession (*ib.* p. 317).<sup>1</sup>

On a prosecution against the driver of a motor car for exceeding the speed limit, it is not necessary to give the defendant notice to produce his licence in order to let in evidence as to its contents by the police constable who stopped the car, and to whom the licence was produced by the driver at the time (*Marshall v. Ford*, (1908, 90 L.T. 796; *Martin v. White*, (1910) 1 K.B. 665); the reason being that the evidence is not tendered as evidence of the contents of the document, but as evidence of identity, based upon what took place between the prosecutor and the defendant at the time of the commission of the offence, the production of the licence being tantamount to a statement by the driver of his name, as if he showed the constable his visiting card.

Where an order by the Lord Lieutenant in Council is, under the statute, "to be published in the prescribed manner," publication is a condition precedent to its coming into force, and proof of such publication must be given (*Walsh v. Somerville*, (1888) 22 L.R.I. 314); but where a statute directs that a regulation shall be laid before Parliament, but does not import that the presentation to Parliament shall be a condition precedent to its operation, no proof of such presentation is necessary (*Hepburn v. Wilson*, (1902, 4 F. (Just. Cas. 18), Sess. Cas.). *Publication of orders a condition precedent.*

In all cases of summary jurisdiction a certificate of any order signed by the justice who shall have made the same, or by any other justice of the same petty sessions, shall on proof of the signature of the justice to the same be received as good evidence of the conviction or order in all courts of justice (Petty Sessions Act, 1851, s. 21). "A previous conviction may be proved in any legal proceeding whatever against any person by producing a record or extract of such conviction, and by giving proof of the identity of the person against whom the conviction is sought to be proved with the person appearing in the record or extract of conviction to have been convicted. A record or extract of a conviction shall in the case of an indictable *Proof of previous conviction, &c.*

<sup>1</sup> In forgery, however, the notice to produce must be served (Taylor 10th ed., p. 317 (n), where suggested explanations for the rule are given). For other cases where notice to produce is not required, see Taylor, 10th ed., p. 345.

Documentary evidence.

*Proof of previous conviction, &c.*

offence consist of a certificate containing the substance and effect only (omitting the formal part of the indictment and conviction), and purporting to be signed by the clerk of the court, or other officer having the custody of the records of the court by which such conviction was made, or purporting to be signed by the deputy of such clerk or officer; and in the case of a summary conviction shall consist of a copy of such conviction purporting to be signed by any justice of the peace having jurisdiction over the offence in respect of which such conviction was made, or to be signed by the proper officer of the court by which such conviction was made, or by the clerk or other officer of any court to which such conviction has been returned. A record or extract of any conviction made in pursuance of this section shall be admissible in evidence without proof of the signature or official character of the person appearing to have signed the same. A previous conviction in any one part of the United Kingdom may be proved against a prisoner in any other part of the United Kingdom; and a conviction before the passing of this Act shall be admissible in the same manner as if it had taken place after the passing thereof. A fee not exceeding five shillings may be charged for a record of a conviction given in pursuance of this section. The mode of proving a previous conviction authorized by this section shall be in addition to, and not in exclusion of, any other authorized mode of proving such conviction" (Prevention of Crime Act, 1871, 34 & 35 Vict. c. 112, s. 18). See also p. 290, *post*.

*Unstamped documents.*

It is probable that in a court like the Dublin metropolitan police court, in which minutes are kept, from which a formal order is subsequently drawn up, such minutes are evidence *in the same court* on the hearing of a subsequent charge (see *Commissioners of Police v. Donovan*, (1903) 1 K.B. 895).

In criminal proceedings<sup>1</sup> an unstamped document is admissible (Stamp Act, 1891, 54 & 55 Vict. c. 39, s. 14 (4)); but in civil cases an unstamped document shall not be admitted, unless on payment to the officer of the court of the stamp duty, the penalty, and £1 (*ib.*, s. 14 (1)). See also Public Officers' Fees Act, 1879, 42 & 43 Vict. c. 58, s. 3.

*Dublin Gazette.*

The Criminal Law and Procedure (Ir.) Act, 1887, 50 & 51 Vict. c. 20, s. 12 (3), provides that a printed copy of the Gazette purporting to be printed and published by the Queen's authority, and containing the publication of any proclamation, &c., shall be conclusive evidence of the contents of such proclamation, &c. The Dublin Gazette purporting to contain a copy of a proclamation under the Act was headed "Printed by authority," and at foot were the words: "Printed under the authority of His Majesty's Stationery Office, by Alexander Thom & Company, Limited, of Nos. 87, 88, and 89, Middle Abbey Street, in the Parish of St. Thomas, in the City of Dublin." *Held*, that the Gazette sufficiently purported to be printed and published by the Queen's authority, and was therefore admissible for the purpose of proving a proclamation under the Act (*R. (Lanktree) v. McCarthy*, (1903) 2 I.R. 146).

*Seizure of documents.*

In case of a lawful arrest, whether for treason, felony, or misdemeanour, a constable may take and detain property, including documents, found in the possession of the accused, which will form

<sup>1</sup> As to what are criminal proceedings, see p. 65.



material evidence in the prosecution (*Dillon v. O'Brien*, (1887) 20 L.R.I. 300, 316).

Cross-examination differs from direct examination in that *a*, leading questions are allowable, and *(b)* questions may be put to the witness to impeach his credibility, so that a witness can be questioned as to his motives, character, previous inconsistent statements, and the like. Cross-examination.  
Generally.

Any witness who is sworn, though he is not examined in chief, is liable to be cross-examined by the opposite party, unless his being sworn was the result of a mistake (Taylor, 10th ed., p. 1034). There is no right to cross-examine a witness who has been called under a subpoena *duces tecum*, merely for the purpose of producing a document (*ib.*). The witness for a plaintiff may afterwards be called as a witness for the defendant, and in that event may be cross-examined by the plaintiff (*Malone v. Spellessy*, (1842) I.C.R. 504; *Lord v. Colvin*, (1855) 24 L.J.Ch. 517).

Cross-examination is not limited to the matters to which the direct examination has been pointed, and it sometimes happens that a witness who has given evidence favourable to the party who has called him on one part of the case, may in cross-examination give evidence equally favourable to the other party on a branch of the case on which he has not been examined in chief.

The law is unsettled upon the question whether, and in what circumstances, if the cross-examination is directed to show bias on the part of the witness, his answers negating bias may be contradicted (Taylor, 10th ed., pp. 1043 *et seq.*). Stephen, J., however, expresses the view that if a witness is asked any question tending to show that he is not impartial, and answers it by denying the facts suggested, he may be contradicted (Stephen, Evidence, 5th ed., p. 148, citing *A.-G. v. Hitchcock*, (1847) 1 Ex. 91, pp. 99, 105). As to bias.

The witness may be cross-examined as to his character. But it is doubtful as to whether a witness is bound to answer any question the direct and immediate effect of answering which might be to degrade his character (Taylor, 10th ed., p. 1060). How far cross-examination should be allowed as to character, when not directly relevant, lies in the discretion of the judge; and questions respecting alleged improprieties of conduct, which furnish no real ground for assuming that a witness who could be guilty of them would not be a person of veracity, might very fairly be checked (*ib.*, p. 1061). As a general rule, the witness's answer to a question put merely to his credit is conclusive; but an exception is provided in case the question is one dealing with an alleged previous conviction. As to credit.

A witness may be questioned as to whether he has been convicted of any felony or misdemeanour, and upon being so questioned, if he either denies or does not admit the fact, or refuses to answer, it shall be lawful for the cross-examining party to prove such conviction; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for such offence purporting to be signed by the clerk of the court, or other officer having the custody of the records of the court where the offender was convicted, or by the deputy of such clerk or officer (for which certificate a fee of five shillings and no more shall be demanded or taken) shall, upon proof of the identity of the person, be sufficient evidence of the said conviction, without proof of the signature or Proof of previous conviction of witness.

Cross-examined.

official character of the person appearing to have signed the same (Criminal Procedure Act, 1865, 28 & 29 Vict. c. 18, s. 6).<sup>1</sup>

Proof of previous inconsistent statement.

If a witness, upon cross-examination as to a former statement made by him relative to the subject-matter of the indictment or proceeding, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement (Criminal Procedure Act, 1865, 28 & 29 Vict. c. 18, s. 4).<sup>2</sup>

A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject-matter of the indictment or proceeding, without such writing being shown to him; but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him: provided always, that it shall be competent for the judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he may think fit (*ib.*, s. 5).<sup>2</sup>

For an instance of the admission of evidence of previous inconsistent statements, and of further evidence to rebut the allegation of previous inconsistent statements, see *R. v. Whelan*, (1881) 8 L.R.I. 314.

Discrediting one's own witness.

A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall, in the opinion of the judge, prove adverse, contradict him by other evidence, or, by leave of the judge, prove that he has made at other times a statement inconsistent with his present testimony: but before such last-mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement (Criminal Procedure Act, 1865, 28 & 29 Vict. c. 18, s. 3).<sup>2</sup>

Cross-examination of one's own witness.

Irrespective of the above provision, the cross-examination of a party's own witness may be allowed by the judge, if the witness appears hostile (see Taylor, 10th ed., p. 1011). The mere fact that the witness is the opposite party, or has adverse interest to the party calling him, does not entitle the party calling him to cross-examine (*Price v. Manning*, (1889) 42 C.D. 372).

In a case where a defendant is examined in pursuance of the statute in that behalf (see p. 260, *ante*), he may be cross-examined as to his character or previous convictions, though this cannot be done in England, having regard to the Criminal Evidence Act, 1908<sup>3</sup> (see *Charnock v. Marchant*, (1900) 1 K.B. 474).

Witness not bound to incriminate himself.

A witness is not compellable to answer any question where the answer would have a tendency to expose the witness or, apparently,

<sup>1</sup> This section also applies to civil matters (see s. 1). See also, as to manner of proof of previous conviction, Prevention of Crime Act, 1871, 34 & 35 Vict. c. 112, s. 18, noted p. 281, *ante*.

<sup>2</sup> This section also applies to civil cases (see s. 1).

<sup>3</sup> The only application of this Act to Ireland is in cases under the Motor Car Act, 1903.

the wife or husband of a witness, to any kind of criminal charge, or to a penalty or forfeiture of any nature whatsoever (Taylor, 10th ed., p. 1052). The objection to answer must be made by the witness himself, who must pledge his oath to a belief that to answer will tend to expose him to a criminal charge; but if there appears to the court that it is clear that there is no danger to the witness, or that his objection is not made *bona fide*, the witness may be compelled to answer (*R. v. Boyes*, (1861) 1 B. & S. 314; *Ex parte Reynolds*, (1882) 20 C.D. 298; *R. (Atkinson) v. Armagh JJ.*, (1883) 18 I.L.T.R. 2). A witness cannot be compelled to produce any document, the production of which may tend to incriminate him (Taylor, 10th ed., p. 1058; *Whitaker v. Lord*, (1809) 2 Taunt 115; *Spokes v. Grosvenor Hotel Co.*, (1897) 2 Q.B. 124). But a witness cannot refuse to answer a question relevant to the matter in issue (the answering of which has no tendency to accuse himself or to expose him to penalty or forfeiture of any nature whatsoever) by reason only or on the sole ground that the answering of such question may establish or tend to establish that he owes a debt or is otherwise subject to a civil suit either at the instance of His Majesty or of any other person or persons (Witness Act, 1806, 46 Geo. 3, c. 37).

Witness not bound to incriminate himself.

There are several statutory enactments to compel a witness to answer questions which may have the effect of showing his complicity in the charge, and providing an indemnity, e.g., Gaming Houses Act, 1845, 8 & 9 Vict. c. 109, s. 9; Gaming Houses Act, 1854, 17 & 18 Vict. c. 38, ss. 5, 6; Merchandise Marks Act, 1887, 50 & 51 Vict. c. 28, s. 19; Criminal Law and Procedure (Ireland) Act, 1887, 50 & 51 Vict. c. 20, s. 1 (5); Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 Vict. c. 51, s. 59; Explosive Substances Act, 1883, 46 Vict. c. 3, s. 6. As to punishment of witness refusing to answer, see p. 54, and 14 & 15 Vict. c. 93, s. 13 (5).

A witness is entitled to claim privilege for what passed between him and his legal advisers; but this rule does not extend to any such communication made in furtherance of any criminal or illegal purpose (*Follet v. Jeffereys*, (1850) 1 Sim. N.S. 17; *Charlton v. Combes*, (1863) 32 L.J.Ch. 284; *Bullivant v. A.-G. for Victoria*, (1901) A.C. 196), or which shows that since the commencement of the employment of such legal adviser any crime has been committed (*Brown v. Foster*, (1857) 1 H. & N. 736). No presumption of fact ought to be made against a party enforcing the rule against the disclosure by his solicitor of knowledge professionally acquired (*Wentworth v. Lloyd*, (1864) 10 H.L. Cas. 589).

Claim of privilege.

The re-examination must be confined to an explanation of the matters that have been referred to in the cross-examination, and must not introduce new matters. If a witness admit, or it be proved, that he formerly made statements inconsistent with his present testimony, the re-examiner may ask the circumstances or the motives of such prior statements. But if a witness has been cross-examined as to a conversation with the prisoner on a particular occasion, the re-examination cannot be directed to other conversations at other times, or even to letting in the entire of the conversation not bearing on the assertions brought out in cross-examination (Taylor, 10th ed., p. 1069; *Prince v. Samo*, (1838) 7 A. & E. 627). If in cross-examination an adverse witness obtrudes irrelevant matter in no way relating to the question, the cross-examining counsel should apply to have the

Re-examination.



evidence rejected, and thereupon no right of re-examination upon it will arise (Taylor, 10th ed., p. 1070).

Witness not  
subpœnaed

In a criminal case a person who is present in court, when called as a witness by either party, is bound to be sworn and to give his evidence, although he has not been subpœnaed (*R. v. Sadler*, (1830) 4 C. & P. 218). In a civil case the general rule is that a person can always refuse to be examined, unless he has been properly served with a subpœna accompanied by the payment of proper conduct money; but the objection must be made before the witness is sworn (Taylor, 10th ed., p. 891). The Petty Sessions Act, 1851, s. 13 (5), provides that in civil as well as criminal cases the justices may require any person present to be sworn and to give evidence.<sup>1</sup> With regard to witnesses called by the justices, it seems to be in the discretion of the court whether or not cross-examination of the witness shall be allowed; but the general rule is that when material evidence is given by such a witness, the party adversely affected will be allowed to cross-examine, but only as to such of the answers as are material (*Coulson v. Desborough*, (1894) 2 Q.B. 316; *R. v. Cliburn*, (1898) 62 J.P. 232).

Accomplices.

There is no positive rule of law that the uncorroborated testimony of an accomplice is not sufficient; but it is the duty of a judge to advise a jury not to convict a prisoner upon the testimony of an accomplice alone (*R. v. Tate*, (1908) 2 K.B. 680; see also *R. v. Beauchamp*, (1909) 25 T.L.R. 330; *R. v. Everest*, (1909) 73 J.P. 269; *R. v. Mason*, (1909) 73 J.P. 250). But, on such caution being given, the jury may act on the sole testimony of the accomplice, and their verdict in that case cannot be disturbed (*In re Meunier*, (1894) 2 K.B. 418). An informer or police spy who has been concerned for the purpose of obtaining evidence is not an accomplice within the rule (*R. v. Bickley*, (1909) 73 J.P. 239; see also *R. v. Kirkham*, (1909) W.N. 141). A non-denial of the charge upon arrest is not necessarily corroboration (*R. v. Tate*, (1908) 2 K.B. 680, cf. *R. v. Cramp*, (1880) 14 Cox 390).

Public policy.

On the grounds of public policy, witnesses will not as a rule be required to disclose information detrimental to the public service. The rule clearly established and acted on is this, that in a public prosecution a witness cannot be asked such questions as will disclose the informer if he be a third person; and the principle of the rule applies to a case where a witness is asked if he himself is the informer (*per* Pollock, C.B., in *A.-G. v. Briant*, (1846) 15 M. and W. 185). But this rule may be departed from, if upon the trial of a prisoner the judge should be of opinion that the disclosure of the name of the informant is necessary or right in order to show the prisoner's innocence; but, except in that case, this rule of public policy is not a matter of discretion, it is a rule of law, and as such should be applied by the judge at the trial, who should not treat it as a matter of discretion whether he should tell the witness to answer or not (*per* Lord Esher, M.R., in *Marks v. Beyfus*, (1890) 25 Q.B.D. 498; and for an instance where the witness was held bound to answer, see *R. v. Richardson*, (1863) 3 F. & F. 693). The rule also applies in a subsequent civil action between the parties, on the

<sup>1</sup> It may be mentioned that the Court of Appeal in England have laid it down that a judge, in a civil case, ought not to call a witness, except with the consent of all parties (*In re Enoch & Co.*, (1910) 1 K.B. 327).

ground that the criminal prosecution was maliciously instituted or brought about (*Marks v. Beyfus, supra.*) The questions in the cases mentioned were merely to the credit of a witness; and where a relevant fact is in question, a police officer cannot shelter himself behind a plea of public policy. Thus, in *Webb v. Cutchlove*, (1886) 3 T.L.R. 159, on the hearing of a charge against a licensed person for allowing his premises to be the resort of prostitutes, a police constable gave evidence of certain acts relied on which he had seen from a hiding place, but he refused to state where the place was. *Held*, that the question was relevant, and that the officer should have been required to answer.

On grounds of public policy also, a witness cannot be compelled to give information as to official communications between public officers upon public affairs, unless the officer at the head of the department concerned permits him to do so (*Beatson v. Skene*, (1860) 5 H. & N. 838; *Hughes v. Vargas*, (1893) 9 T.L.R. 471).

If any person who has given information on examination upon oath against any person shall before the trial be murdered, or so maimed or forcibly carried away and secreted as not to be able to give evidence on the trial of the person against whom the information or examination was given, such information or examination shall be admitted in all courts of justice in Ireland as evidence on the trial: provided it shall be found on a collateral issue to be tried by the jury that the person so secreted was secreted by the accused, or some person acting for him or in his favour (50 Geo. 3, c. 102, s. 5); and such an information or examination is admissible before the grand jury (56 Geo. 3, c. 87, s. 3).

Where a deposition<sup>1</sup> has been duly taken under the Petty Sessions Act, 1851, it is admissible upon the trial, upon proof that the witness is dead, and that such deposition was taken in the presence or hearing of the accused, and that he or his counsel or attorney had an opportunity of cross-examining the deponent (Petty Sessions Act, 1851, s. 14).

Where, on the trial of any person on indictment for an offence of cruelty, or any of the offences mentioned in the first schedule to the Children Act, 1908,<sup>2</sup> the court is satisfied by the evidence of a duly qualified medical practitioner that the attendance before the court of any child<sup>3</sup> or young person<sup>4</sup> in respect of whom the offence is alleged to have been committed would involve serious danger to the life or health of the child or young person, any deposition of the child or young person taken under the Petty Sessions Act, 1851,<sup>5</sup> or Part I of the Children Act, 1908,<sup>2</sup> shall be admissible in evidence either for or against the accused person without proof thereof, (a) if it purports to be signed by the justice by or before whom it purports to be taken, and (b) if it is proved that reasonable notice of the intention to take the deposition has been served upon the person

Witness's deposition, when evidence at trial.  
*Statutes*  
50 Geo. 3,  
c. 102, s. 5.

*Petty Sessions Act.*

*Children Act*,  
1908.

<sup>1</sup> See p. 24 as to admissibility of evidence produced on behalf of the accused.

<sup>2</sup> See APPENDIX OF STATUTES.

<sup>3</sup> That is under fourteen (s. 131).

<sup>4</sup> That is, of or over the age of fourteen and under the age of sixteen (s. 131).

<sup>5</sup> Section 30 uses the words, "under the Indictable Offences Act, 1848"; but s. 133 (10), applying the statute to Ireland, substitutes therefor the words "under the Petty Sessions Act, 1851."

Witness's deposition, when evidence at trial.

against whom it is proposed to use it as evidence, and that that person or his counsel or solicitor had, or might have had if he had chosen to be present, an opportunity of cross-examining the child or young person making the deposition (Children Act, 1908, s. 29).

Common Law rule.

The common law rule in criminal cases was that the deposition of a witness<sup>1</sup> who (1) had died; or (2) had become afflicted with insanity of a permanent character, or (3) so sick as to be unable to travel, and to afford no reasonable hope that the witness would be able to appear on any future occasion, was admissible as evidence on the trial, the admissibility, however, in the last case being very doubtful (Taylor, 10th ed., pp. 358, *et seq.*). The English statute (Indictable Offences Act, 1848, 11 & 12 Vict. c. 42, s. 17) provides for the admissibility of the deposition where the witness is dead, or so ill as to be unable to travel; but the Petty Sessions (Ireland) Act makes provision for the case of death only. It is said that the statutory provisions do not abrogate the common law rule in the cases to which the statute has no reference, e.g., in England, in the case of insanity (see Taylor, 10th ed., p. 362), or, it would follow, in Ireland in the case of insanity or (*quære*) permanent inability to travel.

Deposition on one charge, trial on another.

A question may arise when the deposition was taken on the hearing of one charge, and the trial is upon another charge. Where the deposition is taken upon one charge, and the trial is upon another charge, the deposition will be admissible if the facts deposed to are common to the two charges. Thus, where the charge at the preliminary hearing was one of attempted murder, and the trial was on a charge of murder (*R. v. Beeston*, (1854) Dears. 405); where the original charge was of robbery with violence, and the trial was for murder caused by the violence charged at the preliminary hearing (*R. v. Lee*, (1864) 4 F. & F. 63); where the original charge was for wounding with intent to murder, and the trial was for murder (*R. v. Edmunds*, (1909) 25 T.L.R. 658), the deposition was held admissible; but where the charge is "substantially different," the admissibility of the deposition is exceedingly doubtful (*per* Jervis, J., in *R. v. Beeston*, *supra*, at p. 413).

In *R. v. Lydane*, (1858) 8 Cox 38, where a man was charged in January, 1856, with rape, and committed for trial, but married the woman before the spring assizes in order to get the prosecution abandoned, and the woman was found murdered in the following August, her deposition on the charge of rape was admitted on the man's trial for murder, but only as evidence of the fact that the woman had charged him with rape.

Statutory provisions must be complied with.

The deposition, however, to be admissible at the trial must be taken in accordance with the statute. The whole of the deposition must be taken in the presence of the accused,<sup>2</sup> so that he may hear, and have an opportunity of cross-examining on all that is sworn against him (Phipson Ev., 4th ed., p. 442). The prisoner having been arrested on a charge of poisoning S. P., a magistrate (the prisoner being kept in custody outside), first took down in writing the deposition of S. P., and then swore him to the truth of it; the prisoner being then brought into the room, the magistrate slowly read over the deposition to S. P., and asked him if it was true, and,

<sup>1</sup> That is, it is submitted, a Crown witness (see p. 24).

<sup>2</sup> An exception is made by the Children Act, 1908, s. 29, noted *supra*.



having been answered in the affirmative, he then reswore S. P. to his deposition in the presence of the prisoner, and read over the information of S. P. to him, and, while he was reading it, the prisoner asked him to stop at some statement contained in it; but he told the prisoner that he had better read it over to the end, and that he would then read the deposition paragraph by paragraph distinctly to him, and that he could then put any question he wished to S. P. upon each paragraph. The magistrate accordingly so read over the deposition to the prisoner, who put several questions to the deponent, which, with the answers of the latter thereto, were at the time reduced to writing and annexed to the deposition. The deponent having died, it was held (*Monahan, C.J., Perrin and Ball, JJ.; Torrens, J., diss.; and Pennefather, B., dub.*), that the deposition should not have been received in evidence, inasmuch as it did not sufficiently appear that the answers to the prisoner's questions had been given by the deceased under the sanction of an oath, and also (by *Monahan, C.J., and Perrin, J.*) because the information was originally taken down without an oath having been previously administered to the informant, and also because the prisoner was not present from the commencement (*R. v. Walsh, (1850) 5 Cox 115*).<sup>1</sup> A police-sergeant took a statement from a dying man, which he subsequently dictated out of a notebook to the clerk of petty sessions, who wrote it down, and then went to the residence of the dying man, and read it out for him, in the presence of the accused, the local magistrate, and the police, when the deceased said, "every word is true." When the charge was read, the accused had an opportunity of cross-examining, and did cross-examine, the witness who signed the document, the entire of which, including the cross-examination, was read over to him again by the clerk of petty sessions. *Held*, that the document was not admissible (*R. v. Healy, (1902) 2 N.I.J.R. 73*). A deposition, though inadmissible as such in consequence of the prisoner not having been present when it was taken or otherwise, will be admissible as a dying declaration, if taken under such circumstances as would render such a declaration admissible (*R. v. Woodcock, (1789) 1 East P.C. 356, R. v. Dingley, (1791) 2 Leach 561, R. v. Callaghan, (1793) M'Nally Ev., 385*).

The deposition will not be admissible unless it is preceded by a statement of the charge to which it has reference (*R. v. Galvin, (1865) 16 I.C.L.R. 452*). But where three depositions were taken, and the first, which was numbered 1, contained a statement of the charge, and the others, numbered 2 and 3, were headed "Caption as in No. 1," *Held*, that, in effect, the caption of No. 1, was incorporated in Nos. 2 and 3, and that, the deponents in Nos. 2 and 3 having died, the depositions were held admissible (*R. v. Scanlan, (1910) 44 I.L.T.R. 228, Boyd, J.*).

As to signature by justice to each deposition, see *R. v. Parker, (1870) L.R. 1 C.C.R. 225*, and *R. v. Richards, (1866) 4 F. & F. 860*, noted p. 22 n, *ante*.

Where a deposition has been regularly taken, it is probable no evidence can be given to show that it is erroneous (*R. v. Weller, (1846)*

Witness's deposition when evidence at trial. Statutory provisions must be complied with.

Can deposition be contradicted?

<sup>1</sup> This case was decided upon s. 17 of the repealed Indictable Offences Act, 1848 (12 & 13 Vict. c. 69), which has been substantially re-enacted by s. 14 (1) of the Petty Sessions Act, 1851.

Witness's  
deposition  
when evidence  
at trial.

Deposition  
before coroner.

2 C. & K. 223; see contra, *R. v. Moore*, (1869, 20 L.T. 987; *R. v. Connors*, (1858) 4 Ir. Jur., N.S., 263; and see also *R. v. Coll*, (1889) 24 L.R.I. 522).

The deposition of a witness before a coroner is admissible, as regards so much of it as is not hearsay or otherwise inadmissible according to the ordinary rules of evidence, on proof of the death of the witness, if taken in the presence of the accused (*R. v. Cowle*, (1907) 71 J.P. 152; *R. v. Black*, (1910) 74 J.P. 71), but if not taken in the presence of the accused, it seems it cannot be admitted (*R. v. Rigg*, (1866) 4 F. & F. 1085; Taylor, 10th ed., p. 372; and Russell, 7th ed., p. 2245).

Merchant  
Shipping Act,  
&c.

As to depositions under the Foreign Jurisdiction Act, 1890, see section 6 of that Act, 53 & 54 Vict. c. 37; and under Merchant Shipping Act, 1894, see section 691 of that Act, 57 & 58 Vict. c. 60.

Admissibility  
of evidence  
given at  
previous trial.

If a witness who has given evidence at a trial dies, or becomes mad, or so ill that he will probably never be able to travel, or is kept out of the way by the adverse party, evidence can be given at a second trial of such witness's testimony; provided that the person against whom the evidence is given had the right and opportunity to cross-examine the witness; that the questions in issue were substantially the same in the first as in the second proceeding, and that the same person is accused on the same facts (Stephen Ev., 5th ed., p. 47; Taylor, 10th ed., pp. 354 *et seq.*).

Evidence of  
identification.

In *R. v. Dickman*, (1910) 26 T.L.R. 640, Lord Alverstone, L.C.J., said that if they (the Court of Criminal Appeal) thought in any case that justice depended on the independent identification of the person charged, and that the identification appeared to have been induced by any suggestion or other means, they should not hesitate to quash any conviction which followed. The police ought not, either directly or indirectly, to do anything which might prevent the identification from being absolutely independent, and they should be most scrupulous in seeing that it was so.

The appellant, Lionel Walker Birch Martin, of Ryder Street Chambers, St. James's Street, London, who held a licence to drive a motor car issued by the London county council, and numbered 5080, was in 1909 convicted by a court of summary jurisdiction of driving a motor car on a public highway at a speed exceeding twenty miles an hour, contrary to s. 9 of the Motor Car Act, 1903. It was then proved that the driver of a motor car, of the name of Lionel Martin, and of the same address as the appellant, had been convicted of a similar offence in 1907; and that a person having the same four names and of the same address as the appellant had held a licence from the London county council from a date before 1907 continuously down to the present time; that the licence was numbered 5080; and that no one having a London address could have that number except the person having these four names and that address. A police constable gave evidence that he stopped the motor car upon the occasion in 1907, and the driver, upon demand, produced to him a licence which was issued by the London county council and numbered 5080. No notice to produce the licence was given. It was next proved by production of a certified copy of the conviction that a person with the same four names, and of the same address as the appellant, was convicted of a similar offence in 1908. The appellant, who was represented by counsel at the hearing, absented himself from the court and was not called as a witness. The justices

found upon the above evidence that the appellant was the person who had been convicted on both the former occasions, and they imposed a fine of £20 and ordered his licence to be endorsed. *Held*, that, with regard to the conviction in 1907, the evidence of the police constable as to the contents of the licence produced to him on the occasion when the offence was committed was admissible as evidence of the identity of the appellant with the person who was then convicted, and that no notice to produce the licence was necessary; that, with regard to the conviction in 1908, the identity of the name and of the address was some evidence of the identity of the appellant with the person who was then convicted; and that the justices were entitled to have regard to the appellant's wilful absence, and conclude that he was the person who was convicted on both those occasions and to order his licence to be endorsed. "Proof of identity" of the person against whom it is sought to prove the conviction with the person named in the record of the conviction, required by s. 18 of the Prevention of Crimes Act, 1871 (*ante*, p. 282), does not mean conclusive proof, but means such evidence as will entitle a jury to find that the identity is proved (*Martin v. White*, (1910) I.K.B. 665).

Evidence of identification.

Evidence of acting in a public office is *prima facie* evidence against a wrongdoer of due appointment to the office (*Dexter v. Hayes*, (1860) 11 I.C.L.R. 106, 13 I.C.L.R. 23).

Presumption in case of public official.

The court has power to order witnesses out of court; but if a witness remains in court after such an order, his evidence cannot be rejected (*Chandler v. Horne*, (1842) 2 Moo & Robb 423); but see *Thomas v. David*, (1836) 7 C. & P. 350; *Cobbett v. Hudson*, (1854) 1 E. & B. 77. See also p. 60, *ante*.

Exclusion of witness.

As to compelling witness, in cases of summary jurisdiction, to attend, see p. 53, *ante*, and to answer, &c., p. 54, *ante*. The attendance at quarter sessions and assizes of a witness who has not been bound over is enforced by a subpoena issued by the clerk of the Crown or clerk of the peace.<sup>1</sup> If the witness wilfully refuse to obey the subpoena, an attachment may be granted against him (*R. v. Doye*, (1908) 2 K.B. 333), if he was personally served a reasonable time before the trial (*Smalt v. Whitemill*, (1736) 2 Str. 1054; *Hammond v. Stewart*, (1733) Str. 510). But it seems doubtful whether a court of quarter sessions can issue an attachment; and it would appear that the only remedy is by way of indictment<sup>2</sup> (Archbold, 24th ed., p. 482). A refusal to answer either at assizes or quarter sessions is a contempt of court, for which the witness can be forthwith committed (*Ex parte Fernandez*, (1861) 6 H. & N. 717).

Compelling witnesses to attend and answer.

Where, at the close of the case for the Crown, there was no evidence to go to the jury, but there was no application to stop the case, and the accused went into evidence, which afforded evidence of guilt, the conviction was upheld (*R. v. George*, (1908) 73 J.P. 11; *R. v. Jackson*, (1910) 74 J.P. 352).

No evidence at close of case for prosecution.

<sup>1</sup> If the witness is in custody, a writ of habeas corpus must be applied for.

<sup>2</sup> The refusal of a person who is capable of giving material evidence against a party charged with an indictable offence, and under examination thereupon before a justice, to attend in pursuance of a summons to give evidence, subjects the person so refusing to be proceeded against for a misdemeanour (Nun & Walsh, 2nd ed., p. 328, citing *Cropper v. Horton*, (1826) 4 D. & R. M.C. 44, 45, 47, *arguendo*, 2 Burn 114; *R. v. Clement*, (1821) 4 B. & Ald. 231; *R. v. Brownall*, (1834) 1 A. & E. 598). A witness can be indicted for not attending in pursuance of a summons to give evidence at the quarter sessions or other court of record (Nun & Walsh, 2nd ed., p. 328 n; 1 Hawk, c. 21, s. 15, and c. 22, ss. 4 & 5 n, 1 Curw., Hawk, 64, 65).



## CHAPTER XXIV.

### MASTER AND SERVANT.

	PAGE		PAGE
Master not generally liable, . . .	292	Examples—	
Principle of exceptions, . . .	292	Mines and Collieries, . . .	297
Examples—		Weights and measures, . . .	297
Licensing Acts, . . .	294	Miscellaneous, . . .	297
Food and Drugs Acts, . . .	295	Liability of servant, . . .	298
Public Health Act, . . .	296	Husband and wife, . . .	298
Merchandise Marks Act, . . .	296	Agency, . . .	299
Revenue cases, . . .	296	Coercion, . . .	300

Master not  
criminally  
liable for act  
of servant.

GENERALLY speaking, a master is not criminally responsible for the acts of his servant which he has not instigated or connived at (*Chisholm v. Doulton*, (1889) 22 Q.B.D. 736; *Hardcastle v. Bielby*, (1892) 1 Q.B. 712). "The criminal law makes no one punishable for an offence but the person who either committed it or incited and procured the other to commit it, or who aided in its commission" (Lush, J., in *R. v. Holbrook*, (1878) 4 Q. B. D. 42, at p. 47).

Principle of  
exceptions.

There are, however, many exceptions to this rule. Many businesses nowadays are not carried on by the masters or owners in person, but by servants clothed with full authority to see that the law, in so far as it forbids a thing, is not broken, and in so far as it enjoins a thing, is fulfilled. The law would in such case be nugatory if personal remissness, or *mens rea*, were necessary to fix the master with criminal liability. Thus, if the master through his servant carries on a business which is likely to cause a nuisance unless proper precautions are taken, he is responsible at common law if a nuisance, without his knowledge, and preventable had his instructions been carried out, is caused (*R. v. Stephens*, (1866) L.R. 1 Q.B. 702).

Apart from the instances in which the master is expressly made liable for the acts of his servant,<sup>1</sup> the cases divide themselves into two classes. First, there are the cases in which the statute says that a certain class of persons shall do something under a penalty, or in which, to use the words of Gibson, J. (*Fitzgerald v. Hosford*, (1900) 2 I.R., 391), "the statute imposes a direct and unqualified duty." In such cases a master, upon whom the duty is cast, cannot absolve himself by the plea that he delegated the duty to a servant who neglected it (*Fitzgerald v. Hosford*, *supra*). Secondly, there are the cases in which the statute says that no person shall do a certain act, or an act under certain circumstances, under a penalty. In such cases no very precise principle has been, or apparently can be, laid down; but, to determine whether the doing of the act by the servant in the course of the master's business renders the master

<sup>1</sup> For example, the Petroleum (Hawkers) Act, 1881, 44 & 45 Vict. c. 67, s. 2.

liable, the scope and intention of the statute (see judgments of Lord Russell of Killowen, L.C.J., in *Commissioners of Police v. Cartman*, (1896) 1 Q.B. 655, 657, and in *Coppen v. Moore*, No. 2 (1898) 2 Q.B. 306, at p. 313), and the probability or improbability of the statute being ineffectual, should the master be allowed to escape (*Farley v. Higginbotham*, (1898) 42 S.J. 309; *Morris v. Corbet*, (1892) 56 J.P. 649), seem to be the considerations applicable, the overriding principle, however, being that if it is a question of the master being liable or the statute being rendered nugatory, the statute will prevail (*Farley v. Higginbotham* and *Morris v. Corbet*, *supra*).

The following is the statement of the law by Lord Russell of Killowen, C.J., in *Commissioners of Police v. Cartman*, (1896) 1 Q.B., 655, at p. 657:—"In considering this question, we must see what is the object of the Act, and how far that object would be effected or defeated if the construction contended for by the respondent were given to this section. There can be no question as to the object of this section: it was intended in the interest of public order to prevent the sale of intoxicating liquors to drunken persons. It must be remembered that the persons from whom alone intoxicating liquors can be obtained are licensed persons: how do they carry on their business? From the nature of the case it must be largely carried on by others on their behalf; it is true that sometimes the licensee keeps in his own hands the direct control over his own business, but in the great majority of cases it is not so, the actual direct control being deputed to other persons: are the licensees in these latter cases to be liable under this section for the acts of others? In my opinion they are, subject to this qualification, that the acts of the servant must be within the scope of his employment. The scope of the manager's authority in my view receives its limitation from the scope of his employment; authority is given him to do all acts within the scope of his employment. . . . I think it was intended that the responsibility should be upon the licensee for acts done by an employee within the scope of his authority."

Where the statute imposes a direct and unqualified duty, the person obliged to perform the duty cannot escape under the doctrine of *mens rea* (*per* Gibson, J., in *Fitzgerald v. Hosford*, (1900) 2 I.R. 391).

It has been apparently suggested that the law rendering the master liable for the acts of his servant, will be more stringently applied in the case of revenue, excise, and the like offences, than in other businesses. In *A.-G. v. Allen*, (1850) Ct. Exch. 29th November (cited Highmore's Excise Laws, p. 7), Pollock, C.B., observed: "I think it quite right that it should go forth to the world that a party who carries on a business of this description is responsible in penalties for the conduct of his servants in violating the law; and, if it were not so, the revenue laws would be wholly useless. You would have persons carrying on business by their servants in their absence, and violating the law without any liability." And in *Massey v. Morriss*, (1894) 2 Q.B. 412, at p. 414, Cave, J., said: "Reference was made to the alehouse cases. But the explanation of those cases is this: licences to keep alehouses are only granted to persons of good personal character; and it is obvious that the object of so restricting the grant of licences would be defeated if the licensed person could, by delegating the control and management of the house to another person who was altogether unfit to keep it,

Principle of exceptions.

free himself from responsibility for the manner in which the house was conducted."

In *R. v. Stephens*, (1866) L.R. 1 Q.B. 702, at p. 708, Mellor, J., laid down, as a reason for the master's liability on a charge of creating a nuisance in the carrying on of his business, that such proceedings are in substance civil. At common law, also, the proprietor of a publication was held responsible for criminal libels inserted by his servant having control of the publication (*R. v. Gutch*, (1829) M. & M. 433).<sup>1</sup>

Examples.

The following are examples:—

LICENSING ACTS.

*Master liable.*

*Mullins v. Collins*, (1874) L.R. 9 Q.B. 292. Servant knowingly supplied liquor to constable on duty, contrary to the Licensing Act, 1872, s. 16, without the knowledge of the master.

*Redgate v. Haynes*, (1876) 1 Q.B.D. 89. Hall porter in charge of licensed premises connived at gaming on the licensed premises, contrary to the Licensing Act, 1872, s. 17, though owner was not aware of it.

*Crabtree v. Hole*, (1879) 43 J.P. 799. Gaming on licensed premises contrary to the Licensing Act, 1872, s. 17, while the boots was in charge. The boots was found to have either been aware of the gaming or to have wilfully abstained from becoming aware of it; the licensee was not aware of the gaming going on.

*R. v. J.J. of Parts of Holland* (Lincolnshire), (1882) 46 J.P. 312. Licensee absent. Wife in charge of licensed premises permitted prostitution on the licensed premises, contrary to the Licensing Act, 1872, s. 14.

*Cundy v. Le Cocq*, (1884) 13 Q.B.D. 207. Drink sold to drunken person contrary to Licensing Act, 1872, s. 13. Licensee or servants did not know person served was drunk. Held liable, as knowledge not necessary to constitute the offence.

*Bond v. Erans*, (1888) 21 Q.B.D. 249. Gaming on licensed premises contrary to the Licensing Act, 1872, s. 17, to knowledge of servant in charge, but without knowledge or connivance of owner (cf. *Somerset v. Hart*, noted p. 295).

*Commissioners of Police v. Cartman*, (1896) 1 Q.B. 655. Servant of licensee sold intoxicating liquors to a drunken person, contrary to Licensing Act, 1872, s. 13, against the orders of his master, who was absent when the offence was committed.

*Worth v. Brown*, (1896) 40 S.J. 515. Barmaid permitted drunken man to remain on licensed premises, contrary to the Licensing Act, 1872, s. 13; licensee at time was away.

*R. (Waters) v. Kerry J.J.*, (1900) 35 I.L.T.R. 10. Wife and daughter of owner of unlicensed premises sold whiskey contrary to the Excise Licences Act, 1825, s. 26, during owner's absence; owner convicted of selling without a licence.<sup>2</sup>

*Williamson v. Norris*, (1899) 1 Q.B. 7. A barman in the employment of the committee of the House of Commons was charged with selling without a licence, contrary to s. 3 of the Licensing Act, 1872. Held, that the barman was not

<sup>1</sup> The common law rule has been modified by 6 & 7 Vict. c. 96, s. 7, which allows a defence on the ground that a publication was without the authority, consent, or knowledge of the proprietor, and that the publication did not arise from the want of due care or caution on his part. Where an editor, who had entire control, published a libel without the proprietor's knowledge or consent, it was held that it was for the jury to say whether there was want of due care and caution (*R. v. Holbrook*, (1877) 3 Q.B.D. 60). The fact that an editor is given general control is not evidence of authority to publish a criminal libel (*R. v. Holbrook*, (1878) 4 Q.B.D. 42).

<sup>2</sup> This case was decided upon its own peculiar facts; from which the court inferred that the acts were done in the course of a "shebeening" business carried on by the owner of the premises, and authorized by him. Cf. *Allen v. Lumb*, noted p. 295.



liable, and that if, under the circumstances (sale in the House of Commons), an offence was committed, the committee alone were liable. Examples.

— *v. Crowley* (Birmingham Qr. Sess., 7th July, 1908, reported in *Law Times*, August, 1908). The wife of a publican sold intoxicating liquor by retail without using a measure, in contravention of s. 8 of the Licensing Act, 1872. *Held*, that the wife of the publican was wrongfully convicted, the publican himself being the only person who could be convicted. *Sed quaere*.

*R. v. Gilroy*, (1866) 4 Sc. Sess. Cas., 3rd series, 656. Brewer's servant, employed to deliver beer to customers, sold beer on the highway contrary to the Licensing Act, 1825, s. 26, without his master's knowledge or sanction. LICENSING ACTS.  
Master not liable.

*Boyle v. Smith*, (1906) 1 K.B. 432. Drayman employed by brewer to deliver beer to customers; express orders to drayman not to sell or deliver beer to others than customers; the drayman sold beer, contrary to the Licensing Act, 1872, s. 3, to persons in a street who had not previously ordered it.

*Bosley v. Davies*, (1875) 1 Q.B.D. 84. Gaming in a hotel, contrary to the Licensing Act, 1872, s. 17; manageress unaware of the gaming, and no evidence of knowledge or connivance on part of servants. *Held*, that to support a conviction there must be evidence of knowledge or connivance on part of owner or servant.

*Somerset v. Hart*, (1884) 12 Q.B.D. 360. Gaming on licensed premises, contrary to Licensing Act, 1872, s. 17, to knowledge of a servant *who was not in charge*, the licensee was not aware of the gaming, and no evidence of connivance on his part.

*Newman v. Jones*, (1886) 17 Q.B.D. 132. The trustees and managing committee of a club held wrongly convicted under the Licensing Act, 1872, for selling liquor without a licence to non-members, contrary to the Licensing Act, 1872, s. 3. The liquor was actually sold by the steward contrary to express orders, and without the knowledge and consent of the trustees and committee.

*Allen v. Lumb*, (1893) 57 J.P. 377. Owner of house held wrongly convicted for selling intoxicating liquor without a licence, contrary to the Licensing Act, 1872, s. 3. The evidence only implicated his wife. See also *Brownrigg v. Mulligan*, (1910) 8th December, 1910, K.B.D. (Ir.), noted CATALOGUE OF SUMMARY OFFENCES, "INTOXICATING LIQUORS."

*Emary v. Nolloth*, (1903) 2 K.B. 264. Barman, contrary to his express orders, supplied child under fourteen with intoxicating liquor in a vessel neither corked nor sealed, contrary to Sale to Children Act, 1901. At the time licensee was in charge, but was not aware of barman's action. *Held*, licensee not liable.<sup>1</sup>

*Conlon v. Muldowney*, (1904) 2 I.R. 498, 4 N.I.J.R. 40. Intoxicating liquor knowingly sold to child under fourteen, in bottle not sealed, by servant of licensed person, contrary to the orders of and without the knowledge of the manager of licensed person or of the licensed person himself, contrary to s. 2 of Intoxicating Liquors (Sale to Children) Act, 1901. *Held*, licensed person not liable.

*Brown v. Foot*, (1892) 61 L.J. (M.C.) 110. P., seller of milk; his servant against his orders and without his knowledge watered the milk and so sold it, contrary to the Sale of Food and Drugs Act, 1875, s. 6. FOOD AND DRUGS ACTS.  
Master liable.

*Morris v. Corbet*, (1892) 56 J.P. 649. Servant of C., a dairyman, being short in his supply, bought two gallons of milk from which the cream had been abstracted, and mixed it with his own, and sold the mixed milk. *Held*, though neither C. nor his servant knew or had reason to suspect that cream had been abstracted from the milk, that this was no defence under section 9 of the same Act. See also *Strutt v. Clift*, (1910) 27 T.L.R. 14.

*Farley v. Higginbotham*, (1898) 42 S.J. 309. Manager of a shop, without owner's knowledge, refused to supply coffee for analysis to police officer, contrary to ss. 13 and 17 of the same Act. "These Food Adulteration Acts could not be worked if persons who keep shops were not to be held liable for acts done by their servants in carrying on the ordinary course of business" (*per* Wright, J.).

<sup>1</sup> This case and the Irish case of *Conlon v. Muldowney* turned on the use of the words "knowingly allow," and it was held that no offence was committed unless either the defendant or his servant in charge had knowledge of the transaction.

Examples.  
FOOD AND  
DRUGS ACTS.  
*Master held  
liable.*

*Parker v. Alder*, (1899) 1 Q.B. 20. A farmer delivered milk in a pure and unadulterated condition to the servants of a railway company for delivery in London to the person who had bought it from him. The milk was adulterated without his knowledge or consent during the transit from the local station to the terminus. *Held* liable under s. 6 of the Sale of Food and Drugs Act, 1875.

*Houghton v. Mundy*, (1910) 103 L.T. 103. A grocer's assistant, through mistake and without any intention to defraud, sold butter and margarine, mixed, as pure butter, and his mistake was rendered possible only by his contravening, without the knowledge of his master, the express instructions that he had received from his master. *Held*, that in respect of such sale the master must be convicted under s. 6 of the Sale of Food and Drugs Act, 1875.

*Master not  
liable.*

*Kearley v. Tylor*, (1891) 65 L.T. 261.<sup>1</sup> Sale by servant of lard adulterated with foreign matter, without a proper label indicating its character, contrary to section 6 of the same Act. Evidence that the servant acted contrary to master's express instructions was rejected by the justices. *Held*, evidence admissible as there is nothing in the Act to make master responsible for acts of servant when not authorized and sanctioned by the master.

*Taylor v. Nixon*, (1910) 2 I.R. 94, 44 I.L.T.R. 81. During absence of owner of public-house, and while her husband was left in charge, an inspector of food and drugs demanded a sample of whiskey from a particular bottle. It was found by the justices that the husband in pretending to get the sample wilfully let the bottle fall, so that it was smashed and no sample could be taken; the owner was convicted for "wilfully obstructing" the inspector under section 16 of the Sale of Food and Drugs Act, 1875. Conviction quashed, as the offence created by s. 16 involved personal *mens rea*.

PUBLIC  
HEALTH ACTS.  
*Master held  
liable.*

*Barnes v. Akroyd*, (1872) L.R. 7 Q.B. 474. Mill chimney emitted black smoke so as to create a nuisance within the meaning of the words in a (repealed) English statute, 29 & 30 Vict. c. 90, s. 19, as to black smoke, identical with those in the Public Health (Ir.) Act, 1878, s. 107 (7), due to negligence of owner's servants, owner not being aware of the commission of the nuisance.

*Niven v. Greaves*, (1890) 54 J.P. 548. G.'s mill sent forth black smoke contrary to words (identical with those referred to in *Barnes v. Akroyd*), in s. 91 of Public Health Act, 1875, owing to negligence of stoker. G. was not aware of the offence. G. held liable.

*Blaker v. Tillstone*, (1894) 1 Q.B. 345. Owner had in his possession, with intent to sell, food unfit for human consumption, contrary to the Public Health Act, 1875, s. 117, which is identical with the Public Health (Ir.) Act, 1878, s. 133. Owner did not know of condition of the food, but his servants did. *Held* liable.

*Master not  
liable.*

*Searle v. Reynolds*, (1866) 7 B. & S. 704. Inspector under 11 & 12 Vict. c. 107, s. 4 of which enacted that "every owner or occupier shall obey the order of such inspector," ordered foreman of owner of cattleyard, who was in charge, to disinfect it; the foreman disobeyed the order, of which the owner was not informed. *Held* by Cockburn, C.J., and Shee, J., owner not liable, Mellor, J., diss.

MERCHANDISE  
MARKS ACT.  
*Master held  
liable.*  
*Master not  
liable.*

*Coppen v. Moore*, (No. 2) (1898) 2 Q.B. 306. An assistant, contrary to his master's orders, sold and invoiced an American ham as a Scotch ham, contrary to s. 2, sub-s. 2, of Merchandise Marks Act, 1887. Master held liable.

*Christie, Manson, & Woods v. Cooper*, (1900) 2 Q.B. 522. *Held*, person charged under s. 2, sub-s. 2 (c) of Merchandise Marks Act, might exonerate himself by proving he had acted innocently in selling the goods. "It is open to the defendant to set up under sub-section (c) any absence of *mens rea*" (Channell, J., 528).

REVENUE  
CASES.  
*Master liable.*

*Mitchell v. Torup*, (1766) Parker 227. Sailors without the privity of the master, mate, or owners of a ship imported tea contrary to 12 Car. 2, c. 18, s. 4. Owners held liable.

<sup>1</sup> This case, it is submitted, was erroneously decided. It is in direct opposition to the decision in *Brown v. Foot*, and in *Parker v. Alder* (in which, however, it was not cited), as well as to the *ratio decidendi* of *Farley v. Higginbotham*, as given in the dictum, above cited, of Wright, J.



*A.-G. v. Siddon*, (1830) 1 Cr. & J. 220. Trader concealed smuggled goods. **Examples.** During his absence his servant produced a wrong permit to an Excise officer in respect of the smuggled goods. *Held*, trader liable for such act of servant; but this case is explained by *Gibson, J.*, in *Taylor v. Nixon*, (1910) 2 I.R. 94, at p. 102, as having been decided on an inference of *actual* authority.

*Howells v. Wynne*, (1863) 15 C.B.N.S. 3. A "bankman" at a coal mine allowed more than eight persons to go down the shaft at one time in the "cage," contrary to a rule made pursuant to the 23 & 24 Vict. c. 151. The manager of the pit, who under the same rules was the person responsible for the working of the mine, was present when the cage went down, but did not interfere. *Held*, that the manager was rightly convicted of aiding and abetting the bankman within the meaning of 11 & 12 Vict. c. 43, s. 5. **MINES AND COLLIERIES. Master liable.**

*R. v. Handley*, (1864) 9 L.T. 827. Two women were in charge of the machinery working the cage of a mine, contrary to 5 & 6 Vict. c. 99, s. 8. Section 13 of the same Act, provided that in such case, if the offence were committed *under the authority* of the "contractor," the "contractor" should be liable to a penalty. *Held*, that inasmuch as knowledge of, or acquiescence in, the women being so employed, had not been brought home to the "contractor," he was wrongly convicted. **Master not liable.**

*Dickinson v. Fletcher*, (1873) L.R. 9 C.P. 1. Section 10 of the 23 & 24 Vict. c. 151, provided that whenever safety lamps were required to be used in a coal mine they should be first examined and securely locked *by a person or persons duly authorized for that purpose*. Section 22 of the same Act imposed a penalty on the owner if *through his default* the provisions of s. 10 were neglected or wilfully violated. The owner of a coal mine in which safety lamps were required to be used appointed a competent lamp man to examine and lock the lamps daily, but this man on one occasion gave out some lamps that had not been locked. *Held*, that the owner, in the absence of personal neglect by him, was not liable.

*Roberts v. Woodward*, (1890) 25 Q.B.D. 412. A servant of a coal dealer was in charge in the public street of a vehicle containing sacks of coal, sent out as containing 1 cwt. each by the dealer for delivery to customers. The servant being stopped pursuant to s. 29 (1) of the Weights and Measures Act, 1879, by an inspector under that Act, informed the inspector that each bag contained 1 cwt. This statement was untrue. *Held*, that the dealer was not liable under s. 29 (2) of the Act in respect of the statement. **WEIGHTS AND MEASURES. Master not liable.**

*Anglo-American Oil Company v. Manning*, (1908) 1 K.B. 536. A servant, acting within the scope of his authority in selling his master's oil, for his own benefit, substituted, in order to carry out an ingenious system of fraud upon purchasers, an unjust measure for the measure supplied to him by his master, who had taken every reasonable precaution to ensure that his servant used a correct measure. *Held*, that the possession by the servant of the false measure was not possession by the master so as to make the latter liable to be convicted under section 25 of the Weights and Measures Act, 1875. The Court, however, said that this was a special case, and that their decision was not to govern any future cases that might arise.

*Davies v. Harvey*, (1874) L.R. 9 Q.B. 433. Guardian of poor, through his partner, supplied goods for outdoor relief, contrary to the 4 & 5 Wm. 4, c. 76. He was not aware of his partner so supplying the goods. *Held* liable. **MISCELLANEOUS. Master liable.**

*St. Helen's District Tramways Co. v. Wood*, (1891) 60 L.J. (M.C.) 141. Company held responsible for personal neglect of their engine-driver in not placing and lighting a lamp in his engine according to Board of Trade regulation, providing that their engines between certain hours should carry lighted lamps. This regulation was made pursuant to a private Act, which provided that for every breach of such regulation the company should be liable to a penalty.

*Collman v. Mills*, (1897) 1 Q.B. 396. Bye-laws made under s. 4 of the repealed Slaughterhouses (Metropolis) Act, 1874 (which is practically the same as s. 105 of the Public Health Act (Ir.), 1878), provided that no occupier of a slaughterhouse should slaughter, or permit to be slaughtered, any animal in any pound or within the view of any other animal. The foreman of such an occupier, during the absence, and without the knowledge of, and in contravention of express



Examples.  
MISCEL-  
LANEOUS.  
*Master held  
liable.*

orders from, the occupier violated the bye-law. *Held*, that the occupier was liable for the penalty attaching to such violation of the bye-law. See also *Heaton v. McSweeney*, (1905) 2 I.R. 47.

*Fitzgerald v. Hosford*, (1900) 2 I. R. 391. The occupier of a salmon weir is under a statutory duty (5 & 6 Vict. c. 106, s. 40; 26 & 27 Vict. c. 114, s. 20) to keep his weir open continuously for the free passage of fish during the weekly close time. Where such occupier delegated the performance of this duty to a servant who failed to fulfil it, it was held that the occupier was liable to the penalty attaching to non-performance of the duty (cf. *Hosford v. Mackey*, *infra*.)

*Master not  
liable.*

*Harrison v. Leaper*, (1862) 5 L.T. 640. H. let his steam thrashing-machine to a farmer to whom he sent it under charge of a servant. This servant, by direction of the farmer, set up the machine within 12 yards of the public road, in contravention of 5 & 6 Wm. 4, c. 50, s. 70, which enacts that no person "shall erect, or cause to be erected," any steam engine within twenty-five yards of a public road. H. was absent and unaware of the erection. *Held*, H. not liable.

*Massey v. Morris*, (1894) 2 Q.B. 412. Under s. 28 of the Merchant Shipping Act, 1876, corresponding to s. 442 of the Act of 1894, the owner or master of a British ship who "allows" her to be loaded below the "Plimsoll mark" is liable to a penalty. Where the master of such ship so loaded her in Greece, it was held that the owner in England, who knew nothing of the offence being committed, was wrongly convicted, and that the principle upon which *Bond v. Evans* (noted at p. 294) was decided did not apply, that principle being that where a man obtained a licence to keep an alehouse he could not divest himself of responsibility by entrusting the management of it to a servant.

*Hosford v. Mackey*, (1897) 2 I.R. 292. The use of fixed nets by an unlicensed person is prohibited under a penalty by the 11 & 12 Vict. c. 92, s. 22. Where the servants of the owner of an eel-weir fished with such a net, in contravention of the express orders of their master, during a period in respect of which their master was not licensed. *Held*, that the master was not liable.

*Director of Public Prosecutions v. Witkowski*, (1911) 27 T.L.R. 211. The respondent, who was a money-lender, was summoned for having sent a circular to an infant inviting him to borrow money contrary to the Betting and Loans (Infants) Act, 1892. The respondent had given instructions to his clerk to send out circulars to captains and lieutenants in the Army; but, knowing that many second lieutenants were minors, he directed the clerk to send no circulars to second lieutenants. Without his knowledge the clerk sent a circular to a second lieutenant who was in fact under twenty-one. The magistrate held that as the respondent had distinctly told his clerk not to send the circular to second lieutenants, he did not send or cause to be sent the circular in question, and that even if he were bound by the act of his clerk he had reasonable ground for believing that all persons to whom the circulars were sent were of full age. He accordingly dismissed the summons. *Held*, that there was evidence upon which the magistrate could so find.

Liability of  
servant.

A servant can be made criminally liable though the master be liable also (*Hotchin v. Hindmarsh*, (1891) 2 Q.B. 181). But a servant or agent acting innocently in obedience to orders is not liable (*Hearne v. Garton*, (1859) 2 E. & E. 66, at p. 76; *Williamson v. Norris*, (1899) 1 Q.B. 7; *R. v. Bannen*, (1844) 2 Mood C.C. 309; and see *Agency*, p. 300, *infra*).

Husband and  
wife.

A wife who, not in the presence of her husband and without his coercion, commits a crime is responsible as if she were a *feme sole*. But if a wife commits a crime when her husband is present, the law presumes in most cases that the wife acts under the coercion of her husband, and so she is held not responsible (1 Hale 45, *R. v. Smith*, (1858) 1 Dea & B. C.C. 553). The presumption does not arise in the case of heinous crimes such as treason, or murder, or manslaughter (Hale, 45, 46; Sir Thomas Overbury's case, (1616) 2 St. Tr. 957). The

presumption is rebuttable (*R. v. Cohen*, (1868) 11 Cox 99; *R. v. Husband and Cruse*, (1838) 8 C. & P. 541; *R. v. Torpey*, (1871) 12 Cox 45). If wife. the husband be physically incapable of coercion, then the presumption does not arise (*R. v. Cruse*, *supra*, per Tindall, C.J.).

The extent of the presumption has never been definitely settled, and it has been doubted whether it applies to misdemeanours. This uncertainty is due to the fact that the doctrine is not rooted in any principle of the common law; it is an anomaly, and is a relic of the severe days when death was the penalty for most felonies. A man, in cases within clergy, could have the benefit of his clergy and go free; a woman had no benefit of clergy, and so the doctrine sprang up, *in favorem vite*, of presuming that a wife acted under the coercion of her husband (1 Hale 45). If husband and wife jointly commit burglary or larceny, the wife should be acquitted (1 Hale, 45). But if the jury find she acted independently of her husband and not under his control, she can be convicted jointly with her husband of stealing (*R. v. Cohen*, (1868) 11 Cox 99). The presumption probably does not apply to robbery. In *R. v. Buncombe*, (1845) 1 Cox 183, a case of robbery, Coleridge, J., would have reserved the point, but the prisoner was acquitted; in *R. v. Torpey*, (1871) 12 Cox 45, and in *R. v. Dykes*, (1885) 15 Cox 771, both cases of robbery with violence, the question whether the wife acted under her husband's coercion was left to the jury, and the wife was acquitted. The doctrine has been held to apply to misdemeanours (*R. v. Price*, (1837) 8 C. & P. 19). In *R. v. Cruse*, (1838) 8 C. & P. 541, where a wife was convicted of felonious assault along with her husband, the full court of judges held the presumption did not arise. In *R. v. Ingram*, (1712) 1 Salk. 384, husband and wife were jointly convicted of common assault. A married woman can be jointly convicted with her husband for keeping a bawdy-house (*R. v. Williams*, (1712) 10 Mod. 63) or gaming-house (*R. v. Dixon*, (1712) 10 Mod. 335), as she is supposed to have the government of her house. A married woman cannot be convicted of receiving stolen goods unless the jury find she received the goods in the absence of her husband (*R. v. Archer*, (1826) 1 Moody C.C. 143). In *R. v. Morris*, (1814) R. & R. 270, where a wife uttered a forged note by her husband's order, but in his absence, the conviction was held good.

At common law, a wife cannot be guilty of stealing her husband's goods, for husband and wife, in the eyes of the law, are one person: and, as a consequence, an adulterer could not be guilty of receiving goods taken by the erring wife from the husband (*R. v. Kenny*, (1877) 2 Q.B.D. 307.) But if the adulterer assisted in carrying off the husband's goods, he was guilty of stealing, as the assent of the husband to the taking would not then be presumed (*R. v. Berry*, (1859) 8 Cox 121). If a stranger assisted the wife in taking the husband's goods, the wife not having committed or intending to commit adultery, he could not be convicted of stealing the husband's goods (*R. v. Avery*, (1859) 8 Cox 184). The law has been changed by the Married Women's Property Act, 1882, ss. 12 and 16, which provide that criminal proceedings may be taken by a husband against his wife for wrongfully taking the husband's property when leaving or deserting, or about to leave or desert, the husband; with similar remedies for the wife against the husband wrongfully taking her property in like circumstances. But no criminal

Husband and wife.

proceedings can be taken for any such taking by husband or wife while living together. The indictment against a wife under the Act need not aver that the prisoner is the wife of the prosecutor, or that she took the goods when leaving or deserting, or about to leave or desert, her husband (*R. v. James*, (1902) 1 K.B. 540).

Agency.

An employer who, with the intent to carry out a criminal offence, gets the act that is necessary for the commission of the offence performed by an innocent agent, is responsible as principal for that act as if the act has been done by such employer (*R. v. Clifford*, (1845) 2 C. & K. 202; *R. v. Bleasdale*, (1848) 2 C. & K. 765).

If two persons agree to carry out a criminal act, and the act is done by an innocent agent who has been employed by one only, both persons who have so agreed are guilty as principals (*R. v. Bull*, (1845) 1 Cox, 281). If the act be not done by the agent selected, but by another unknown to the employer, the latter is still responsible as principal (*R. v. Michael*, (1840) 9 C. & P. 356, a case of murder by poison, the poison supplied by the prisoner having been administered by a child who found it). If the agent be aware of the consequences of the act, then the employer is an accessory and not a principal (*R. v. Manley*, (1844) 1 Cox 104).

Section 19 (3) of the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), frees from liability to any prosecution or punishment any servant who has *bona fide* acted in obedience to the instructions of his master, and on demand made by or on behalf of the prosecutor has given full information as to his master.

Coercion.

There cannot be a criminal act without the free concurrence and acquiescence of the will. Overmastering physical compulsion excuses a man who under its influence has done an act which otherwise would be a criminal act (1 Hale, 434). The question as to how far, if at all, (1) threats of instant death, (2) risk of death, (3) risk of personal injury, (4) risk of injury to property, or (5) the necessity of choosing between two evils excuse the commission of a criminal act depends entirely upon the facts of each particular case, and no general rules can safely be laid down. Such questions rarely arise, and are of little practical importance.



## CHAPTER XXV.

### FUGITIVE OFFENDERS.

	PAGE		PAGE
Extradition Acts, . . . . .	301	Fugitive Offenders Act, 1881, . . . . .	302
Application of Acts, . . . . .	301	Arrest, . . . . .	303
Arrest of fugitive criminal, . . . . .	301	Hearing of charges, . . . . .	303
Hearing of extradition charges, . . . . .	302	Miscellaneous provisions of Act, . . . . .	303

THE statutes by which the extradition of criminals between the King's dominions and foreign states is regulated, are the Extradition Act, 1870 (33 & 34 Vict. c. 52), the Extradition Act, 1873 (36 & 37 Vict. c. 60), the Extradition Act, 1895 (58 & 59 Vict. c. 33), and the Extradition Act, 1906 (6 Ed. 7, c. 15), which collectively are entitled (Act of 1906, s. 2) the Extradition Acts, 1870 to 1906, and are to be construed as one Act.

The Extradition Acts apply to fugitive criminals from foreign jurisdictions, but only where there is an extradition treaty with the particular foreign State from which the criminal is fugitive, and where the Acts have been applied, in the case of that state, by Order in Council (Act of 1870, s. 2). Such fugitive criminal cannot be extradited except he is accused or convicted of a crime specified in the treaty, which also is an "extradition crime," that is to say (Act of 1870, s. 26), a crime which if committed in England would be one of the crimes specified in the schedules to the Acts of 1870-1873, and s. 1 of the Act of 1906,<sup>1</sup> and he cannot be surrendered to a foreign State for a political crime, or in certain other cases provided by s. 3 of the Act of 1870.

A fugitive criminal of a foreign state is any person, found in or suspected of being in the United Kingdom, who is accused or has been convicted of an "extradition crime," within a foreign jurisdiction (Act of 1870, s. 26). Such fugitive, if in Ireland, may be arrested

<sup>1</sup> The following are the crimes specified in those two schedules:—Murder, attempt or conspiracy to murder, manslaughter, counterfeiting, altering, uttering counterfeited or altered money, forgery, counterfeiting, altering, uttering what is forged, altered or counterfeited, embezzlement, larceny, obtaining money or goods by false pretences, crimes by bankrupts against bankruptcy laws, fraud by bailee, banker, agent, factor, trustee, or director, member or public officer of any company made criminal by any act, rape, abduction, child-stealing, burglary, house-breaking, arson, robbery with violence, threats with intent to extort, piracy by law of nations, sinking or destroying a ship at sea, or attempting or conspiring so to do, assaults on board a ship on the high seas with intent to destroy life or do grievous bodily harm, revolt or conspiracy to revolt by two or more persons on a ship on the high seas against the authority of the master (Act of 1870, First Schedule), kidnapping, false imprisonment, perjury, subornation of perjury, indictable offences under the Criminal Law Consolidation Acts, 1861, and under bankruptcy laws (Act of 1873, schedule), bribery (Act of 1906). To these crimes have been added offences against the slave trade (Slave Trade Act, 1873, s. 27). Accessories before or after the fact to any of the foregoing offences are, for the purposes of the Extradition Acts, to be deemed to have committed such offences (Extradition Act, 1873, s. 2).

Extradition  
Acts.  
Arrest of  
fugitive  
criminal.

either under a warrant issued by a magistrate at Bow Street on order of a Secretary of State, or under a warrant issued by any justice of the peace having jurisdiction in the place where such fugitive is or is suspected to be (s. 8). The latter warrant is to be issued on information and complaint, and on such evidence as would in the opinion of the justice justify the issue in the case of a crime committed within his jurisdiction (*ib.*). A Bow Street warrant seems to be the usual course except in really urgent cases (Biron and Chalmers Extradition, p. 35), and such warrant runs throughout the United Kingdom without backing (s. 13). The quantum of evidence justifying the issue of a warrant by a justice is entirely in the discretion of the justice: very little evidence will suffice (*R. v. Weil* (1882), 9 Q.B.D. 701). A constable may arrest a fugitive without warrant on suspicion of the commission of what would be felony in English law (*per* Brett, L.J., in *R. v. Weil, supra*). It is suggested that if a fugitive be arrested without warrant, a warrant for his detention should be at once obtained from a justice, and such warrant will be effective (*R. v. Weil, supra*). Dublin police magistrates are not specifically mentioned in the Act, but, it is submitted, they come within the words, "any justice of the peace" in s. 8. The justice issuing the warrant must send a report of its issue, together with the information or complaint, and evidence, or certified copies thereof, to a Secretary of State, who may cancel the warrant and discharge the prisoner (s. 8). The prisoner, if not so discharged, is brought before a magistrate having power to issue such warrant, who then issues a warrant to convey the prisoner to Bow Street (*ib.*).

Hearing of  
extradition  
charges.

Extradition charges in ordinary cases are heard at Bow Street (s. 10). In the case of crimes committed on ships at sea, where the ship comes to an Irish port, jurisdiction to hear extradition charges is given to a "stipendiary magistrate"<sup>1</sup> of such port, or of the place nearest to such port (s. 16). This jurisdiction, however, appears to be confined to cases where the fugitive has been arrested on warrant issued without order of a Secretary of State (s. 16 (3); Extradition Act, 1873, 36 & 37 Vict. c. 60, s. 6). Where a Secretary of State is satisfied that a fugitive arrested in Ireland cannot be removed to London on account of his health, such Secretary may direct the case to be heard by any "stipendiary magistrate"<sup>1</sup> named in the order of such Secretary (Act of 1895, s. 1). Those cases in which Irish magistrates are empowered to hear extradition charges so rarely arise, that no useful purpose would be served in here dealing with the procedure, &c., on such hearing, as to which see the Act of 1870, s. 10.

Fugitive  
Offenders Act,  
1881.

The Fugitive Offenders Act, 1881 (44 & 45 Vict. c. 69), relates to offences committed, and offenders, within some part of the King's dominions.

A fugitive offender, as regards the United Kingdom, is a person accused or convicted in a British possession of an offence to which the Act applies, and found in any part of the United Kingdom (s. 2). The Act applies to all offences punishable in the place of commission, on indictment or information, with imprisonment with hard labour, rigorous imprisonment, or any confinement in prison with labour

<sup>1</sup> Stipendiary magistrate here, it is submitted, probably includes a divisional justice of the D.M.P. district. See *R. (Redding) v. Swift*, [1909] 2 I.R. 302. See also p. 8, *ante*.

of any kind for twelve months, or with any greater punishment (s. 9).

Fugitive  
Offenders Act,  
1881.  
*Arrest.*

A fugitive offender under the Act may be arrested under either an endorsed warrant or a provisional warrant (s. 2). An endorsed warrant is a warrant issued in the place where the crime was committed, and endorsed with the signature of a Secretary of State, the Lord Lieutenant, or Chief Secretary, and authorizes every constable in Ireland to arrest the person therein named, and to bring him before a magistrate (ss. 3, 11, and 26). A provisional warrant can be issued by any justice of the peace in whose jurisdiction the offender is or is suspected to be, and such warrant may be backed and executed as are ordinary warrants to arrest (ss. 4, 39). The warrant is to be issued upon such evidence as would, in the opinion of the justice, justify the issue of a warrant if the offence had been committed within his jurisdiction, and such justice is to report forthwith its issue, and to send the information, or a certified copy thereof, to a Secretary of State, the Lord Lieutenant, or the Chief Secretary, any of whom may discharge the person arrested (ss. 4 and 11).

The fugitive when arrested, if not released under s. 11, must be brought before a magistrate, who when hearing such case has all his usual powers, and may remand or admit to bail.<sup>1</sup> If no endorsed warrant has been issued, the prisoner may be remanded from time to time (for not more than seven days at any one time) till such endorsed warrant is issued. When the endorsed warrant has been authenticated, as required by the Act, the magistrate may commit the prisoner, if satisfied on the evidence that there is a strong or probable presumption of his guilt of the offence charged in the endorsed warrant (s. 5). It is only when the case is clear in favour of the accused that the magistrate should refuse to commit (*Re Coutts*, (1902) 22 N.Z.L.R. 203). In order that a magistrate may have jurisdiction to commit, it is necessary that there should be evidence before him that the offender has committed an offence to which the Act applies in the Possession to which his return is sought (*Ex parte Percival*, (1907) 1 K.B. 696). No proof is required that the offence charged is an offence, or an offence to which the Act applies under English law (s. 9).<sup>2</sup> On committing the prisoner, the magistrate must inform him that he will not be surrendered for fifteen days, and may apply for a writ of habeas corpus (s. 5). The Superior Courts may discharge a prisoner in frivolous cases, or where his return would be unjust (s. 10).

*Hearing of  
charges.*

Sections 7 and 8 deal with discharge of prisoners committed, but not claimed in due time by the authority seeking their return, and with the sending back to the United Kingdom of prisoners not tried in due time after their return to another part of the King's dominions. Section 24 gives power to the magistrate to issue search warrants; section 22 provides for the trial of the offences

*Miscellaneous  
provisions of  
Act.*

<sup>1</sup> The Court of Queen's Bench may admit to bail a prisoner awaiting trial (*R. v. Spilsbury*, (1898) 2 Q.B. 615).

<sup>2</sup> Colonial Acts, ordinances, statutes, orders, and regulations may be proved by the production of a copy purporting to be printed by the Government printer of the colony (Evidence (Colonial Statutes) Act, 1907, 7 Ed. 7, c. 16, s. 1 (1)). Printing a copy or pretended copy falsely purporting to be printed by a Government printer, or tendering such false copy knowingly in evidence, are offences punishable on indictment by imprisonment, with or without hard labour, not exceeding twelve months (s. 1 (2)).



Fugitive  
Offenders Act,  
1881.  
*Miscellaneous  
provisions.*

of false swearing and perjury in proceedings under the Act: section 27 provides for the conveyance of returned persons, and provides a penalty, not exceeding £50, recoverable in like manner as penalties under the Merchant Shipping Acts, for refusal by a master of a British ship to convey or deliver into custody a fugitive when required as provided by the section; section 28 deals with escape of prisoners; section 33 with offences committed at sea; section 34 with the application of the Act to convicts at large.

## CHAPTER XXVI.

### DUBLIN METROPOLITAN POLICE DISTRICT.

	PAGE		PAGE
Dublin metropolitan police district, . . .	305	Matters specially within jurisdic-	
Boundaries, . . . . .	306	tion, . . . . .	312-314
Appointment of divisional justices, . . .	307	(a) Award of compensation, &c., . . .	312
Jurisdiction, . . . . .	307	(b) Offences under 5 & 6 Vict. c. 24, . . .	312
Hearing complaints <i>ex parte</i> , . . . . .	308	(c) Offences under other statutes, . . .	313
Witnesses, . . . . .	308	(d) Nuisances in thoroughfare, . . .	314
Service of summons, . . . . .	308	(e) Pawnbrokers, . . . . .	314
Warrants, . . . . .	309	Hackney carriages, . . . . .	314-317
Time limits, . . . . .	309	(a) Generally, . . . . .	314
Miscellaneous provisions, . . . . .	309	(b) Licences, . . . . .	314
Convictions, . . . . .	309	(c) Regulation of routes, . . . . .	315
Penalties, . . . . .	309	(d) Disputes, . . . . .	316
Offences for which no penalty is		(e) Fares, stands, . . . . .	316
appointed, . . . . .	310	(f) Offences, . . . . .	316
Imprisonment in default, . . . . .	310	(g) Appeals, . . . . .	317
Costs, . . . . .	310	Dublin Traffic Act, 1875, . . . . .	317
Mitigation, . . . . .	311	Powers of Dublin metropolitan police, . . .	318
Payment to informer, . . . . .	311	Law of Distress Act, . . . . .	318
Appeals, . . . . .	311	Indictable offences, . . . . .	319
		Criminal trials in city and county of	
		Dublin, . . . . .	321

THE Dublin metropolitan police district at one time consisted of six districts or divisions (48 Geo. 3, c. 140) to which eighteen divisional justices were attached, each of such divisions having its separate public office or court. By the 22 & 23 Vict. c. 52, s. 8, power was given to the Lord Lieutenant to abolish these divisions, and to constitute such number of public offices or police courts as he should deem proper, and to reduce the number of justices for the district. By order in council of 4th February, 1860, these divisions were abolished; and by further order of 29th September, 1868, two courts were instituted for the entire district, one at Inns Quay, the present central court, and the other at Kingstown. By successive reductions the number of justices has been brought down from the original number, eighteen, to the present number, four; and on the extension of the district by order in council of 23rd October, 1901, so as to embrace the added area of the city of Dublin annexed by the Dublin Corporation Act, 1900, a third court with fortnightly sittings was instituted at Clontarf.

The salaries of the divisional justices are fixed as follows: chief magistrate, £1200; three other divisional magistrates, £1000 each (22 & 23 Vict. c. 52; 38 & 39 Vict. c. 20, s. 3). A justice may appoint a practising barrister of at least seven years' standing as his deputy, for any time not exceeding six weeks inside twelve calendar months; in case of sickness or unavoidable absence, he may, with the concurrence of the Chief Secretary, appoint a deputy for three calendar months at a time (34 & 35 Vict. c. 76, s. 11); such deputy, where he acts in case of the sickness or unavoidable absence of the justice, to be paid out of moneys to be provided by Parliament at such daily rate as the treasury may prescribe (46 & 47 Vict. c. 14, s. 17); in case of absence arising

from any other cause, the deputy to be paid at the justice's own charge (34 & 35 Vict. c. 76, s. 11).

Boundaries of  
district, &c.

The present boundaries of the Dublin metropolitan police district are as follows<sup>1</sup> :—

From the Lighthouse on the North Wall of the River Liffey by a direct line to the Lighthouse at the end of the South Wall ; thence by low water-mark and the sea-shore to a point 2 furlongs beyond the Southern Wall of Mount Malpas, Killiney, and from said point by a line running 2 furlongs distance from said wall to the entrance gate of said Mount ; thence by a line at the like distance to the left or outside of the Glenageary and Rochestown roads, leading to Kill-o'-the-Grange ; thence at like distance by the cross road of Dean's Grange and Stillorgan Road to a point on the left bank of the River Dodder, 2 furlongs southward of Donnybrook Bridge ; thence by the left bank of that river to the junction of the baronies of Newcastle and Uppercross near Cypress Grove, and by the boundary of those baronies to the third lock on the Grand Canal, near Golden Bridge, thence by a direct line drawn through the fields from the said lock to Chapelizod Bridge on the River Liffey, to a point 50 perches from said lock where said line intersects the boundary between the parishes of St. Jude and Ballyfermott, and by said boundary to where it intersects the G. S. & W. Railway at the carriage sheds ; thence by a continuation of aforesaid direct line until it again intersects the boundary between said parishes, near Stone House ; thence by said parish boundary until it abuts on St. Laurence Road, near Lynch's Lane ; thence by aforesaid direct line to Chapelizod Bridge on the River Liffey, and by the left bank of the Liffey to the ferry at foot of Knockmaroon Hill ; thence by the road over that hill to the Knockmaroon gate of the Phoenix Park ; thence by the Park wall to Ashtown Lodge, at the rear of the Under Secretary's house, and by the most direct road thence to Longford Bridge on the Royal Canal ; thence by the most direct road to Tolka River, and by that river to Convent wall, opposite Glasnevin Cemetery, and by West side of said wall to Finglas Road, North, at Harburn Lodge, and by the left of said road, Naul Road (and Claremount to rear of Glasnevin House) to Glenavon House, thence along North side of fence across the fields to the boundary line between the townlands of Hampstead and Drishogue, and by said boundary line and wire fence between Hampstead and Albert Model Farm to a point about 200 yards from the gate-lodge entrance to Albert Model Farm on Drumcondra Road ; thence in a direct line to ash tree marking city boundary on right of avenue leading to Hampstead, and across said avenue to and by the left of hedge to Whitehall ; thence by the left to Drumcondra Road to a point opposite entrance to Broom Hill ; thence by the right of Drumcondra Road to northern end of Charlotte Place ; thence across field by said hedge to the cross fence ; thence in a northerly direction by said fence to opposite Puckstown Road ; thence across the fields to Puckstown Road, along said road for about 50 yards to stone pillars on said road ; thence across fields by hedge on right to cross fence and said fence in an easterly direction to opposite Artane Lodge ; thence by fence to the left to Puckstown Road, across said road and field to stream there ; thence by the right of and along said stream to Donnycarney Bridge, Malahide Road across said road, and along fields on right bank of said stream to within about 100 yards of Killester Lane ; thence by right-hand side of fence to the left to the stone pillars on Killester Lane, near gate lodge of Killester Abbey ; thence along Killester land to Howth Road, along Howth Road to the three-mile stone ; thence by Castle Avenue and Merville Avenue to "Woodville," Vernon Avenue ; thence across fields and by hedge to back gate at St. Anne's, along hedge to right to gate lodge ; thence across fields in St. Anne's to the Nannikin River, and by said river to Sea Wall, Dollymount Strand, along said sea wall to Annesley Bridge, and thence by sea line to the Lighthouse at North Wall.

For police purposes, the Dublin metropolitan police district is divided into six divisions, viz., A, B, C, D, E, F, each under the charge of a superintendent. The number of inspectors, sergeants, and constables in the force varies according to the extent of the divisions and other circumstances. Divisions are divided into sub-divisions,

<sup>1</sup> But see Bill before Parliament, which, if passed before the volume goes to press, will be found in APPENDIX OF STATUTES.



each containing a station-house. Sub-divisions are divided into sections, each under the charge of a sergeant, and sections are divided into beats which are patrolled by the constables.

Boundaries of district, &c.

The A and B Divisions occupy the portion of the city and urban district of Kilmainham south of the Liffey from the Estuary of the Dodder at Ringsend to the Chapelized Bridge on the Liffey; thence in a direct line to Blackhorse Bridge on Grand Canal, and thence by the Grand Canal to the Grand Canal Basin at the Estuary of the Dodder, Ringsend. The A and B Divisions are separated by a line from Portobello Bridge, through Richmond Street, Camden Street, Wexford Street, Redmond's Hill, Peter's Row, Whitefriar Street, Great Ship Street, Castle Steps, Castle Street, and Fishamble Street to the Liffey. The C and D Divisions occupy the portion of the district lying north of the Liffey between the Nannikin River, Dollymount, and the Ferryboat Station on the Liffey at foot of Knockmaroon Hill. They are separated by a line from Grattan Bridge, through Capel Street, Bolton Street, Dorset Street, and Drumcondra Road to Whitehall, Upper Drumcondra Road. The E Division occupies the portion of the district south of the Grand Canal and the Liffey, between the Blackhorse Bridge on the Grand Canal and the Railway Gates at Merrion Strand. It embraces the Urban Districts of Rathmines and Pembroke. The F Division occupies the portion of the district between the Railway Gates at Merrion by the sea-coast to a point 2 furlongs south of the southern wall, Killiney. It embraces the Urban Districts of Blackrock, Kingstown, Dalkey, and part of Killiney and Ballybrack. Divisional boundaries in all cases run along the middle of the streets, &c., mentioned.

A divisional justice, who must be a barrister of not less than six years' standing (5 & 6 Vict. c. 24, s. 46), is appointed by the Lord Lieutenant (6 & 7 Wm. 4, c. 29, s. 32); and cannot practise as a barrister or be a member of Parliament, or vote or take part in parliamentary elections (48 Geo. 3, c. 140, ss. 14 and 15).

Appointment of divisional justices.

A divisional justice is a "stipendiary magistrate" within the Married Women (Maintenance in case of Desertion) Act, 1886, 49 & 50 Vict. c. 52 (*R. (Redding) v. Swifte*, (1909) 2 I.R. 302; see also p. 8, *ante*). Any one divisional justice may do alone all things authorized to be done by two justices<sup>1</sup> (18 & 19 Vict. c. 126, s. 16; 22 & 23 Vict. c. 52, s. 11; 25 & 26 Vict. c. 50, s. 2).

The ordinary justice of the peace can exercise jurisdiction for the trial of summary offences, either (*a*) when the offence has been committed within the limits of his jurisdiction (that is to say, in the case of the ordinary county justice, his county), or (*b*) when it has been committed outside of such limits anywhere within the United Kingdom or in the Isle of Man or the Channel Islands, provided that the offender reside or be within his territorial limits (Petty Sessions Act, 1851, s. 10).<sup>2</sup> But as a general rule (*ib.* s. 11), a condition precedent to the exercise of these jurisdictions is the service of a summons on the offender, and this service can only be effectively made in the justice's own county or in the adjoining county (*G. S. W. Ry. Co. and Leyden*, (1907) 2 I.R. 160). On the other hand, the jurisdiction of the Dublin divisional justices in summary cases of a criminal nature is confined to offences committed within the metropolitan police district,<sup>3</sup> but, for such offences, his summons may be effectively served anywhere in Ireland; and this wide power of service attaching to the divisional justice's summons is not confined

Jurisdiction.

<sup>1</sup> But two divisional justices are required to grant a licence to deal in game (2S & 29 Vict. c. 2).

<sup>2</sup> See, further, as to territorial limits of justices, pp. 13, *et seq.*, *ante*.

<sup>3</sup> But see Bill before Parliament, which, if passed before the volume goes to press, will be found in APPENDIX OF STATUTES.

**Jurisdiction.**

to offences, since section 49 of the Dublin Police Act of 1842 (5 & 6 Vict. c. 24), from which this power is derived, deals with "any matter which such justice is authorized to hear and determine summarily," and so includes civil and quasi-civil matters, such, for instance, as a proceeding to compel a husband to contribute to the support of his wife under the Married Women (Maintenance in Case of Desertion) Act, 1886 (*R. (Redding) v. Swift*, (1909) 2 I.R. 302).

**Hearing complaints *ex parte*.**

Power to hear *ex parte*, on due proof of service of the summons, summary matters, whether criminal or otherwise, arising within the metropolitan district is conferred on the divisional justices by section 49 already referred to, and by section 7 of the Summary Jurisdiction (Ireland) Amendment Act, 1871, 34 & 35 Vict. c. 76. The justice has the option of so proceeding *ex parte*, or of adjourning the hearing, or in offence cases, of issuing a warrant of apprehension. It is not obligatory on the divisional justice to proceed by summons in cases of summary offences, as section 51 of the Act of 1842 authorizes him to issue a warrant of apprehension, without any previous summons "whenever good grounds for so doing shall be stated on oath before him."

**Witnesses.**

It would appear that the power given by section 52 of the Dublin Police Act, 1842,<sup>1</sup> of compelling the appearance of witnesses in summary offence cases<sup>2</sup> arising within the district is equally extensive with the powers given to compel the appearance of the offender under sections 49 and 50. There is nothing in the language of section 52 inconsistent with the right to serve a witness summons in such cases anywhere in Ireland (see judgment of Dodd, J., in *R. (Redding) v. Swift*, (1909) 2 I.R. 327). It is to be noted, however, that in indictable cases the power of compelling the appearance of witnesses is confined to witnesses within the jurisdiction (12 & 13 Vict. c. 69, s. 16). In the case of a summary offence, if the summons is disobeyed by the witness, a warrant may issue (5 & 6 Vict. c. 24, s. 52); in the case of an indictable offence, the justice may either issue a summons for the witness, followed on disobedience by a warrant, or may issue a warrant in the first instance, when it appears by sworn evidence to be probable that the witness will not obey a summons (12 & 13 Vict. c. 69, s. 16). Service of a summons on a witness is sufficient if left at his place of abode twenty-four hours before the hearing (5 Geo. 4, c. 102, s. 25); a witness refusing to attend may be fined 40s. (s. 26). The attendance of witnesses who reside outside of the jurisdiction is in practice secured by a Crown Office subpoena.

**Service of summons.**

The summons in all summary matters, whether of a civil or criminal nature, may be served by delivering a copy to the party, or by delivering at his usual place of abode a copy to his wife or servant or some inmate of his family, such servant or inmate being of the age of sixteen years or upwards, and explaining the purport of the summons to such wife, servant, or inmate (5 & 6 Vict. c. 24, s. 50). The statute does not specify any particular time for service of the summons, nor does it expressly require (as does the Petty Sessions Act, 1851, s. 12) that the summons shall be served a reasonable time before the hearing, but that will be implied (see dictum of Cockburn, C.J., in *R. v. Smith*, (1875) L. R. 10 Q.B. 604, at p. 608). For cases

<sup>1</sup> 5 & 6 Vict. c. 24, to be found in APPENDIX OF STATUTES.

<sup>2</sup> This section is usually understood not to apply to indictable offences.

as to what is a reasonable time, see p. 49. A summons against a limited company must be served in the manner prescribed by section 62 of the Companies Act, 1862 (now replaced by section 116 of the Companies Consolidation Act, 1908), by being left at or sent by post to the registered office of the company (*Pearks v. Richardson*, (1902) 1 K.B. 91).

Service of  
summons.

By section 48 of the Dublin Police Act of 1842, every distress or levy warrant, or service warrant, or warrant to compel the appearance of any person, or for the apprehension of any person charged with an offence, issued by a divisional justice in respect of any matters arising within the Dublin police district, may be executed by any constable of Dublin police without backing in any part of Ireland (see also 48 Geo. 3, c. 140, s. 31). This section would appear, however, to be rendered obsolete, if not impliedly repealed by section 28 of the Petty Sessions (Ireland) Act of 1851, which, with other sections of that Act dealing with the backing and execution of warrants, is made applicable to the Dublin police district. This section empowers the execution of Irish warrants addressed to persons other than the constabulary, not only throughout Ireland, but in England and Scotland, the Isle of Man, and the Channel Islands. Under s. 28 of the Petty Sessions Act, the warrant must be backed for execution, proof on oath being given of the handwriting of the justices signing the warrant.

Warrants.

The summons in cases of offences triable summarily may issue without any previous information in writing, and is to be "heard and determined . . . . . within six calendar months at the furthest next after the commission of such offence" (Dublin Police Act, 1842 s. 70). And there is no jurisdiction to hear the complaint after the six months have expired, even though the lapse of time has been due to adjournments, with the consent of the parties (*R. v. Tolley*, (1803) 3 East 467; *R. v. Bellamy*, (1823) 1 B. & C. 500). The Petty Sessions Act is different, prescribing (s. 10) that the complaint shall be made within six months from the time when the cause of complaint shall have arisen; and it is immaterial what period is suffered to elapse between the making of the complaint and its determination under that Act.

Time limit for  
summary con-  
viction.

Although no written information or complaint is necessary in the metropolitan district, the divisional justice may, if he thinks fit, require such information to be laid (5 & 6 Vict. c. 24, s. 70). Power is given to remand prisoners or enlarge them on recognizances (s. 64). Forms of information, summons, and conviction are provided (s. 72), and it shall be sufficient that the charge shall be stated in the words of the statute creating the same (*ib.*, but as to effect of this provision see p. 49). The Act does not affect the proceedings in informations under the Revenue or Stamp Acts (s. 78).

Miscellaneous  
provisions.

The conviction at petty sessions consists of the entry in the order book (14 & 15 Vict. c. 93, ss. 21, 36). But it is otherwise in the Dublin metropolitan police district, where there is no order book, and where merely a memorandum or minute is made by the magistrate in a court book, from which memorandum or minute a formal order or conviction may subsequently be drawn up, in the form referred to in 5 & 6 Vict. c. 24, s. 72. It is not, however, necessary that the conviction should be drawn up before it is acted

Conviction.



## Conviction.

upon, whether by commitment or levy of the penalty (see *Ratt v. Parkinson*, (1851) 20 L.J.M.C. 208). It may be drawn up before return to certiorari or after action brought against the justice; but the filing of a conviction with the clerk of the peace is final (*Ex parte Austin*, (1880) 34 L.T. 102). Certiorari is taken away (5 Geo. 4, c. 102, s. 30, 6 & 7 Wm. 4. c. 29, s. 41, 1 Vict. c. 25, s. 27, which statutes are to be read as one with 5 & 6 Vict. c. 24; see s. 1 of the last-named Act). The provision taking away certiorari has no application when the conviction is bad upon its face or has been obtained by fraud, or is made by a court illegally constituted (see p. 226). The fact that the magistrate's book contains merely a minute of the decision is important in considering the advisability of moving for a writ of certiorari on the ground that the conviction is bad upon its face. Justices in a petty sessions district are bound by the entry in the order book (*R. (Burke) v. Cork JJ.*, (1905) 2 I.R. 309), whereas the divisional justice is bound only by the formal conviction drawn up from the minute or memorandum in the court-book, any technical defect in which may be rectified in drawing up the conviction (*R. (Cahill) v. Dublin JJ.*, (1904) 2 I.R., 698).

Penalties.  
Offences for  
which no  
penalty is  
appointed.

Section 36 of the Dublin Police Act, 1842, provides that for every misdemeanour or other offence against the Act, for which no specific penalty is appointed, the offender shall be liable to a penalty not exceeding £5, or to imprisonment not exceeding one calendar month.

Imprisonment  
in default.

Section 71 of the Dublin Police Act deals with imprisonment in lieu of payment of a penalty, and provides that, where the penalty or forfeiture exceeds £5, imprisonment in default, not exceeding three months, may be awarded.<sup>1</sup>

Power to  
award costs.

While in petty sessions courts the power to award costs, either against complainant or defendant, is limited in any case of summary jurisdiction to the sum of 20s. (Petty Sessions Act, 1851, s. 22 (9)), in the Dublin metropolitan district there is no limit to the amount of costs which may be awarded, as section 59 of the Dublin Police Act of 1842 empowers the divisional justice who has heard or determined any charge or complaint to award to either party "such costs as to him shall seem meet to be paid."<sup>2</sup> Under this section large sums of costs are from time to time awarded in summary cases determined in the Dublin police courts, and payment of such costs may be enforced by distress, and by imprisonment in default of goods. In a recent case, *Creean v. Derlin and Johnson*, heard by one of the divisional justices, on the 15th April, 1909, three summonses for breaches of the Public Meeting Act, 1908, were dismissed with £50 costs against the complainant in each case. Application to quash the orders by certiorari having been made, it was held (Palles, C.B., and Johnson, J.) that the orders in these cases, in so far as the amount of costs and direction to levy were concerned, were perfectly valid; but that the further direction for imprisonment in default

<sup>1</sup> It is submitted that section 39, which limits the imprisonment to one month, when the penalty does not exceed £5, and that portion of s. 71 dealing with penalties under £5, are superseded by the Small Penalties Act, 1873 (noted p. 64, *ante*, and *verbatim*, APPENDIX OF STATUTES).

<sup>2</sup> The amount of the costs awarded should be specified in the order, and blanks should not be allowed therefor (see *Bott v. Ackroyd*, (1859) 28 L.J.M.C. 207, *R. v. Payne*, (1824) 4 D. & R. 72).

was improperly included in the original order, and should not be made except on further application to the magistrate after a return of *nulla bona* (unreported K.B.D. 18th June, 1909).

Power is given to mitigate penalties, save in revenue prosecutions (s. 53). Where a statute directs a share of the penalty to be paid to a common informer, the justice may order that no part or a lesser part of such penalty shall be so paid (s. 52). The power to deprive the informer of any share in the penalty will apply to a later statute, e.g., the Betting Act, 1853, which contains an express proviso that a certain portion of the penalty shall be paid to the informer (*Hawke v. Mackenzie*, (1902) 2 K.B. 234).

*Mitigation.  
Payment to  
informer.*

The appeal provisions of the Petty Sessions Act of 1851 do not apply to the Dublin metropolitan police district, except where made specially applicable by subsequent statutes to certain classes of offences. The only general appeal provisions in force in the district are:—(a) section 27 of the Dublin Police Act, 1 Vict. c. 25, which gives an appeal against any penalty exceeding £5, or imprisonment exceeding one month, the person appealing being required at the time of his conviction to enter into a recognizance with two sufficient sureties to prosecute the appeal;<sup>1</sup> (b) section 9 of the Fines Act (Ireland), 1851, which gives an appeal for “*reduction or remission*” in the case of any penal sum exceeding 40s. The appeal so made under the Fines Act is to be “subject in all respects to the provisions of the Petty Sessions Act,” and, since the Petty Sessions Act appeal section (s. 24) empowers the appeal court “to confirm, vary, or reverse the order made by the justices,” a point of some nicety arises as to whether the appeal court in deciding appeals under the Fines Act against penalties exceeding 40s. imposed by the Dublin divisional justices is authorized to reverse the conviction or has power merely to reduce or remit the penalty. It is submitted that the procedure of the Petty Sessions Act as to appeals applies to appeals under the Fines Act only so far as is necessary to effect the avowed purpose of section nine of the latter Act, that is to say, the reduction or remission of the penalty where the appeal court may think it advisable so to do (see also pp. 138, *et seq.*)

*Appeals.*

Many modern statutes provide a right of appeal and a procedure in reference to the offences created by them; and such rights and procedure will prevail over the general provisions of the 1 Vict. c. 25, as they do, in petty sessions districts, over the Petty Sessions Act (see p. 131, *ante*). But where the statute does not expressly confer a right of appeal, and does not expressly apply the appeal section of

<sup>1</sup> The defendant was sentenced to a term of imprisonment at 4.30 p.m. on the 10th May. The police-offices closed about that time, and the prisoner's solicitor could not have served formal notice of appeal that day. Next day (the prisoner having meanwhile been committed to prison under the magistrate's warrant) her solicitor brought a notice of appeal to the magistrate's clerk, and had a discussion with him in reference to it, but the notice was not formally served until the day following. *Held*, that the notice was not served “at the time of the” conviction (*R. (Hegarty) v. Dublin JJ.*, (1899) 2 I.R. 310). But it was also held that the right of appeal in the particular case was governed, not by section 27 of the Dublin Police Act, but by section 19 of the Prevention of Cruelty to Children Act, 1894, under which the prosecution was brought (identical with section 19 of the Prevention of Cruelty to Children Act, 1904, as the latter section stood before its partial repeal by the Children Act, 1908), and that therefore the appeal, having been prosecuted as soon as conveniently possible, was in time, but that there was no power to release the prisoner pending the appeal (*ib.*).

## Appeals.

the 1 Vict. c. 25,<sup>1</sup> the question whether an appeal lies or not seems doubtful for the reasons stated at p. 131. At all events, where a statute expressly gives a right of appeal, and indicates no procedure, the general procedure under 1 Vict. c. 24 has been held not to be applicable (*R. (Hegarty) v. Dublin JJ.*, (1899) 2 I.R. 310).

## Matters specially within jurisdiction of divisional justices.

By various statutes certain offences are created and made punishable summarily by the divisional justices, and other matters brought within their jurisdiction. The matters hereinafter referred to seem the most worthy of mention.

## Award of compensation, costs, &amp;c. (5 &amp; 6 Vict. c. 24.)

A divisional justice may award compensation not exceeding £10 for hurt or damage to person or property caused by the commission of any offence against the Act (5 & 6 Vict. c. 24, s. 25);<sup>2</sup> in any case heard and determined by him may award such costs to either party as he shall deem meet (s. 59); or amends not exceeding £5 to any person against whom frivolous informations are brought (s. 60); may hear and determine claims of watermen, coal porters, sailors, and other quay labourers to wages, and order sum not exceeding £5 (s. 65); award compensation for wilful damage by tenants not exceeding £15 (s. 66), or for damages caused by negligence, misbehaviour, or misconduct of the driver of any vehicle<sup>3</sup> (16 & 17 Vict. c. 112, s. 32); deal summarily with complaints as to oppressive distress by weekly or monthly tenants, or tenants whose rent does not exceed £15 a year (5 & 6 Vict. c. 24, s. 67); order delivery of goods unlawfully detained<sup>3</sup> to owner, or, on failure, their value, not exceeding £15, such order not to be a bar to an action brought within six months by any person against the person to whose possession such goods shall come by virtue of such order (s. 68); determine disputes as to pawnbrokers (see CATALOGUE OF SUMMARY OFFENCES; "PAWNBROKERS"); licence general dealers (3 Ed. 7 c. 44, ss. 1, 12); exercise the jurisdiction exercisable elsewhere at petty sessions as regards renewal and temporary transfer of licences (see Ch. IX.); as regards recovery of poor rate (11 & 12 Vict. c. 26, s. 6), and as regards the possession of small tenements (34 & 35 Vict. c. 76, s. 10); in cases of attempted suicide may convict summarily and sentence to three months' imprisonment (34 & 35 Vict. c. 76, s. 9); in case of contempt of court may impose a fine of 40s., or order imprisonment not exceeding seven days (*ib.*, s. 6).

## Offences against 5 &amp; 6 Vict. c. 24.

## Licensed persons. Cock fighting, &amp;c.

The following are the chief offences mentioned in 5 & 6 Vict. c. 24 and other statutes, with the maximum penalties therefor:—

Licensed person supplying liquor to person under 16, penalty, first offence, 20s.; second offence, 40s.; third offence, £5 (s. 6); keeper of refreshment house permitting drunkenness, gaming, assembling of prostitutes, or other disorderly conduct, penalty £5 (s. 7); keeping places for bear baiting, cock fighting, penalty £5 or one month's imprisonment; person found thereon, 5s.

<sup>1</sup> In other words, comes within one of the classes (B.), (C.), and (D.), mentioned, *ante*, p. 131.

<sup>2</sup> Such award will be a bar to proceedings to recover damages, even in the case of personal injuries which subsequently turn out more serious than anticipated (*Wright v. London General Omnibus Co.*, (1877) 2 Q.B.D. 271; see also *McGarry v. Fairbairn*, (1869) I.R. 3 C.L. 552, *McNulty v. Hope*, (1870) I.R. 4 C.L. 377); but an award under the section cannot be made against the will of the party aggrieved.

<sup>3</sup> "Goods" includes dogs (*R. v. Slade*, (1888) 21 Q.B.D. 433).



(s. 8) ; person owning, keeping, or conducting gaming house, penalty £100 or six months' imprisonment ; and commissioner of police, on report from superintendent, and complaint, in writing and on oath, of two householders, may authorize police to enter same, persons found therein, penalty £5 (s. 9) ; proof of gaming for money, wager, or stake not necessary (s. 10) ; drunkenness in public thoroughfares, drunkenness and riotous or indecent behaviour, violent or indecent behaviour in police station, penalty 40s. or seven days imprisonment (s. 15) ; riding behind carriages, penalty 5s, or if under 12 to be detained till handed over to parent, but not after closing of police office (s. 16) ; cutting ropes or cables, &c., of ships, a misdemeanour (s. 18) ; letting fall articles into river or harbour to prevent discovery, misdemeanour (s. 19) ; police to have power of constables on Liffey and harbours of Dublin and Kingstown (*ib.*) ; possessing instruments for unlawfully procuring liquor, misdemeanour (s. 20) ; piercing casks, &c., for unlawfully procuring liquor, misdemeanour (s. 21) ; breaking casks, &c., with intent to spill contents, misdemeanour (s. 22) ; informer compounding information, penalty £10 (s. 61) ; framing or producing false bill of parcels to prevent evidence as to goods stolen or unlawfully obtained, misdemeanour (s. 5) ; having or conveying goods reasonably suspected of being stolen or unlawfully obtained, without satisfactorily accounting for same, penalty £5, or two months' imprisonment<sup>1</sup> (s. 53) ; on information on oath, search warrant may be granted (s. 54) ;<sup>2</sup> where any person is charged with such an offence and shall declare that he received the property from some other person, or that he was employed to convey the same for some other person, the justice shall cause such person, and also, if necessary, every former or pretended purchaser, to be brought before him and examined ;<sup>3</sup> and if it shall appear to such justice that any person had possession of the property, and had reasonable cause to believe that same was stolen or unlawfully obtained, such person shall be guilty of misdemeanour, penalty £5, or three months' imprisonment (s. 55) ; justice may order pawnbroker or other person having lawful possession of property unlawfully obtained to appear and produce the goods, and to deliver up same to owner without payment, or on payment of such sum as justice shall think fit ; penalty on refusal, payment of full value of goods on justice's order (s. 56) ; justice may order property unlawfully obtained and in custody of police constables to be delivered up to owner (s. 57) ; no order under ss. 56 or 57 to be a bar to any action by person against whom justice's order has been made to recover such goods, provided action be brought within six months from date of justice's order (ss. 56, 57) ; where owner cannot be ascertained and goods are ordered to be delivered to receiver of district, they may be ordered to be sold after twelve months (s. 58) ; divisional justice or constable may enter licensed house ; labourers, &c., or women tippling or gaming therein during prohibited hours, penalty 5s. to 20s. (5 Geo. 4. c. 102, s. 16) ; publican opposing entry, penalty £10 (s. 17) ; refusing to admit, £5 (s. 18) ; publicans in whose premises labourers, &c., are tippling, penalty, first offence £2, second offence £20, third offence £50 and forfeiture of licence (s. 19) ; publicans harbouring policemen on duty, penalty £5 (6 & 7 Wm. 4, c. 29, s. 6) ; assaulting or resisting constable, penalty £5 (s. 9) : offence against public decency, £5 or two months' imprisonment (34 & 35 Vict. c. 76, s. 5) ;

Offences.

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*Gaming houses*  
*Drunkenness.*  
*Indecent*  
*behaviour.*  
*Miscellaneous*  
*offences.*

*Stolen goods.*

*Licensed*  
*persons.*

*Assaulting*  
*constables.*

<sup>1</sup> Section 24 of 2 & 3 Vict. c. 71 (corresponding to s. 53 of the Dublin Police Act), which enacts that every person who shall be brought before a metropolitan magistrate charged with having in his possession or conveying in any manner anything which may be reasonably suspected of being stolen or unlawfully obtained, and who shall not give an account to the satisfaction of the magistrate of how he came by the same, shall be guilty of a misdemeanour, was held to be supplemental only to section 66 of 2 & 3 Vict. c. 47 (corresponding to s. 29 of the Dublin Police Act), which empowers a constable to stop, search, and detain any person who may be reasonably suspected of having or conveying in any manner anything stolen or unlawfully obtained ; and the sections apply only to possession in the streets, and not to possession in a house. *See*, that in a case in which a constable would have been authorized to arrest, the magistrate would have jurisdiction, although the offender had not been arrested, but was "brought before" him by summons (*Hadley v. Perks*, (1866) L.R. 1 Q.B. 444). Section 49 of 48 Geo. 3. c. 140, enacts a forfeiture of £100, to be recovered in the Recorder's Court by civil bill from any person concealing stolen goods, or receiver thereof.

<sup>2</sup> A search warrant may be granted on Sunday in Dublin, under the 12 & 13 Vict. c. 69, s. 4.

<sup>3</sup> It is submitted that the terms of this section are not sufficient to override the principle that a person is not bound to answer questions incriminating himself (see p. 284).

*Offences.**Miscellaneous.*

contempt of court, 40s. or seven days (s. 6); offensive or riotous conduct in places of public amusement, 40s. or one month's imprisonment (s. 8); attempted suicide, imprisonment not to exceed three months if defendant consents to be tried summarily (s. 9). Bailiffs guilty of extortion, or acting without authority, fine not exceeding £10, or imprisonment not exceeding six months, with or without hard labour (51 & 52 Vict. c. 47, ss. 12, 13).

*Nuisances in  
public  
thoroughfare.*

The following nuisances in public thoroughfares are forbidden under a 40s. maximum penalty (5 & 6 Vict. c. 24, ss. 14, 17):—

Exposing animals for show or sale; showing caravans; shoeing, &c., horses; exercising horses, or cleaning, making, or repairing a vehicle, except in case of accident: turning loose horse or cattle; suffering to be at large any unmuzzled ferocious dog; urging dog to attack person or animal; causing mischief by negligence or ill-usage in driving cattle; misbehaviour in the driving, &c., of cattle; riding on the shafts of a vehicle, or riding on a horse without having and holding the reins, or being at such distance from vehicle as not to have the complete control over the animal drawing same; riding or driving furiously or to the common danger; causing vehicle to stand longer than necessary for loading and unloading, or wilfully interrupting public crossing or causing obstruction; driving or leaving horse or vehicle on footway; rolling tubs, &c., on footway, save for loading or unloading; disregarding directions regulating driving during divine service, or for preventing obstruction during public processions; posting bills without consent of owner or occupier; marking buildings, breaking fences, &c.; loitering or soliciting; exhibiting, &c., indecent books or pictures, or using profane or indecent language; threatening, abusive, or insulting language; showmen or hawkers blowing horns; discharging fire-arms, stones, or missiles to damage or danger of any person; making bonfires, discharging fireworks, pulling bells, extinguishing lamps; flying kites or playing games; making or using slides (persons guilty of any of above in view of constables may be apprehended, s. 14); burning or cleansing hoops, cutting timber or stone, or slacking lime; depositing materials (except building materials, which are to be enclosed); beating or shaking carpets, &c. (except door-mats before 8 a.m.); throwing rubbish on highway or into river, drain, &c. (but not to extend to the laying of materials to prevent accidents by frost, or to prevent noise in case of sickness); emptying privies or removing offensive matter between 6 a.m. and 12 p.m.; keeping pig-styes in front of house and not shut off by sufficient wall or fence; keeping swine so as to be a common nuisance; occupier of house or tenement neglecting to sweep footways and watercourses adjoining his premises (where tenement unoccupied, owner to be deemed the occupier); exposing anything for sale in park or public garden without consent or so as to overhang carriageway or footway; setting up blinds, awnings, so as to cause annoyance or obstruction; leaving open and unfenced any vault or cellar, &c., to the danger of passengers.

*Pawnbrokers.*

The jurisdiction as to pawnbrokers will be found in CATALOGUE OF SUMMARY OFFENCES, "PAWNBROKERS."

*Hackney  
carriages.*

The law as to the hiring, &c., of hackney cars and cabs is contained in 16 & 17 Vict. c. 112; 17 & 18 Vict. c. 45; 18 & 19 Vict. c. 65. By the last-mentioned statute, all enactments relating to hackney carriages, save those regulating the duty, are applied to cabriolets, commonly known as cabs.

*Licence for  
carriage.*

The commissioners of police may grant licences to keep, use, or hire a stage carriage, job carriage, hackney carriage, cabriolet, cart,<sup>1</sup> or job horse, on payment of annual duty.<sup>2</sup> They may refuse,

<sup>1</sup> The sections as to carts for hire are, however, not enforced.

<sup>2</sup> A person duly licensed as a car-driver by the Killiney and Ballybrack urban district council, by virtue of the Towns Improvement Act, 1854, who is not licensed under the Dublin Carriage Act, 1853 (16 & 17 Vict. c. 112), is not liable to the penalty under the latter Act while he is pursuing his calling in the over-lapping district—that is, that area which is common to both the Dublin metropolitan police district and Killiney and Ballybrack urban district. Wherever the Towns Improvement Act, 1854, is in opera-



revoke, or suspend such licence upon the ground that the vehicle or horse or harness is unserviceable or unsafe, or unfit for public accommodation or use, or that the applicant or licensee is an unfit person to hold the licence by reason of having been convicted of theft, felony, assault, or drunkenness, or any breach of the statutes or rules, orders or bye-laws relating to hackney carriages, &c. The grounds of refusal, or revocation must be endorsed by the commissioners upon or annexed to the licence or the requisition therefor. A licence cannot be granted to a person under eighteen, otherwise than jointly with a person of full age, who is trustee, guardian, or administrator of the will or personal estate of a proprietor dying while licensed. A separate licence is required for each carriage, &c. (17 & 18 Vict. c. 45, s. 2). A new licence may be granted on change of ownership (s. 3), and a supplementary licence in case the original is lost, mislaid, obliterated, or defaced (s. 4). The application for the licence is in writing, containing certain particulars, including, in the case of a stage carriage, the fixed route or line of way by which it is intended such carriage shall proceed to its destination (16 & 17 Vict. c. 112, s. 8). A licence shall not be required for a cart bringing farm produce to market or manure from town (*ib.*). The duties per annum (which may be altered or abolished with the consent of the Lord Lieutenant (17 & 18 Vict. c. 45, s. 8)) are as follows:—two-horse job carriage, £8; one-horse job carriage, £5; stage carriage, £8; hackney carriage, £2; licence on transfer, 10s.; cabriolet, £1 4s.; hackney carriage (when proprietor has a cabriolet licence, and has paid a bulk premium of £12 10s.), £1; job horse, £2; cart or dray used or let to hire, 12s. (17 & 18 Vict. c. 45, schedule B.). A “Dublin plate,” costing 1s., is delivered with each licence (16 & 17 Vict. c. 112, ss. 11 and 15). Notice of change of residence, &c., must be given, and particulars of the change are to be endorsed on the licence (16 & 17 Vict. c. 112, s. 14). Entry of licences, and of all endorsements thereon, is to be made in a book to be kept by the commissioners of police, and certified extracts therefrom under the hand of the principal officer in charge thereof are to be evidence in all proceedings (16 & 17 Vict. c. 112, s. 12). The commissioners may on the requisition of the applicant (s. 53) grant a licence to any person over sixteen to drive, on production of a satisfactory certificate of ability to drive and of good character, the duty on which is 2s. 6d. the first year, each succeeding year 1s. (s. 52). The licence may be revoked or suspended by a justice for breach of the statutes or regulations made thereunder (s. 54). Badges are to be supplied to, and worn by, drivers (s. 55).

Hackney  
carriages.  
Licence for  
carriage.

Licence to  
drive.

The commissioners of police have power, on the application of the minister or churchwardens of any place of public worship, to regulate the route and conduct of persons driving any vehicles during hours of divine service on Sundays and certain other days (16 & 17 Vict. c. 112, s. 27); to make regulations for the route to be observed by all vehicles in the Phoenix Park (s. 28), and in any street or thoroughfare in the district (s. 29). Proof upon oath that a copy of any such regulations have been published in a Dublin daily newspaper, or have

Regulation of  
routes.

tion in the immediate neighbourhood of the Dublin metropolitan police district there is an exemption from the general clauses of the Dublin Carriage Act, 1853, so far as the provisions of the two Acts may clash. The court expressed no opinion as to the liability should a Killiney car-driver, hired in his own district, drive into the purely metropolitan district (*Dunne v. Owens*, (1903) 3 N.I.J.R. 45).



**Hackney  
carriages.**

been printed and posted in the vicinity of any public place to which they refer, shall be sufficient evidence of publication and notice of such regulations (s. 30). Power is given to the divisional justices to determine disputes between proprietors and drivers (s. 35); but agreements between drivers and proprietors are to be unenforceable unless in writing (s. 36). The commissioners may alter fares with the consent of the Recorder of Dublin (s. 48), and may appoint and alter carriage stands, and limit the number of carriages for each (s. 49), and may make rules for the regulation of drivers, carriages, &c. (s. 50).

**Disputes.  
Fares.  
Stands.  
Rules.****Offences.**

All offences may be determined by a divisional justice, whether the cause of complaint arose within the district or not; in case of disputes, the hirer may require the driver to drive to the police court where the matter may be determined without a summons, or to the nearest police station to have the complaint entered if the police court is not open (s. 61). The summons is to be served forty-eight hours at least before the hearing (s. 64); the defendant is a competent witness (s. 65); justices may award compensation to persons brought to answer unfounded complaints (s. 67).

The following is a summary of the offences under the statute; the penalties mentioned being maximum penalties:—

**Licences and  
plates.**

Procuring licence in fictitious name, penalty 40s. or two months, and revocation of licence (16 & 17 Vict. c. 112, s. 13); neglect to give notice of change of residence, penalty 40s. (s. 14); neglect to deliver up plate at expiration of licence, penalty 40s. (s. 17); not delivering up lost plate when found, or using a plate after it has been defaced, 40s. (s. 18); driver driving without plates may be apprehended and vehicle detained and sold unless penalty paid (s. 19); forging licence or plate, misdemeanour, imprisonment not exceeding two months (s. 21); refusal to deliver up plate to have same changed after notice in writing from commissioners, penalty 40s. (s. 22); obstructing officers seizing plate where licence discontinued or revoked, penalty £5 (s. 24); letting to hire without licence or plate, penalty £10 (s. 25), proprietor or driver failing to deliver to owner, commissioners of police, or to police station property left in licensed vehicle, penalty 40s. (s. 26); in case of hurt or damage caused by

**Lost property.****Negligence, &c.****Driving  
without  
licence.**

negligence or misconduct of any driver of any vehicle or person in charge of any horse, justice may award reasonable compensation to party aggrieved, and in default may order two months' imprisonment (s. 32); persons driving without licence or badge, proprietor suffering unlicensed person to act as driver, penalty 40s. (s. 33); if any complaint made against driver, the justice shall summon proprietor to produce drivers and their licences, and in default, penalty 40s. (s. 34); compensation may be awarded to driver where licensed proprietor wrongfully retains licence on the driver quitting his service (s. 37); driver of hackney carriage must deliver a ticket, with his number thereon, to hirer if required (s. 38); driver refusing to convey, to any place within ten miles of General Post Office, a person who tenders legal fare, or who occupies more than ten minutes in performing the distance of one mile; or demanding or exacting more than the legal fare, penalty 40s. (s. 39); hackney carriages found in any street are to be deemed plying for hire, and any driver who is not actually hired is obliged to drive to any place within district or within ten miles of the General Post Office, penalty on refusal, after tender of the legal fare, 40s. (s. 40); complainant wrongfully bringing complaint against driver for refusal to drive may be ordered to pay compensation (s. 41); demanding or exacting more than agreed sum, penalty 40s. (s. 42); agreement to pay driver more than legal fare is void; any person paying same can recover excess, and driver or proprietor is, in addition, liable to penalty not exceeding 40s. (s. 43); hirer may require driver to drive a certain distance without specifying destination, penalty on driver refusing, 40s. (s. 44); driver may be compelled to wait on receiving deposit, if required, of a reasonable sum (s. 45); penalty

**Ticket to be  
delivered.  
Refusal to  
drive.  
Illegal fare.****Regulations as  
to driving.**

<sup>1</sup> Note (2), p. 312, is also applicable to this section.

on person refusing to pay hire of carriage, or injuring the same, such reasonable sum as to justice may seem meet, with reasonable amends to party aggrieved, and in default of payment two months' imprisonment (s. 47); person acting as driver, or driver allowing persons so to act without consent of proprietor, penalty 40s. (s. 51); driving without displaying a badge, penalty 40s. (s. 55); wearing badge without licence, penalty 40s. (s. 56); not delivering up lost badge when found, or wearing badge after it has been defaced, penalty 40s. (s. 57); forging of licence or badge, a misdemeanour, penalty two months' imprisonment (s. 58); driver neglecting to notify change of abode, penalty 40s. (s. 59); no advertisements are to be carried upon any vehicles or on foot to the annoyance of inhabitants or passengers' (s. 60); witness refusing to obey summons to attend, penalty 40s. (s. 66). Penalties may be mitigated (s. 61).

Hackney carriages.  
*Refusal to pay fare, etc.*  
*Driving without badge, &c.*

*Witnesses.*  
*Mitigation of penalty.*

In case of the refusal or revocation of a licence, or a judgment for the payment of any sum exceeding twenty shillings, or for any term of imprisonment exceeding a month, an appeal may be taken to the Recorder of Dublin, to the sessions next ensuing, if held after the expiration of a week, and otherwise to the next sessions but one (s. 69). Notice in writing of the appeal must be given within forty-eight hours of the refusal or revocation of the licence, or after the giving of the judgment appealed against, to the secretary of the commissioners, or to the clerk of the justices, as the case may be; the notice to be lodged in due time with the clerk of the peace (s. 70). An appeal shall not stay execution unless a recognizance with two sureties is entered into to prosecute the appeal (17 & 18 Vict. c. 45, s. 9). The Recorder may state a case for the opinion of the King's Bench Division (16 & 17 Vict. c. 112, s. 72), and may award costs (s. 73). One moiety of the penalty is to be paid to the revenue of the metropolitan police district, and the other moiety to the prosecutor, unless where the prosecutor is a member of the Dublin metropolitan police force, in which case the entire penalty goes to the revenue of the district (s. 77).

*Appeals.*

The Dublin Traffic Act, 1875<sup>2</sup> (38 & 39 Vict. c. cxcv), enables (s. 1) the Chief Commissioner of Police, with the approval of the Recorder of Dublin, to be given as prescribed, to make regulations as to traffic, and generally for giving effect to the provisions of the Act. The following offences are created under the Act:—obstructing thoroughfare (s. 5); driving cattle otherwise than as prescribed (s. 6); washing footways otherwise than as prescribed (s. 7); prohibition of removing dead animals, ashes, &c., between 10 a.m. and 7 p.m. in any prescribed street (s. 8); prohibition of carriage of advertisements otherwise than as prescribed (s. 9); unloading goods save as prescribed (s. 14); driving carts, &c., of greater length, &c., than prescribed (s. 15). The Chief Commissioner may, by regulations made under the authority of the Act, prescribe the pace, &c., of traffic (s. 10), or prohibit cleansing and watering of streets save as prescribed (s. 11). Within special limits to be prescribed (s. 12), the route, &c., of vehicles may be prescribed (s. 13). Any householder may, personally or by his servant, or by any constable, require any street musician to desist, under a penalty (s. 16). Shoeblocks and messengers may be licensed by the commissioner (s. 17); wrongfully obstructing standings, &c., is prohibited (s. 19). The publication of regulations and orders is provided for by s. 19, and betting in the streets is prohibited by s. 21. Penalties

Dublin Traffic Act, 1875.

<sup>1</sup> This seems to apply to all vehicles whether, licensed or not, and to all persons carrying advertisement boards.

<sup>2</sup> *Verbatim*, APPENDIX OF STATUTES.



Dublin Traffic under the Act are to be recoverable in like manner, and subject to the like right of appeal as penalties under the Hackney Carriage Act (s. 22). The Lord Lieutenant in Council has power to extend the Act to places within the police district of Dublin Metropolis (s. 23).

Powers of  
Dublin metro-  
politan police.  
*Search, deten-  
tion, and  
arrest.*

D. M. P. constables have power, under warrant, to search for concealed arms (48 Geo 3, c. 140, s. 52), or for traitors, felons, or stolen goods (5 Geo. 4, c. 102, s. 13), and may, without warrant, arrest nightwalkers, suspected thieves, and all persons gaming or tipping in streets or public places, such persons to be deemed rogues and vagabonds (48 Geo. 3, c. 140, s. 53); like powers (6 & 7 Wm. 4, c. 29, s. 7); power to enter licensed houses and arrest tipplers or gamblers (5 Geo. 4, c. 102, s. 16), penalty for opposing entry £10 (s. 17), or refusing admittance £5 (s. 18); penalties on tipplers and gamblers, in prohibited hours, £2, £20, £50 (s. 19).

*Vessels, &c.*

A superintendent or inspector has the right to board vessels by night or day accompanied by constables, for the purpose of directing the conduct of police constables stationed on board same, and inspecting and observing the conduct of employees on board the ship, and for the purpose of taking all such measures as may be necessary for providing against fire and other accidents, and preserving peace and good order, and for prevention or detection of felonies and misdemeanours (5 & 6 Vict. c. 24, s. 23); superintendent, inspector, or sergeant, having just cause to suspect that a felony has been or is about to be committed, may board any boat or vessel for the prevention or detection of such felony, and take into custody the persons suspected (s. 24); constable may stop, search, and detain any vessel, boat, or carriage in which there shall be reason to suspect that anything stolen or unlawfully obtained may be found or any person reasonably suspected of having or conveying property stolen or unlawfully obtained (s. 29); and between 8 p.m. and 6 a.m. to stop and detain carts suspected of removing furniture to avoid payment of rent (s. 30), horse, boat, or vehicle detained under the Act may be ordered by the justice to be sold to defray penalty and costs (s. 31); constable may apprehend without warrant any person offending within his view against the Act whose name and residence are not known (s. 26), and may apprehend without warrant disorderly persons or suspected persons, and persons found loitering between sunset and 8 a.m. (s. 27; see also 6 & 7 Wm. 4, c. 29, s. 7), and persons charged with recent assaults of an aggravated character (s. 28), and any person found committing any indictable offence or misdemeanour (s. 29); persons apprehended without warrant are to be taken to the nearest station-house (s. 32), where, in the case of a charge summarily triable or a charge of having carelessly done any hurt or damage, recognizance may be taken and accused discharged if the police court is shut (s. 33). Where a person charged with felony or a grave misdemeanour shall be brought to a police station without warrant, whilst the police court is shut, the complainant may be bound over, and if he refuses, accused may be liberated upon entering into recognizances (s. 34) to appear before the justice of the division at his next sitting (s. 35). Constable shall not be responsible for irregularity in any warrant executed by him (2 & 3 Vict. c. 78, s. 13); constable may destroy mad dog; owner allowing same at large after having reasonable ground for believing it in a rabid state, penalty £5 (*ib.*, s. 15).

*Stolen  
property.*

*Removing  
furniture at  
night.*

*Arrest without  
warrant.*

*Procedure at  
station.*

*Mad dog.*

*Accoutrements.*

Constable on dismissal, &c., not delivering up accoutrements, &c., penalty one month's imprisonment (5 & 6 Vict. c. 24, s. 3); unlawful possession of accoutrements or assuming dress of constable, penalty £10 (s. 4).

Law of Dis-  
tress Act,  
51 & 52 Vict.  
c. 47.

Part 2 of the Law of Distress and Small Debts (Ireland) Act, 1888 (51 & 52 Vict. c. 47), provides for the appointment of bailiffs in the city of Dublin for the purpose of levying distresses for rent, or executing any decree of the Court of Conscience, or any decree or order of the Dublin divisional justices in pursuance of their small debts jurisdiction (ss. 6, 7); and the amount of their annual salaries (s. 8); publication and advertisement of the names, &c., of bailiffs (s. 9); the maintenance by the municipal authority of a public store for the storage of all goods seized pending sale or redemption (s. 10); storage charges (s. 11). If any bailiff or assistant bailiff shall extort any money or security for money, or other thing, or if any person, not being authorized as

<sup>1</sup> This store is at South William Street.



provided by the Act, shall act as a bailiff in cases within the Act, such person so offending shall be guilty of a misdemeanour, punishable by fine not exceeding £20, or imprisonment not exceeding twelve calendar months, with or without hard labour; or such person may be proceeded against summarily, and upon conviction shall be punishable by fine not exceeding £20, or imprisonment not exceeding six calendar months, with or without hard labour (s. 12). If any such bailiff or person assisting him shall offend against any of the provisions of the Act, or shall be guilty of any misconduct or illegality in the case of any distress or execution within the Act, other than in the last preceding section mentioned, the person aggrieved may proceed summarily against such offender, who on conviction shall be punishable by fine not exceeding £10, or imprisonment not exceeding three calendar months, with or without hard labour (s. 13). In any case within this or the preceding section the court may order the certificate of the offender to be withdrawn or suspended; and such order shall be transmitted to the municipal authority, or to the Recorder of Dublin, in case the certificate was granted by him, and the certificate shall be withdrawn or suspended accordingly: Provided that in case of any distress or execution within the Act, any person feeling aggrieved by anything done thereunder, or claiming to be the owner of any of the goods seized, may proceed by complaint in a court of summary jurisdiction, and the court may order all persons interested to be summoned, and shall give all requisite orders and directions as the justice of the case may require, whether as to the custody of the goods pending litigation, or the terms upon which the same should be sold, or for the return of the goods on such terms as to giving security or otherwise as shall appear just (s. 13). Summary proceedings under Part II. of the Act shall be regulated as in cases of summary jurisdiction under the Acts regulating the court of the divisional justices in Dublin, and subject to the like appeal, and shall be in addition to, and not in substitution for, any remedies existing before the Act (s. 14).

Law of  
Distress Act.

The Indictable Offences (Ireland) Act, 1849 (12 & 13 Vict. c. 69),<sup>1</sup> does not appear in the revised statutes; but, nevertheless, the statute is in force so far as Dublin is concerned, and is the sole statute now regulating procedure in indictable cases in the metropolitan police district. The Petty Sessions Act (14 & 15 Vict. c. 93, s. 43) purports to repeal the Indictable Offences Act. But, since the Petty Sessions Act applies to the Dublin metropolitan police district only in so far as it relates to the backing and execution of warrants (s. 41), the effect is to leave the Indictable Offences (Ireland) Act in force in Dublin.

Indictable  
offences.

In all cases where a charge or complaint is made that any person has committed, or is suspected to have committed, any treason, felony, or indictable misdemeanour, or other indictable offence, within the limits of the jurisdiction of the justice, or that any person guilty, or suspected to be guilty, of having committed any such crime or offence elsewhere out of the jurisdiction of such justice is residing, or being or is suspected to reside, or be within the limits of the jurisdiction of such justice, the justice may issue his warrant for the apprehension of such person; or, the justice may issue a summons in the first instance, and, if the summons be not obeyed, may then issue a warrant (s. 1). The justice may issue a warrant to apprehend for indictable offences committed on the high seas or abroad when the offender is, or is suspected to be, within the district (s. 2), or to apprehend a party against whom an indictment is found (s. 3), and may issue warrants on

Warrant to  
enforce  
appearance,  
&c.

<sup>1</sup> The opinion has always been acted upon, without question, that the Indictable Offences (Ir.) Act, 1849 (12 & 13 Vict. c. 69), applies to the police district of Dublin metropolis. Possibly the correctness of this view may never be formally decided; but the statute itself affords some indication that it was never intended to apply to Dublin (see ss. 1, 20, 22, 29, and Smyth's "Justice of the Peace," p. 192, Macnally's "Justice," vol. i., p. 177).

Indictable offences.	Sundays, including search warrants (s. 4). Certain rights are given in the case of indictable offences to act as justices for an adjoining county (ss. 5-7). If a warrant is to be issued, the information must be in writing and on oath; but if a summons only is to issue, the information need not be in writing or upon oath (s. 8). A summons is to be served by delivering same to the party personally, or if, he cannot conveniently be met with, by leaving the same with some person for him at his last or most usual place of abode (s. 9). No objection is to be taken or allowed to any information or complaint, summons or warrant, for any alleged defect therein in substance or in form, or for any variance between it and the evidence; but if any such variance shall appear to the justice to be such that the party has been deceived or misled, the justice may adjourn, remanding the party charged or admitting him to bail (ss. 8, 9, 10). A warrant to apprehend must be under the hand and seal of the justice, and may be directed to a constable by name or to the constables generally in the county or district in which the justice has jurisdiction, and may be executed within the place of jurisdiction, or in the case of fresh pursuit at any place in the next adjoining county, within seven miles of the border (s. 10). A justice is empowered to summon witnesses for the prosecution within his jurisdiction under his hand and seal, <sup>1</sup> to attend and give evidence, and if summons is not obeyed, warrant may issue; and if the justice is satisfied that the witness will not attend in the first instance, warrant may be issued; persons appearing in answer to a summons and refusing to be examined may be committed for seven days (s. 16). The depositions must be taken in writing, and the deposition of persons who have died can be read in evidence at the trial (s. 17). After examination of the accused the justice is to read the depositions taken against him, and caution him as to any statement he may make, and inform him that he has nothing to hope or fear from either promise or threat, and the statement of accused will be taken down and signed by the justice (s. 18). The place where the examination is taken is not to be deemed an open court, and the justice may order that no person remain without consent (s. 19).
Summons.	
Variance.	
Execution of warrant.	
Witnesses.	
Depositions.	
Hearing.	
Recognizances.	
Remand.	
Different counties.	
Bail.	Power is given to the justices to bind over the prosecutors and witnesses by recognizance (s. 20). Witnesses refusing to enter into recognizances may be committed (s. 20). Power is given to remand for a period not exceeding eight days, by warrant; if remand for three days only, by verbal order; the accused may be admitted to bail; if party does not appear on recognizance, the justices may transmit the same to the clerk of the peace (s. 21). If a person be apprehended in one county on charge of an offence committed in another, he may be examined in the former, and, if evidence be deemed sufficient, may be committed to the prison for the county or place where the offence is alleged to have been committed; if insufficient, he is to be brought before some justice in the latter county (s. 22). Power is given to the justices to admit to bail persons charged with any felony (save felonies under 11 & 12 Vict. c. 12), or with any assault with intent to commit any felony, or with any attempt to commit any felony, or with any offence against 1 & 2 Wm. 4, c. 34 (the Whiteboy Act), or with obtaining or attempting to obtain

<sup>1</sup> "Seal" does not mean necessarily something made with wax (*R. v. St. Paul's, Covent Garden*, (1845) 7 Q. B. 232).

property by false pretences, or with a misdemeanour in receiving property stolen or obtained by false pretences, or with perjury or subornation of perjury, or with concealing the birth of a child by secret burying or otherwise, or wilful or indecent exposure of the person, or with riot, or with assault in pursuance of a conspiracy to raise wages, or assault upon a peace officer in the execution of his duty, or upon any person acting in his aid, or with neglect or breach of duty as a peace officer, or with any misdemeanour for the prosecution of which the costs may be allowed out of the county rate or funds, and may admit to bail in the aforesaid cases after commitment for trial (s. 23). Justices shall admit to bail persons charged with other misdemeanours (*ib.*). No bail in cases of treason or felony under 11 and 12 Vict. c. 12, but by order of the Lord Lieutenant or the King's Bench Division (s. 24). If the evidence is not thought sufficient, the accused is to be discharged, otherwise the accused is to be committed for trial (s. 25). The defendant is entitled to have copies of the depositions at a cost not exceeding 1½*d.* per ninety words (s. 27).

Indictable offences.

Disposal of prisoner.

It may be noted that the jurisdiction, outside that of trials at bar in the King's Bench, in respect of crimes committed in the city and county of Dublin is as follows:—(A) The city (1) under the Commission issued by the authority of the 2 Geo. 2, c. 15; (2) under the powers conferred on the Recorder by the charters of the city and the provisions of the 3 & 4 Vict. c. 108; (B) in the county (1) under the Commission issued under the authority of the Act of 1729 already referred to; (2) the quarter sessions held at Kilmainham.

Criminal trials in city and county of Dublin.

There was no commission of assize ever issued to the county of Dublin. Since, however, the extension to Ireland by the 63rd section of 40 & 41 Vict. c. 57 of the Winter Assize Act, 1876, this county has, under the provisions of that Act, been occasionally named as the winter assize county for Leinster. The criminal business of the county was, up to 1798, mainly discharged at the quarter sessions, Kilmainham, which was usually presided over by a judge or serjeant. In that year, owing to the great increase of crime, as recited in the preamble of the 38 Geo. 3, c. 55 (Ir.), power was given to appoint a permanent chairman of these sessions, the Act preserving the right to preside to a judge of the King's Bench or serjeant in event of either being present at the sessions. This mode of appointment was repealed by 14 & 15 Vict. c. 57.

The Recorder of the city is, since the passing of the 40 & 41 Vict. c. 56, the *ex-officio* chairman of these quarter sessions. In the city, amongst other charters, that of 2 Rich. 3 names the mayor and Recorder<sup>1</sup> for the time being justices of Oyer and Terminer and general gaol delivery within the city suburbs and franchises, with liberty to deliver the city gaol. Many other charters and statutory provisions followed, dealing with the city criminal court, and in the result "all crimes and offences committed within these limits, except treason, are within the cognizance and jurisdiction of this court."<sup>2</sup>

The provisions of the 3 & 4 Vict. c. 108, vest all the powers of the court in the Recorder, who sits as sole judge.

<sup>1</sup> Set out at p. 43, Royal Commission, Dublin.

<sup>2</sup> Report Royal Commission, Dublin Corporation, p. 45, signed, amongst others, by Maziere Brady, afterwards Lord Chancellor; David R. Pigot, C.B.; Louis Perrin, Justice of K.B.



## CHAPTER XXVII.

### LIABILITY OF JUSTICES.

	PAGE		PAGE
Justices' Protection Act, 1849, . . .	322	Burthen of proof, . . .	326
Acts within jurisdiction, . . .	322	Setting aside proceedings, . . .	326
" without, . . .	322	Action for defamation, . . .	327
Other provisions, . . .	322	Arrest under defective warrant, . . .	327
Examples, . . .	323	Criminal information, . . .	328
Order bad upon its face, . . .	326	Time for action, . . .	328

Justices' Protection Act,  
1849.

*Acts within  
jurisdiction.*

*Acts without  
jurisdiction.*

*Other pro-  
visions.*

To entitle a plaintiff to succeed in an action brought against a justice of the peace for an act done by him *within his jurisdiction*, it is necessary for the plaintiff to allege in the statement of claim, and to prove at the trial, that the act was done maliciously and without reasonable and probable cause (Justices' Protection Act, 1849, 12 & 13 Vict. c. 16, s. 1).<sup>1</sup> But if the act is done without or in excess of jurisdiction, the action will lie without such allegation or proof, provided that no action shall be brought (1) for anything done under a conviction or order until the same has been quashed, either upon appeal or upon application to the King's Bench Division, (2) for anything done under a warrant to compel appearance if the warrant has been followed by a conviction or order, until the conviction or order has been quashed, or (3) where a warrant to compel appearance has not been followed by a conviction or order, or is a warrant upon an information for an alleged indictable offence, if the warrant was preceded by a summons and the summons was disobeyed (s. 2). Where a conviction or order shall be made by one or more justices, and a warrant of distress or commitment shall be granted thereon by some other justice *bona fide* and without collusion, no action shall be brought against the justice who granted the warrant by reason of any defect in the conviction or order or for want of jurisdiction in the justice who made the same, but the action must be against the justice or justices who made the conviction or order (s. 3). No action lies against a justice for issuing a distress warrant for recovery of poor rate by reason of any irregularity or defect in the rate, or of the party not being liable to be rated, nor against a justice for the manner in which he exercises a discretionary power (s. 4). No action lies against a justice for conforming to a rule of the King's Bench Division directing him to do an act (s. 5). No action lies against a justice for anything done under a warrant of distress or commitment upon any order or conviction which has been affirmed on appeal (s. 6). In all cases where by the Act it is enacted that no action shall be brought under particular circumstances,<sup>2</sup> if any such action shall be brought, it shall be lawful for a judge of the court in which the same shall be brought, upon application of the defendant, and upon an

<sup>1</sup> *Verbatim*, APPENDIX OF STATUTES.

<sup>2</sup> As to which, see p. 326, *infra*.

affidavit of the facts, to set aside the proceedings with or without costs (s. 7). The plaintiff in any action brought against a justice shall not recover more than 2*l.* damages if he is proved to have been guilty of the offence of which he was convicted, or that he was liable by law to pay the sum he was ordered to pay, and, with respect to imprisonment, that he had undergone no greater punishment than that assigned by law for the offence of which he was so convicted, or for non-payment of the sum he was ordered to pay (s. 13).

Justices' Protection Act, 1849.

Under s. 1 of the statute, it is necessary, in actions brought, in respect of acts done *within a justice's jurisdiction*, to allege and prove malice and want of reasonable and probable cause. From a large number of cases, the following have been selected to show the conditions necessary for the success of an action against justices. Some of the cases were decided before 12 & 13 Vict. c. 16, but sections 1 and 2 of that statute were merely declaratory of the existing law.

Examples.

*Rogers v. Jones*, (1824) 5 D. & R. 268. Where a justice committed a party to prison for an alleged offence against one statute, and afterwards drew up a conviction for a different offence from that stated in the warrant of commitment. *Held*, that the conviction was no justification of the magistrate in an action against him for false imprisonment.

*James v. Saunders*, (1834) 10 Bing. 429. Whether a justice was acting as a justice may, under certain circumstances (e.g., where the defendant, on the occasion of street disturbances, seized and detained the plaintiff until a constable came up), be a question for the jury.

*Newman v. Hardwicke*, (1838) 8 A. & E. 124, 3 N. & P. 368, 7 L.J.M.C. 101. If goods be seized upon a warrant, founded upon a conviction which is bad upon its face, the justices issuing the warrant are liable in trespass.

*Annette v. Osborne*, (1840) 2 Jebb & Sym. 376, 2 I.L.R. 317, 1 Cr. & Dix C.C. 540. A justice who arrests upon his own suspicion of a felony must be able to show, not only that the suspicion was reasonable, but that what he did under the influence of it was no more than was necessary to prevent the escape of the suspected person. The reasonableness of the suspicion is a question for the jury.

*Cave v. Mountain*, (1840) 1 M. & G. 257, 9 L.J.M.C. 90. A warrant was issued on an information which charged a felony, and which, in support of the offence alleged, adduced evidence that was entirely hearsay, and therefore inadmissible. *Held*, that though the admission of the hearsay evidence was wrong, yet the justice had acted within his jurisdiction. Where, supposing the facts alleged to be true, the justices have jurisdiction, their liability to be sued, or their exemption from such liability on the ground of jurisdiction, cannot be affected by the truth or falsehood of these facts, or by the sufficiency or insufficiency of the evidence adduced for the purpose of establishing them.

*Stevens v. Clark*, (1842) Car. & M. 509, 2 M. & Rob. 435. Where a justice defends an action brought in respect of anything done under a warrant issued by him, he must, in order to succeed, prove not merely that the warrant is regular, but that it is founded upon an information duly sworn.

*Clark v. Woods*, (1848) 2 Ex. 395. The English statute 43 Eliz. c. 2, s. 4, limits the period for which a person can be imprisoned, in default of payment of sums directed to be paid by him under that statute, to one month. A warrant issued under the statute directed defendant to be detained in prison "until payment of the said sum." *Held*, that the warrant was bad *in toto*, and that an action of trespass lay against the justices and the constable for an arrest and imprisonment under it, and defendant was held entitled to recover back all moneys paid under it. The backing of a warrant (under 24 Geo 2.,

Examples.

c. 55, s. 1) by a justice is merely ministerial, and the justice who issues the warrant is responsible for an arrest under it, although it be backed and executed in a county other than that in which it is issued.

*Linford v. Fitzroy*, (1849) 13 Q.B. 240, 18 L.J.M.C. 108, 13 Jur. 303. In an action against a justice for refusing to take bail on a charge of misdemeanour in which the justice was bound to take bail. *Held*, that defendant's duty in this respect was not merely ministerial, and that the action was not sustainable without proof of malice.

*Barton v. Bricknell*, (1850) 13 Q.B. 393. Action for trespass to plaintiff's goods. The conviction had been quashed because it contained an illegal alternative of confinement in the stocks on non-payment. The plaintiff had not been in fact put in the stocks, but his goods had been seized. *Held*, that the act complained of (the distress of the goods) was within the jurisdiction, though had plaintiff been imprisoned in the stocks this would have been an act without jurisdiction.

*Leary v. Patrick*, (1850) 15 Q.B. 266, 19 L.J.M.C. 211. The plaintiff was convicted in a penalty of £5, no mention being made of costs. A warrant of distress was issued, reciting a conviction for £5 and 12s. costs. The warrant was afterwards quashed. *Held*, that there was an excess of jurisdiction in the issue of the warrant, and that an action was maintainable against the justice issuing it.

*Ratt v. Parkinson*, (1851) 20 L.J.M.C. 208. Defendant was summoned for non-payment of a church rate. The justices, without drawing up a formal order, issued a warrant, which was dated, but omitted to recite the order and to show a previous disobedience of the order. *Held*, that the error was merely one of form, and that the justices were entitled to the protection of section 1. "I should be inclined to think that exceeding his jurisdiction in section 2 means assuming to do something which the Act under which he is proceeding could by no possibility justify, as in the case in the Queen's Bench of *Leary v. Patrick* . . . But I abstain from offering an opinion on this point" (*ib.*, per Jervis, C.J.; but see *Coghlan v. Woods*, (1882) 10 L.R.I. 29).

*Haylock v. Sparke*, (1853) 1 E. & B. 471, 22 L.J.M.C. 67. A person having been charged with having published a criminal libel, the justice, who had jurisdiction to bind him to be of good behaviour, but none to bind to the peace, required the offender to find sureties to keep the peace, and on default issued a warrant. *Held*, that the warrant was an act within jurisdiction, though informally exercised.

*Bessell v. Wilson*, (1853) 1 E. & B. 489, 22 L.J.M.C. 94. In the case of an offence tried summarily, a justice has no jurisdiction to issue a warrant where the defendant appears by counsel or solicitor; and where he does so he will not be entitled to the protection of section 1.

*Grady v. Hunt*, (1855) 5 I.C.L.R. 445. A justice's warrant of committal to prison until the party find sufficient sureties of the peace is illegal, if it omit to specify the time for which he is to be kept in prison. The issuing of such a warrant is an act without jurisdiction (see also *Prickett v. Gratrex*, (1846) 8 Q.B. 1020).

*Lalor v. Bland*, (1858) 8 I.C.L.R. 115. The provision in the 12 & 13 Vict. c. 16, s. 2 (forbidding the bringing of an action until the conviction is set aside), only applies to actions within that section, i.e., for acts done without or in excess of jurisdiction.

*Bott v. Ackroyd*, (1859) 28 L.J.M.C. 207, 5 Jur. (N.S.) 1053, 7 W.R. 420. The defendants, justices of the peace, convicted the plaintiff in a penalty of £2 and costs or two months' imprisonment. Against this decision, which was given orally, the plaintiff gave notice of appeal, and immediately left the court. A conviction and warrant of commitment were afterwards drawn up, in which blanks were left for the amount of costs to be inserted, and so signed by the defendants. The blanks were afterwards filled up by the magistrate's clerk, and the plaintiff was arrested on the warrant, when he, for the first time, became aware of the amount of costs. *Held*, that the signing in blank for the defendants was a mere irregularity and not an excess of jurisdiction, and that the plaintiff having brought an action for false imprisonment was rightly non-



sued under 11 & 12 Vict. c. 44, s. 1, identical with the Irish Act, 12 & 13 Vict. c. 16, s. 1 (see also *R. v. Binney*, (1853) 1 E. & B. 810).

*Lawrenson v. Hill*, (1860) 10 I.C.L.R. 177. A warrant issued by a justice founded upon an information which discloses no criminal offence, cannot be sustained by proof that there was in fact parol evidence on oath given which conveyed a criminal charge. Though the justice has a general jurisdiction over the subject-matter of the inquiry, yet the particular act of issuing such a warrant is without or in excess of jurisdiction, and an action brought for plaintiff's arrest and false imprisonment is maintainable under s. 2 of the 12 & 13 Vict. c. 16. Under that section the *bona fide* belief of the justice that he is acting within his jurisdiction affords no defence (see *M'Donald v. Bulwer*, (1862) 13 I.C.L.R. 549).

*Pease v. Chaytor*, (1863) 3 B. & S. 620. Justices are not liable to an action if they honestly, though erroneously, decide that an objection to the validity of a rate made at the hearing of a complaint for non-payment of arrears is not *bona fide*, and proceed to adjudicate and issue their warrant to enforce payment.

*Maloney v. French*, (1869) I.R. 3 C.L. 391. A justice of the peace has no power, where a prisoner is brought before him, and he is otherwise too occupied to investigate the charge, to order that the prisoner be kept in custody till such time as the defendant or some other justice shall be able to inquire into the matter; and an action for false imprisonment will lie if he does so. If a justice, for any reason, cannot go into the case against a prisoner brought before him, he ought to direct the person in whose custody such prisoner is to bring him before some other justice (*Edwards v. Ferris*, (1836) 7 C. & P. 542).

*Smith v. Ewen*, (1875) 39 J.P. 724. Where a summons purported to have been served upon a defendant by being left at his house whilst he was at sea, and he, before his return from sea, was convicted summarily and sentenced to imprisonment upon the charge set forth in the summons, it was held that an action lay against the justices as for an act done without jurisdiction (see 11 & 12 Vict. c. 43, s. 1, corresponding to 14 & 15 Vict. c. 93, s. 12 (2), as to service of summons, and 11 & 12 Vict. c. 43, s. 13, corresponding to 14 & 15 Vict. c. 93, s. 20 (2), as to proceeding in absence of defendant). But the correctness of this decision, or at all events of the reason given for it, seems open to question. It appears from the cases cited, p. 49, *et seq.*, that it is within the jurisdiction of the justices to determine whether the summons has been served a reasonable time before the hearing, and that, indeed, the High Court will not, generally speaking, interfere with their determination upon this point. It is submitted that where they inquire into the question of service, and *bona fide* come to a conclusion upon it, no action lies against them, though their conclusion is erroneous (see *Johnston v. Meldon*, (1891) 30 L.R.I. 15, *infra*). It would of course be otherwise if the justices convicted without making any inquiry as to service, or if they acted, in such inquiry, maliciously and without reasonable and probable cause.

*Forbes v. Lloyd*, (1876) I.R. 10 C.L. 552. In case of a dispute in a fair or market, 14 & 15 Vict. c. 92, s. 17 (1), authorizes a justice to cause all parties to be brought before him. *Held*, that these words did not authorize the arrest of a defendant who had not been summoned to appear, and that an action lay for false arrest.

*Coghlan v. Woods*, (1882) 10 L.R.I. 29. If a warrant committing a person to a lunatic asylum as a dangerous lunatic under 30 and 31 Vict. c. 118, fails to show upon its face all the elements material to the jurisdiction, e.g., that the justices called in a proper medical officer, and that such officer gave the requisite medical certificate, an action for false imprisonment will lie against the justices as well as the medical superintendent of the asylum.

*Johnston v. Meldon*, (1891) 30 L.R.I. 15. The plaintiff was convicted of an offence against the fishery laws. At the hearing the defendant raised a question of title. The justices honestly, but mistakenly, proceeded to adjudicate. The conviction was afterwards quashed on the ground that the claim was *bona fide*. *Held*, that an action for false imprisonment suffered on the conviction did not lie, (1) because where means of knowledge, as distinguished from knowledge, of want of jurisdiction are relied on to sustain an action against

Examples.

a justice for an act done without jurisdiction, the action will lie only when the justice acted maliciously and without reasonable and probable cause; and (2) that the jurisdiction was to inquire as to whether the claim was *bona fide* or not; that such jurisdiction was a continuing one, and that a decision thereon, though erroneous, and all subsequent proceedings, were within the jurisdiction.

*Polley v. Fordham*, (No. 2) (1904) 91 L.T. 525, 68 J.P. 504, 20 T.L.R. 639. Where it appears upon the face of a summons that a justice has no jurisdiction to entertain the matter, it is immaterial that the want of jurisdiction was not brought to his knowledge at the hearing of such summons, and the plaintiff, in an action against the justice, need not allege malice or want of reasonable and probable cause.

*Quinn v. Pratt*, (1908) 2 I.R. 69. Sect. 1 of 60 & 61 Vict. c. 30, gives power to a "court of summary jurisdiction" to make orders with respect to property in possession of the police. A was charged with larceny of certain property, and returned for trial. Afterwards, in the absence of the defendant A, and others who claimed to be interested in the property, two justices, sitting in the day-room of a police barrack, purported to make an order disposing of the property under sect. 1 of 60 & 61 Vict. c. 30. Held, (1) that the two justices sitting as aforesaid were not a court of summary jurisdiction, and (2) that there was no jurisdiction to make the order without the parties interested being present or summoned to attend; and that, therefore, an action for trover of the goods lay against the justices.

Order bad  
upon its face.

Some of the above-mentioned cases (*Newman v. Hardwicke*, (1838) 8 A. & E. 124, *Coghlan v. Woods*, (1882) 10 L.R.I. 29) apparently show that a conviction or order which is bad upon its face affords no defence to an action against a justice, for such a conviction or order is without or in excess of jurisdiction (see remarks of Pales, C.B., in *Re Heaphy*, (1888) 22 L.R.I. 500, 511). The conviction or order must, however, be quashed before an action can be taken upon it (s. 2; cf. *Lalor v. Bland*, (1858) 8 I.C.L.R. 115, and *McDonald v. Bulwer*, (1862) 13 I.C.L.R. 549); and "the plaintiff can recover as damages no more than two pence, if it be proved that he was guilty of the offence charged, or that he was liable to pay the sum that he was ordered to pay, or that the punishment ordered was no greater than that authorized by law" (Justices' Protection Act, 1849, s. 13). The words "guilty of the offence charged" apply, it is submitted, to criminal proceedings, and probably would receive a liberal interpretation, so as to include a case where the conviction is set aside as not fully or accurately describing the offence, and clearly would apply where a conviction is set aside as containing a general adjudication of guilt, in respect of a summons charging several offences conjunctively or distinctively. The words "that he was liable to pay the sum that he was ordered to pay" apparently apply to orders of a civil nature (s. 13).

Burthen of  
proof.

In any action for acts done within the justice's jurisdiction, it is not sufficient for the plaintiff to prove his innocence, and to call on the defendant to show probable cause; the plaintiff must give such evidence of what passed on the hearing (by calling the witnesses for the prosecution, or otherwise) that it may appear there was no probable cause for the conviction (*Burley v. Bethune*, (1814) 5 Taunt. 580, decided on 43 Geo. 3, c. 141; see also *Abrath v. N. E. R. Co.*, (1883) 11 Q.B.D. 440). Unless special reasons are shown, particulars will not be ordered of the matters relied on as reasonable cause (*Roberts v. Owens*, (1890) 54 J.P. 295; 6 L.T.R. 172).

Setting aside  
proceedings.

Section 7 of the Justices' Protection Act, 1849, enables the High

Court to set aside, on the application of the defendant, and with or without costs, proceedings brought against a justice, in all cases where by the Act it is enacted that no action "shall be brought under particular circumstances" (that is, of course, where such circumstances exist in the particular case). Instances of such statutory prohibition are:—action not to be brought in respect of a conviction unless the conviction is quashed, nor for an act done under a warrant to compel appearance, if a conviction did not follow, or if a summons were previously served, and not obeyed (s. 2). The only reported case under s. 7 is that of *Rockford v. Rynd*, (1881) 8 L.R. 1. 204, where the application to stay was based upon the circumstance that the action was late, having been instituted upwards of six months from the cause of action, which was forbidden by section 8 of the Act.<sup>1</sup>

Setting aside proceedings.

Justices issued a warrant of distress, in ignorance of the fact that the conviction to enforce which the distress was sought had been quashed. The action not having been brought within six months, an application was made, under section 7, to set aside the proceedings; and the point was made by the plaintiff that the issuing of the distress warrant was not an act done by the justices in execution of their office, and therefore was not within section 8. *Held*, that as the affidavits in support of the motion (while averring that the defendants *bona fide* believed that they were justified in acting as they did) did not show facts upon which such belief was founded, they were deficient, and the motion should be refused (*Rockford v. Rynd*, *supra*).

A justice of the peace, when sitting in the course of his judicial duties, is a "judge" within the meaning of the rule laid down by *Munster v. Lamb*, (1883) 11 Q.B.D. 588, and *Hodson v. Pare*, (1899) 1 Q.B. 455, that defamatory observations by a judge in the course of his judicial duties are not actionable (*Law v. Llewellyn*, (1906) 1 K.B. 487).<sup>2</sup> The statements of witnesses, counsel, and solicitors are also absolutely privileged (*Dawkins v. Lord Rokeby*, (1875) L.R. 7 H.L. 744; *Munster v. Lamb*, (1883) 11 Q.B.D. 588). A member of a county council, sitting to hear applications for music and dancing licences in England, is not absolutely privileged, and is only entitled to the qualified privilege extending to a communication made without malice on a privileged occasion (*Royal Aquarium Society v. Parkinson*, (1892) 1 Q.B. 431); but justices in Ireland at licensing sessions are a Court (*R. Findlater v. Dublin J.J.*, (1904) 2 I.R. 75), and seem therefore to be absolutely privileged.

Action for defamation.

Where defendant was arrested under a warrant which was altogether bad, he was held entitled to recover as special damages against the justices the costs of obtaining his release (*Norton v. Monckton*, (1895) 43 W.R. 350). An action will lie against the governor of a prison for imprisoning a defendant under a defective warrant (*Demer v. Cook*, (1903) 88 L.T. 629, 67 J.P. 206); but where a gaoler receives a prisoner under a warrant which is correct in form, no action will lie against him if it should turn out that the warrant was improperly issued, or that the court had no jurisdiction to issue

Arrest under defective warrant.

<sup>1</sup> Section 8 is now repealed, but the Public Authorities' Protection Act, 1843, contains a similar provision; and the proceedings could now be stayed or set aside in the like case by the court, under its inherent jurisdiction (see *Judicature (Ir.) Act*, 1877, s. 27, (5), *Wylie*, pp. 34-37).

<sup>2</sup> This case decided that the contrary view taken in the Scotch case of *Allardice v. Robertson*, (1830) 1 Dow. & Cl. 495, is not law in England or Ireland.



it (*Henderson v. Preston*, (1888) 21 Q.B.D. 362; *Greaves v. Keene*, (1879) 4 Ex. D. 73).

Criminal  
information.

Proceedings by way of criminal information may, by leave or direction of the King's Bench Division, be taken against a justice where he has been guilty of such misconduct in his office "as calls for punishment upon public grounds" (Paley, 8th ed., 511), such as acting from a dishonest, oppressive, or corrupt motive (see *R. v. Borron*, (1820) 3 B. & Ald. 432; *R. v. Badger*, (1843) 4 Q.B. 468). Notice containing a distinct statement of the matters complained of must be served personally upon the justice, or left at his residence with some member of his household, six days before the time named in it for making the necessary application to the King's Bench Division for leave (Order 84, Rule 22: see *R. v. Rae*, (1874) 1 R. 8 C. L. 524.). The application is by motion to the divisional court for a conditional order within a reasonable time after the matters complained of, and supported by an affidavit of the applicant that the defendant was actuated by corrupt motives, and further, if the application is in respect of an unjust conviction, that the applicant is innocent of the charge (Order 84, Rule 23).

The costs are entirely in the discretion of the court; and even where a rule has been discharged, a justice has been ordered to pay the costs (see *R. v. Dodson*, (1839) 9 A. & E. 704). This discretion is not interfered with by the Public Authorities' Protection Act, 1893 (Paley, 8th ed. 515).

Time for  
action.

An action against a justice must be brought within six months after the acts complained of; notice of action is no longer necessary (Public Authorities Protection Act, 1893, 56 & 57 Vict. c. 61). The defendant, a police magistrate, convicted the plaintiff of an offence, and ordered him to pay a fine. The plaintiff having failed to pay the fine, the defendant issued a distress warrant under which the plaintiff's goods were seized. The conviction was subsequently quashed. The plaintiff thereupon brought an action against the defendant for illegal distress. The action was commenced more than six months after the conviction was made, but less than six months after the distress warrant was issued. *Held*, that the action was not barred by the Public Authorities' Protection Act (*Polley v. Fordham*, (1904) 2 K.B. 345). The six months are reckoned exclusive of the day of committing the act complained of (*Clarke v. Davey*, (1820) 4 Moore, 465). Thus, if the imprisonment in respect of which the plaintiff claims damages ends on December 14th, the action will be in time if the writ is issued on June 14th (*Hardy v. Ryle*, (1829) 9 B. & C. 603); but the damages will be limited, in case of a continuing imprisonment, to such portion of it as was suffered within six calendar months from the issue of the writ (*Massey v. Johnson*, (1809) 12 East 67). In case of an illegal distress the time is reckoned from the date of the sale of the distress (*Collins v. Rose*, (1839) 5 M. & W. 194).

## CHAPTER XXVIII.

### CLERK OF PETTY SESSIONS.

	PAGE		PAGE
Appointment, . . . . .	329	Action against, . . . . .	333
Regulations, . . . . .	330	Petty Sessions Clerks Fund, . . . . .	333
Districts and salaries, . . . . .	331	Applications of fines and penalties, . . . . .	333
Duties, . . . . .	332		

THE method of appointing a clerk of petty sessions is prescribed by the Petty Sessions Clerk Act, 21 & 22 Vict. c. 100, s. 7.<sup>1</sup> Whenever a vacancy arises in the office of a petty sessions clerk serving one district only, the justices of such petty sessions shall nominate some person to hold the office ; and in any borough having a separate commission of the peace within 3 & 4 Vict. c. 108 (as to which see p. 6, *ante*), and for which borough petty sessions are held, the clerk shall be nominated by the justices of the borough. Whenever a vacancy shall arise in the office of petty sessions clerk serving two or more districts, the justices of such districts shall appoint some proper person to fill such office. Notice is to be given by the clerk of the peace of the time and place of election, the notice to be published in some newspaper circulating in the county or division, and served upon each such justice seven days previous to the election. Every appointment shall be notified to the registrar.

There is no definition of the term "the justices of such petty sessions." According to opinions of the law officers of 22nd October, 1866, 7th June, 1867, 11th September, 1871, and 11th May, 1875, the phrase includes a justice for the county who is resident in the district, or one of the districts, or a justice who, though not so resident, has been in the habit of attending and acting as a justice at the petty sessions of the district, or one of the districts. A justice cannot be considered as having been in the habit of attending and acting for the district who has not attended at least four times in each of the three years next preceding the election, or if the justice has been appointed for less than three years, he must have attended a proportionate number of times. But it is submitted that these opinions are only meant as a rough guide, to be modified according to the circumstances, e.g., in case of a justice who has been prevented by illness from attending. The chairman has no casting vote. In *R. (Rogcroft) v. Cork JJ.*, (1910) 2 I.R. 601, it was held that a justice who had not been resident in the county for over twenty years, but who occasionally visited the county, and last adjudicated while on a visit in the county four years prior to the election, was not a justice of the district, and the opinions of the law officers above mentioned (and cited in Molloy's Justice of the Peace, p. 494) were referred to, with approval (p. 611). See also p. 333, *post*.

<sup>1</sup> *Verbatim*, APPENDIX OF STATUTES.

## Appointment.

In the case of *R. (Fitzgerald) v. Kerry J.J.* (1910) 44 I.L.T.R. 352, at an election of a petty sessions clerk for the C district, eleven magistrates took part. Five voted for F, six for B. F moved for a mandamus on the ground that X and Y, who voted for B, were not qualified: X, though owning property in the district, being resident twelve miles away, and having last attended petty sessions in the district in the year 1903: Y, though owning property in the district, being a bank manager and resident at M, in the adjoining county, and having last attended petty sessions in the district in the year 1900. B objected to several magistrates, *inter alia*, to H, who resided three miles away in another district, and who had attended petty sessions in the district once in each of the preceding years, and F, who was chairman of the rural district council, on the ground that he was only *ex-officio* a member of the bench. The court held that X, Y, and H were disqualified, that, there being four lawful votes each way, a mandamus must issue for a new election, that, in the case of a magistrate residing outside the petty sessions district, attendance at petty sessions was a necessary qualification, the mere issuing of summonses, &c., not being enough. The court refrained from deciding whether a justice residing within the district could be qualified without attendance at petty sessions.

The office is held during the pleasure of the justices of the district or districts, and the Lord Lieutenant (s. 8 (1)).

Where an election was held, and the result was in dispute, the Lord Lieutenant signified his pleasure that neither candidate should hold office under the said election, and that a new election should take place. On an application by one of the candidates for a writ of mandamus to admit him to the office, it was held that the writ should be refused, for the writ will not issue in vain, and would be ineffectual, having regard to section 8 and the declared pleasure of the Lord Lieutenant (*R. (Whitley) v. Cork J.J.* (1909) 43 I.L.T.R. 133). But a mandamus will be granted to compel a new election (*R. (Rogers) v. Cork J.J.*, *supra*; *R. (Fitzgerald) v. Kerry J.J.*, *supra*).

Security must be given by the clerk before he enters on his duties (21 & 22 Vict. c. 100, s. 11, sch. B; 44 & 45 Vict., c. 18, s. 3). He shall not practise as a barrister or solicitor, or act as a solicitor's clerk, clerk of poor law union, or collector of any public tax, or be concerned in the keeping of any hotel, tavern, eating-house, or licensed house, or engage in any business which the Lord Lieutenant by general or special order shall prohibit (21 & 22 Vict. c. 100, s. 8).

## Regulations.

The following regulations are in force<sup>1</sup> regarding the position:—

A clerk whose salary does not exceed £70 per annum is, immediately after his election, and before approval, required to pass an examination in the subjects set out in No. I.

If the salary exceeds £70 per annum, a clerk is given six months to prepare in the subjects set out in No. II., and may also be required to pass in the subjects of No. I. as soon as elected.

All details of the examination No. II. are sent to a clerk on his election.

<sup>1</sup> The Lord Lieutenant has power to make rules for the purpose of carrying out the provisions of the Act (s. 29); and whether this section gives power to make the above regulations seems immaterial, inasmuch as the Lord Lieutenant's concurrence is required to the appointment of every clerk.



## No. I.

Regulations.

Writing. Arithmetic. Dictation.

The Filing of Returns.

The Taking of Informations, and preparing Petty Sessions Forms.

## No. II.

Certain portions of Mr. Justice Stephens' Digest of the Criminal Law, and Digest of the Law of Evidence ;

Certain portions of Humphrey's Justice of the Peace, or Supple's Justice of the Peace and Guide to Petty Sessions Clerks ;

The principal statutes relating to the duties of Clerks of Petty Sessions ; and Circulars to Petty Sessions Clerks and Magistrates.

The limits of age of persons eligible for the appointment of Clerk of Petty Sessions are twenty-one and forty years, except in the following cases, viz. :—

I.—The limits of age are twenty-one and fifty years in the case of a candidate who is—

- (1) A magistrate. [Magistrates are not eligible as candidates in the Petty Sessions District in which they reside, or in which they attend at Petty Sessions] ;
- (2) A practising barrister ;
- (3) A solicitor ;
- (4) A clerk of a solicitor of not less than 10 years' standing ;
- (5) A conducting clerk of a solicitor of not less than 7 years' standing ;
- (6) A person who has for 5 years immediately preceding his candidature constantly assisted a Petty Sessions Clerk ;
- (7) A recognised assistant to the Petty Sessions Clerk of Belfast or Cork, who is paid by the Department ;
- (8) A retired district inspector, head constable, sergeant, or constable of the Royal Irish Constabulary.

(The rule at (8) also applies to members of the Royal Irish Constabulary who are still serving, but they must retire before their appointment as Clerk of Petty Sessions is approved.)

II.—The limits of age are twenty-one and fifty-five years, in the case of a candidate who is a Petty Sessions Clerk.

The candidate elected must undergo a medical examination as to his fitness for the post.

The Lord Lieutenant may order that two or more districts shall be served by one clerk (20 & 21 Vict. c. 100, s. 6). Districts and salaries.

By the Petty Sessions Clerks and Fines (Ireland) Act, 1878 (41 & 42 Vict. c. 69, s. 2), the Lord Lieutenant is empowered to fix, and from time to time vary, a scale of salaries to be paid to the several petty sessions clerks in lieu of the scale set forth in the schedule to the 21 & 22 Vict. c. 100. The Petty Sessions Clerks (Ireland) Act, 1881, 44 & 45 Vict. c. 18, s. 1, enacts that the salaries and emoluments of petty sessions clerks shall not be raised or lowered on account of the amount of fines levied in the court of which they are clerks, or on account of the amount of stamps used therein, but may be raised on account of the length of service, or for merit, or for new duties attached to the office, and shall not be liable to be reduced during the tenure of the same occupant. The justices are obliged, if required by the Chief or Under-Secretary, to make a return of the business done, and of all fees and fines received in the district for any period not exceeding seven years (21 & 22 Vict. c. 100, s. 9).

If a clerk of petty sessions shall cease to hold the office, by reason of inability to perform the duties, or by reason of the consolidation of districts or offices, the Lord Lieutenant, on the recommendation of the justices, may direct that he shall be paid such gross sum by way

Districts and  
salaries.

of gratuity, or such annual sum by way of pension, as to the Lord Lieutenant shall appear just, such gratuity not to exceed the amount of three years' fees, and such pension not to exceed two-thirds of the salary (21 & 22 Vict. c. 100, s. 12). The pension shall cease if the pensioner shall be appointed petty sessions clerk of any district, or to any other public office or situation of equal value (s. 12). As to the fund out of which the gratuity or pension is payable, see p. 333. All the provisions of 21 & 22 Vict. c. 100, s. 12, apply to the assistants who are employed pursuant to 21 & 22 Vict. c. 100, s. 10) of the clerks of petty sessions at Cork and Belfast (7 Ed. 7, c. 22.).

The duties of the clerk of petty sessions cannot be performed by deputy, except in case of sickness, unavoidable absence, or other emergency, in which event the justices may appoint a temporary substitute (21 & 22 Vict. c. 100, s. 8).

Duties.

The duties of the clerk of petty sessions are defined by the Petty Sessions (Ireland) Act, 1851, ss. 5, 10, 21, the Petty Sessions Clerks (Ireland) Act, 1858, s. 8, and the Petty Sessions Clerks and Fines (Ireland) Act, 1878, s. 5. These duties are as follows: (1) To make minutes of all proceedings either in or out of sessions in a "minute book," and to enter up the orders at petty sessions in the "order book"; (2) to have custody of the books to be kept in the courthouse or place of holding petty sessions; (3) to prepare all informations and other forms; (4) to retain a copy in a book of all orders, circulars, and opinions of law officers, and to make copies of all informations when directed by the justices, and to retain copies of all abstracts or schedules or documents transmitted to clerks of the Crown and peace; (5) to enter cases in the order book in consecutive order; (6) to enter and account for all fines and sums levied, and act as to same as required by the Fines and Penalties Act, 1851; and account for all stamps to registrar; (7) to make returns and to observe general regulations; (8) to attend assizes or quarter sessions if required, to answer any complaint of neglect of duty as to informations; (9) to furnish copy of informations or complaints on payment of a fee of sixpence; (10) to transmit informations in indictable offences to the clerk of the Crown or clerk of the peace; (11) to enter in the order book all orders made out of sessions, and have same signed at petty sessions by the justice who made the order, or, on his refusal to sign same, to record the fact; (12) to adjourn the court if no justice shall be in attendance for one hour after the appointed time (where the case on the books requires two justices and only one attends, an adjournment may be declared: *Ex parte Mulcahy*, (1898) 4 I.W.L.R. 186); (13) in case of appeal, to cause the notice of appeal to be served on the respondent, to give appellant a certificate that the notice of appeal has been given and recognizance entered into, and to transmit recognizance to clerk of peace or officer of Recorder's court, seven days at least before the commencement of the sessions; (14) to fill up all stamped forms when required; (15) to fill processes and forms and deliver certificate of appeal under the Small Debts Act.<sup>1</sup>

Besides the above, other duties are imposed by various statutes. The clerk of petty sessions is obliged to keep a register of licences (Licensing (Ireland) Act, 1874, s. 16), to serve notices of convictions

<sup>1</sup> Government circular of 12th August, 1859.

under the licensing code on the owner of the premises (Licensing Act, 1872, s. 56), to enter particulars of convictions in register, and retain the licence if forfeited (*ib.* s. 55), to keep the register of clubs under the Registration of Clubs (Ireland) Act, 1904 (4 Edw. 7. c. 9, s. 1).

A certificate, signed by a justice, of an order of justices sitting in petty sessions was furnished by a petty sessions clerk, pursuant to s. 21 of the Petty Sessions Act, for use in certiorari proceedings, and this certificate was erroneous as regards a material part of the order. *Held*, that the petty sessions clerk was not liable for loss sustained through the incorrectness of the certificate (*Doherty v. Myles*, (1905) 40 I.L.T.R. 39). A clerk of a court, who acts in pursuance of, and for the purpose of carrying out, the order of the court, is a ministerial officer, and is not liable for acts done by him as such (*Dews v. Riley*, (1851) 11 C.B. 434; *Demer v. Cook*, (1903) 88 L.T. 629). As to responsibility of governor of goal, an illegal act of warder in keeping in custody an acquitted prisoner, see *Mee v. Cruickshank*, (1902); 20 Cox 210; see also *Demer v. Cook*, (1903) 88 T.L. 629, noted p. 327, *ante*.

The salaries as well as the pensions and gratuities of petty sessions clerks are paid out of a fund known as the Petty Sessions Clerks Fund, derived from the sources specified in 21 & 22 Vict. c. 100, s. 28; 28 & 29 Vict. c. 50, s. 16, and 44 & 45 Vict. c. 18, s. 2. (see *Casey v. Pope*, (1906) 40 I.L.T.R. 48.)

As to application of fines and penalties, see Fines Act 'Ir.', 1851, 14 & 15 Vict. c. 90, APPENDIX OF STATUTES.

#### NOTE.

It is now definitely settled that residence in a petty sessions district is, *per se*, sufficient qualification to entitle a justice to vote at the election of a petty sessions clerk for the district in which such justice resides (*R. (Hude, v. Carlow JJ.*, (1911) 45 I.L.T.R. 62).

Such election is a ministerial act, and need not be held in open court (*ib.*).



## CHAPTER XXIX.

### STATUTES, STATUTORY REGULATIONS, AND BYE-LAWS.

	PAGE		PAGE
Application of English pre-Union statutes, . . . . .	334	Statutory rules and regulations, . . . . .	336
Commencement of statutes, . . . . .	334	Bye-laws, . . . . .	337
Repeal, re-enactment, &c., . . . . .	334	Power to make, . . . . .	337
Definition of terms, . . . . .	335	Unreasonableness, . . . . .	337
Time, . . . . .	336	Examples, . . . . .	338
“Public” Acts, . . . . .	336	Good in part, bad in part, . . . . .	340
Title: marginal note, . . . . .	336	Repeal by Statute Law Revision Acts, . . . . .	340
Short Titles Act, 1896, . . . . .	336	Irish currency, . . . . .	341

Application of English pre-Union statutes. THE Irish statute known as Poynings’ Act (1495, 10 Hen. 7 (Ir.), c. 22) extended all the then existing statute law of England to Ireland. With the exception of a few other statutes, not affecting the subject of this work, which also were extended to Ireland by the Irish Parliament, the statute law of England between 1495 and 1800, the date of the passing of the Act of Union (39 & 40 Geo. 3, c. 67), does not apply to Ireland. Since the Act of Union, all statutes of the Imperial Parliament, from which Ireland is not expressly excluded, apply to Ireland, unless the contents of the statute itself show that it has no application to Ireland.<sup>1</sup>

Commence-ment of statutes. Down to 1793 in England, and 1795 in Ireland, all statutes came into operation from the first moment of the first day of the session in which they were passed, unless they contained an express provision to the contrary (*Att.-Gen. v. Panter*, (1772) 6 Bro. P.C. 486). But now, unless a statute contains an express provision to the contrary, it comes into operation on the day it receives the Royal assent (35 Geo. 3, c. 12 (Ir.); 33 Geo. 3, c. 13). A statute operates as from the first moment of the day on which it comes into operation (*Coll v. Porteous*, (1892) 19 Ont. App. 111). Where an Act passed after the 31st December, 1889, or any order in Council, order, warrant, scheme, letters patent, rules, regulations, or bye-laws made, granted, or issued, under a power conferred by any such Act, is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day (Interpretation Act, 1889, 52 & 53 Vict. c. 63, ss. 42, 36 (2)).

Repeal, re-enactment, &c. Where any Act passed after 1st January, 1890, repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted (*ib.*, s. 38 (1)). Where an Act passed after 1850 repeals a repealing enactment, it shall not be construed as reviving any enactment previously repealed, unless words are added

<sup>1</sup> For an instance of such implied exclusion, see 45 & 46 Vict. c. 34 (*Re Cahill*, (1899) 33 I.L.T.R. 138).

reviving that enactment (s. 11 (1)). Where such an Act repeals wholly or partially any former enactment, and substitutes provisions for the enactment repealed, the repealed enactment shall remain in force until the substituted provisions come into operation (s. 11 (2)). Where any Act passed after 31st December, 1890, repeals any other enactment, then, unless the contrary intention appears, the repeal shall not (a) revive anything not in force or existing at the time at which the repeal takes effect; or, (b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or, (c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed, or, (d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or, (e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment, as aforesaid; and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing Act had not been passed (s. 38).

Repeal,  
re-enactment,  
&c.

In all Acts passed since 1850, unless the contrary intention appears, words importing the masculine gender shall include females, and words in the singular shall include the plural, and words in the plural shall include the singular (*ib.*, s. 1 (1)). In the construction of every enactment relating to an offence punishable on an indictment or on summary conviction "person" shall, unless the contrary intention appears, include a body corporate (*ib.*, s. 2 (1), and see p. 83). Where, under any Act, any forfeiture or penalty is payable to a party aggrieved, it shall be payable to a body corporate in every case where that body is the party aggrieved (*ib.*, s. 2 (2)). In every Act passed since 1850, unless the contrary intention appears, the expression "month" means calendar month, the expression "land" includes messuages, tenements, and hereditaments, houses and buildings of any tenure; and the expressions "oath" and "affidavit," in the case of persons allowed by law to affirm or declare instead of swearing, include affirmation and declaration; and the expression "swear," in the like case, includes affirm and declare (s. 3). In every Act passed since 1850 and before 1st January, 1890, the expression "county" shall, unless the contrary intention appears, be construed as including a county of a city and a county of a town (s. 4). Every Act passed after 1850 shall be a public Act and be judicially noticed as such, unless the contrary is expressly provided by the Act (s. 9). The expression "the Summary Jurisdiction (Ireland) Acts" shall mean, as respects the Dublin metropolitan police district, the Acts regulating the powers and duties of justices of the peace or of the police of that district, and as respects any other part of Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act, past or future, amending the same (s. 13 (9)). The expression "the Summary Jurisdiction Acts" when used in relation to Ireland shall mean the Summary Jurisdiction (Ireland) Acts (s. 13 (10)). The expression "court of summary jurisdiction" shall mean any justice or justices of the peace, or other magistrate, by whatever name called, to whom jurisdiction is given by, or who is authorized to act under, the Summary Jurisdiction Acts, and whether acting under the Summary

Definition of  
terms.

Definition of  
terms.

Jurisdiction Acts or any of them, or under any other Act, or by virtue of his commission, or under the common law (s. 13 (11), and see p. 146). The expression "court of quarter sessions" means the justices of any county, riding, parts, division, or liberty of a county, or of a county of a city, or county of a town, in general or quarter sessions assembled, and shall include the court of the recorder of a municipal borough having a separate court of quarter sessions (s. 13 (14)). Expressions referring to writing, unless the contrary intention appears, are to be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form (s. 20). Where an Act passed after 31 December, 1889, authorizes or requires any document to be served by post, whether the expression "serve," or the expression "give" or "send," or any other expression is used, then, unless the contrary intention appears, the service is to be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post (s. 26). Where an act or omission constitutes an offence under two or more Acts, or both under an Act and at common law, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those Acts or at common law, but shall not be liable to be punished twice for the same offence (s. 33, and see p. 102). In the measurement of any distance for the purpose of any Act passed after 31 December, 1889, that distance, unless the contrary intention appears, is to be measured in a straight line on a horizontal plane (s. 34).

Time.

Whenever any expression of time occurs in any Act of Parliament the time referred to shall, unless it is otherwise specifically stated, mean, in the case of Ireland, Dublin mean time (Statutes Definition of Time) Act, 1880, 43 & 44 Vict. c. 9).

"Public"  
Acts.

Every Act passed after 1850 is a public Act, and shall be judicially noticed as such, unless the contrary is expressly provided by the Act (52 & 53 Vict. c. 63, s. 9).

Title:  
Marginal  
note.  
Short Titles  
Act, 1896.

The title does (*Fielding v. Morley*, (1899) 1 Ch. 1.), but the marginal note does not (*Sutton v. Sutton*, (1883) 22 C.D. 573) form part of the Act.

The Short Titles Act, 1896 59 & 60 Vict. c. 14, provides short titles for a great number of Acts, and collective titles for a number of groups of Acts.

Statutory  
rules and  
regulations

The Rules Publication Act, 1893 (56 & 57 Vict. c. 66), prescribes the procedure for making statutory rules. "Statutory rules" mean rules, regulations, or bye-laws, made under any Act of Parliament which (a) relate to any court in the United Kingdom, or to the procedure, practice, costs, or fees therein, or (b) are made by His Majesty in Council, the Treasury, the Lord Lieutenant, or the Lord Chancellor of Ireland, or a Secretary of State, the Admiralty, the Board of Trade, the Local Government Board for Ireland, the Chief Secretary for Ireland, or any other Government department (s. 4). At least forty days before making the rules, notice of the proposal to make the rules, and of the place where copies of the draft rules may be obtained, shall be published in the London Gazette, and, in the case of any rule extending to Ireland, also in the Dublin Gazette, and, if they extend to Ireland only, solely in the Dublin Gazette (s. 1 (1), (6)). During these forty days any public body may obtain copies of the draft rules, on payment



not exceeding therefor threepence a folio, and any representations or suggestions made in writing by a public body interested to the rule-making authority shall be taken into consideration by that authority, and on the expiration of these forty days the rules may be made by the rule-making authority, either as originally drawn, or as amended by such authority, and shall come into operation forthwith, or at such time as may be prescribed in the rules (s. 1 (2)). Section 1 applies to statutory rules where the Act directs the rules to be laid before Parliament, but does not include rules if the same or a draft thereof are required to be laid before Parliament for any period before the rules come into operation, nor does it include rules made by the Local Government Board for Ireland, the Board of Trade, or the Revenue Departments, or by or for the purpose of the Post-office (s. 1 (4)).

Statutory  
rules and  
regulations.

Rules made by the Department of Agriculture, &c., for Ireland under the Diseases of Animals Acts, 1894 and 1896, are by 62 & 63 Vict. c. 50, s. 21 (4) excluded from the operation of section 1 of the Rules Publication Act, 1893, as by s. 1 (2) of the Destructive Insects and Pests Act, 1907 (7 Edw. 7, c. 4) are orders made by the same department under the Destructive Insects and Pests Acts, 1877 and 1907, and as by s. 8 of the Bee Pest Prevention (Ir.) Act, 1908 (8 Edw. 7, c. 34), are orders made by the same department under that Act.

Where a statute prescribes that the rules shall be laid before Parliament, it is not necessary, in a prosecution under the rules, to prove that they were in fact laid before Parliament; and the rules are valid and operative even if that provision is not complied with, unless the statute directs that they shall not come into operation until they are so laid before Parliament (*Hepburn v. Wilson*, (1902) 4 F. (Just. Cas.) 18, Ct. of Justiciary; cf. *Walsh v. Somerville*, (1888) 22 L. R. I. 314).

Such rules and regulations should be proven in any prosecution under them: as to evidence thereof, see EVIDENCE, p. 278.

The power to make bye-laws is conferred by statute on many corporations or public bodies, such as railway companies, town commissioners, and the like. The statute usually directs the method of proof of the making and publication of the bye-law, and such proof will have to be adduced in any proceeding under the bye-law.<sup>1</sup>

Bye-laws.  
Power to make.

Even though a bye-law has been duly made and published, it will be void if unreasonable; and justices, if the point that a bye-law is unreasonable is raised, must consider and determine it. In *Kruse v. Johnston*, (1898, 2 Q.B. 91, at p. 99, Lord Russell of Killowen, L.C.J., said: "Bye-laws ought to be supported if possible. They ought to be, as has been said, 'benevolently' interpreted, and credit ought to be given to those who have to administer them that they will be reasonably administered. This involves the introduction of no new canon of construction. But, further, looking to the character of the body legislating under the delegated authority of Parliament, to the subject-matter of such legislation, and to the nature and extent of the authority given to deal with matters which concern them, and in the manner which to them shall seem meet, I think courts of justice ought to be slow to condemn as invalid any bye-law, so made under such conditions, on the ground of supposed unreasonableness

Unreasonable-  
ness.

<sup>1</sup> See also EVIDENCE, pp. 278, *et seq.*

Bye-laws.  
Unreasonable-  
ness.

. . . I do not mean to say that there may not be cases in which it would be the duty of the court to condemn bye-laws, made under such authority as these were made, as invalid because unreasonable. But unreasonable in what sense? If, for instance, they were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the court might well say, 'Parliament never intended to give authority to make such rules; they are unreasonable and *ultra vires*.' But it is in this sense, and in this sense only, as I conceive, that the question of unreasonableness can properly be regarded. A bye-law is not unreasonable merely because particular judges may think that it goes further than is prudent or necessary or convenient, or because it is not accompanied by a qualification or an exception which some judges may think ought to be there. Surely it is not too much to say that, in matters which directly and mainly concern the people of the county, who have the right to choose those whom they think best fitted to represent them in the local government bodies, such representatives may be trusted to understand their own requirements better than judges. Indeed, if the question of the validity of bye-laws were to be determined by the opinion of judges as to what was reasonable in the narrow sense of that word, the cases in the books on this subject are no guide; for they reveal, as indeed one would expect, a wide diversity of judicial opinion, and they lay down no principle or definite standard by which reasonableness or unreasonableness may be tested."

Examples.

The following are some cases in which the validity of bye-laws was challenged on the ground of unreasonableness:—

*Johnson v. Mayor, &c., of Croydon*, (1886) 16 Q.B.D. 708. Bye-law, made pursuant to the Municipal Corporation Act, 1882 (45 & 46 Vict. c. 50), s. 23, which provides that bye-laws may be made for the good order and government of the borough, and for the prevention and suppression of nuisances not already punishable in a summary way, that no person (not being a member of the army or auxiliary forces acting under the orders of his commanding officer) should sound or play upon any musical instrument in any of the streets in the borough on Sunday. *Held*, void, as making the playing of a musical instrument an offence, whether it causes a nuisance or annoys anybody or not.

*Innes v. Newman*, (1894) 2 Q.B. 292. Bye-law, providing that if any person should make any noise in any of the streets of the borough to the annoyance of the inhabitants, he should be guilty of an offence. *Held*, good, and justices were entitled to convict under it, even though only one inhabitant was proved to have been annoyed.

*Huffam v. North Staffordshire R. Co.*, (1894) 2 Q.B. 821. Bye-law providing that "any passenger using or attempting to use a ticket on any day for which such ticket is not available" should be liable to a penalty (irrespective of fraud or intention to commit a fraud). *Held*, bad.

*Kent County Council v. Humphrey*, (1895) 1 Q.B. 903. The Weights and Measures Act, 1889, s. 28, enables local authorities to make bye-laws requiring a weighing instrument to be carried with any vehicle in which coal is carried for sale or delivery to a purchaser. A bye-law is good which requires every coal dealer to provide, and every person employed by him, and conveying or carrying coal for sale or delivery to a purchaser from or out of any vehicle, to carry therewith a correct and stamped weighing machine of the form approved by the county council, and requiring that such person shall reweigh the coal upon being requested to do so.

*Hanks v. Bridgman*, (1896) 1 Q.B. 253. A bye-law made by a tramway company under the Tramways Act, 1870, requiring that every passenger upon a tramway shall, when required so to do, either deliver up his ticket or pay the fare legally demandable for the distance travelled by him, is good, and magistrates are bound to convict, under it, a passenger whose refusal to comply with it was caused by his having lost the ticket for which he had paid.

*Strickland v. Hayes*, (1896) 1 Q.B. 290, 60 J.P. 164. A bye-law (made by a county council, and purporting to be made in exercise of a statutory power to make bye-laws for the good rule and government of the county) that no person should "in any street or public place, or on land adjacent thereto," use any obscene language was held bad, as going entirely beyond anything necessary for good rule and government, as the use of such language in a place where no one except the speaker heard it would be an offence against the bye-law (cf. *Gentel v. Rapps, infra*).

*Teale v. Harris*, (1896) 60 J.P. 744. A bye-law (made by the council of a municipal borough in pursuance of a statutory power to make bye-laws for the good rule and government thereof) that no person should, to the annoyance or disturbance of residents and passengers, keep or manage a shooting gallery, swing-boat, roundabout, or other like thing, in any street or public place, or on land adjoining or near to such street. Held, good, as being distinguishable from the bye-law in *Strickland v. Hayes, supra*, by the words "to the annoyance or disturbance," &c.

*Collman v. Mills*, (1897) 1 Q.B. 396. A bye-law (made under s. 4 of the Slaughter Houses, &c. Metropolis Act, 1874, 37 & 38 Vict. c. 67, as kept in force by s. 142 (2) (b) of the Public Health (London) Act, 1891), authorizing the local authority to make bye-laws for regulating the conduct of (*inter alia*) slaughter houses, made it an offence for the licensed occupier of a slaughter house to slaughter sheep in the pound of the slaughter house or in view of other sheep. Held, that the bye-law was good, and that under it the occupier was liable for the act of his servant.

*Baker v. Williams*, (1898) 1 Q.B. 23. A bye-law enacting regulations respecting air-space, and made under the Contagious Diseases (Animals) Act, 1878, and orders thereunder, which enable local authorities to regulate the ventilation of dairies and cowsheds is good.

*Kruse v. Johnson*, (1898) 2 Q.B. 91. A bye-law (made by a county council pursuant to the Local Government Act, 1888 (E.), 51 & 52 Vict. c. 41, s. 16, which gives county councils the same power of making bye-laws for counties that councils of boroughs have as regards boroughs under s. 23 of the Municipal Corporation Act, 1882) prohibiting any person from playing music or singing in any public place or highway, within fifty yards of any dwellinghouse, after being requested by any constable, or an inmate of such house, or his or their servant, to desist, was held good.

*Mayor, &c., of Southend v. Davis*, (1900) 16 T.L.R. 167. A bye-law made under a local Act provided that "No organ or other musical instrument worked by steam or other mechanical means shall be used within the borough, provided that this bye-law shall not apply to any locomotive or steam engine in use on any railway within the borough; nor to any steam whistle or steam trumpet within the meaning of the Factories (Steam Whistles) Act, 1878." The bye-law, as being verbatim with the terms of the Act, was held good.

*Gentel v. Rapps*, (1902) 1 K.B. 160. A bye-law (made by a tramway company under the Tramways Act, 1870, s. 46, which enables a tramway company to make bye-laws for the prevention of nuisances in the tramcars) that no person shall swear, or use offensive or obscene language, in a tramcar is good, though it does not add "so as to be a nuisance or annoyance to others." The insertion of those words in a bye-law referring to a very large area may be necessary, for "what is a nuisance in one part of it may possibly not be so in another" (*ib.*, per Channell, J., at p. 165; and cf. *Strickland v. Hayes, supra*).

*Salt v. Scott-Hall*, (1903) 2 K.B. 245. A bye-law made under s. 157 of the Public Health (E.) Act, 1875, 38 & 39 Vict. c. 55 (enabling an urban authority to make bye-laws with respect to the structure of walls, foundations, roofs, and chimneys of new buildings for securing stability and the prevention of fires, and

Bye-laws  
Unreasonable-  
ness.  
Examples.



Bye-laws.  
Unreasonable-  
ness

for purposes of health) prohibited the erection, within the district, of any new building not constructed of brick, stone, or other hard and incombustible material. *Held*, that the fact that the bye-law did not reserve to the sanitary authority any power to exempt exceptional cases from its operation (as, for instance, where the building was remote from other dwellings, and had all its rooms on the ground floor, such as a bungalow), did not make the bye-law unreasonable; but *held*, also, that, in a case such as that of a bungalow, the justices were at liberty, if they so thought fit, to treat a breach of the bye-law as a trivial offence, and to dismiss the summons. Such bye-laws should contain such a dispensing power (*Pomeroy v. Malvern U. C.*, (1903) 89 L. T. 555). Cf. *Enniscorthy U. D. C. v. Field, infra*; and *Dublin Corporation v. Irish Church Missions*, (1901) 2 I.R. 387).

*Enniscorthy U.D.C. v. Field*, (1904) 2 I.R. 518. A bye-law (made by an urban district council purporting to act under s. 38 of the Public Health Acts Amendment Act, 1890, 53 & 54 Vict. c. 59, which enables an urban authority to "make bye-laws for the prevention of danger from whirligigs and swings when driven by steam power") that no person should cause or suffer any whirligig or swing to be set in motion or driven on any land immediately adjoining or abutting upon any street or road within the urban district of Enniscorthy unless such whirligig or swing was placed at a distance of not less than 20 yards from any road or street, and separated therefrom by a wall not less than 14 inches in thickness and carried up to a height of not less than 4 feet above the level of the street or road. *Held*, void, as it required a structure of a permanent character, involving large expense, to provide against a temporary danger, which could as effectively be provided against by a temporary structure.

*Scott v. Pilliner*, (1904) 2 K.B. 855. A bye-law (made by a county council, apparently, though the fact is not stated in the report, under the same authority as that mentioned in *Kruse v. Johnson, supra*) imposing a penalty on any person frequenting and using any street or public place for the purpose of selling or distributing any paper, or written or printed matter devoted wholly or mainly to giving information as to the probable result of races, steeplechases, or other competitions. *Held*, void, both on the ground of uncertainty, and mainly on the ground that it might strike at perfectly innocent sales of papers giving information as to the probable results of competitions on which there might be no betting at all" (*ib.*, p. 858, *per* Lord Alverstone, L.C.J.).

*Heiton v. McSweeney*, (1905) 2 I.R. 47. A bye-law (made by a county council in exercise of the powers given to them by the Local Government (Ireland) Act, 1898, s. 16, to make bye-laws "for the good rule and government" of the county, provided that the owner of every vehicle should cause a lighted lamp to be attached thereto and kept lighted during lighting-up hours. *Held* (Gibson, J., dissenting), that the bye-law was not void for making the master liable in respect of the omission or neglect of his servant (see also *Collman v. Mills, supra*).

Bye-law  
good in part  
and bad in part.

A bye-law may be good in part, and bad in part (*R. v. Lundie*, (1862) 5 L.T. 830). In that case, a private Act of Parliament empowered certain persons to make bye-laws for the regulation of certain common pastures, and to impose reasonable penalties for breaches of such bye-laws. In exercise of this power, these persons made a bye-law, that if any pasture freeman entitled to stock the common pastures should depasture any vicious horse on any part of the said common pasture, such person and the owner of such horse should respectively pay for every such offence the sum of £5. *Held*, that the bye-law was good as regards the part of it imposing a penalty on the person putting such horse on the land, but bad as regards the part imposing a penalty on the owner of such horse.

Repeal by  
Statute Law  
Revision Acts.

It must not be assumed that a statute, or portion of a statute, repealed by any of the periodic Statute Law Revision Acts, is repealed for all purposes. Such repeals shall not affect "any jurisdiction, or principle, or rule of law or equity, established or confirmed, or right or privilege acquired, or duty or liability imposed or incurred,

or compensation secured by or under any enactment repealed" (Statute Law Revision and Civil Procedure Act, 1883, 46 & 47 Vict. c. 49, s. 5). It has been said that a repeal by a Statute Law Revision Act is, in the main, "literary only" (Hardeastle on Statutes (1907), 4th ed., p. 296). For instance, it has been held that Lord Cairns' Act, 21 & 22 Vict. c. 27, though repealed by the Statute Law Revision Act, 1883, is still in operation (*Sayers v. Collyer*, (1884) 28 C.D. 103, 107; see also *Winfield v. Boothroyd*, (1886) 34 W.N. 501; *In the matter of Scott & Crawford*, (1910) 44 I.L.T.R. 19; *R. v. Dillon and O'Brien*, (1891) 28 L.R.I. 276, at p. 280).

Repeal by  
Statute Law  
Revision Acts.

The coinage of Great Britain and Ireland was assimilated on and from 5th January, 1826, by 79 Geo. 4, c. 18. All Acts relating exclusively to Ireland passed before that date are conversant with Irish currency. All Acts passed on and after that date are conversant with the present currency only. If a conviction imposes a penalty in Irish currency it will be void, having regard to 33 & 34 Vict. c. 10 (*Noble v. Hughes*, (1896) 2 I.W.L.R. 90, noted, p. 91, *ante*).

Irish  
currency.

#### SURETIES OF THE PEACE AND GOOD BEHAVIOUR— SUPPLEMENTAL NOTE.

"It seems clear, that wherever a person has just cause to fear that another will burn his house, or do him a corporal hurt, as by killing, or beating him, or that he will procure others to do him such mischief, he may demand the surety of the peace against such person; and that every justice of the peace is bound to grant it, upon the party's giving him satisfaction upon oath that he is actually under such fear; and that he has just cause to be so, by reason of the other's having threatened to beat him, or lain in wait for that purpose; and that he does not require it out of malice or for vexation" (1 Hawk, P.C., 8th ed., p. 479). "Those upon whom is imposed the duty of keeping the peace, be they conservators, justices, or judges, have power to direct that sureties shall be given for good behaviour and for keeping the peace, if they are judicially satisfied that there is danger of a future breach of the peace" (*per Palles, C.B.*, in *Ex parte Harken*, (1889) Judgments of Superior Courts, 316, at p. 322).

For what  
cause the  
surety of the  
peace is  
grantable.

"It may be forfeited by any actual violence to the person of another, whether it be done by the party himself, or by others through his procurement, as manslaughter, rape, robbery, unlawful imprisonment, &c.; . . . also, for treason . . . and also by any unlawful assembly *in terrorem populi*; and even by words directly tending to a breach of the peace, as by challenging one to fight, or in his presence threatening to beat him, &c. However, it seems that it shall not be forfeited by bare words of heat and choler, as the calling a man knave, teller of lies, rascal, or drunkard; for though such words may provoke a choleric man to break the peace, yet they do not directly challenge him to it, nor does it appear that the speaker designed to carry his resentment any farther. And it has been said, that even a recognizance for the good behaviour, shall not be forfeited for such words; from whence it follows, *a fortiori*, that a recognizance for the peace shall not" (1 Hawk. P.C., 8th ed., p. 483).

How recog-  
nizance to the  
peace may be  
forfeited.

"A man may be bound to his good behaviour for many causes of scandal which give him a bad fame, as being contrary to good manners only; as for (a) haunting bawdy-houses with women of bad fame; or for (b) keeping bad women in his own house; or for speaking words of contempt of an inferior magistrate. . . . However, it seems the better opinion that no one ought to be bound to the good behaviour for any rash, quarrelsome, or unmannerly words, unless they either directly tend to a breach of the peace, or to scandalize the government by abusing those who are intrusted by it with the administration of justice, or to deter an officer from doing his duty; and therefore it seems that

For what  
cause a person  
may be bound  
to good  
behaviour.

For what  
cause a person  
may be bound  
to good  
behaviour.

he who barely calls another rogue or rascal, or teller of lies, drunkard, &c., ought not, for such cause, to be bound to good behaviour. However, I cannot find any certain precise rules for the direction of the magistrate in this respect, and therefore am inclined to think that he has a discretionary power to take such surety of all those whom he shall have just cause to suspect to be dangerous, quarrelsome, or scandalous, as of those who sleep in the day and go abroad in the night, and of such as keep suspicious company, and of such as are generally suspected to be robbers, &c., and of eavesdroppers and common drunkards, and all other persons whose misbehaviour may reasonably be intended to bring them within the meaning of the statute as persons of evil fame, who, being described by an expression of so great latitude, seem in a great measure to be left to the judgment of the magistrate. But if he commit one for want of sureties, he must show the cause, &c., with convenient certainty" (1 Hawk. P.C., 8th ed., pp. 485, 6).

Security for good behaviour may be taken : for using opprobrious terms in a court of justice, publishing an obscene book, offering medicine to destroy a child in the womb, disturbing a religious service, unlawful fishing or hunting, for hunting or stealing deer or conies ; and it is a usual part of the judgment in a misdemeanour (*ib.*, p. 486 n.). The following are also instances in which the justices were held entitled to require the person charged to enter into sureties to be of good behaviour :—libel (*Haylock v. Sparke*, (1853) E. & B. 471) : public utterances manifesting that the speaker was in unlawful concert and combination to prevent tenants paying their rent (*R. (Reynolds) v. Cork JJ.*, (1882) 10 L.R.I. 1 ; *R. (Feehan) v. Queen's Co. JJ.*, (1882) 10 L.R.I. 294).

For what  
misbehaviour  
a surety to be  
of good  
behaviour  
may be  
forfeited.

"It is laid down as a general rule in the argument of *Stamp and Hide's* case, that whatever will be a good cause to bind a man to his good behaviour, will forfeit a recognizance for it. Yet this is since denied in *Hayward's Case* ; and indeed does by no means seem to be maintainable, because the statute, in ordering persons of evil fame to be bound in this manner, seems in many cases chiefly to regard the prevention of that mischief which they may justly be suspected to be likely to do ; and in that respect requires them to secure the public from that danger which may probably be apprehended from their future behaviour, whether any actual crime can be proved upon them or not ; and it would be extremely hard in such cases to make persons forfeit their recognizance who yet may justly be compellable to give one, as those who keep suspicious company, or those who spend much money idly without having any visible means of getting it honestly, or those who lie under a general suspicion of being rogues, &c. However, it seems that such a recognizance shall not only be forfeited for such actual breaches of the peace, for which a recognizance for the peace may be forfeited, but also for some others, for which such a recognizance cannot be forfeited, as for going armed with great numbers to the terror of the people, or speaking words tending to sedition, &c., and also for all such actual misbehaviours which are intended to be prevented by such a recognizance, but not for barely giving cause of suspicion of what perhaps may never actually happen" (1 Hawk. P.C., 8th ed., pp. 486-7).



PART II.

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CATALOGUE OF SUMMARY OFFENCES.



## INTRODUCTORY TO PARTS II. AND III.

(Catalogue of Summary Offences, and Catalogue of Indictable Offences.)

### HINTS TO JUSTICES.

One justice is sufficient unless the particular statute otherwise directs. Where it so directs, the fact will be noted *post*. Two justices are usually required where the offender is brought up out of petty sessions and cannot find bail for his appearance at petty sessions.

**Number of justices.**  
See p. 54.

If a justice arrives late, and it is deemed desirable that he should adjudicate, the whole evidence should be given again.

**Justice must hear the whole case.**  
See p. 56.

Generally, any person may prosecute.

**Who may prosecute.**  
See p. 43.

A justice who signs a summons should himself hear the complaint before doing so.

**Justice should hear complaint.**  
See p. 46.

Where a condition is necessary to the exercise of summary jurisdiction (e.g., consent to be tried summarily), take care that same is complied with ; and let such compliance appear on the face of the order.

**Conditions precedent.**  
See p. 56.

Justices have ample power to amend a summons, and there is no reason why such power should not be exercised to the full. An ill drafted summons can be amended into a properly drafted one ; and apparently (see *Keenan v. Costelloe*, p. 97) a new charge can be substituted where same is necessary to raise the real issue in the case. Where any amendment is made, any application of a defendant for an adjournment should be favourably considered. Apparently no amendment can be made unless defendant appears.

**Amendment of summons.**  
See p. 93, *et seq.*

In cases not within the Petty Sessions Act, such as offences relating to game, the particular statute and the procedure thereby directed must be followed.

**Cases outside P. S. Act.**  
See p. 76.

The Petty Sessions Act applies, generally speaking, to all offences triable summarily, save offences relating to excise, customs, stamps, taxes, post office, or game. The Act also applies to cases of illicit distillation.

**Application of P. S. Act.**  
See p. 41, 76 *n.*

Justices may call any person who is in court and examine him, whether he has been summoned as a witness or not.

**Justices may call witness.**  
See p. 57.



**Defendant and husband or wife of defendant not competent witnesses.**

In criminal cases the defendant, or the husband or wife of the defendant, cannot, as a rule, be examined. There are, however, many exceptions noted *post* under each title, and collected in chapter on "Evidence," p. 260, *ante*.

**Complainant may give rebutting evidence.**  
See p. 57.

The complainant can give evidence in reply where the defendant has given any evidence other than evidence of character.

**Formal proofs admissible after complainant's case closed.**  
See p. 57.

If the defendant, at the close of the complainant's case, objects that the case has failed for want of necessary formal proof, the justices may, and should, allow the omission to be rectified.

**Speeches at end of case.**  
See p. 57.

Strictly speaking, neither complainant nor defendant has any right to address the Court at the close of the case.

**Rehearing case heard in defendant's absence.**  
See p. 47.

Where a case is heard and determined in the absence of the defendant, who appears before the bench has separated, and before the order-book has been signed, the case can be re-opened if the justices who heard the case think fit, and if the complainant is also present.

**Form of conviction.**  
See pp. 84, 85, 86.

Be precise about the form of conviction; but there is no magic about it. Follow the words of the statute, and do not attempt to improve on them. Abhor vagueness; it is as easy to say "did assault constable A" as "did assault certain constables"; the former is right, the latter is wrong.

**Conviction where several offences charged.**  
See pp. 87, 88, 102.

One summons may contain several distinct charges. The adjudication must leave no doubt that each and every one of the charges has been disposed of. If, for instance, there are five charges in one summons, the order must show which of the five are dismissed, and on which of the five there are convictions. It is a question of some nicety when defendant can be punished for more than one offence on the same facts: when in such doubt, err on the safe side by convicting on one charge only. Where a person is convicted of several offences charged in one summons, there is only "one case," and the total costs awarded against him, under the Petty Sessions Act, cannot exceed 20s.

**"Cautioned."**

Every man is presumed to be innocent until his guilt is established by satisfactory proof. If the justices are not satisfied of defendant's guilt beyond reasonable doubt, then he is not guilty, and he is entitled to a dismiss. The law knows no such order as "Cautioned." Either a man is guilty or he is not guilty. If he is guilty, a justice should not shrink from saying so. If he is not guilty, or, what is tantamount to the same thing, not proved to be guilty, it is his right to be acquitted without any words suggesting a stain upon his character.

**Burthen of proof.**

But while the burthen of proof is in the first instance always upon the prosecutor, yet, having regard to the statute or the nature of the defence,

it may shift to the defendant in the course of the case. Thus, on a charge under the Merchandise Marks Act, 1887, where a false trade mark has been proved to have been used by the defendant, if the defendant wishes to prove that he “acted innocently” within s. 2 (2) (c), the affirmative proof thereof will rest upon him; so also, in a case of selling drink during prohibited hours, where the publican relies upon a defence that he believed the purchasers were *bona fide* travellers, the burthen of proving such defence to the satisfaction of the justices lies upon the publican. While, as already stated, the defendant is, in a matter in which the proof rests upon the complainant, entitled to the benefit of the doubt, the defendant is not entitled to the benefit of the doubt on an issue the proof whereof lies upon him, and in any of the cases given, or any like case, *if the justices are not affirmatively satisfied, by the evidence adduced on behalf of the defendant or otherwise, of the truth of such defence, they should convict.*

Burthen of proof.

If the case has been tried on the merits, the dismiss should be on the merits. The practice of dismissing without prejudice a case which is heard upon the merits, because the evidence establishes a case of strong suspicion but not of proof, is, it is suggested, entirely wrong. The dismiss without prejudice should not be adopted unless in a case in which the failure to prove the case arises from some oversight as to a technical proof on the part of the complainant, and the justices think that, having regard to all the circumstances, the case ought to be proceeded with again. Insufficiency of evidence, however, should not be considered as a ground for having the case tried again.

“Dismissed without prejudice.”

Costs not exceeding 20s. may be given to either complainant or defendant, when the Petty Sessions Act applies. As regards costs in cases to which it does not apply, see under each subject. The text, *post*, is silent where the Petty Sessions Act applies. A police constable in almost every case prosecutes as a common informer, and therefore costs can be given against him; but, as he would have to pay such costs out of his own pocket, it is suggested that costs ought not to be given against a constable who does his duty in a fair and reasonable manner.

Costs.  
See p. 68.

The punishment must be neither more nor less than the statute allows. If a fixed penalty (e.g., when the defendant is made liable to a “penalty of £—”), the justices must order the fixed penalty, and not less. Where the statute contains such words as “not exceeding £—,” any sum from a farthing to the sum named can be imposed. When there is an increased penalty on a second or subsequent offence, the fact that the conviction is for a second or subsequent offence should appear therein. In Acts passed before 5th January, 1826, relating exclusively to Ireland, convert Irish currency.

The punishment.  
See pp. 65, 67, 90.

The order for imprisonment in default of payment of a penalty should state “unless such sums be sooner paid”; and where the penalty and costs added together exceed £5, should order an antecedent distress.

Imprisonment.  
See p. 67.

**Scale of imprisonment.**  
See pp. 64, 67.

In default of payment of a penalty imprisonment (without hard labour) may be imposed, the term not to exceed the scale laid down by the Small Penalties Act, for the purposes of which the fine and costs should probably be added together.<sup>1</sup> In case of an offence punishable by imprisonment without the option of a fine, such imprisonment may be either with or without hard labour, unless the particular statute otherwise directs. When the conviction says "imprisonment" merely, this means imprisonment without hard labour. As to consecutive sentences, see pp. 68, 1011*n*<sup>2</sup>.

**Sureties for good behaviour.**  
See p. 34, *et seq.*

If a person is convicted of any offence, e.g., larceny, he may in addition to any other punishment be bound over to be of good behaviour, which includes, and is more comprehensive than, binding to keep the peace. Even where a charge is dismissed, provided there are circumstances which justify it, the defendant can be bound over to be of good behaviour or to keep the peace. A successful complainant can be similarly bound over.

**Amendment of order.**  
See pp. 99, 109.

When justices have delivered a spoken judgment, they can certainly change their minds unless and until the order has been signed in the order book. Even after they have signed an order in the book they can possibly alter it before they separate; but, apparently, after they have separated they cannot alter the order.

**Appeals.**  
See p. 132, *et seq.*

An appeal lies under the Petty Sessions Act where the order is for the payment of any sum exceeding 20s. (exclusive of costs) or for imprisonment exceeding one month, or for the doing of anything at a greater expense than 40s., but not when the sum (exclusive of costs) amounts to only 20s. exactly, or the imprisonment is only a month exactly. In the great majority of cases the appeal will be governed by the Petty Sessions Act, but there are many important exceptions dealt with under each title, *post*, and discussed also p. 131, *ante*. Where, in any subject dealt with in the following catalogue, the text is silent as to appeals, it may be assumed that the appeal sections of the Petty Sessions Act apply.

See p. 143.

**Probation of offenders.**  
See p. 59.

The Probation of Offenders Act, 1907, enabling the court, if they find a charge established, to dismiss the case, or to release the offender on recognizance as mentioned in the statute, is not confined to children or young persons, or even necessarily to first offences.

**Children, offences by.**

As regards indictable offences by persons under fourteen, note the provisions of the Summary Jurisdiction over Children (Ir.) Act, 1884, which, as amended by the Children Act, 1908, is noted at p. 73, and printed *verbatim*, APPENDIX OF STATUTES.

<sup>1</sup> See judgment of Wright, J., in *R. (Hastings) v. Galway JJ.* (1907) 2 I.R. 18, at p. 25.



By s. 111 of the Children Act, 1908, a court of summary jurisdiction cannot (except as provided in that section) try a person under sixteen in the presence of anybody except the reporters and those actually concerned in the case.

**Juvenile courts.**

The effect of section 115 of the Children Act, 1908, is that no person under fourteen is to be allowed to remain as a mere spectator in any court during any criminal proceedings whatever.

**Exclusion of children from court.**

Under s. 114 of the Children Act, 1908, justices may order the court to be cleared of everyone except those concerned in the case and the reporters whilst any witness under sixteen is giving evidence as to indecent or immoral conduct. Besides the above provisions, justices can order the court to be cleared at any time they think fit of any persons who are causing a disturbance.

**Clearing the court.**

Where several defendants are charged in the same summons with a joint offence, none of them can be examined as witnesses, nor can they claim as of right that the cases shall be tried separately. It is apparently within the discretion of justices to direct that the cases shall be tried separately. In summary cases where several defendants are jointly charged, if an application is *bona fide* made to have the cases tried separately, so as to allow the defendants to be examined on each other's behalf, it is suggested that the application ought to be acceded to.

**Joint offence.**  
See p. 47.

Strictly speaking, each justice at quarter sessions has the same power as the county court judge to decide questions of law as well as of fact. Indeed, apparently there is nothing to prevent any justice delivering to the grand or petty jury at quarter sessions a charge on his own account. But the county court judge is the statutory chairman. He is, moreover, a trained lawyer, and therefore more likely to be right on questions of law. Sympathy with an application for a licence is, perhaps, sometimes natural enough, but to grant it, against the opinion of the judge on the legality of doing so, spells disaster to the applicant himself; for the order will most probably be set aside, with costs against the applicant. Furthermore, public controversy between the chairman and his fellow-justices is to be deprecated.

**Powers of justices at quarter sessions.**  
See p. 10.

You cannot sit to hear an appeal from yourself, however desirable it may seem to do so. On such an appeal, divest yourself for the time of your judicial office, and take your seat in the body of the court as an ordinary citizen.

**Justice cannot hear appeal from himself.**  
See p. 137.

Be careful not to infringe the rule against determining questions of title. If in doubt, decline to proceed further, after you have satisfied yourself that a question of title is involved.

**Title ousting jurisdiction.**  
See pp. 206, *et seq.*

It is not enough to be just, you should be obviously just; Lord Field said: "The administration of justice ought not only to be pure in itself, and

**Acting where question of bias raised.**  
See p. 215.

capable of being demonstrated to be so, but nothing should be done by those who are administering it to throw on it a substantial doubt." If your presence on the bench be challenged on the score of interest or bias, it is safer and wiser not to act, if the challenge is real and *bona fide*. Costs have frequently been awarded by the High Court against disqualified justices who have persisted in acting, though challenged.

**Preliminary investigation of indictable offences.**  
See pp. 23, 24.

A justice has no business to *try* an indictable offence. If a *prima facie* case is made out, the case should be sent forward. It is the function of the jury, not of the justices, to *weigh* the evidence.

At the same time, the accused should not be discouraged from calling his evidence at the preliminary inquiry. Such evidence may show that there is really nothing in the charge; and it cannot fail to throw some light on the case.

**Cases triable either on indictment or summarily.**

In cases in which the option lies with the justices to try a case either summarily or on indictment, it is suggested that the case should be sent forward for trial, if the accused so wishes. A trial by jury is the normal and constitutional method of ascertaining the guilt or innocence of a person charged with a crime.

**Exercise of discretion.**

"Discretion should be exercised honestly and in the spirit of the statute. 'According to his discretion' means, it is said, according to the rules of reason and justice, not private opinion; according to law and not humour; it is not to be arbitrary, vague, and fanciful, but legal and regular; to be exercised not capriciously, but on judicial grounds and for substantial reasons" (Stroud, *sub verb.*).

# CATALOGUE OF SUMMARY OFFENCES.

## ABUSIVE LANGUAGE.

Mere abusive language is not an offence; but persons guilty of abusive language tending to a breach of the peace may be bound over. As to abusive language amounting to a contempt of court, see CONTEMPT OF COURT. As to language contemptuous of the Christian religion, and language regarding the Sovereign that amounts to seditious libel, see CATALOGUE OF INDICTABLE OFFENCES.

## ACCIDENTS TO WORKMEN.

In case of accident in certain employments, such as to cause any person employed therein either loss of life or such bodily injury as to cause him to be absent one whole day, employer to send notice to Board of Trade as soon as possible, and, in case of an accident not resulting in death, not later than six days from accident; penalty not exceeding 40s. The employments are—(1) Construction, use, working, or repair of any railway, tram road, tramway, canal, bridge, tunnel, or other work authorized by any local or personal Act of Parliament; (2) Use or working of any traction engine or other engine or machine worked by steam in the open air (*Notice of Accidents Act*, 1894, s. 1, and schedule;<sup>1</sup> *Notice of Accidents Act*, 1906, s. 6). The Board of Trade has power to apply section one of the Act of 1894 to any employment in which twenty persons or more, not being domestic servants, are employed by the same employer, and which, in their opinion, is specially dangerous to life or limb (s. 2), and to hold formal investigation in case of serious accidents, with power to summon witnesses, and to award costs, which are recoverable in like manner as a penalty under the Act—*Penalty*, on obstructing court or refusing to obey summons or to make return or produce documents, fine not exceeding £10, recoverable on summary conviction (s. 3).

Notice of accidents.

57 & 58 Vict.  
c. 28,  
6 Edw. 7.  
c. 53.

The Notice of Accidents Act, 1906, further provides for annual returns of accidents in mines and quarries (s. 1); notices of accidents in mines and quarries (s. 2); or railway sidings used in connection with mines and quarries (s. 3); making further enactment in respect of notice of accidents in factories and workshops (s. 4); confers power on the Secretary of State to extend provisions as to notice of accidents to dangerous occurrences (s. 5).

As to accidents in cases of explosives, see EXPLOSIVES.

Every employer in any industry to which the Secretary of State may direct that the section shall apply, to send return to Secretary of State of compensation paid for injuries during the year—*Penalty*, not exceeding £5 (*Workmen's Compensation Act*, 1906, s. 12).

Return of compensation.  
6 Edw. 7,  
c. 58.

<sup>1</sup> Portion of the schedule is repealed by Factory and Workshop Act, 1895, s. 54.



## ADULTERATION.

Corn, meal,  
or flour.

1 & 2 Vict.  
c. 28, s. 8.

Adulterating corn, meal, or flour, or selling corn, meal, or flour, not equal to sample, or fraudulently increasing weight of corn, meal, or flour—*Penalty*, not exceeding £10 or less than 40s., with forfeiture of article (*Bread (Ireland) Act*, 1838, s. 8).

14 & 15 Vict.  
c. 92, s. 7.

Selling or offering for sale wheat, rye, meslin, peas, beans, barley bere, oats, shillin, cutlings, meal, flour, malt, or other corn, spoiled or adulterated by wetting or mixing other stuff, or not equal to sample—*Penalty*, forfeiture, and fine not exceeding 40s., or imprisonment not exceeding a month (*Summary Jurisdiction Act*, 1851, s. 7, printed *verbatim* in APPENDIX OF STATUTES).

Wine.

23 & 24 Vict.  
c. 107, s. 31.  
Seeds.

Licensed wine retailer fraudulently diluting or adulterating wine, or knowingly selling or offering for sale wine diluted, or in any way adulterated—*Penalty*, first offence, not less than £10 or more than £20; second offence, disqualification for selling wine for five years, or penalty not less than £20 or more than £50 (*Refreshment Houses (Ireland) Act*, 1860, s. 31).

32 & 33 Vict.  
c. 112.

"Every person who, with intent to defraud, or to enable another person to defraud, . . . kills<sup>1</sup> or causes to be killed any seeds; or dyes<sup>2</sup> or causes to be dyed any seeds; or sells or causes to be sold any killed or dyed seeds"—*Penalty*, first offence, not exceeding £5; subsequent offence, not exceeding £50; in case of subsequent offence the court may further order offender's name, occupation, place of abode, place of business, and particulars of his punishment under the Act, to be published at the expense of such offender, in such newspaper or newspapers, or in such other manner, as the court may think fit (*Adulteration of Seeds Act*, 1869, s. 3); proceedings, including appeal, governed by the Summary Jurisdiction (Ireland) Acts (ss. 4, 6); complaint to be commenced within twenty-one days after the offence (s. 7); the intent to defraud any particular person need not be alleged or proved (s. 5); costs may be given to the defendant for an unreasonable prosecution (s. 8).

As to food and drugs, see FOOD AND DRUGS.

## ADVERTISEMENTS.

Indecent  
advertisements.

52 & 53 Vict.  
c. 18.

"Whoever affixes to or inscribes on any house, building, wall, hoarding, gate, fence, pillar, post, board, tree, or any other thing whatsoever, so as to be visible to a person, being in or passing along any street, public highway, or footpath, and whoever affixes to or inscribes on any public urinal, or delivers, or attempts to deliver, or exhibits, to any inhabitant, or to any person being in or passing along any street, public highway, or footpath, or throws down the area of any house, or exhibits to public view in the window of any house or shop, any picture, or printed or written matter, which is of an indecent or obscene nature"—*Penalty*, not exceeding 40s., or one month's imprisonment, with or without hard labour (*Indecent Advertisements Act*, 1889, s. 3).

"Whoever gives or delivers to any other person any such pictures, or printed or written matter mentioned in section 3 of this Act, with the

<sup>1</sup> Killing seeds means destroying by artificial means the vitality or germinating power of such seeds (s. 2).

<sup>2</sup> Dyeing seeds means applying to seeds any process of colouring, dyeing, or sulphur-smoking (*Adulteration of Seeds Act*, 1878, 41 & 42 Vict. c. 16, s. 2).

intent that the same, or some one or more thereof, should be affixed, inscribed, delivered, or exhibited, as therein mentioned"—*Penalty*, not exceeding £5, or three months' imprisonment, with or without hard labour (s. 4).

Any advertisement relating to syphilis, gonorrhœa, or nervous debility, or other complaint or infirmity arising from or relating to sexual intercourse, shall be deemed to be printed or written matter of an indecent nature within the meaning of s. 3 (s. 5). Constable may arrest, without warrant, any person whom he shall find committing any offence against the Act (s. 6).

Local authority (that is the urban district council in urban districts containing population of over 5,000, elsewhere the county council (s. 7)) may make bye-laws (1) for the regulation and control of hoardings and similar structures used for the purpose of advertising when they exceed twelve feet in height, (2) for regulating, restricting, or preventing the exhibition of advertisements in such places and in such manner, or by such means as to affect injuriously the amenities of a public park or pleasure promenade, or to disfigure the natural beauty of a landscape (*Advertisements Regulation Act*, 1907, s. 2).—*Penalty* for contravening bye-law, not exceeding £5, and not exceeding 20s. for every day during which offence is continued after conviction (s. 10). Bye-laws as to advertisements. 7 Ed. 7, c. 27.

Existing hoardings and advertisements to be exempt for five years from the making of the bye-laws (s. 1). The bye-laws are to be confirmed by the Lord Lieutenant, acting with the advice of the Privy Council (ss. 3, 9), after prior publication for at least thirty days (s. 3); the Lord Lieutenant may consider objections and direct local inquiry (s. 3); production of a copy of bye-law certified by a person purporting to be the clerk of the local authority to be a true copy, to be *prima facie* evidence of bye-laws, and of the due making, and, if it is so stated in certificate, of the due confirmation thereof (s. 3).

## AGRICULTURAL FERTILISER AND FEEDING STUFFS.

The Fertiliser and Feeding Stuffs Act, 1906, deals with the sale, either wholesale or retail (1) of any article for use as a fertiliser of the soil, (2) of any article for use as food for cattle or poultry. In the application of the Act to Ireland the Department of Agriculture and Technical Instruction for Ireland is substituted for the Board of Agriculture and Fisheries (s. 12). The statute, with notes, is printed *verbatim* in 6 Ed. 7, c. 27.  
APPENDIX OF STATUTES.

## AIDING AND ABETTING.

"Every person who shall aid, abet, counsel, or procure the commission of any offence which is or shall be punishable on summary conviction, shall be liable to be proceeded against and convicted for the same, either together with the principal offender, or before or after his conviction, and shall be liable on conviction to the same forfeiture and punishment to which such principal offender shall be by law liable (except where the age of such aider or abettor shall exceed fourteen years, in which case he shall be liable to the same forfeiture and punishment to which any principal offender whose age shall exceed fourteen years shall be liable), and may be proceeded against and convicted either in the county where such principal offender may be convicted, or in that in which such offence of aiding, Aiding and abetting summary offence.

14 & 15 Vict. c. 93, s. 22. abetting, counselling, or procuring, may have been committed" (*Petty Sessions (Ireland) Act, 1851, s. 22*).

Under the similar English section (s. 5 of the English Summary Jurisdiction Act, 1848) a person who aided and abetted the offence of driving a motor car at a speed dangerous to the public, by allowing such driving to take place when he could and should have prevented it, was held rightly convicted, as a principal, on a charge "that he did drive a motor at a speed dangerous to the public" (*Du Cros v. Lambourne*, (1907) 1 K.B. 40; see also *Benford v. Sims*, (1898) 2 Q.B. 641; *Burton v. Scott*, (1909) 25 T.L.R. 239). He might also have been convicted of aiding and abetting (*Howells v. Wynne*, (1863) 15 C.B. (N.S.) 3; *Du Cros v. Lambourne*, *supra*).

Aiding and abetting indictable offence.

As to aiding and abetting indictable offences, see INDICTABLE OFFENCES—"ACCESSORY AND PRINCIPAL."

### ALIENS.

Alien immigration: 5 Ed. 7, c. 13.

The Aliens Act, 1905, 5 Ed. 7, c. 13, regulates alien immigration. It applies to an immigrant ship, that is a ship bringing more than twenty alien steerage passengers who are to be landed in the United Kingdom, or such number of these passengers as may be fixed by order of the Secretary of State, s. 8 (2)<sup>1</sup>. An immigrant means an alien steerage passenger who is to be landed in the United Kingdom, but does not include a passenger who shows to the satisfaction of the immigration officer or board concerned with the case that he desires to land in the United Kingdom only for the purpose of proceeding within reasonable time to some destination out of the United Kingdom, or any passengers holding through tickets to such destination if the master or owner of the ship gives security that except for transit they will not remain in the United Kingdom (s. 8 (1)).

An immigrant shall not be landed in the United Kingdom from an immigrant ship except at a port at which there is an immigration officer appointed under the Act,<sup>2</sup> and shall not be landed at such port without the leave of that officer given after an inspection of the immigrants, and the officer shall withhold leave in case of undesirable immigrants. An immigrant shall be considered undesirable (a) if he cannot show that he has in his possession, or is in a position to obtain, the means of decently supporting himself and his dependants (if any); or (b) if he is a lunatic or an idiot, or owing to any disease or infirmity appears likely to become a charge upon the rates, or otherwise a detriment to the public; or (c) if he has been sentenced in a foreign country with which there is an extradition treaty for a crime, not being an offence of a political character, which is, as respects that country, an extradition crime within the meaning of the Extradition Act, 1870; or (d) if an expulsion order under the Act has been made in his case (s. 1).

No immigration board has been established, or officer appointed, for Ireland.

Expulsion of undesirable aliens.

If it be certified to the Secretary of State by any court (including a court of summary jurisdiction) that an alien has been convicted by that court of any felony or misdemeanour, or other offence, for which the

<sup>1</sup> The number was reduced to twelve by Order of 19th December, 1905, but restored to twenty by Order of 9th March, 1906.

<sup>2</sup> The ports for which officers have been appointed are Cardiff, Dover, Folkestone, Grangemouth, Grimsby, Harwich, Hull, Leith, Liverpool, London (including Queensborough), Newhaven, Southampton, and the Tyne Ports.



court has power to award imprisonment, without the option of a fine, or of an offence as a prostitute under s. 72 of the Towns Improvement (Ir.) Act, 1854, and that the court recommend that an expulsion order should be made in the case of such alien, either in addition to or in lieu of the sentence of such court, then the Secretary of State may, if he thinks fit, make an order requiring such alien to leave the United Kingdom within a time fixed by such order, and thereafter to remain out of the United Kingdom; and if such alien be found within the United Kingdom in contravention of such order, he shall be guilty of an offence against the Act (s. 3), and shall be liable on summary conviction to imprisonment not exceeding three months with hard labour (ss. 7, 9). If any question arises with reference to the giving of such certificate as to whether any person is an alien or not, the onus of proving that that person is not an alien shall lie on that person (s. 7 (5)).

### ALKALI WORKS.

The Alkali, &c., Works Regulation Act, 1906 (6 Ed. 7, c. 14), makes provision for the registration and regulation of alkali and kindred works mentioned in the first schedule to the Act.

### ANCIENT MONUMENTS.

<sup>1</sup> Injuring or defacing any ancient monument<sup>1</sup>—*Penalty*, not exceeding £5, and expenses of repair, or, at the discretion of the court, imprisonment with or without hard labour not exceeding one month<sup>2</sup> (*Ancient Monuments Protection Act*, 1882, s. 6). The Act applies to (a) the monuments mentioned in the schedule thereto, (b) any other monuments of like character, of which the Commissioners of Works, at the request of the owners thereof, may consent to become guardians (ss. 8, 11), (c) any monuments declared by order in council to be ancient monuments (s. 10), (d) any monument which is maintained by the Commissioners in pursuance of any gift, devise, or bequest (*Ancient Monuments Protection Act*, 1910), (e) ancient monuments vested in the Commissioners on a sale under the Land Purchase Acts (*Irish Land Act*, 1903, s. 14), (f) ancient monuments of which a county council consent to become guardians under the Local Government Act, 1898 (*Local Government (Ir.) Act*, 1898, s. 49).

45 & 46 Vict.  
c. 73.  
  
10 Ed. 7, c. 3.  
  
3 Ed. 7, c. 37.  
61 & 62 Vict.  
c. 37.

Where the Commissioners of Works are of opinion that the preservation of any ancient structure is a matter of public interest they may, at the request of the owner, consent to become the guardians thereof, and

<sup>1</sup> "Ancient monument" includes the site of such monument and such portion of land adjoining same as may be required to fence, cover in, or otherwise preserve from injury the monument; also the means of access to such monument (s. 11).

The following are the ancient monuments mentioned in the schedule to the Act:—Navan Fort (Co. Armagh); stone monuments and groups of sepulchral cists in Glen Maulin (Co. Donegal); Grianan of Aileach (Co. Donegal); Giant's Ring, near Ballylessan (Co. Down); earthen fort at Downpatrick, Dunkeltair (Co. Down); Stague Fort (Co. Kerry); earthen mound at Greenmount (Co. Kerry); stone monument at Ballyna (Co. Mayo); cairns and stone circles at Moytura (Co. Mayo); tumuli, New Grange, Knowth, and Dowth (Co. Meath); earthworks on Hill of Tara (Co. Meath); earthworks at Teltown, Taltin (Co. Meath); earthworks at Wardstown, Tlaghta (Co. Meath); tumuli on the hills, called Slieve Na Calliagh (Co. Meath); cairn at Heapstown (Co. Sligo); sepulchral remains at Carrowmore; the cairn called Miscaun Mave or Knocknarea (Co. Sligo); cave containing Ogham-inscribed stones at Drumloghan (Co. Waterford); the Catstone and the cemetery on the hill of Usnagh (Co. Westmeath).

<sup>2</sup> The owner can only be convicted where the Commissioners of Works or county council have been appointed guardians.

55 & 56 Vict.  
c. 46.

thereupon the Ancient Monuments Protection Act of 1882 shall apply to such structure (*Ancient Monuments Protection (Ireland) Act, 1892*; see also *Act of 1882, s. 2*).

Offences and penalties shall be prosecuted according to the Summary Jurisdiction Acts<sup>1</sup>—(*Act of 1882, s. 7*).

### ANIMALS, CRUELTY TO.

	PAGE		PAGE
Cruelty generally, . . . . .	356	Obstruction of constable, . . . . .	361
Meaning of "animal," . . . . .	356	Procedure under Cruelty to Animals Act, 1849 . . . . .	361
Meaning of "cruelly," . . . . .	356	Wild Animals in Captivity Act, 1900, . . . . .	362
Knowledge, intent, . . . . .	359	Vivisection, . . . . .	362
Separate offences created by section, . . . . .	359	Using dog for draught, . . . . .	363
Cock-fighting, &c., . . . . .	360	Cattle in transit, . . . . .	363
Pounds, . . . . .	360	Slaughter of injured animals by or by order of police, . . . . .	363
Slaughter-houses, . . . . .	360		
Carrying animals in vehicles, . . . . .	361		

Cruelty  
generally.

12 & 13 Vict.  
c. 92.

Meaning of  
"animal."

"If any person shall cruelly beat, ill-treat, overdrive, abuse, or torture, or cause or procure to be cruelly beaten, ill-treated, overdriven, abused, or tortured any animal"—*Penalty* not exceeding £5<sup>2</sup> (*Cruelty to Animals Act, 1849, s. 2*). Overdriving includes overriding (*s. 29*). The convicting justices may order the offender to pay compensation, not exceeding £10, if he has caused damage to be done to any animal, person, or property (*s. 4*).

"Animal" includes any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, hog, pig, sow, goat, dog, cat, or any other domestic animal (*s. 29*), and now by the Cruelty to Animals Act, 1854 (*17 & 18 Vict. c. 60*), *s. 3*, is defined to be any domestic animal, whether of the species enumerated in *s. 29*, or any other kind or species whatever and whether a quadruped or not. Cocks used for fighting (*Bridge v. Parsons, (1863) 3 B. & S. 382*; *Bates v. McCormick, (1863) 8 Ir. Jur. N.S. 239*; *Allen v. Small, (1904) 2 I.R. 705*), linnets kept in captivity and used as decoys (*Colam v. Pagett, (1884) 12 Q.B.D. 66*) are domestic animals; but wild rabbits caught in nets and fed five or six days before they are liberated to be coursed (*Aplin v. Porritt, (1893) 2 Q.B. 57*), a pinioned and tamed sea-gull (*Yates v. Higgins, (1896) 1 Q.B. 166*), or caged and trained lions (*Harper v. Marcks, (1894) 2 Q.B. 319*), are not domestic animals, though leopards trained to hunt for their master, otters trained to catch fish, and elephants trained to assist in the capture of wild elephants might be held to be domestic (*ib., per Wright, J.*). The distinction between wild animals and domestic animals is now, however, of comparatively little importance in view of the *63 & 64 Vict. c. 33* (as to which see *p. 362*).

"Cruelly."

"Cruelly" means unreasonably inflicting unnecessary pain (*Budge v. Parsons, (1863) 3 B. & S. 382*; *Elliott v. Osborne, (1891) 17 Cox 346*; *Swan v. Saunders, (1881), 14 Cox 566* at *p. 570*). Cock-fighting is within the section (*Bates v. McCormick, supra*); so is dubbing or cutting off the combs of cocks (*Murphy v. Manning, (1877) 2 Ex. D. 307*), to fit them for fighting, &c. Branding an identification mark with a red-hot iron on lambs is not cruelty (*Bouryer v. Morgan, (1906) 22 T.L.R. 426*); neither is the dishorning of cattle (*R. v. McDonagh, (1891) 28 L.R.I. 204*, in

<sup>1</sup> The section expressly gives a right of appeal in England, but is silent as to the right of appeal in Ireland, where, however, it is submitted, such appeal lies as is given by the Petty Sessions (Ir.) Act. See *p. 131*.

<sup>2</sup> If a case is heard before two justices, or one police magistrate, three months' imprisonment, with or without hard labour, may be imposed, without the option of a fine (*s. 18*).

*To face page 356.]*

## **ANIMALS, CRUELTY TO.**

The Cruelty to Animals Act, 1849, the Cruelty to Animals Act, 1854, the Wild Animals in Captivity Protection Act, 1900, and the Injured Animals Act, 1907, have been repealed by the Protection of Animals Act, 1911, 1 & 2 Geo. 5, c. 27, which became law as the volume was going through the press. That statute, which contains substituted provisions, will be found at p. 1277. It is, however, conceived that the notes in the present article will be found useful.





which the court refused to follow the English case, to the contrary effect, "**Cruelty.**" of *Ford v. Wiley*, (1889) 23 Q.B.D. 203; nor the spaying (*Lewis v. Termor*, (1887) 18 Q.B.D. 352), or the castration of animals (see judgment of Lord O'Brien, C.J., in *R. v. M'Donagh*, *supra*, at p. 210); but if such operations are performed in an unskilful or careless way, or so as to cause unnecessary suffering, the magistrate can and ought to convict (*ib.*, *per* Gibson, J., 234). A performance in which wild and domestic animals are exhibited together is not necessarily cruelty; but circumstances (e. g. the fact that a lion, immediately after exhibiting some tendency to attack a pony, was allowed to remain in a cage with the pony, which it subsequently attacked and killed) may warrant a conviction (*Thielbar v. Craigen*, (1905) 21 Cox 44). Mere carelessness is not necessarily cruelty (*Westbrook v. Field*, (1887) 3 T.L.R. 465). If a person has a right to kill an animal, his right is confined to killing it outright in a humane way (*Adcock v. Murrell*, (1890) 54 J.P. 776; *Duncan v. Pope*, (1899) 19 Cox 241).

The following decisions on the section seem worthy of a full note:—

A mare met with an accident, by which one of her hind legs was dislocated and fractured. The defendant, the owner of the animal, for several months kept the mare in a field, where she was obliged to move about, in much pain, for the purpose of obtaining her food. For some time after the accident there was a probability of the recovery of the mare, but the defendant admitted that for some time prior to the issue of the summons he knew the mare was incurable. The justices found that the omission to slaughter the animal did not amount to cruelty within the statute:—*Held*, that the justices were right in holding that the defendant could not be convicted merely for keeping a mare that had a diseased leg. "But the real question which the magistrates should have put to us is, did he not cause and procure the mare to be tortured by putting her into a field, where he knew that she must move her leg about and endure torture to obtain food? I think it is the same as if he had at every step she took got some person to raise her leg and put it to ground and so cause her to endure torture" (*per* Kelly, C.B.). The case was accordingly remitted to the justices. (*Everitt v. Davies*, (1878) 42 J.P. 248).

The defendant shot a dog which was trespassing in his garden, and the dog fell at the defendant's kitchen door, distant some yards from the road. The defendant then thought it was dead and dragged it on to the road, but in the course of so doing the dog showed signs of life and the defendant then became aware that the dog was alive and in pain. The defendant left the dog in the road, and on a police constable calling at his house about an hour later, and calling attention to the state of the dog, refused to come out and did not kill the dog, which remained in the road till about three o'clock the following morning, when it was found by a policeman, who killed it. The magistrate, while not deciding that the original shooting of the dog was lawful, assumed for the purpose of the case that it was so, and held that the not killing the dog afterwards or seeing that it was killed was merely an act of omission and not within the statute. Cockburn, C.J., in upholding the decision of the justice, said:—"Here on the facts we must take it that the appellant was justified in shooting the dog... In what happened afterwards the appellant was purely passive"; and Mellor, J., said:—"In my opinion we must take it that the act of shooting was not unlawful. If so, then all the defendant did was simply that he did nothing" (*Powell v. Knight*, (1878) 42 J.P. 597). It is difficult to follow the reasoning of this case. The court acted on the justice's assumption that the original shooting of the dog was lawful, as if this were a question of fact found by the justice,

“Cruelly.”

whereas it was not a finding of fact, but a mere assumption of law. Further, the word “lawful” is ambiguous. It may mean either that the shooting was not an act of cruelty within the statute, thus begging the question; or it may mean not involving any legal wrong, in which alternative the assumption was clearly wrong, for trespassing dogs cannot be shot unless they are in hot pursuit of game at the time (see *Addison on Torts*, 8th ed., 581).<sup>1</sup>

*Elliott v.  
Osborne.*

The defendant received a large cargo of cattle late on Saturday night, and next Monday one of the bullocks was found with wounds caused by the head rope not having been loosened:—*Held*, that as no knowledge was proved against the defendant of the state of the bullock, the magistrate was wrong in convicting (*Elliott v. Osborne*, (1891) 17 Cox 346).

*Armstrong v.  
Mitchell.*

The defendant, a gamekeeper, was driving pheasants across his master's land, when a greyhound came into the field, galloped across it, and frightened the birds. The defendant shot the dog twice, first, at a distance of about fifty yards, and again at a distance of about ninety yards, inflicting twenty-five to thirty shot wounds, in consequence of which the dog suffered considerable pain. The dog was not chasing any other animal or doing any damage at the time it was shot. The justices found that the defendant had no intention of killing the dog, but that he had the intention of injuring it if necessary for the purpose of frightening it away from the field, and dismissed the charge. The decision was affirmed, on the ground that “the question was a question of fact which the magistrates had found in favour of the respondent, and it was quite possible that shooting at the dog with small shot at a distance of fifty yards might fall far short of cruelty to the dog.” This case decides no principle whatever (*Armstrong v. Mitchell*, (1903) 20 Cox 497).

*Hooker v.  
Gray.*

The defendant shot a cat which belonged to his next-door neighbour, and which was at the time in the defendant's garden, with a saloon rifle, intending to kill it. The bullet struck the cat in the back, wounding it severely, and it crawled away in the direction of its owner's property, where it was found after half an hour, alive, but in great pain. The justices having dismissed the charge, they were upheld on the ground that the court “could not assume that to use a saloon rifle for the purpose of shooting at a cat was cruelty in itself, or would of necessity amount to torturing the animal. As the magistrates did not find<sup>2</sup> that after shooting the cat the respondent, with knowledge of the pain and suffering which his act had caused, did not do his best to put the animal out of its pain, they were justified in dismissing the summons.” Mr. Justice Phillimore, in agreeing, said he was not sure that “if a person shot at an animal and hit it, and knew that the animal was lingering on in pain, it would not be his duty to put the animal out of pain” (*Hooker v. Gray*, (1907) 21 Cox, 437).

*Green v. Cross.*

The defendant found a dog caught in a trap set by him for the purpose of catching vermin. The dog was suffering great pain, which was obvious to the defendant, who went at once to a neighbouring farmer to ascertain if the dog was his. Finding that it was not, the defendant returned to his

<sup>1</sup> It may here be remarked that in *Daniel v. Janes*, (1877) 2 C.P.D. 351, it was held that the placing of poisoned flesh in an enclosed garden, for the purpose of destroying a dog which was in the habit of straying there, is not an offence punishable under the Malicious Damage Act, 1861, s. 41, but *semble* is an offence against the Poisoned Flesh Prohibition Act, 1864. This case was followed in *Smith v. Williams*, (1892), 9 T.L.R. 9, in which it was held that shooting trespassing fowls was not within the same statute, but Mathew, J., regretted that *Daniel v. Janes* could not be reconsidered, and the case was also doubted by Lord Alverstone, C.J., in *Armstrong v. Mitchell*, (1903) 20 Cox 497.

<sup>2</sup> The justices do not seem to have found either way, though one would infer from the report that the defendant saw the cat crawl away.



farm, fed and attended to his horses, and then went in search of the police. The defendant would have run some risk of being bitten if he had attempted to release the dog with his hands. The dog was released from the trap about 11.30 a.m. by two police officers, having been in the trap for two hours to the defendant's knowledge. The justices found as a fact that the dog was caused a great deal of suffering which could have been avoided by the defendant had he taken steps to release the dog immediately he found it was caught in the trap, and considered that the dog had been cruelly ill-treated, but thought they were bound by the cases of *Powell v. Knight*, *Armstrong v. Mitchell*, *Hooker v. Gray*, *supra*, to dismiss the complaint:—*Held*, that *Powell v. Knight* did not support the general proposition that no act of omission could be brought to sustain a charge under the section, and (*per Lord Alverstone, C.J.*) the principle is that "where the act was not a direct act of commission, if the defendant had caused pain by a lawful act, and he alone could stop it, the justices were entitled to consider whether he had done his best to stop it," and to acquit or convict accordingly. The case was sent back to the magistrates for further consideration (*Green v. Cross*, (1910) 26 T.L.R. 507).

On the hearing of an information against the respondent for cruelty to a sheep, evidence was given that the sheep died in a field belonging to the respondent a quarter of a mile from his house, death being due to exhaustion owing to the sheep being eaten by maggots, and that it must have suffered great pain. Evidence was also given that the respondent stated that he knew some of his sheep were affected with fly, and that four days previous to the death of the sheep he sent a man to dress the wounds. The justices dismissed the information on the ground that there was not sufficient evidence that the respondent unlawfully and cruelly caused the sheep to be ill-treated. It was held that, as it was for the prosecution to prove the offence, it could not be said that the justices were wrong (*Potter v. Challans*, (1910) 102 L.T. 325).

The defendant was the certificated manager of a colliery, certain horses belonging to which were worked while suffering from raw wounds; but he was not proved to have had any notice or knowledge of the state of the horses—*Held*, that he could not be convicted (*Small v. Warr*, (1883) 47 J.P. 20). See also *Elliott v. Osborne*, (1891) 17 Cox 346; *Greenwood v. Backhouse*, (1902) 20 Cox 196; *Hughes v. Mooney*, (1909) 43 I.L.T.R. 127. But proof of the fact that cruelty was not intended is no defence if there was in fact cruelty (*Duncan v. Pope*, (1899) 19 Cox, 241).

The words "ill treat," "abuse," and "torture" create three separate offences, and therefore a conviction for "ill-treating, abusing, and torturing" is bad (*Johnson v. Needham*, (1909) 1 K.B. 626).

Defendant was charged in one information with having unlawfully caused to be ill-treated four ponies. The evidence was that he turned out the four ponies at the same time into the same field and kept them there for a considerable time without proper food. During the hearing of the case no notice was given to him that he was being charged with four offences. He was convicted, fined £5 for each pony, four convictions being drawn up against him, each stating that he was fined for ill-treating a pony: *Held*, that the information alleged only one offence, and that the defendant could not, without previous notice, be convicted on that information of four offences, and that three of the convictions were bad and should be quashed (*R. v. Rawson*, (1909) 2 K.B. 748; see also *R. (Daly) v. Cork JJ.*, (1898) 2 I.R. 694, noted, p. 91). Where there is only one act or omission, though in respect of several animals, the justices are justified in treating the facts alleged as constituting but one offence (*R. v. Cable*, (1906) 1 K.B. 719).<sup>1</sup>

*Potter v.*  
*Challans.*

*Knowledge,*  
*intent.*

*Separate*  
*offences under*  
*section.*

<sup>1</sup> In this case Lord Alverstone, L.C.J., was of opinion (p. 721) that there could be as

Cock-fighting,  
&c.

"Every person who shall keep or use or act in the management of any place for the purpose of fighting or baiting any bull, bear, badger, dog, cock, or other kind of animal, whether of domestic or wild nature, or shall permit or suffer any place to be so used"—*Penalty*, £5 per day. "Every person who shall receive money for the admission of any other person to any place kept or used for any of the purposes aforesaid shall be deemed to be the keeper thereof, and every person who shall in any manner encourage, aid, or assist at the fighting or baiting"—*Penalty*, not exceeding £5 (*Cruelty to Animals Act*, 1849, s. 3).<sup>1</sup>

12 & 13 Vict.  
c. 92.

The offence of encouraging, &c., within this section, can occur only at a place kept for the purposes aimed at by the section (*Clark v. Haque*, (1860) 2 El. & El. 281; *Morley v. Greenhalgh*, (1863) 3 B. & S. 374; *Coyne v. Brady*, (1862) 12 I.C.L.R. 577). But persons assisting, &c., at a fighting, &c., of any animal anywhere are obviously guilty either of an offence under s. 2 as aiders and abettors (14 & 15 Vict. c. 93, s. 22.), or may apparently be charged as principals (see p. 353, *ante*). The mere presence at a "main" is, it is submitted, some evidence of encouraging, &c., within the section (see *R. v. Coney*, (1882) 8 Q.B.D. 584). Turning out rabbits in an enclosure from which they cannot escape and coursing them with dogs is not "baiting animals" (*Pitts v. Millar*, (1874) L.R. 9 Q.B. 380).

17 & 18 Vict.  
s. 103, s. 75.

Pounds.

12 & 13 Vict.  
c. 92.

"Every person who within the town<sup>2</sup> keeps or acts in the management of any house or place for the purpose of fighting, baiting, or worrying any animals"—*Penalty*, not exceeding £5, or, in the discretion of the court, one month's imprisonment with or without hard labour (*Towns Improvement (Ireland) Act*, 1854, s. 75).

Any person failing to supply food and water to animals that he has impounded, or caused to be impounded—*Penalty*, not exceeding £1 (*Cruelty to Animals Act*, 1849, s. 5).<sup>1</sup> Any other person on such failure may supply food, &c., and recover costs thereof from the owner of the animal (s. 6).<sup>3</sup>

By the 17 & 18 Vict. c. 60, s. 1, the person supplying food, &c., can recover double the value thereof from the owner, or, alternatively, may sell the animal after it has been impounded for seven days in order to recover such double value.

Slaughter-  
houses.

Keeper, &c., of any place intended for the slaughter of horses<sup>4</sup> or other cattle (not intended for butcher's meat) failing to cut hair off the necks of any such animal immediately upon its arrival at such place, or to slaughter such animal within three days after such arrival, or meanwhile to supply it with food and water<sup>5</sup>—*Penalty*, not exceeding £5 (*Cruelty to Animals Act*, 1849, s. 8).<sup>1</sup>

Keeper, &c., of any place intended for the slaughter of horses or other

many charges and convictions as there were animals. See also *Ex parte Beal*, (1868) L.R. 3 Q.B. 387; *Lord Advocate v. Stewart*, (1899) 63 J.P. 311; *Fecitt v. Walsh*, (1891) 2 Q.B. 304; but see *Telford v. Fyfe*, (1908) S.C. (J.) 83, noted p. 106.

<sup>1</sup> If a case is heard before two justices, or one police magistrate, three months' imprisonment, with or without hard labour, may be imposed without the option of a fine (s. 18).

<sup>2</sup> That is, town within the Act. See TOWNS IMPROVEMENT.

<sup>3</sup> The section refers not to the pound-keeper, but to the person who has caused the animal to be impounded (*Dargan v. Davies*, (1877) 2 Q.B.D. 118). As to offences by pound-keeper, see POUNDS.

<sup>4</sup> It is submitted that section 7 of the Act, enacting a penalty for non-compliance with 26 Geo. 3, c. 71 (E.) (which provides for licensing of slaughter-houses, and that the owners of such licensed slaughter-houses shall affix their names, &c., over the door), is not applicable to Ireland. As to licensing of slaughter-houses in Ireland, see PUBLIC HEALTH.

<sup>5</sup> This section, in view of the grounds upon which the decision in *Colam v. Hall*, (1871) L.R. 6 Q.B. 206, was based, clearly applies to an unlicensed as well as to a licensed slaughter-house.

cattle(not intended for butcher's meat) working any such animal, or permitting it to leave such place in order to be worked, or any person working, or possessing for the purpose of working, any such animal<sup>1</sup>—*Penalty*, £2 a day (s. 9).<sup>2</sup>

Any such keeper, &c., failing to enter in book description of any such animal, or to produce such book to any justice when required—*Penalty*, not exceeding £2<sup>2</sup> (s. 10). No person licensed to slaughter horses<sup>3</sup> to trade as a horse-dealer whilst licensed as such keeper (a) (s. 11).

"If any person shall convey or carry, or cause to be conveyed or carried, in or upon any vehicle any animal in such a manner or position as to subject such animal to unnecessary pain or suffering"—*Penalty*, not exceeding, first offence, £3, subsequent offence, £5 (*Cruelty to Animals Act*, 1849, s. 12).<sup>2</sup>

Carrying  
animals in  
vehicles.

A justice may order the sale of any vehicle or animal detained by the police pursuant to section 19 of the Act for the purposes of satisfying penalty imposed under the Act, &c. (s. 19).

When a complaint is made against the driver or conductor of any vehicle for any offence committed by him<sup>4</sup> against the Act, the justice to whom the complaint is made may summon, if he think proper, the owner of such vehicle to produce on the hearing of such complaint such driver, etc., to answer such complaint; and if such driver, etc., shall not appear, it shall be lawful for the court, if it think fit, to hear and determine the case as if he had been produced, and to order such owner to pay any penalty, sum of money, or costs in which such driver, etc., may be convicted; any sum of money paid under such order to be recoverable by such owner from such driver, etc., as provided in the Act (s. 22).

Such owner so summoned to produce such driver, etc., and without satisfactory excuse failing so to do, may, if the court think proper, be fined forty shillings for every such failure to produce, until he shall produce such driver (s. 22). A conviction for non-production is not a bar to a second charge for a subsequent non-production (see *R. (Shortall) v. Queen's Co. JJ.*, (1899) 5 I. W. L. R. 122).

Obstruction, &c., of any constable or pound-keeper whilst doing anything by virtue of the Act—*Penalty*, not exceeding £5 (*Cruelty to Animals Act*, 1849, s. 20).<sup>2</sup>

Obstruction  
of constable,  
&c.

The procedure under the Cruelty to Animals Act, including, it is submitted, the right of and procedure on appeal, is regulated by the Petty Sessions Act (Ir.), 1851. It is submitted that s. 14 of the Act, providing a time-limit as to the institution of proceedings, is impliedly repealed and replaced by s. 10 (4) of the Petty Sessions Act, 1851. A constable, on his own view, or upon the complaint of any other person who shall declare his or her name and place of abode, may seize an offender and bring him before a justice (*Cruelty to Animals Act*, 1849, s. 13). Certiorari is taken away (s. 26); as to the effect of this provision, see p. 226, *ante*.

Procedure.

<sup>1</sup> The section applies to an unlicensed as well as a licensed slaughterhouse. In *Colam v. Hall*, (1871) L. R. 6 Q. B. 206, it was held to apply to the unlicensed slaughterhouse used in connection with a pack of foxhounds. And section 10, in view of the ground on which this decision was based, would seem to apply to an unlicensed as well as a licensed slaughter-house.

<sup>2</sup> See p. 360, n. 1.

<sup>3</sup> It would seem doubtful whether this section applies to Ireland, inasmuch as the licence contemplated by it is the licence issued under the English Act, 26 Geo. 3, c. 71; though, of course, a licence for slaughter-houses exists in Ireland also; see PUBLIC HEALTH.

<sup>4</sup> *Scilicet*, it is submitted in reference to the driving of the vehicle.



**Offences as to  
wild animals  
in captivity**

63 & 64 Vict.  
c. 33.

“ Any person shall be guilty of an offence who, whilst an animal is in captivity or close confinement, or is maimed, pinioned, or subjected to any appliance or contrivance for the purpose of hindering or preventing its escape from such captivity or confinement, shall, by wantonly or unreasonably doing or omitting any act, cause, or permit to be caused, any unnecessary suffering to such animal, or cruelly abuse, infuriate, tease, or terrify it, or permit it to be so treated” (*Wild Animals in Captivity Protection Act, 1900, s. 2*). An offender may be proceeded against under the Summary Jurisdiction Acts—*Penalty*, imprisonment, with or without hard labour, not exceeding three months, or a fine not exceeding £5, and in default imprisonment with or without hard labour (s. 3).

The word “ animal ” in the Act means any bird, beast, fish, or reptile which is not included in the Cruelty to Animals Acts, 1849 and 1854 (s. 1). The Act does not apply to any act done or any omission in the course of destroying or preparing any animal for destruction as food for mankind, nor to any act permitted by the Cruelty to Animals Act, 1876,<sup>1</sup> nor to the hunting or coursing of any animal which has not been liberated in a mutilated or injured state for the purpose of facilitating its capture or destruction (s. 4). The respondent, the Master of the Cambridge University Drag Hounds, was summoned under the Wild Animals in Captivity Act, 1900, for permitting a hind to be cruelly abused. It was given in evidence that in connection with the drag hounds a number of hinds were kept, and that one of these, which was not in a mutilated or injured state, had been released and was being hunted: that three times during the hunt it took refuge in a yard, from which it was dislodged by being prodded and whipped; that once when being so driven out of the yard it ran against some barbed wire, and was injured thereby; that when caught in the yard it was dragged along the road for some distance till it fell down exhausted; that it was again dragged along for some fifteen or sixteen yards, when it fell down and died. One witness stated that the respondent said he was present the whole of the time, that there was no cruelty so far as he could see, and that he gave orders for the hind to be got out of the yard, with a view to hunting it again, because it was not blown, but was only sulking, as it had done before. At the close of the evidence for the prosecution it was submitted on behalf of the respondent that he had no case to answer, as all the acts deposed to took place while the hind was being hunted, and by sect. 4 of the Wild Animals in Captivity Act, 1900, it was provided that the Act did not apply to anything done in the hunting of an animal. The justices upheld this contention, and accordingly dismissed the information:—*Held*, that the justices should have considered that there was a case requiring explanation as to how the acts done at the last stage of the proceedings could be hunting, and that the case should therefore be remitted to the justices for further hearing (*Rodgers v. Pickersgill, (1910) 26 T.L.R. 493*).

**Vivisection.**

39 & 40 Vict.  
c. 77.

Performing on any living animal<sup>2</sup> any painful experiment, except subject to the restrictions<sup>3</sup> imposed by the Act—*Penalty*, not exceeding, first offence, £50, subsequent offence, £100, or, at the discretion of the court, three months' imprisonment (*Cruelty to Animals Act, 1876, s. 2*).

Exhibiting to the general public any such experiment—*Penalty*, same as under sect. 2. Publishing any advertisement of such exhibition—*Penalty*, not exceeding £1 (s. 6).

<sup>1</sup> Vivisection experiments as allowed by that Act.

<sup>2</sup> Not including invertebrate animals (s. 22).

<sup>3</sup> The Act provides for the licensing of persons to conduct experiments in vivisection, and for the registration of places in which same may be performed: and for the use of anæsthetics in experiments on a cat or dog, &c.

A search warrant may be granted, upon a sworn information, by a justice to a police constable. Refusal of admission to, or obstruction of, or failure to give correct name and address to, such constable—*Penalty*, not exceeding £5 (s. 13). No prosecution can be instituted against any person licensed under the Act to perform experiments on animals except with the assent in writing of the Chief Secretary to the Lord Lieutenant (ss. 20, 21). If any person is charged under the Act before a court of summary jurisdiction with an offence in respect of which a penalty of more than £5 can be imposed, such person can elect to be tried on indictment (s. 19).

"Any person who shall on any public highway use any dog for the purpose of drawing or helping to draw any cart, carriage, truck, or barrow"—*Penalty*, not exceeding £2, first offence; subsequent offence, £5 (*Cruelty to Animals Act*, 1854, s. 2).

As to cruelty to cattle in transit by train, steamer, etc., see **ANIMALS, DISEASES** or, at p. 366.

"(1) If a police constable finds any animal so diseased or so severely injured or in such a physical condition that it cannot without cruelty be removed, he shall, if the owner is absent or refuses to consent to the destruction of the animal, at once summon a duly registered veterinary surgeon, if any such veterinary surgeon resides within a reasonable distance, and, if it appears by the certificate of such veterinary surgeon that the animal is mortally injured, or so severely injured or so diseased or in such a physical condition that it is cruel to keep it alive, it shall be lawful for the police constable, without the consent of the owner, to slaughter the animal or cause it to be slaughtered with such instruments or appliances, and with such precautions, and in such manner, as to inflict as little pain and suffering as practicable, and, if the slaughter takes place in a street or public place, to remove the carcase or cause it to be removed therefrom.<sup>1</sup>

"(2) Any reasonable expense which may be incurred by any constable in carrying out the provisions of this Act may be recovered from the owner summarily as a civil debt, and, subject thereto, any such expense shall be defrayed out of the fund from which the expenses of the police are payable in the area in which the animal is found" (*Injured Animals Act*, 1907, s. 1).

"For the purposes of this Act the word 'animal' means any horse, mule, ass, bull, cow, ox, heifer, calf, sheep, goat, or swine" (s. 2).

<sup>1</sup> It would appear that where, as is frequently the case in remote parts of Ireland, a veterinary surgeon cannot be got to inspect the animal, a constable cannot slaughter the animal under this section.

Using dog for draught

17 & 18 Vict. c. 60.

Cattle in transit.

Slaughter of injured animals by, or by order of, police.

7 Ed. 7, c. 5.

## ANIMALS, DISEASES OF.

	PAGE		PAGE
Statutes—57 & 58 Vict. c. 57, 59 & 60		Miscellaneous offences punishable	
Vict. c. 15, 3 Ed. 7, c. 43, . . .	364	by imprisonment, . . .	368
Powers of the Department of Agriculture, . . .	364	Powers and duties of local authorities, . . .	369
Separation of diseased animals, and notice, . . .	366	Powers and duties of police, . . .	370
Cruelty to animals in transit, . . .	366	Veterinary inspector, . . .	370
Provision of water at railway station, . . .	366	Procedure, . . .	370
Importation and slaughter of foreign animals, . . .	367	Appeal, . . .	371
Burial of carcase washed ashore, . . .	367	Evidence, . . .	371
Penalties, . . .	367	Notices, . . .	371
General offences, . . .	367	Dairies, Cowsheds, and Milkshops	
		Order, . . .	371
		Inspection of dairies by medical officer of health, . . .	372

Statutes:  
57 & 58 Vict.  
c. 57.  
59 & 60 Vict.  
c. 15.  
3 Ed. 7, c. 43.

The Diseases of Animals Act, 1894, as amended by the Diseases of Animals Act, 1896, and the Diseases of Animals Act, 1903 (all which Acts are to be construed as one Act)<sup>1</sup> provides for the notification of disease in animals,<sup>2</sup> and confers extensive powers on "the Department"<sup>3</sup> and certain local authorities in reference to the suppression of certain diseases amongst animals.

Powers of  
Department.

The Act of 1894 confers wide powers on the Department of Agriculture in Ireland to take steps to check disease, including:—power to declare place or area infected with cattle plague (ss. 5, 6), or infected with pleuro-pneumonia, or foot-and-mouth disease, including power to prohibit markets, fairs, exhibitions, or sales (ss. 8, 9);<sup>4</sup> general powers as to infected areas and places (s. 10); to order slaughter of animals, and compensation in case of cattle plague (s. 7), pleuro-pneumonia (s. 14), foot-and-mouth disease (s. 15), swine fever (s. 16), generally (ss. 19, 20); to provide for expenses (s. 17); to provide for pleuro-pneumonia or foot-and-mouth disease during transit, &c. (s. 21);<sup>5</sup> to make orders, generally, for preventing or checking disease (s. 22),<sup>6</sup> and as to the powers of inspectors

<sup>1</sup> Act of 1896, s. 3; Act of 1903, s. 5.

<sup>2</sup> See Diseases of Animals Act, 1894, s. 65 (1); Agriculture and Technical Instruction (Ireland) Act, 1899, s. 2 (1) (a); Order in Council, dated 24th March, 1900.

<sup>3</sup> The term by which the Department of Agriculture and Technical Instruction for Ireland is popularly known, and by which it is referred to in the Act creating it (62 & 63 Vict. c. 50).

<sup>4</sup> The respondent was passing along a highway in charge of a horse and float containing pigs, two of which had been previously ordered, and, whilst so travelling, asked other people if they wanted to buy pigs, and subsequently sold them all to various people: *Held*, not to be a breach of an order, "no market, fair, sale, or exhibition of swine shall be held," &c., for, though there was a selling, there was no holding a sale (*M'Lean v. Monk*, (1898) 18 Cox, 686).

<sup>5</sup> In connection with this section, see art. 15 of the Pleuro-Pneumonia Order of 1900, and art. 18 of the Foot-and-Mouth Disease Order of 1900.

<sup>6</sup> The general orders made under this section, as enlarged by s. 1 of the Diseases of Animals Act, 1903, or ss. 4, 10, 21, 23, 25, 30, 68, and now (December 31, 1910) in force, are:—

1. The Animals (Transit and General) (Ireland) Order of 1895 (dated Ap. 19, 1895).
2. The Portal Inspection (Ireland) Order of 1895 (dated Dec. 17, 1895).
3. The Diseases of Animals (Ireland) Orders Amendment Order of 1899 (dated Feb. 24, 1899).
4. The Officers of Local Authorities (Ireland) Order (dated March 2, 1899).
5. The Cattle Plague (Ireland) Order of 1900 (dated Oct. 16, 1900).
6. The Pleuro-Pneumonia (Ireland) Order of 1900 (dated Oct. 16, 1900).
7. The Foot-and-Mouth Disease (Ireland) Order of 1900 (dated Oct. 16, 1900).
8. The Sheep Pox (Ireland) Order of 1900 (dated Oct. 16, 1900).
9. The Swine Fever (Ireland) Order of 1900 (dated Oct. 16, 1900).
10. The Sheep Scab (Ireland) Order of 1900 (dated Oct. 16, 1900).



and other officers of local authorities (s. 68), movement of cattle<sup>1</sup> into, within, or out of infected places and areas unless under prescribed conditions (s. 12). Section 11 forbids movement into, within, or out of infected places and areas in case of pleuro-pneumonia and foot-and-mouth disease, save under conditions prescribed by schedule to the Act. A person owning or having charge of animals<sup>2</sup> in place or area infected may exclude strangers by notice (s. 13). The Diseases of Animals Act, 1903, provides power to make orders for the prevention of sheep scab, and as to examination of sheep and facilities for sheep-dipping.

**Powers of  
Department.**

One of the matters in connection with which the Department may make orders under section 22 is the muzzling of dogs, and the keeping of dogs under control, and the seizure and slaughter of stray or unmuzzled dogs, or of dogs not under proper control. These provisions have been supplemented by the Dogs Act, 1906, giving power to make regulations as to collars on dogs, &c. See Dogs.

The Department may alter or revoke any order of the Department. Every order of the Department shall have effect as if it had been enacted by the Act.<sup>3</sup> The Department shall, in the case of every order made by them under the Act, publish in the Dublin Gazette a notice that the

11. The Rabies (Ireland) Order of 1900 (dated Oct. 16, 1900).
12. The Anthrax (Ireland) Order of 1900 (dated Oct. 16, 1900).
13. The Glanders or Farcy (Ireland) Order of 1900 (dated Oct. 16, 1900).
14. The Parasitic Mange (Ireland) Order of 1900 (dated Oct. 16, 1900).
15. The Importation of Animals (Ireland) Order of 1900 (dated Oct. 16, 1900).
16. The Exportation of Horses (Ireland) Order of 1900 (dated Oct. 16, 1900).
17. The Water Supply on Railways (Ireland) Order of 1901 (dated April 3, 1901).
18. The Foreign Animals (Ireland) Order of 1901 (dated Nov. 30, 1901).
19. The Swine Fever (Ireland) Order of 1901 (dated Dec. 30, 1901).
20. The Importation of Dogs (Ireland) Order of 1902 (dated May 20, 1902).
21. The Animals (Transit & General) (Ireland) Amendment Order of 1904 (dated March 1, 1904).
22. The Epizootic Lymphangitis (Ireland) Order of 1904 (dated May 2, 1904).
23. The Animals (Transit and General) (Ireland) Amendment Order of 1904, No. 11 (dated Nov. 29, 1904).
24. The Sheep Scab (Ireland) Order of 1905 (dated March 28, 1905).
25. The Animals (Transit and General) (Ireland) Amendment Order of 1905 (dated Oct. 9, 1905).
26. The Importation of Horses, Asses, and Mules (Ireland) Order of 1906 (dated May 29, 1906).
27. The Dogs (Ireland) Order of 1906 (dated Nov. 16, 1906).
28. The Importation of Horses, Asses, and Mules (Ireland) Order of 1907 (dated Jan. 28, 1907).
29. The Sheep Dipping (Ireland) Order of 1907 (dated Mar. 20, 1907).
30. The Importation of Horses, Asses, and Mules (Ireland) Order of 1907, No. 11 (dated Dec. 17, 1907).
31. The Foreign Hay and Straw (Ireland) Order of 1908 (dated Mar. 2, 1908).
32. Order amending the Foreign Hay and Straw (Ireland) Order of 1908 (dated March 18, 1908).
33. The Importation of Dogs (Ireland) Order of 1909 Amendment Order (dated May 26, 1909).
34. The Conveyances of Horses (Ireland) Order of 1909 (dated Dec. 21, 1909).
35. The Bovine Tuberculosis Notification (Ireland) Order of 1910 (dated Jan. 27, 1910).

By the Importation of Horses, Asses, and Mules (Ireland) Order of 1906 (dated May 29, 1906), and by the Importation of Horses, Asses, and Mules (Ireland) Order of 1907 (dated Jan. 28, 1907), horses, animals, and mules are declared animals for the purposes of ss. 22 and 65, 43 and 74, and 44 of this Act, and of the other sections relative to or consequent on those sections.

By the Bovine Tuberculosis (Ireland) Order of 1910 (dated Jan. 27, 1910), tuberculosis is declared a disease for the purposes of ss. 22 and 65, 43 and 44, and 74 of this Act.

<sup>1</sup> Means bulls, cows, oxen, heifers, and calves (s. 59).

<sup>2</sup> Means, except where otherwise expressed, cattle, sheep, and goats, and all other ruminating animals, and swine (s. 59).

<sup>3</sup> This means that the Act and every order should be construed as one Act (see *Baker v. Williams*, (1898) 1 Q.B. 23).

order has been made and where copies of the order may be obtained (ss. 49 (1), (2), (3), 76 (1)). The validity of any order, licence, or other instrument issued by the Department shall not be affected by want of or defect or irregularity in any publication thereof (*Diseases of Animals Act, 1894, s. 49 (5)*).

As to publication by local authority of order of Department. see p. 369.

Separation of diseased animals, and notice to police.

“(1) Every person having in his possession or under his charge an animal<sup>1</sup> affected with disease<sup>2</sup> shall :—(a) as far as practicable keep that animal separate from animals not so affected; (b) with all practicable speed give notice of the animal being so affected to a constable of the police force for the police area wherein the animal so affected is. (2) The constable to whom notice is given shall forthwith give information thereof to such person or authority as [the Department] by general order direct. (3) [The Department] may make such orders as they think fit for prescribing and regulating the notice to be given to or by any person or authority in case of any particular disease or in case of the illness of an animal, and for supplementing or varying for those purposes any of the provisions of this section” (*Diseases of Animals Act, 1894, s. 4*).

Cruelty to animals in transit.

It is provided by the Animals (Transit and General) (Ireland) Order of 1895 (No. 1 in the list on p. 364) that a railway company shall not allow any vehicle used for carrying animals to be overcrowded so as to cause unnecessary suffering to such animals (Ch. 3, par. 8); and by the same order it is provided that a railway company shall not between 1st November and 30th April following, both days inclusive, carry in any open truck sheep shorn within sixty days, unless such sheep are provided with clothing (Ch. 3, par. 9). It is provided by the Animals (Transit and General) Amendment (Ireland) Order of 1904 (which is to be read as one with the last-mentioned Order of 1895) that no cow shall be permitted by the owner, his agent, or any person in charge to be carried by railway if reasonably likely to calve during the journey (par. 7); and by the same order it is provided that no animal shall be permitted by the owner, his agent, or any person in charge to be carried by railway if for any reason it cannot be carried without unnecessary suffering (par. 8).

Provision of water at railway station.

“(1) Every railway company shall make a provision, to the satisfaction of [the Department] of water and food, or either of them, at such stations as [the Department] by general or specific description, direct,<sup>3</sup> for animals carried, or about to be, or having been carried, on the railway of the company; (2) the water and food so provided or either of them shall be supplied to any such animal by the company carrying it, on the request of the consignor or of any person in charge thereof; (3) as regards water, if, in the case of any animal, such a request is not made, so that the animal remains without a supply of water for twenty-four consecutive hours, the consignor and the person in charge of the animal shall each be guilty of an offence against this Act; and it shall lie on the person charged to prove such request and the time within which the animal had a supply of water; (4) but [the Department] may, if they think fit, by order prescribe any other period, not less than twelve hours, instead of the period of twenty-four hours aforesaid, generally, or in respect of any particular kind of animals; (5) the company supplying

<sup>1</sup> “Animal” means cattle, sheep, and goats, and all other ruminating animals and swine (s. 59).

<sup>2</sup> “Disease” means cattle-plague, pleuro-pneumonia, foot-and-mouth disease, sheep-pox, sheep-scab, or swine-fever (s. 59).

<sup>3</sup> The Water Supply on Railways (Ireland) Order of 1901 specifies the stations at which water is to be provided. No order has been made by the Department either as to varying the period of twenty-four hours mentioned in s. 23 (3) or as to food.

water or food under this section may make in respect thereof such reasonable charges (if any) as [the Department] by order approve. . . .” (*Diseases of Animals Act, 1894, s. 23*).

Subject as hereinafter appears, a foreign<sup>1</sup> animal may be landed at a port defined for the purpose by the Department, to be called a foreign animals' wharf,<sup>2</sup> but must be slaughtered before it leaves the wharf (*Diseases of Animals Act, 1896, s. 1 (1), schedule 3 to Act of 1894*). But foreign animals intended for exhibition or other exceptional purposes, and the landing of which is allowed for the time being by the Department, subject to the provisions as to quarantine in section 27 of the Act of 1894, are not within these provisions (*Act of 1896, s. 1 (1)*). Further, the Department may, whenever they deem it expedient so to do, make orders entirely prohibiting the landing of any animals, or of carcases, fodder, litter, dung, or other thing brought from any place outside the United Kingdom, and shall prohibit the landing of such animals whenever they think such prohibition necessary in order to prevent the importation from such place of animals affected with foot-and-mouth disease (*Act of 1894, s. 25*). The orders made under this section and now (Dec. 31, 1910) in force are:—Nos. 17, 20, 22, 28, 29, 30, 31, 32, 33, and 35 in the list given at p. 364.

Importation  
and slaughter  
of foreign  
animals.

59 & 60 Vict.

If any person lands or attempts to land or ship any animal or thing in contravention of the Act or of an order of the Department, he shall be liable, under and according to the Customs Acts, to the penalties imposed on persons importing, etc., goods contrary to the Customs Acts, with forfeiture of animal or thing (*Act of 1894, s. 56*).

The local authority shall pay to the receiver of wreck the expenses connected with the burial of carcases washed ashore and buried by his direction; the owner of the vessel from which the animal or carcass was thrown shall be liable to repay the expenses to the local authority, recoverable as salvage is recoverable (*Diseases of Animals Act, 1894, s. 46*).

Burial of  
carcase  
washed  
ashore.

“Carcass” includes carcases of frozen meat (*The Suevic* (1908), P. 292).

“If any person is guilty of an offence against this Act, he shall for every such offence be liable—(1) to a fine not exceeding £20; or (2) if the offence is committed with respect to more than four animals, to a fine not exceeding £5 for each animal; or (3) where the offence is committed in relation to carcases, fodder, litter, dung, or other thing (exclusive of animals), to a fine not exceeding £10 in respect of every half ton in weight thereof after one half ton, in addition to the first fine of not exceeding £20” (*Diseases of Animals Act, 1894, s. 51*).

Penalties.

“If any person, without lawful authority or excuse, proof whereof shall lie on him, does any of the following things, he shall be guilty of an offence against this Act:—(i) If he does anything in contravention of this Act, or of an order of the Department, or of a regulation of a local authority; or (ii) if, where required by this Act or by an order of the

General  
offences.

<sup>1</sup> As to meaning of “animals” see p. 366, n. 1. “Foreign” means brought to the U.K. from a country outside the U.K. (*Act of 1894, s. 59*).

In relation to animals brought from the Channel Islands or the Isle of Man, the Department may, if they think fit, by order or by licence, vary any of the provisions of the third schedule to the Act relating to slaughter or quarantine (*Act of 1894, s. 28*).

<sup>2</sup> The Department may make such orders as they think fit, subject and according to the provisions of the Act, for the regulation of ports (*Act of 1894, s. 30 (1), i.-xiii.*). The only such order made and now (Dec. 31, 1910) in force is the Portal Inspection (Ireland) Order of 1895, dated December 17th, 1895 (No. 2 on the list on p. 364).

As to the power of the Department to, by order, appoint a body other than the county council to be the local authority, for the purposes of the provisions of the Act as regards foreign animals, in relation to a port or part of a port, see s. 30 (3). As to power to detain vessels, see the Act of 1894, s. 45.



General  
Offences.

Department to keep an animal separate as far as practicable, or to give notice of disease with all practicable speed, he fails to do so; or (iii) if he fails to give, produce, observe, or do any notice, licence, rule or thing which by this Act, or by an order of the Department, or by a regulation of a local authority, he is required to give, produce, observe, or do; or (iv) if he does anything which by this Act or an order of the Department is made or declared to be not lawful; or (v) if he does or omits anything, the doing or omission whereof is declared by this Act or by an order of the Department to be an offence by him against this Act; or (vi) if he refuses to an inspector or other officer, acting in execution of this Act, or of an order of the Department, or of a regulation of a local authority, admission to any land, building, place, vessel, pen, vehicle, or boat which the inspector or officer is entitled to enter or examine, or obstructs or impedes him in so entering or examining, or otherwise in any respect obstructs or impedes an inspector or constable or other officer in the execution of his duty, or assists in any such obstructing or impeding; or (vii) if he throws or places, or causes or suffers to be thrown or placed, into or in any river, stream, canal, navigation, or other water, or into or in the sea within three miles of the shore, the carcass of an animal which has died of disease, or been slaughtered as diseased or suspected; and on a further conviction within a period of twelve months for a second or subsequent offence against the same sub-section of this section he shall be liable, in the discretion of the court, to be imprisoned for any term not exceeding one month, with or without hard labour, in lieu of the fine to which he is liable under this Act" (s. 52).

Miscellaneous  
offences  
punishable by  
imprisonment.

"(1) If any person does any of the following things, he shall be guilty of an offence against this Act:—(i) if, with intent to unlawfully evade this Act, or an order of the Department, or a regulation of a local authority, he does anything for which a licence is requisite under this Act, or an order of the Department, or a regulation of a local authority, without having obtained a licence: or (ii) if where a licence is requisite, having obtained a licence, he, with the like intent, does the thing licensed after the licence has expired: or (iii) if he uses or offers or attempts to use as such a licence an instrument not being a complete licence, or an instrument untruly purporting or appearing to be a licence, unless he shows to the satisfaction of the court that he did not know of that incompleteness or untruth, and that he could not with reasonable diligence have obtained knowledge thereof: or (iv) if, with intent to unlawfully evade this Act, or an order of the Department, or a regulation of a local authority, he alters, or falsely makes, or ante-dates, or counterfeits, or offers or utters, knowing the same to be altered, or falsely made, or ante-dated, or counterfeited, a licence, declaration, certificate, or instrument made or issued, or purporting to be made or issued under or for any purpose of this Act, or of an order of the Department, or of a regulation of a local authority: or (v) if, for the purpose of obtaining a licence, certificate, or instrument, he makes a declaration or statement false in any material particular, unless he shows to the satisfaction of the court that he did not know of that falsity, and that he could not with reasonable diligence have obtained knowledge thereof: or (vi) if he obtains or endeavours to obtain such a licence, certificate, or instrument by means of a false pretence, unless he shows to the satisfaction of the court that he did not know of that falsity, and that he could not with reasonable diligence have obtained knowledge thereof: or (vii) if he grants or issues such a licence, certificate, or instrument, being false in any date or other material particular, unless he shows to the satisfaction of the Court that he did not know of that falsity, and that he could not with reasonable diligence have obtained knowledge thereof, or if he grants or issues such a licence,

certificate, or instrument, having, and knowing that he has, no lawful authority to grant or issue the same : or (viii) if, with intent to unlawfully evade or defeat this Act, or an order of the Department, or a regulation of a local authority, he grants or issues an instrument being in form a licence, certificate, or instrument made or issued under this Act, or an order of the Department, or a regulation of a local authority, for permitting or regulating the movement of a particular animal, or the doing of any other particular thing, but being issued in blank, that is to say, not being before the issue thereof so filled up as to specify any particular animal or thing : or (ix) if he uses or offers or attempts to use for any purpose of this Act, or of an order of the Department, or of a regulation of a local authority, an instrument so issued in blank, unless he shows to the satisfaction of the court that he did not know of it having been so issued in blank, and that he could not with reasonable diligence have obtained knowledge thereof : or (x) if he by means of any fraud or false pretence obtains, or attempts to obtain, compensation from the Department or a local authority in respect of an animal slaughtered, or aids or abets any person in any such fraud or false pretence : or (xi) if, without lawful authority or excuse, proof whereof shall lie on him, he digs up, or causes to be dug up, a carcase buried under the direction of the Department or of a local authority or of a receiver of wreck : or (xii) if, where the Department has by order prohibited, absolutely or conditionally, the use for the carrying of animals, or for any purpose connected therewith, of a vessel, vehicle, or pen, or other place, he, without lawful authority or excuse, proof whereof shall lie on him, does anything so prohibited ; (2) and in every case in this section specified he shall be liable, on conviction, in the discretion of the court, to be imprisoned for any term not exceeding two months, with or without hard labour, in lieu of the fine to which he is liable under this Act" (s. 53).

Miscellaneous  
offences  
punishable by  
imprisonment.

The local authorities who, under section 2 of the Diseases of Animals Act, 1894, 57 & 58 Vict. c. 57, are to execute and enforce the Act are the county councils (*Diseases of Animals Act, 1894, s. 67 (1), Local Government (Ireland) Act, 1898, s. 6, art. 45 of Adaptation of Irish Enactments Order of 30th January, 1899*). In case of a county borough the local authority is the council of such county borough (*Local Government (Ir.) Act, 1898, s. 21 (2)*). The county boroughs in Ireland are Dublin, Belfast, Cork, Limerick, Londonderry, Waterford (s. 21, sch. 2).

Powers and  
duties of local  
authorities.

Section 8 (6), (7), (8), (11), of the Act of 1894 authorizes the making by local authorities of certain orders under the Act declaring places infected with pleuro-pneumonia, or foot-and-mouth disease.<sup>1</sup>

"An order or regulation of a local authority may be proved—(i) by the production of a newspaper purporting to contain the order or regulation as an advertisement ; or (ii) by the production of a copy of the order or regulation purporting to be certified by the clerk of the local authority as a true copy. An order or regulation so proved shall be taken to have been duly made unless and until the contrary is proved. An order or regulation of a local authority authorized by this Act or by an order of [the Department] shall alone be deemed for the purposes of this Act an order or regulation of a local authority" (*Act of 1894, s. 37*).

The powers of a local authority are confined to its own district, save where otherwise expressly provided (s. 38).<sup>2</sup>

Every local authority shall at their own expense publish every order of the department ; and every licence or other instrument sent

<sup>1</sup> Schedule 4 authorizes the local authority to delegate its functions to a committee, who may appoint sub-committees. As to the power of the Department to direct that the local authority shall make orders only itself or by its executive committee, see s. 31 (2).

<sup>2</sup> See, for instance, s. 8 (7).

to them by the Department for publication, in such manner as the Department direct, and subject to and in the absence of any direction, by advertisement in a newspaper circulating in the district of the local authority. The validity or effect of an order of the Department, licence, or other instrument issued by the Department shall not be affected by want of, or defect or irregularity in, publication (*Act of 1894*, s. 49).

Powers and  
duties of  
police.

The police force of each police area shall execute and enforce the Act and every order of the Department (s. 43). The police force in Ireland means the Royal Irish Constabulary and the Dublin Metropolitan Police, (s. 74); and the term does not include such bodies as the Quay Police of the Dublin Port and Docks Board or the Harbour Police in Belfast. The powers of a constable are set out in s. 43 (2-7), and include the power to stop and detain any person seen or found committing, or reasonably suspected of being engaged in committing, an offence against the Act; and power to apprehend such person should his name and address be unknown and be refused to the constable. A constable may stop, detain, and examine any animal, vehicle, boat, or thing to which the offence or suspected offence relates, and require the same to be forthwith taken back to any place wherefrom it was unlawfully removed. A constable may, without warrant, apprehend any person who obstructs or impedes him in the execution of the Act. Any person called by a constable to his assistance has the same power as the constable.

Veterinary  
inspector.

A veterinary inspector (s. 69 (4)) has, within his district, for the purposes of the Act all the powers of a constable (s. 44 (1)). The department can make orders as to the powers of inspectors and other officers of the local authority (s. 68). The local authority are not responsible for the negligence of an inspector appointed by them under the Act (*Stanbury v. Eacter Corporation*, (1905) 2 K.B. 838). A certificate of a veterinary inspector as to an animal being affected with a disease is conclusive evidence of the fact stated therein (s. 44 (5)), and evidence to disprove such fact is not admissible, though the same facts may be given in evidence to show absence of guilty knowledge, when guilty knowledge is of the essence of the offence (*Leonard v. Richards*, (1891) 25 I.L.T.R. 58).

Certificate of.

Procedure.

The procedure is to follow the Summary Jurisdiction (Ireland) Acts (*Act of 1894*, s. 75 (1)).

The Court may consist of one or more justices (s. 75 (3)); one-third of the penalty may be awarded to the informer (s. 75 (4)), that is, the complainant, not a mere witness (see *Powell v. Castletown*, (1891) 30 L.R.I. 93). Any person may prosecute, the right to do so not being confined to local authority (*R. v. Stewart*, (1896) 1 Q.B. 300)<sup>1</sup>.

Procedure.

The prosecution may be instituted either at the place where the offence was committed, or at the place where the accused is at the time of the institution or commencement of the charge, complaint, or proceeding (s. 57 (4)). Defendant gave a false declaration at B to his drover, who produced it to a constable at C. *Held*, that the defendant was rightly convicted at C, the place where the document was issued (*Oakey v. Stretton*, (1884) 48 J.P. 709). The movement of animals into a certain district in the county of Dorset was forbidden. Animals were consigned to a place within the district, with through bills from Cork *via* Bristol and a specified route. The appellants, a railway company, were no parties to the contract with the consignor, but in furtherance of the scheme of carriage carried the animals over a portion of the route to a point outside the county of Dorset, whence they were subsequently carried into that county by another company. *Held*, that the

<sup>1</sup> This, however, does not apply to proceedings under Customs Acts for unlawful landing or shipping under section 56.



appellants were rightly convicted of "causing, directing, or permitting" the movement, contrary to Order in Council (*Midland R. Co. v. Freeman*, (1884) 12 Q.B.D. 629'. A corporation can be prosecuted under the Act (*R. (Lanktree) v. Dublin JJ.*, (1904) 4 N.I.J.R. 182).

If any person thinks himself aggrieved by the dismissal of a complaint by or by any determination or adjudication of a court of summary jurisdiction under this Act, he may appeal therefrom to a court of quarter sessions (*Act of 1894*, s. 55). This section gives a right of appeal, both in cases of dismissals and of impositions of fines less than twenty shillings.

"The provisions of the Summary Jurisdiction (Ireland) Acts relative to appeals against orders and convictions shall apply to orders and convictions and to dismissals of complaints under this Act" (s. 75 (2)).

The accused, or the husband or wife of the accused, is a competent but not a compellable witness (s. 57 (3)).

If the owner or any person in charge of any animal is charged with any offence relating to the disease, etc., thereof, he shall be presumed to have known of the existence of the disease, etc., until the contrary is proved (s. 57 (1)). Where any person is charged with an offence in not having duly cleansed, etc., any place, etc., belonging to him or under his charge, and "*a presumption against him on the part of the prosecution is raised*," it shall lie on him to prove the due cleansing; etc., thereof (s. 57 (2)). The precise meaning of the words in italics is not clear, and there is no reported decision on the point. Probably they merely mean, "when it has been proved on behalf of the prosecution that such place, etc., presents the appearance of not having been cleansed, etc., as required by the Act or any order of the Department."

In any proceeding under this Act no proof shall be required of the appointment or handwriting of an inspector or other authority of the Department, or of the clerk or inspector or other officer of a local authority (s. 48 (1)). As to proof of orders of Department, see p. 277, and of local authority, p. 369; as to certificate of veterinary inspector, p. 370.

Every notice under the Act or under any order or regulation made under this Act must be in writing. Any notice or other instrument under the Act or under an order of the Department or a regulation of a local authority may be served on the person to be affected thereby, either by the delivery thereof to him personally, or by the leaving thereof for him at his last known place of abode or business, or by the sending thereof through the post in a letter addressed to him there. A notice or other instrument to be served on the occupier of any building, land, or place may, except when sent by post, be addressed to him by the designation of the occupier of that building, land, or place, without naming or further describing him; and where it is to be served on the several occupiers of several buildings, lands, or places may, except when sent by post, be addressed to them collectively by the designation of the occupiers of those several buildings, lands or places, without further naming or describing them, but separate copies thereof being served on them severally (s. 48).

Under the Contagious Diseases (Animals) Act, 1878 (41 & 42 Vict. c. 74), s. 34,<sup>1</sup> and the Contagious Diseases (Animals) Act, 1886 (49 & 50 Vict. c. 32), s. 9,<sup>2</sup> which are the only sections of those Acts not repealed by the fifth schedule to the Diseases of Animals Act, 1894, the Local Government Board for Ireland have made the Dairies, Cowsheds, and Milkshops Order.

<sup>1</sup> Giving power to the Privy Council to make orders relative to dairies, cowsheds, and milkshops.

<sup>2</sup> Transferring the power to make orders relative to dairies, cowsheds, and milkshops to the Local Government Board.

Dairies,  
Cowsheds, and  
Milkshops  
Order.

Milkshops (Ireland) Order of 1908,<sup>1</sup> dated 13th February, 1908, which revokes all previous Orders under those Acts, providing:—

- (a) For the registration with the local authorities of all persons carrying on the trade of cowkeepers, dairymen,<sup>2</sup> or purveyors of milk.
- (b) For the inspection of cattle in dairies, and for prescribing and regulating the lighting, ventilation, cleansing, drainage, and water supply of dairies and cowsheds in the occupation of persons following the trade of cowkeepers or dairymen.
- (c) For securing the cleanliness of milk stores, milk shops, and of milk vessels used for containing milk for sale by such persons.
- (d) For prescribing precautions to be taken for protecting milk against infection or contamination.
- (e) For authorizing local authorities to make regulations<sup>3</sup> for the purposes aforesaid or any of them subject to such conditions as the Board may prescribe.

The Order deals in articles 1–24 with the matters mentioned in (a), (b), (c), (d), and (e). By article 26 it is provided that any person offending against any of the provisions of the Order, or any regulation made under it by a local authority, shall be liable to a penalty not exceeding £5, and in the case of a continuing offence to a further penalty not exceeding £2 for each day after written notice of the offence from the local authority. For the interpretation of the terms used in the Order, see article 28.

Offences against this order may be prosecuted, and penalties recovered, in a summary manner and subject to the like provisions as if the orders were a bye-law of a local authority under the Public Health Act, 1878 (Act of 1886, s. 9 (5)). See PUBLIC HEALTH. As to proof of Orders of Local Government Board, see p. 278, *ante*.

Inspection of  
dairies by  
Medical  
Officer of  
Health.

As to the power of a medical officer of health, under the Infectious Diseases Prevention Act, 1890 (53 & 54 Vict. c. 34, s. 4, to inspect a dairy for reasons connected with the diseases, not of animals, but of human beings, and also to prohibit the supply of milk for the same reasons from a dairy, see PUBLIC HEALTH.

## APPRENTICES.

See MASTER AND SERVANT.

<sup>1</sup> As to the manner in which this order may be proved, see p. 278, *ante*. It has been held that the local authority are obliged to comply with a sealed order of the L. G. B. directing them to appoint a duly qualified veterinary surgeon as veterinary inspector to fulfil such duties as may be assigned to him by the L. G. B. (*R. (Local Govt. Board) v. Kilmallock R.D.C.*, (1910) Dec., unreported; but see INDEX OF CASES).

<sup>2</sup> A farmer who kept cows to supply milk to his own household, and who occasionally sold at irregular intervals small quantities of milk to his neighbours, was held by the Q. B. Division not to carry on the trade of a dairyman (*Southwell v. Lewis*, (1880) 45 J.P. 206). A farmer who does not sell milk, but uses it for the purpose of fattening calves, is not a dairyman (*Umfreville v. London County Council*, (1897) 18 Cox 464).

<sup>3</sup> A regulation which provided that there must be 800 cubic feet of air space for each animal was held good (*Baker v. Williams*, (1898) 1 Q.B. 23).

## ARMY.

	PAGE		PAGE
Application of Army Act, 1881, . . . . .	373	Personation to obtain military pay, . . . . .	376
Liability of soldiers and officers to be tried by civil courts, . . . . .	373	Forging of certificates, &c., . . . . .	376
Enlistment, . . . . .	373	Falsely pretending to be a deserter, . . . . .	376
False answers on attestation, . . . . .	373	Inducing soldiers to desert, . . . . .	376
Apprentices, . . . . .	374	Apprehension of deserters, . . . . .	376
Unlawful recruiting or interference with recruiting, . . . . .	374	Purchasing regimental equipment, &c. . . . .	376
Billeting—		Detaining certificate of pensioner, . . . . .	377
General provisions, . . . . .	374	Procedure, . . . . .	377
Offences as to billeting by—		Evidence, . . . . .	377
(1) Constables, . . . . .	374	Offences for which soldiers may be “taken out of” the service, . . . . .	378
(2) Keepers of victualling houses, . . . . .	374	Failure to deliver offender to civil authority, . . . . .	378
(3) Troops, . . . . .	375	Power of justice to extend furlough, . . . . .	378
Impressment of carriages and horses, . . . . .	375	Provisions as to military manœuvres:—	
Application to petty sessions for money due for billets or in respect of ill-treatment by troops, . . . . .	375	Power to close roads, . . . . .	378
Fraudulent claims, . . . . .	375	Offences as to manœuvres, . . . . .	378
		Canteens, . . . . .	379

The raising or keeping of a standing army in the United Kingdom in time of peace, unless with the consent of Parliament, is unlawful, and, in order to legalize the existence of the army, Parliament, by the Army (Annual) Act, every year re-enacts for one year the Army Act, 1881. The Army Act, 1881, referred to in this Article is the Army Act, 1881, as amended by the twenty-nine Army (Annual) Acts passed since 1881, and as printed with such amendments pursuant to the Army (Annual) Act, 1885. The Army Act, 1881, applies to persons subject to military law, whether within or without His Majesty's dominions (*Army (Annual) Act*, 1910, s. 2 (2)). A person subject to military law<sup>1</sup> when in His Majesty's dominions may be tried by any competent civil court for any offence for which he would be triable if he were not subject to military law (*Army Act*, 1881, s. 41 (5) (b)). Articles of War may be made by His Majesty for the better government of officers and soldiers, and such articles shall be judicially taken notice of by all judges and in all courts (s. 69).

A recruiter shall give to each intending recruit a notice stating the conditions of enlistment, and directing such recruit to appear before a justice of the peace. Such justice shall ask the recruit whether he has received and understands the notice, and if he assents to be enlisted, and shall not proceed with the enlistment if he appear to be under the influence of liquor. If he assents, the justice shall, after cautioning him that if he makes any false answer he will be liable to punishment as provided by the Act, read to him the specified questions in the attestation paper, taking care that he understands the questions put to him, and see the answers recorded in the attestation paper, and get such recruit to sign the same and to take the oath of allegiance, and the justice shall also sign the paper (s. 80). Any immaterial error in the attestation paper may be amended by a justice (s. 80 (6)).

To knowingly make a false answer to any question in the attestation paper—*Penalty*, imprisonment, with or without hard labour, not exceeding three months (s. 99 (1)). If the person guilty of this offence has been attested a soldier of the regular forces, he may be proceeded against by court-martial instead of summarily (s. 99 (2)).

<sup>1</sup> For such persons, see ss. 175, 176, 178, 181 (2).



**Apprentices.**

The master of an apprentice in the United Kingdom who has enlisted may claim him while he is under twenty-one, by following the procedure indicated by s. 96.

**Unlawful recruiting and interference with recruiting.**

Unlawful recruiting, or interference with recruiting—*Penalty*, not exceeding £20 (s. 98).

**Billeting.**

*General provisions.*

Every constable<sup>1</sup> in charge of any place mentioned in any route (as defined in the section) issued to troops shall, on production of such route, and on demand by or on behalf of the officer commanding such troops, billet on the occupiers of victualling houses and other premises mentioned in the Act, such officers, soldiers, and horses entitled under the Act to be billeted, as are stated in such route to require quarters (s. 103). The term "victualling houses" includes all inns, hotels, livery stables, ale-houses, and the houses of sellers by retail of wines for consumption on the premises, and the houses of sellers by retail of brandy, spirits, strong water, or cider; but no officer or soldier is to be billeted in any private house, nor in any house kept for distilling brandy or strong waters in which tippling is not permitted, nor in the house of any shopkeeper whose principal dealing is in goods other than brandy and strong waters, and who does not permit tippling in such house, nor in the house of a person licensed only for the sale of beer or cider not to be consumed on the premises, nor in the house of any foreign consul (s. 104). Officers, soldiers, and horses of the regular forces and of the auxiliary forces when subject to military law (s. 181) are entitled to be billeted (s. 105). A person in whose house troops may be billeted must either give them in such house the accommodation, etc., specified in the second schedule to the Act, or provide such accommodation elsewhere to the satisfaction of the constable who issued the billet (s. 106). Any person aggrieved by reason of being entered in the annual list (made out pursuant to this section) of victualling houses liable to billets, or of being entered thereon to receive an undue proportion of officers, soldiers, or horses, may complain to a court of summary jurisdiction, which may order the list to be amended (s. 107). There is a similar provision with regard to list of persons liable to supply carriages, etc. (s. 114). A justice, on the request of an officer or non-commissioned officer, authorized to demand billets, may vary a route by adding any place or omitting any place, and also may direct billets to be given above one mile from a place mentioned in the route (s. 108 (6)). A justice may require a constable to give an account in writing of the number of officers, soldiers, and horses billeted by such constable, together with the names of the keepers of victualling houses on whom such officers, soldiers, and horses are billeted, and the locality of such victualling houses (s. 108 (7)).

*Officers as to billeting by (1) constable.*

A constable who (1) billets any officer, soldier, or horse on any person not liable to billets, without the consent of such person; (2) receives, demands, or agrees for money or reward to relieve any person liable to billets from such liability; (3) billets or quarters on any person or premises without the consent of such person or the occupier of such premises any person or horse not entitled to be billeted; (4) neglects or refuses after sufficient notice to give billets demanded for any officer, soldier, or horse entitled to be billeted—*Penalty*, not less than £2 and not exceeding £10 (s. 109).

*Officers as to billeting by (2) keeper of victualling houses.*

A keeper of a victualling house who (1) refuses to receive any person or horse billeted on him or to furnish such accommodation as is required by the Act; (2) bribes or agrees to bribe any constable to free him from liability to billets; (3) gives or agrees to give money to any

<sup>1</sup> This term includes every member of a police force, s. 190 (38).

officer or soldier billeted on him in lieu of receiving an officer, soldier, or horse or furnishing accommodation—*Penalty*, not less than £2, and not exceeding £5 (s. 110).

Any officer or soldier who commits any of the following offences : *Offences as to billeting by 3 troops.*  
 (a) being guilty of violence, extortion, or making disturbance in billets; (b) if an officer, failing to cause compensation to be made by anyone under his command for such violence, etc.; (c) failing to comply with the requirements of the Act as to payment for billets; (d) demanding billets that are not required; (e) taking, or permitting the taking of, bribes for relieving any person from his liability to billets; (f) compelling a constable or other civil officer to give billets contrary to this Act, or discouraging him from performing any duty in regard to billeting; (g) compelling any person to receive without his consent any person or horse not duly billeted on him, or to furnish any accommodation which he is not required to furnish—*Penalty*, not exceeding £50; conviction to be reported to the Army Council (ss. 111 (2), 30, and 119, read together).

Any justice of any place mentioned in any route purporting to be issued to the commanding officer of any part of the regular forces must, on production of such route and on demand by or on behalf of such commanding officer, issue his warrant to any constable to provide such carriages,<sup>1</sup> animals, and drivers as are stated to be required for the conveyance of regimental baggage and stores (s. 112). Provision is made for payment for the use of such carriages, &c. (s. 113). The police are annually to make out lists of persons liable to furnish carriages, &c. (s. 114). By order, stating that a case of emergency exists, the Chief or Under Secretary may authorize any general or field officer in command of His Majesty's regular forces to issue a "requisition of emergency" under which justices must issue their warrants for the provision, for any purposes mentioned in such requisition, of carriages of every description, including motor cars and locomotives, horses of every description, and boats used for inland navigation, that are mentioned in such requisition (s. 115). Provision is made for the punishment of offences by constables in relation to ss. 112 and 115 (s. 116), by persons ordered to furnish carriages, horses, or boats (s. 117), and by officers and soldiers in connection with the impressment of carriages, horses, and boats (s. 118). *Impressment of carriages and horses.*

If any officer or soldier fails to comply with the provisions of the Act with respect to the payment of money due for billets, or the use of carriages or animals, or if any person on whom troops are billeted, or who owns or drives any carriage, animal, or boat impressed under the Act, is illtreated by any officer or soldier, such person, after first making complaint, if practicable, to an officer commanding such officer or soldier, may apply to a court of summary jurisdiction, which if satisfied of the truth of the complaint, shall certify to the Army Council the amount, including the costs of such application, due to the complainant. If the Army Council be not satisfied that the amount so certified is due, they may cause a complaint to be made to a court of summary jurisdiction for the same place as that for which the court so certifying acted, and on such last-mentioned complaint, such certificate may be varied or confirmed (s. 119). A justice may, in case of emergency, act as a constable for the purposes of the Act, but no person having any military office or commission shall act as a justice or constable with regard to the billeting of troops under his command (s. 120). *Application to petty sessions for money due for billets, or in respect of illtreatment by troops.*

If any person (1) forges, or produces to any justice or constable any forged route or requisition of emergency; (2) for the purpose of *Fraudulent claims.*

<sup>1</sup> A carriage means anything on which men or goods are carried (Stroud, *Jud. Dictionary, sub verb.*).

procuring billets or carriages, animals or vessels, personates any officer or soldier; or (3) produces to any justice or constable a route or requisition of emergency that he is not authorized to produce, or a document falsely purporting to be a route or requisition—*Penalty*, imprisonment not exceeding three months, with or without hard labour, or fine not less than £1 nor exceeding £5 (s. 121).

Personation to obtain military pay, &c.

Personation to obtain military pay—*Penalty*, imprisonment not exceeding three months with or without hard labour, or fine not exceeding £25 (s. 142).

Forgery of certificates, &c.

6 Ed. 7, c. 5.

Forging of certificate of discharge, or seeking employment by means of forged certificates or personating holder thereof—*Penalty*, imprisonment, with or without hard labour, not exceeding one month, or fine not exceeding £20 (*Seamen and Sailors' False Characters Act*, 1906, s. 1). Using or giving false statements for enlistment, penalty not exceeding £20 (s. 2). Making false written statement as to character or previous employment of any man to be used for enlistment, like penalty (*ib.*).

Falsely pretending to be deserter.

Falsely pretending to be a deserter—*Penalty*, imprisonment not exceeding three months, with or without hard labour (*Army Act*, 1881, s. 152).

Inducing soldiers to desert.

Inducing, aiding, &c., soldiers to desert, concealing deserter—*Penalty*, imprisonment not exceeding six months, with or without hard labour (s. 153).

Apprehension of deserters.

A justice, if satisfied by evidence on oath that a deserter is or is reasonably suspected to be within his jurisdiction, may issue a warrant authorizing such deserter to be apprehended and brought before a court of summary jurisdiction, which may deal with such deserter as if he were charged with an indictable offence. Such court, if satisfied by evidence on oath or by confession that a person brought before them charged with being a deserter is in fact a deserter, shall forthwith deliver him into military custody, or commit him, until he can be so delivered, to some prison or police station. Upon so doing the court is to transmit to the Army Council a return called a "descriptive return" containing such particulars and in such form as is specified in the 4th schedule to the Act, or as the Army Council may direct. If the court be not satisfied that a person who has confessed that he is a deserter is in fact a deserter, they may from time to time remand him, for not more than eight days at a time, whilst making enquiry regarding him of the Army Council (s. 154).

Purchasing regimental equipment, stores, &c.

Purchasing, taking in pawn, receiving, &c., or soliciting any soldier to give away, or aiding any soldier in making away with regimental equipments, stores, &c., unless purchaser, &c., proves that he did not know that he was dealing with such property, or that the person he dealt with was or acted for a soldier, or unless he proves that such arms, &c., were sold by some competent military authority—*Penalty*, first offence, not exceeding £20, together with treble the value of such property so bought, &c.; second offence, not less than £5 nor more than £20, together with treble the value of such property so bought, &c., or imprisonment with or without hard labour, not exceeding six months (s. 156 (1)). When any such property as aforesaid is found in the possession of any person, he may be brought before a court of summary jurisdiction, and if such court have reasonable ground to believe that such property was obtained in contravention of the section, and such person, does not satisfy such court that he came by such property lawfully—*Penalty*, not exceeding £5 (s. 156 (2)).

Any person charged under this section and the husband or wife of such person are competent but not compellable witnesses (s. 156 (3)). Any person found committing an offence against this section may be apprehended and brought before a court of summary jurisdiction, and any person who suspects that property offered to him is offered to him in



contravention may apprehend the person so offering and take him and such property before such court (s. 156 (4)). A court of summary jurisdiction, if satisfied on oath that there is reasonable cause to suspect that any person has in his possession, or on his premises, any property obtained in contravention of this section, may issue, as in the case of stolen goods, a warrant to search for such property, and any such property found on such search shall be seized, and the person in whose possession the same is found shall be brought before a court of summary jurisdiction (s. 156 (5)). For the purpose of this section, property shall be deemed to be in the possession or keeping of any person who has it knowingly in the actual possession or keeping of any other person, or in any place whatever, whether occupied by himself or not, and whether for the benefit of himself or any other person (s. 156 (6)).

Receiving, detaining, &c., pensioner's certificate as pledge or security for debt, &c.—*Penalties* as for offences under s. 156 (1), *supra* (s. 156 (9)).

The foregoing offences may be prosecuted in any places where the offence was committed or where the offender is, and the fine and forfeiture in respect thereof may be recovered in manner provided by the Summary Jurisdiction Acts,<sup>1</sup> which Acts are to apply to the proceedings. A portion, not exceeding one-half, of any fine imposed may be ordered to be paid to the informer,<sup>2</sup> and, in so far as not so applied, all fines are to be applied as directed by the Fines Act (Ir.), 1851, and any Acts amending the same. The court is to consist of two or more justices sitting in petty sessions, or in the D. M. P. district of one divisional justice<sup>3</sup> (s. 166). Prosecutions for any act done in pursuance or execution or intended execution of the Act or in respect of any alleged neglect or default in the execution of the Act must be commenced within six months after the act complained of, or in the case of a continuing offence within the like period after the ceasing thereof (s. 170 (1)). If a person sentenced by a court-martial in pursuance of the Act is afterwards tried by a civil court for the same offence, such civil court is, in awarding punishment, to have regard to the military punishment undergone (s. 162 (1)).

Detaining  
certificate of  
pensioner.  
Procedure.

The attestation paper, or the declaration made by any person upon his re-engagement, is evidence of the answers therein appearing. The enlistment may be proved by a copy of the attestation paper purporting to be certified as a true copy by the officer having the custody of such paper, without proof of the handwriting of such officer or of his having such custody (s. 163 (1) (a)). A letter or other document respecting the services of any person in or the discharge of any person from any portion of His Majesty's Forces, or respecting a person not having served in or belonged to such forces, if purporting to be signed by or on behalf of a Secretary of State or the Army Council, or of the Commissioners of the Admiralty, or by the commanding officer of any portion of the forces, or of any of H.M. ships, to which such person appears to have belonged, or alleges that he belongs or has belonged, is evidence of the facts therein stated (s. 163 (1) (b)). Regimental records purporting to be signed by the commanding officer or by the officer whose duty it is to make such record is evidence of the facts thereby stated (s. 163 (1) (g)). A descriptive return<sup>4</sup> purporting to be signed by a justice is evidence of the matter therein stated (s. 163 (1) (i)). Whenever any person subject to military law has been tried by any civil court, the clerk thereof shall, if

Evidence.

<sup>1</sup> This means the Summary Jurisdiction (Ir.) Acts, as to which see the Interpretation Act, 1889, s. 13 (10), noted, p. 41.

<sup>2</sup> That is to say, to the complainant (*Powell v. Castletown*, (1891) 30 L. R. I. 93).

<sup>3</sup> The effect of s. 165 (5) is that the court must be constituted in this manner.

<sup>4</sup> As to which see s. 154, at p. 376.

required by the commanding officer of such person, furnish a certificate setting forth the offence and the order made by the court. Such certificate is sufficient proof of such order<sup>1</sup> (s. 164).

Offences for which a soldier may be taken out of the service.

A soldier of the regular forces is not liable to be taken out of the service by any order of any court of summary jurisdiction or compellable to appear in person<sup>2</sup> before such court, except on account of a charge or conviction of crime, which term means a felony, or misdemeanour, or other offence punishable with fine and imprisonment, or some greater punishment, and does not include the offence of a person absenting himself from his service, or neglecting to fulfil his contract, or otherwise misconducting himself respecting his contract (s. 144 (1, 2, 3)). Any officer or soldier may be proceeded against by the ordinary course of law when accused or convicted of any offence except such an offence is declared not to be a crime for the purposes of s. 144, and if an officer “(a) neglects or refuses on application to deliver over to the civil magistrate any officer or soldier so accused or convicted as aforesaid, or (b) wilfully obstructs or neglects or refuses to assist constables in apprehending any such officer or soldier; misdemeanour (s. 162 (2 & 3)).

Failure to deliver over to civil power soldiers or officers accused or convicted.

Power of justices as to furlough.

If any soldier on furlough is detained by sickness or other casualty rendering necessary any extension of such furlough in any place, and there is not any officer in the performance of military duty of the rank of captain or higher rank within convenient distance of the place, any justice of the peace who is satisfied of such necessity may grant an extension of furlough, not exceeding one month, and shall immediately by letter certify such extension and the cause thereof to the commanding officer of such soldier, if known, and if not, then to the Army Council (s. 173).

Provisions as to military manœuvres. 60 & 61 Vict. c. 43.

Power to close roads.

When military manœuvres are ordered pursuant to the Military Manœuvres Act, 1897, “two justices of the peace, not being military officers in command of the forces, may, if they think fit, on the application of a commissioned officer in command of the authorized forces<sup>3</sup> or of part thereof, by order, suspend for a time not exceeding forty-eight hours any right of way within the specified limits<sup>4</sup> and within their jurisdiction.” If such order relate to “any county, main or parish road,” the justices must make it when sitting in petty sessions in the petty sessions district or districts within which such road or part of a road is situate, and such order must be for only twelve hours, and be made only after seven days’ notice of such intended application has been published in at least one newspaper circulating generally in the district, and subject to such terms and conditions as may be required by the said justices for the protection of individuals or of the public or of public bodies. The officer in command of the authorized forces shall cause such public notice of the order as the justices may require to be given not less than twelve hours before the order comes into force, and shall give all reasonable facilities for traffic whilst the order is in force (*Military Manœuvres Act*, 1897, s. 3). If within the limits and during the period specified in an Order in Council, authorizing military manœuvres under this Act any person (a) wilfully and unlawfully obstructs or interferes with the execution of the manœuvres; or (b) without due authority enters or remains in any camp—*Penalty*, fine not exceeding

Offences as to manœuvres.

<sup>1</sup> For such certificate the clerk is to receive a fee of three shillings (*ib.*).

<sup>2</sup> This means as a defendant, and does not entitle a soldier to disregard a witness-summmons.

<sup>3</sup> This means such persons as are, under the authority of His Majesty, engaged in the manœuvres (*ib.* s. 2).

<sup>4</sup> That is to say, specified in the Order in Council directing the manœuvres.

£2, and he and any animal or vehicle under his charge may be removed by any constable, or by or under the order of any commissioned officer of the authorized forces (s. 7 (1)). If within such limits and period any person (a) without due authority moves any flag or other mark distinguishing for the purpose of the manœuvres any lands; or (b) maliciously cuts or damages any telegraph wire laid down by or for the use of the authorized forces—*Penalty*, fine not exceeding £5 (s. 7 (2)).

When a person holds a canteen under the authority of a Secretary of State or the Admiralty, it shall be lawful for any two justices within their respective jurisdiction to grant, transfer, or renew any licence for the time being required to enable such person to obtain or hold any excise licence for the sale of any intoxicating liquor, without regard to the time of year, and without regard to the requirements as to notices, certificates, or otherwise, of any Acts for the time being in force affecting such licences, and excise licences may be granted to such persons accordingly (*Army Act*, 1881, s. 174). No offence is committed by selling liquor to a civilian at a canteen (*Dickeson v. Mayes*, (1910) 1 K.B. 452). The Licensing Act, 1872, does not apply to a sale at a canteen (see s. 72), but it has been said that the provisions in the English Licensing Act, 1874, as to closing hours are applicable (*Gallagher v. Rudd*, (1898), 1 Q.B. 114, at p. 119).

## ASSAULT

	PAGE		PAGE
Definition, . . . . .	379	Assault relating to grain, etc., . . . . .	381
Effect of statutes giving summary jurisdiction, . . . . .	379	Assault on seamen, . . . . .	382
Common assault, . . . . .	379	Setting on dog, . . . . .	382
Aggravated assault on females and males under 14, . . . . .	380	Effect of dismissal or conviction, . . . . .	382
Ouster of jurisdiction, . . . . .	381	Procedure, . . . . .	382
Assault on peace officer, . . . . .	381	Chastisement by person in authority, . . . . .	383
		Power to withdraw charge, . . . . .	383

As to what is an assault, see INDICTABLE OFFENCES, "ASSAULT." Definition.

Any assault, including a common assault, may be proceeded against by indictment; and the various statutory provisions, presently to be noticed, enabling justices, if they think fit, to deal with certain prosecutions for assault summarily, do not take away the right to proceed by indictment, which is, therefore, untouched by the decisions in *R. v. Wicklow JJ.*, (1892) 30 L.R.I. 633, and kindred cases, as to the right of third parties to prosecute. Such third parties, though not purporting to prosecute on behalf of the party aggrieved, may proceed by indictment (*R. v. Gaunt*, (1895), 18 Cox 210; see also observations of Phillimore, J., in *Pickering v. Willoughby*, (1907) 2 K.B. 296, at p. 300).

"Where any person shall unlawfully assault or beat any other person, two justices of the peace,<sup>1</sup> upon complaint by or on behalf of the party aggrieved, may hear and determine such offence"—*Penalty*, not exceeding, together with costs, if ordered, £5, or two months' imprisonment, with or without hard labour (*Offences against the Person Act*, 1861, s. 42).

Where a person who has been assaulted prefers an information calling upon the defendant to show cause why he should not be

Common assault.  
Effect of statutes giving summary jurisdiction.  
24 & 25 Vict. c. 100. s. 42.

<sup>1</sup> Under the Summary Jurisdiction (Ir.) Act, 1862, 25 & 26 Vict. c. 50, s. 2, the offence under the Offences against the Person Act, 1861, may be prosecuted before one or more justices in petty sessions, and before two justices out of sessions, if the offender shall be unable to procure bail for his appearance at petty sessions, as to which see *R. (Connell) v. Dublin JJ.*, (1861) 13 I.C.L.R. 375, noted, p. 45.



Common  
assault.

bound over to the peace, but does not ask for a conviction for assault, wishing to preserve his civil remedy,<sup>1</sup> the justices have no jurisdiction to fine for assault (*R. v. Deny*, (1851) 20 L.J.M.C. 189); but where the summons is for assault, and also calls on the defendant to show cause why he should not be bound over, the justices can convict of assault (*Kennington v. Daniel*, (1888) 22 L.R.I. 667). Even if the summons for assault be dismissed, the justices may order the defendant to enter into recognizances to keep the peace (*Ex parte Davis*, (1871) 24 L.T. 547.)

Where an assault is committed upon a person who, through age and infirmity, is in such a feeble state of health, and so under the control of the person who commits the assault as to be incapable of instituting proceedings, an information under section 42 of the Offences against the Person Act, 1861, may be laid by a person other than the person assaulted, although he has not been authorized by such person to do so (*Pickering v. Willoughby*, (1907) 2 K.B. 296). "I think we ought to hold that one who from motives of protection makes a complaint for an assault upon such a person makes that complaint on behalf of the person aggrieved" (*ib.*, per Lord Alverstone, C.J.).

25 & 26 Vict.  
c. 50, s. 9.

"It shall be lawful for the justices at petty sessions, if they shall so think fit, to proceed against any person or persons charged with being guilty of an assault, pursuant to the provisions of the Offences against the Person Act, 1861, s. 42, notwithstanding that the party aggrieved may decline or refuse to prefer a complaint" (*Summary Jurisdiction (Ireland) Act*, 1862, s. 9).

The fact that the party aggrieved has declined to prefer the complaint must be proved, and averred in a conviction under this section (see *R. v. Wicklow JJ.*, (1892) 30 L.R.I. 633; *Nicholson v. Booth*, (1888) 16 Cox 373; *R. (Deane) v. Galway JJ.*, (1901) 35 I.L.T.R. 156; *R. (Prendergast) v. Waterford JJ.*, (1904) 4 N.I.J.R. 196; *R. (Johnson) v. Armagh JJ.*, (1909) 43 I.L.T.R. 112).

Aggravated  
assault on  
females and  
males under  
fourteen.

24 & 25 Vict.  
c. 100, s. 43.

"When any person shall be charged before two justices of the peace with an assault or battery upon any male child<sup>2</sup> whose age shall not in the opinion of such justices exceed fourteen years, or upon any female, either upon the complaint of the party aggrieved or otherwise, the said justices, if the assault or battery is of such an aggravated nature that it cannot in their opinion be sufficiently punished under the provisions hereinbefore contained as to common assaults and batteries, may proceed to hear and determine the same in a summary way, and, if the same be proved, may convict the person accused"—*Penalty*, not exceeding (together with costs) £20, or six months' imprisonment, with or without hard labour (*Offences against the Person Act*, 1861, s. 43). Offenders may also be bound over to keep the peace and be of good behaviour, for any period not exceeding six months from the expiration of the sentence (*ib.*).

There is jurisdiction under this section to hear a case, the facts of which show that the assault has occasioned bodily harm (*R. (McGrath) v. Clare JJ.*, (1905) 2 I.R. 510), but not, it would seem, where the summons charges an assault "occasioning actual bodily harm," as that is a separate offence punishable on indictment (per Andrews, J., in *Ex parte Clarke*, (1890) 26 L.R.I. 1, at p. 10). If a defendant be charged with simple assault, he may be convicted of an aggravated assault under this section (*Holden v. King*, (1876) 35 L.T. 479), which merely gives power to inflict increased punishment if the assault be one of an aggravated character (*Crocker v. Raymond*, (1886) 3 T.L.R. 181). An aggravated assault means one

<sup>1</sup> See *post*, p. 382.

<sup>2</sup> See also Children Act, 1908, s. 12, printed *verbatim* in APPENDIX OF STATUTES.

aggravated in respect of violence, and does not include an indecent assault (*R. v. Baker*, (1883) 48 J.P. 666).

"In case the justices shall find the assault or battery complained of to have been accompanied by any attempt to commit felony,<sup>1</sup> or shall be of opinion that the same is, from any other circumstance, a fit subject for a prosecution by indictment, they shall abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner as if they had no authority finally to hear and determine the same: Provided also that nothing herein contained shall authorize any justice to hear and determine any case of assault or battery in which any question shall arise as to the title to any lands, tenements, or hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any court of justice" (*Offences against the Person Act*, 1861, s. 46). As to when the jurisdiction is ousted by a question of title, see p. 206.

Ouster of jurisdiction.

24 & 25 Vict. c. 100, s. 46.

"Whosoever shall . . . assault, resist, or wilfully obstruct any peace officer in the due execution of his duty, or any person acting in aid of such officer, or shall assault any person with intent to resist or prevent the lawful apprehension or detainer of himself or of any other person for any offence"—*Misdemeanour*, imprisonment not exceeding two years, with or without hard labour—(*Offences against the Person Act*, 1861, s. 38).

Assault on peace officers.

24 & 25 Vict. c. 100, s. 38.

Apparently the offence is committed, even though the peace officer is in plain clothes while on duty, and the defendant does not know he is a peace officer (*R. v. Forbes*, (1865) 10 Cox, 362; *R. v. Maxwell & Clanchy*, (1909) 73 J.P. 176; cf. *Sherras v. De Rutzen*, (1895) 1 Q.B. 918, noted under "INTOXICATING LIQUORS").

Such assaults are also punishable (in the same manner as assaults under s. 42 of the *Offences against the Person Act*, *supra*) before two justices, if they shall consider the offence so trivial as not to require to be dealt with by a superior tribunal (*Summary Jurisdiction (Ireland) Act*, 1862, s. 10).

25 & 26 Vict. c. 50, s. 10.

The summary jurisdiction conferred by the 25 & 26 Vict. c. 50, s. 10, only applies to the offences of *assault* mentioned in the 24 & 25 Vict. c. 100, s. 38, and therefore justices have no jurisdiction to deal summarily with a charge of resisting or wilfully obstructing a peace officer in the discharge of his duty (*R. v. Kilkenny JJ.*, (1871) I.R. 5 C.L. 394).

"Where any person is convicted of an assault on any constable when in the execution of his duty, such person shall be guilty of an offence against this Act"—*Penalty*, not exceeding £20, and in default imprisonment, with or without hard labour, not exceeding six months, or imprisonment not exceeding six months, or if such person has been convicted of a similar assault, within two years, not exceeding nine months, with or without hard labour (*Prevention of Crime Act*, 1871, s. 12).

34 & 35 Vict. c. 112, s. 12.

The offence is to be prosecuted in the Dublin metropolitan police district before a divisional justice, and elsewhere in Ireland before a stipendiary magistrate sitting alone or with others, or any two or more justices of the peace in petty sessions (*ib.*, s. 17). A previous conviction may be proved in any legal proceeding by producing a record or extract of such conviction, and by giving proof of identity of the person in the record with the person against whom the conviction is sought to be proved (*ib.*, s. 18).

Whoever shall beat or use any violence or threat of violence to any person with intent to deter or hinder him from buying, selling, or otherwise disposing of, or to compel him to buy, sell, or otherwise dispose of, any wheat or other grain, flour, meal, malt, or potatoes in any market or other place, or shall beat or use any such violence or threat to any

Assault to obstruct the sale of grain, etc.

<sup>1</sup> But see 25 & 26 Vict. c. 50, s. 10, *infra*, by which jurisdiction is given in such cases.

<sup>2</sup> As to which, see p. 8, *ante*.

24 & 25 Vict.  
c. 100, s. 39.  
Assault on  
seamen, &c.

person having the care or charge of any wheat or other grain, etc., whilst on the way to or from any city, market town, or other place, with intent to stop the conveyance of the same—*Penalty*, imprisonment with hard labour not exceeding three months (*Offences against the Person Act*, 1861, s. 39).

24 & 25 Vict.  
c. 100, s. 40.  
Assault by  
setting on  
dog.

“Whosoever shall unlawfully and with force hinder or prevent any seaman, keelman, or caster from working at or exercising his lawful trade, business, or occupation, or shall beat or use any violence to any such person with intent to hinder or prevent him from working at or exercising the same”—*Penalty*, imprisonment not exceeding three months (*Offences against the Person Act*, 1861, s. 40).

Effect of  
dismissal or  
conviction.

Setting on dog to attack or worry any person, horse, or other animal—*Penalty*, not exceeding 10s. (*Summary Jurisdiction (Ir.) Act*, 1851, s. 10 (10)).

24 & 25 Vict.  
c. 100, s. 44.

“If the justices upon the hearing of any such case of assault or battery upon the merits, where the complaint was preferred by or on behalf of the party aggrieved, under either of the last two preceding sections,<sup>1</sup> shall deem the offence not to be proved, or shall find the assault or battery to have been justified, or so trifling as not to merit any punishment, and shall accordingly dismiss the complaint; they shall forthwith make out a certificate under their hands stating the fact of such dismissal, and shall deliver such certificate to the party against whom the complaint was preferred” (*Offences against the Person Act*, 1861, s. 44).

“If any person, against whom any such complaint as in either of the last three preceding sections<sup>2</sup> mentioned shall have been preferred by or on behalf of the party aggrieved, shall have obtained such certificate, or, having been convicted, shall have paid the whole amount adjudged to be paid, or shall have suffered the imprisonment or imprisonment with hard labour awarded, in every such case, he shall be released from all further or other proceedings, civil or criminal, for the same cause” (s. 45).

The justices are bound to grant this certificate if their decision warrants same (*Hancock v. Somes*, (1859) 1 El. & El. 795). The word “forthwith” means “forthwith upon application,” so that the certificate need not be drawn up until applied for (*Ostar v. Hetherington*, (1859) 1 El. & El. 802). Where a prosecutor gave notice to the defendant that he would not attend or offer evidence, but the person charged attended and obtained from the magistrate a certificate of dismissal under the section, it was held (1) that there had been no “hearing upon the merits,”<sup>3</sup> and (2) that, in subsequent civil proceedings, the county court judge had jurisdiction to inquire as to the circumstances under which the magistrate’s certificate had been obtained (*Reed v. Nutt*, (1890) 24 Q.B.D. 669). The order “dismissed” simply is a bad order and a mere nullity (see p. 100); and therefore is not a bar to subsequent civil proceedings (*Donnelly v. Ingram*, Cir. C. : Palles, C.B., (1897) 31 I.L.T.R. 139). The conviction for assault of a servant does not operate to release the master from civil liability for the assault (*Dyer v. Munday*, (1895) 1 Q.B. 742). An order merely binding to the peace is no bar to an action for assault (*Hartley v. Hindmarsh*, (1866) L.R. 1 C.P. 553; cf. *R. v. Miles*, (1890) 24 Q.B.D. 423).

Procedure.

25 & 26 Vict.  
c. 50.

Offences under the Offences against the Person Act, 1861, are punishable before a single justice in petty sessions, or before two justices out of petty sessions, when the offender shall be unable to procure bail for his appearance at petty sessions, or before a Dublin divisional justice (*Summary Jurisdiction Amendment Act*, 1862, s. 2); the proceedings as to compelling appearance are regulated by the Petty Sessions Act, 1857, (*ib.*, s. 3).

<sup>1</sup> That is ss. 42, 43, noted *supra*.

<sup>2</sup> Ss. 42, 43, 44.

<sup>3</sup> Cf. *Tunncliffe v. Tedd*, (1848) 5 C.B. 553; *Vaughton v. Bradshaw*, (1860) 9 C.B. (N.S.) 103, noted p. 57 n.



Persons in authority, such as parents, schoolmasters, etc., have a right to inflict moderate chastisement upon those in their charge (*Re Basingstoke School*, (1877) 41 J.P. 118). The ordinary authority to punish school children extends not to the head teacher only, but to the responsible teachers who have charge of classes; and it is a good defence if a teacher is able to prove that the punishment which he administered was moderate, that it was not dictated by any bad motive, and was such as is usual in the school, and such as the parent of the child might expect that the child would receive if he did wrong (*Mansell v. Griffin*, (1908) 1 K.B. 160).

Right of chastisement by person in authority.

The right to inflict reasonable personal chastisement is not limited to punishment for offences committed in school, but may extend to offences committed by the pupil on the way to or from school (*Cleary v. Booth*, (1893) 1 Q.B. 465). A master is entitled to reasonably chastise his apprentice for misconduct (*Walter v. Everard*, (1891) 2 Q.B. 369, at p. 376, *per* Fry, L.J.). It is probable that a master has no right of chastising a hired servant of full age for dereliction of duty. (See Smith's "Master and Servant," 6th ed., p. 96, but the matter is not free from doubt (9 Halsbury, p. 608)). It has been held that the master of a ship has such a right, for the preservation of order (*Watson v. Christie*, (1800) 2 B. & P. 224; *Lamb v. Burnett*, (1831) 1 Cr. & J. 291). The master can also restrain and arrest a passenger for the same purpose (*Noden v. Johnson*, (1850) 16 Q.B. 218).

With regard to assaults on fishermen and water bailiffs see title, FISHERIES, *post*. There are also special provisions as to assaults on certain officers, as Public Health Officers, Food and Drugs Inspectors, &c., as to which see the appropriate titles.

It has been held that the justices are not bound to allow a complainant to withdraw his summons for assault, and the jurisdiction of the justices attaches once the information is laid (*Ex parte Bryant*, (1863) 27 J.P. 277).

Power to withdraw charge.

## AUCTIONEERS.

	PAGE		PAGE
Carrying on business without a licence,	a 383	Placard to be exhibited at auction,	384
		Sale of excisable commodities,	384

Every person carrying on the business of an auctioneer, or acting in that capacity at any sale or roup, or selling or offering for sale any goods, lands, tenements, or hereditaments, or any interest therein at any sale or roup where the sale is by competition, must take out an auctioneer's licence, to be renewed annually on every 5th July, ten days at least before its expiration. Acting as aforesaid without a licence — *Penalty*, £100 (*Auctioneers Act*, 1845, s. 4).

Carrying on business of auctioneer without a licence.

8 & 9 Vict. c. 15.

A licence is not required to sell by auction goods taken under a distress for non-payment of rent to less amount than £20 (s. 5). Where a member of the constabulary or of the metropolitan police force is empowered to distrain any goods under a warrant, such goods may be sold by him without a licence (14 & 15 Vict. c. 93, s. 32 (4)). The undersheriff or any of his bailiffs are empowered to sell without a licence goods taken in execution by him or by the sheriff or any bailiff (*Civil Bill Courts (Ireland) Act*, 1864, 27 & 28 Vict. c. 99, s. 30); and this extends to a special bailiff nominated at the risk of the party (*Civil Bill Courts (Ireland) Act*, 1871, 34 & 35 Vict. c. 99, s. 5). A licence is not necessary to sell fish by auction by the sea-shore where such fish shall have been first landed (33 & 34 Vict. c. 32, s. 5).

Placard to be exhibited at auction.

Before beginning auction, the auctioneer must have suspended in a conspicuous position a ticket or board containing his Christian and surname, and residence, printed or written in large legible characters, and such ticket or board must remain throughout the auction—*Penalty*, on breach, £20 (s. 7).

The auctioneer at the time of the sale must produce on demand by officer of excise, or customs, or of stamps and taxes, his licence, or else deposit £10—*Penalty*, not exceeding one month's imprisonment (s. 8). If the £10 be deposited, and licence be shown to the proper officer within one week of the date of the sale, the £10 shall be returned (*ib.*).

Sale of excisable commodities:

An auctioneer is not authorized by his licence to sell any commodities for the dealing in or selling of which an excise licence is required, except upon premises of which the owner of such commodities is duly licensed for the sale of such commodities; but an auctioneer may sell by auction, by sample, in any town or place any such commodities, if the owner be duly licensed for the sale of such commodities in the same town or place; and an auctioneer may be authorized by Commissioners of Inland Revenue to sell excisable liquors belonging to private persons; breach of section punishable as for selling such commodities without the excise licence required by law (*Revenue (No. 2) Act, 1864, s. 14*).

27 & 28 Vict.  
c. 56 s. 14.

It should be noted that all the above penalties are excise penalties, and recoverable as such. See **EXCISE OFFENCES**, p. 78.

### BAKEHOUSES.

See **FACTORIES AND WORKSHOPS ACT, 1901** (1 Ed. 7, c. 22), ss. 97-102, **APPENDIX OF STATUTES**.

### BARBED WIRE.

See **Barbed Wire Act, 1893**, 56 & 57 Vict. c. 32, **APPENDIX OF STATUTES**.

### BATHING.

	PAGE		PAGE
Where bathing illegal, . . .	384	Bye-law by Town Commissioners, . . .	385
Bathing in waterworks, . . .	384	Kingstown, . . . . .	385

When bathing illegal.

At common law the public have no rights of bathing in the sea, or of crossing the seashore on foot, or with bathing-machines (*Blundell v. Catterall*, (1821) 5 B. and Ald. 268), whether the foreshore is the property of the Crown or of a private owner (*Brinckman v. Matley*, (1904) 2 Ch. 313; see also judgment of Cozens Hardy, J., in *Llandudno Urban Council v. Woods*, (1899) 2 Ch., at p. 709). Such right, however, may be gained by prescription or custom (*Blundell v. Catterall, supra*), but must be subject to the restrictions imposed by decency. It is a misdemeanour to undress and bathe from a beach which is visible from houses situate close by (*R. v. Crunden*, (1809) 2 Camp. 89), or to bathe so close to a public footway as to be distinctly seen by passers-by (*R. v. Reed*, (1871) 12 Cox 1).

Bathing in Waterworks,

"Every person who shall bathe in any stream, reservoir, aqueduct, or other waterworks belonging to the undertakers, or wash, throw or cause to enter therein any dog or other animal"—*Penalty*, not exceeding £5 (*Waterworks Clauses Act, 1847, s. 61*).

10 & 11 Vict.  
c. 17.

"Where any part of the seashore or strand of any river used as a public bathing-place is within the town,<sup>1</sup> the commissioners may make bye-laws for the following purposes, that is to say:—for fixing the stands of bathing-machines on the seashore or strand, and the limits within which persons of each sex shall be set down for bathing, and within which persons shall bathe; for regulating the occupation of such stands of bathing-machines, and apportioning the same temporarily among the owners of such machines for the time; for preventing any indecent exposure of the persons of the bathers; for regulating the manner in which, and the times at which, the bathing-machines shall be used, and the charges to be made for the same; for ensuring that the bathing-machines shall be kept in a proper state of repair; for regulating the distance at which boats and vessels let to hire for the purpose of sailing or rowing for pleasure shall be kept from persons bathing within such prescribed limits" (*Towns Improvement Act*, 1854, s. 77).—*Penalties*, not exceeding 40s., may be imposed for breach of a bye-law (*Towns Improvement Clauses Act*, 1847, 10 & 11 Vict. c. 34, s. 201, incorporated with the Act of 1854 by section 57 of that Act). These powers do not enable the Commissioners to authorize persons to place bathing-machines on part of the foreshore which is private property (*Mace v. Philcox*, (1864) 15 C.B.N.S. 600); see also Public Health Act, 1907, 7 Ed. 7, c. 53, s. 92, noted under PUBLIC HEALTH.

Bye-laws by  
Town Com-  
missioners.

17 & 18 Vict.  
c. 103, s. 77.

Bathing in Kingstown Harbour, except at such places and times as authorized by the Commissioners, is forbidden—*Penalty*, after notice being posted as prescribed, not exceeding 20s. (*Kingstown Harbour Act*, 1836, s. 54).

Kingstown  
Harbour.  
6 & 7 Wm. IV  
c. 117, s. 54.

## BEE PEST PREVENTION.

See Bee Pest Prevention Act, 1908, 8 Ed. 7, c. 34, APPENDIX OF STATUTES, and Regulations dated 3rd June, 1909, in note to Statute.

## BEGGING.

"Every person wandering abroad and begging, or placing himself in any public place, street, highway, court, or passage to beg or gather alms, or causing or procuring or encouraging any child or children so to do, and every person who, having been resident in any union in Ireland, shall go from such union to some other union, or from one electoral or relief district to another electoral or relief district in Ireland, for the purpose of obtaining relief in such last-mentioned union or district"—*Penalty*, imprisonment with hard labour not exceeding one calendar month (*Vagrancy (Ir.) Act*, 1847, s. 3).

Cases under this statute may be heard out of petty sessions (see Petty Sessions Act, 1851, s. 8).

10 & 11 Vict.  
c. 84, s. 3.

Causing, or procuring, or allowing child or young person to beg; see Children Act, 1908, s. 14, APPENDIX OF STATUTES (offences under which must be prosecuted at petty sessions).

8 Ed. 7. c. 67.

As to sending children found begging to industrial schools, see Children Act, 1908, s. 58, APPENDIX OF STATUTES.

## BOAT.

See FISHERY LAWS.

<sup>1</sup> That is, town within the Act, see TOWNS IMPROVEMENT.



## BOILER EXPLOSION.

45 & 46 Vict.  
c. 22.

"On the occurrence of an explosion from any boiler to which this Act applies, notice thereof shall, within twenty-four hours thereafter, be sent to the Board of Trade by the owner or user, or by the person acting on behalf of the owner or user"—*Penalty*, not exceeding £20 (*Boiler Explosions Act, 1882, s. 5*), recoverable in Dublin according to the Dublin Police Acts, elsewhere, the Petty Sessions Act (s. 8).

53 & 54 Vict.  
c. 35.

"Boiler" means any closed vessel used for generating steam or for heating water or for heating other liquids, or into which steam is admitted for heating, steaming, boiling, or other similar purposes (s. 3); but does not include a boiler used exclusively for domestic purposes or a boiler used in the service of His Majesty (s. 4); the Act applies to an explosion on board a British ship; and where the explosion occurs at sea, the notice is to be sent by the owner or master (*Boiler Explosions Act, 1890*).

A boiler used to heat offices or business premises upon which the owner does not reside, and also to supply warm water for the purpose of cleaning the offices and for the household purposes of a resident caretaker, is within the exemption (*Smith v. Müller, (1894) 1 Q.B. 192*).

## BOUNDARY SURVEY.

17 & 18 Vict.  
c. 17.

"If any person shall fill up any trench, or take away, remove, or displace or alter the situation of any boundary stone, post, or mark which shall be set up and placed for the purposes of this Act, or shall wilfully deface, mutilate, break, or destroy any such boundary stone, post, or mark"—*Penalty*, not exceeding £10, or less than £2 (*Boundary Survey (Ireland) Act, 1854, s. 7*), recoverable under the provisions of the Petty Sessions Act, 1851 (s. 8).

## BREAD, SALE OF.

	PAGE		PAGE
Adulteration, . . . .	386	Weighing implements to be provided, . . . .	388
Sale by weight, . . . .	387	Sale of bread on Sunday, . . . .	388

Adulteration.

1 & 2 Vict.  
c. 28.

Bakers may sell bread made from wheat, barley, rye, oats, buckwheat, Indian corn, peas, beans, rice, or other grain, or of potatoes, or any of them: such ingredients being mixed with any common salt, pure water, eggs, milk, barm, leaven, potato, or other yeast, butter, seeds, or sugar in such proportions as they shall think fit, and with no other ingredient or matter whatsoever (*Bread (Ir.) Act, 1838, s. 2*).

No baker or other person who shall make bread for sale in Ireland, nor any journeyman or other servant of any such baker or other person, shall, at any time or times, in the making of bread for sale in Ireland use any mixture or ingredient other than and except as herein-before mentioned—*Penalty*, not exceeding £5 nor less than 50s.; name and address of offender may be ordered to be published in a newspaper printed or published in or near the place where offence committed (s. 7.)

In *Core v. James, (1871) L.R. 7 Q.B. 185*,<sup>1</sup> the respondent purchased a loaf in the appellant's shop which was proved to contain a proportion of alum. The appellant's baker proved that the bread had been made from

<sup>1</sup> Decided on the practically identical English section, 6 & 7 Wm. 4, c. 37, s. 8.

flour purchased by appellant, and that no alum had been put into it by the appellant or his workman. The justices did not find that the appellant knew that alum was used in the bread—*Held*, that the user mentioned in the section was “a guilty user, a use by a baker who knows that he is using such an ingredient as is forbidden by the Act,” and that the conviction should be quashed.

Mixing at any time with any corn, meal, or flour which shall be ground, cleaned, bolted, or manufactured in Ireland, any ingredient or mixture whatsoever not being the real and genuine produce of the corn or grain which shall be so ground, or knowingly selling, or offering, or exposing for sale, either separately or mixed, any corn, meal, or flour not equal to sample, or using any fraud to increase the weight of such corn, meal, or flour; for every such offence, *penalty* not exceeding £10, or less than 40s. and forfeiture of all such corn, meal, or flour (s. 8). See also 1 & 2 Vict. c. 28. 14 & 15 Vict. c. 92, s. 7, APPENDIX OF STATUTES.

Bread for sale, made of peas or beans or potatoes, or of any sort of corn or grain other than wheat, must be marked with a large Roman M.—*Penalty* for not so marking, for every pound of bread, and so in proportion for any less quantity, a sum not exceeding 10s. Provided that bread made from the meal or flour of wheat only, and in which potato yeast is employed, need not be so marked (*Bread (Ir.) Act*, 1838, s. 9).

1 & 2 Vict.  
c. 28.

Section 10 gives power to magistrates, on sworn information, and constables, under warrant, to enter and search premises belonging to any miller, mealman, flour factor, or baker, and examine ingredients used in making bread: any meal, &c., found to be adulterated, and any ingredient found intended to be used for adulteration can be carried away, and if found to be adulterated by a magistrate or justice, the latter shall order same to be disposed of as he thinks fit. Every miller, &c., on whose premises any ingredients for adulteration are found is liable to a *penalty* for every such offence not exceeding £10, nor less than 40s. for first offence; second offence, £5; subsequent offence, £10; and names and places of abode may be published (s. 11). Obstructing search or seizure, *penalty* not exceeding £10 (s. 12).

Compensation may be awarded to master where offence is occasioned by act, neglect, or default of servant or apprentice (s. 12).

Bakers may make bread of any weight or size (s. 3). All bread must be sold by weight: selling bread other than by weight, *penalty* not exceeding 40s. But French or fancy bread or rolls may be sold without previously having been weighed (s. 4). The sale must be by avoirdupois weight; *penalty* not exceeding 40s. nor less than 10s. (s. 5).

Sale by  
weight.

The bread itself must be weighed; it is not a compliance with the Act to weigh the dough and to allow a certain weight of the dough for each loaf (*Slater v. Brewsters, Ltd.*, (1905) 2 I.R. 258; *Hill v. Browning*, (1870) L.R. 5 Q.B. 453; *Jones v. Huxtable*, (1867) L.R. 2 Q.B. 460). To sell without weighing is an offence, even if the purchaser does not ask for a loaf of a specific weight (*London C. C. v. Read*, (1900) 1 Q.B. 288). The weighing need not be done at the moment of sale, but must be done with reference to the sale. Where bread was weighed twelve hours before sale and in the interim had lost 1½ oz., thereby bringing it under weight, it was held the seller should be convicted (*Mattinson v. Bindley*, (1908) 2 K.B. 534). The respondent, on being asked by a purchaser for a half quartern loaf, served him with a loaf and two rolls, which he placed in the scales in the purchaser's presence. The bread did not weigh down the 2-lb. weight placed in the opposite pan of the scales, and nothing concerning the weight was ascertained at the sale beyond the fact that the bread did not weigh 2 lb. *Held*, that there was no sale by weight within the statute (*Cox v. Bleines*, (1902) 1 K.B. 670). The respondent

**Sale by weight.**

weighed all his loaves against weights amounting to  $1\frac{3}{4}$  lb., and those which were over that weight he passed for sale, but did not ascertain the precise weight of any particular loaf, and sold his loaves as weighing  $1\frac{3}{4}$  lb. *Held*, that the respondent was not guilty of an offence (*Bridge v. Passman*, (1903) 47 S. J 420). The respondent sold a loaf, of the size and appearance of a 2-lb. loaf, to a purchaser, for 3d. When weighed the loaf was found to be half an ounce short of 2 lb. in weight. It was the practice of the respondent to weigh loaves after baking them, three at a time, and it was proved that the loaf in question had been weighed that morning with two others, and that the three together had weighed 6 lb. *Held*, that the respondent had sold bread otherwise than by weight (*Welch v. Cutler*, (1905) 20 Cox, 809).

If a customer asks for bread by weight, the baker is bound to sell by weight whether the bread be fancy bread or not (*R. v. Kennett*, (1869) L.R. 4 Q. B. 565). In order that bread sold shall come under the exemption of "fancy" bread, it must be bread which to the eye is distinctly different from and not liable to be confounded with ordinary household bread (*Aerated Bread Co. v. Gregg*, (1873) L. R. 8 Q. B. 355, cf. *R. v. Wood*, (1869) L. R. 4 Q. B. 559). "In order to make it fancy bread, the bread in question must be something which to the eye is so distinct from ordinary household bread, that it is not liable to be confounded with it by those who did not know the intricacies of the trade" (*per Wills, J.*, in *V. V. Bread Co. v. Stubbs*, (1896) 74 L. T. 704). Thus, bread made like ordinary half quartern loaves, but of superior yeast, is not "fancy" bread, and must be sold by weight (*ib.*). But bread may be "fancy" bread, even though of the same quality as ordinary household bread, if it is not made similar to household bread in size, shape, and appearance, but of a fancy shape (*Bailey v. Barsby*, (1909) 2 K. B. 610).

**Weighing implements to be provided.**

Every seller of bread must have in a conspicuous part of his shop beams, scales, and weights to weigh bread if a customer so desires—*Penalty* for not having such beams and scales and proper weights, or having or using any incorrect or false beam or scales or balance or any false weight not being the weight it purports to be, or refusing to weigh bread when requested by a purchaser, not exceeding £5 (*Bread (Ir.) Act*, 1838, s. 6).

**Sale of bread on Sunday.**

No person exercising the trade of a baker shall make or bake any bread, rolls, or cake, of any sort, on the Lord's Day, or shall on any other part of the said day than between the hours of nine a.m. and one p.m., sell or expose for sale, or permit or suffer to be sold, delivered, or exposed for sale, any bread, rolls, or cake, or bake or deliver any meat, pudding, pie, tart, or victuals, or in any other manner exercise the trade of a baker, save so far as is necessary in setting and superintending the sponge to prepare the bread or dough for the following day: Provided, however, that a baker may deliver to customers on such day baked dishes, meat, or puddings (but not bread) up to 1.30 p.m.—*Penalty*, on conviction *within ten days of offence under the section*:<sup>1</sup> first offence 10s., second offence 20s., subsequent offence 40s., and costs<sup>2</sup> (*Bread (Ir.) Act*, 1838, s. 13). No person concerned in the business of miller, mealman, flour-factor, or baker, shall be capable of acting or be allowed to act as a magistrate or justice under this Act, or in putting in execution any of the powers of the Act—*Penalty*, £100 and costs recoverable by action or information (s. 14). No person shall resist or make forcible opposition to persons employed in due execution of the Act—*Penalty*, not exceeding £5 (s. 15).

<sup>1</sup> The particular time limits mentioned in this section, as also in s. 27, are probably impliedly repealed by the Petty Sessions Act, s. 10 (4).

<sup>2</sup> But not, it is submitted, exceeding 20s., the limit allowed by the Petty Sessions Act.



**BRIBERY AND CORRUPTION.**

As to Bribery, see CATALOGUE OF INDICTABLE OFFENCES.

"(1) If any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

If any person corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

If any person knowingly gives to any agent, or if any agent knowingly uses with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal, he shall be guilty of a misdemeanour, and shall be liable on conviction on indictment to imprisonment, with or without hard labour, for a term not exceeding two years, or to a fine not exceeding £500, or to both such imprisonment and such fine, or on summary conviction to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding £50, or to both such imprisonment and such fine. (2) For the purposes of this Act the expression "consideration" includes valuable consideration of any kind; the expression "agent" includes any person employed by or acting for another;<sup>1</sup> and the expression "principal" includes an employer. (3) A person serving under the Crown or under any corporation or any municipal, borough, county, or district council, or any board of guardians, is an agent within the meaning of this Act" (*Prevention of Corruption Act, 1906, s. 1*).

Bribery.

Punishment  
of corrupt  
transactions  
with agents.

6 Ed. 7, c. 34.

Procedure.

A prosecution cannot be instituted without the consent of the Attorney-General or Solicitor-General for Ireland (s. 2 (1)). The Vexatious Indictments Act applies (s. 2 (2)). The offence is not triable at quarter sessions (s. 2 (5)). There is an appeal in every case by a party aggrieved<sup>2</sup> (s. 2 (6)).

**BRICKS.**

By the 11 Geo. 3, c. 6 (Ir.),<sup>3</sup> the making or burning of bricks within two measured miles from the public lamps of the city of Dublin is forbidden on pain of forfeiting the bricks and ten shillings for every one thousand bricks made or burned. Complaint to be made before two justices (cf. Public Health (Ir.) Act, 1878, ss. 107 (7), 128).

**BUILDING SOCIETIES.**

As to offences by Building Societies or officers thereof, or frauds on such societies, see Building Societies Act, 1874, 37 & 38 Vict. c. 42, and Building Societies Act, 1894, 57 & 58 Vict. c. 47.

<sup>1</sup> A police constable was held in Scotland to be an agent, *quoad* the chief constable, within the section (*Graham v. Hart*, (1908) S.O. (Just.) 26).

<sup>2</sup> This will not include a complainant, see p. 134.

<sup>3</sup> Entitled "An Act to prevent the pernicious burning of bricks within the City of Dublin or neighbourhood thereof."

## BROTHEL.

	PAGE		PAGE
Summary proceedings against brothel-keeper, . . . . .	390	Brothel-keeper harbouring thieves, . . .	390
Evidence, . . . . .	390	Other offences punishable summarily, . .	391
Appeal, . . . . .	390	Offences punishable on indictment, . .	391

Summary  
proceedings  
against  
brothel-  
keeper, &c.

"Any person who (1) keeps, or manages, or acts, or assists in the management of a brothel; or (2) being the tenant, lessee, or occupier of any premises knowingly permits such premises, or any part thereof, to be used as a brothel, or for the purposes of habitual prostitution; or (3) being the lessor or landlord of any premises, or the agent of such lessor or landlord, lets the same or any part thereof, with the knowledge that such premises, or some part thereof, are, or is, to be used as a brothel, or is wilfully a party to the continued use of such premises, or any part thereof, as a brothel, shall, on summary conviction in manner provided by the Summary Jurisdiction Acts, be liable—(1) to a penalty not exceeding £20, or in the discretion of the Court to imprisonment for any term not exceeding three months with or without hard labour; and (2) on a second or subsequent conviction, to a penalty not exceeding £40, or in the discretion of the Court to imprisonment for any term not exceeding four months with or without hard labour; and, in case of a third or subsequent conviction, such person may, in addition to such penalty or imprisonment as last aforesaid, be required by the Court to enter into a recognizance, with or without sureties as to the Court seems meet, to be of good behaviour for any period not exceeding twelve months, and in default of entering into such recognizance, with or without sureties (as the case may be), such person may be imprisoned for any period not exceeding three months in addition to any such term of imprisonment as aforesaid."—(*Criminal Law Amendment Act*, 1885, s. 13).

48 & 49 Vict.  
c. 69, s. 13.

A brothel is a place resorted to by persons of both sexes for the purpose of prostitution (*per Wills, J., Singleton v. Ellison*, (1895) 1 Q.B., at p. 608). Where a woman occupied a house frequented by men for the purpose of committing fornication with her, but no other woman lived in the house, or frequented it: *Held*, that she had not committed the offence of keeping a brothel (*ib.*). A block of flats inhabited by different women in the habit of bringing men there for immoral purposes may be a brothel (*Durose v. Wilson*, (1907) 21 Cox. 421). To convict a person of "keeping" a brothel, there must be evidence of something like habitual keeping; an isolated instance of permitting prostitution would not support a charge under the statute. The circumstances attending the permitting of prostitution on one occasion may afford evidence that the premises are used as a brothel (*R. v. Holland J.J.*, (1882) 46 J.P. 312; cf. *Martin v. Benjamin*, (1907) 1 K.B. 64). The porter who looked after the block of flats in *Durose v. Wilson* (*supra*) was held to have been rightly convicted of having been wilfully a party to such user.

Evidence.

The defendant and the husband or wife of the defendant are competent but not compellable witnesses at every stage of the proceedings except an inquiry before a grand jury (s. 20).

Appeal.

Any person on being summarily convicted may appeal to a Court of general quarter sessions against such conviction (*Criminal Law Amendment Act*, 1885, s. 13).

Harbouring  
thieves, etc.

"Every person who occupies or keeps a brothel, and knowingly lodges or knowingly harbours thieves or reputed thieves, or knowingly permits or knowingly suffers them to meet or assemble therein, or knowingly allows the deposit of goods therein, having reasonable cause for believing

them to be stolen, shall be guilty of an offence against this Act, and be liable to a penalty not exceeding £10, and in default of payment to be imprisoned for a period not exceeding four months, with or without hard labour, and the court before which he is brought may, if it think fit, in addition to or in lieu of any penalty, require him to enter into recognizances, with or without sureties, as in this Act described" (*Prevention of Crime Act*, 1871, s. 11). As to procedure, see PREVENTION OF CRIME.

As to permitting licensed premises to be used as a brothel, see INTOXICATING LIQUOR; as to offences regarding children and young persons, see CHILDREN ACT, 1908.

As to offences punishable on indictment, see INDICTABLE OFFENCES, OFFENCES AGAINST DECENCY.

34 & 35 Vict.  
c. 112, s 11.

Other  
offences.

Offences  
punishable on  
indictment.

## BUTTER.

The sale of butter is regulated in Ireland by the Butter Trade (Ireland) Acts, 1812, 1827, and 1829.

The Act of 1812 provides for the appointment of public weighmasters and tasters of butter in the city of Dublin and in every city<sup>1</sup> and town corporate in Ireland, and in every seaport or place of export from whence butter is commonly shipped for exportation from Ireland, and in every market town wherein butter is bought or sold or exposed for sale (s. 2). Any weighmaster or taster neglecting or refusing to attend at his weighhouse on the appointed days and hours shall forfeit £5,<sup>2</sup> recoverable before two justices of the peace or by civil bill (52 Geo. 3, c. 134, s. 12). Any person selling or exposing to sale any cask for packing butter within such city, town corporate, seaport, or place of export, not being of the weight required, liable to penalty of 10s.<sup>2</sup> for every cask (s. 14). Any person making up or packing any butter to be exposed for sale or for export not being of the requisite weight—*Penalty*, 10s.<sup>2</sup> for every 56 lb. of butter, and so in proportion for every less quantity (s. 14). Any person bringing any cask to a public weighhouse not bearing the name of the cooper who made the cask branded on same in a legible manner—*Penalty*, cask to be forfeited and fine 5s.<sup>2</sup> for every 56 lb. of butter in such cask (*ib.*). Weighmasters weighing and branding any cask not being of the requisite weight, or not branded with the name of the cooper, or marking or branding falsely any cask as containing more or less than the true weight, shall, on conviction, forfeit 5s.<sup>2</sup> for every cask not branded, or branded not being of the requisite weight, and for every cask branded falsely, 10s.<sup>2</sup> (s. 14). Weighmaster must weigh merchantable butter, and mark on each cask the gross weight in figures and not in numerical letters, under penalty of 5s.<sup>2</sup> for every cask (s. 15). Packing or mixing old butter with new, or mixing bay-salt instead of white in packing, or greater quantities of salt than what melts in working it up, entails forfeiture of such butter (s. 16). Persons shall not buy or sell casks of butter at any greater or less tare than sanctioned by the Act, or buy or sell by hand and not by weight—*Penalty*, 10s.<sup>2</sup> for every cask (s. 19). No weighmaster or person employed in a weighhouse can buy, sell, contract, or treat for any cask of butter—*Penalty*, forfeiture of butter or value thereof: but may purchase one cask not exceeding 84 lb. gross at a time for family use (s. 21). The Act forbids any person having in his possession any brand for branding casks other than with the name of the cooper who made such cask—*Penalty*, £5<sup>2</sup> (s. 22). Branding or marking a cask with any name other than that of the cooper who made such cask—*Penalty*, 10s.<sup>2</sup> for every cask (s. 22).

Provisions as  
to sale of  
butter.

52 Geo. 3,  
c. 134.

7 & 8 Geo. 4,  
c. 61.

10 Geo. 4,  
c. 41.

<sup>1</sup> Except Cork, see *post*.

<sup>2</sup> Irish currency.



Provisions as to sale of butter, 10 Geo. 4, c. 61.

Casks found not to be of the requisite weight when brought to be weighed to be sawed in two (s. 23). Persons are not compellable to have empty casks branded, or to bring casks of butter to be weighed, &c., before they are exposed for sale or export (Act of 1829, s. 1).

The Act of 1812 does not apply to Cork (47 & 48 Vict. c. cxix). The office of butter-taster is but a function of the office of weighmaster (*Kelly v. Molony*, (1854) 4 I.C.L.R. 413). Evidence of acting in the office of weighmaster is evidence to go to a jury of title to that office, though the title is in issue and the appointment must be under seal (*Dexter v. Hayes*, (1860), 11 I.C.L.R. 106; 13 Ir.C.L.R. 22). "Place of export" means a place of shipment, and does not include an inland town from which butter is sent direct to a foreign market (*Dexter v. Hayes*, *supra*). An action lies for disturbance of a weighmaster in his office, and exemplary damages may be given (*Dexter v. Cust*, (1862) 7 Ir.J.N.S. 156).

7 & 8 Geo. 4, c. 61.

Altering, counterfeiting, or erasing marks or brands on casks of butter—*Penalty*, not exceeding £10, or less than £5 (*Butter Trade (Ir.) Act*, 1827, s. 3).

The Act of 1812 does not apply to Cork (47 & 48 Vict. c. cxix). As to Acts of 1827 and 1829, *quære*, see 47 & 48 Vict. c. cxix.

25 & 26 Vict. c. 76.

The Weights and Measures (Ireland) Amendment Act, 1862, enacts a penalty not exceeding £5 for counterfeiting brands, &c. (s. 14), and not exceeding 40s. for wilfully packing up or mixing, or causing to be packed up or mixed, with or in any butter contained in any firkin or cask, any salt, pickle or other substance, with intent to increase the weight of such butter, or for bringing or sending any such butter to any market for sale (s. 15).

See also WEIGHTS AND MEASURES.

### CATTLE STRAYING OR TRESPASSING.

Cattle straying on public road.

Cattle<sup>1</sup> found at large in any street<sup>2</sup> of a town under the Towns Improvement Act, 1854,<sup>3</sup> without any person having the charge thereof, may be seized, impounded, and detained, by constable, officer of constabulary, or resident, until the owner pay the Town Commissioners a penalty not exceeding twenty shillings, besides the reasonable expense of impounding and keeping such cattle; and if penalty and expenses are not paid within three days, may be sold after three days' notice as prescribed by the section (*Towns Improvement Act*, 1854, s. 71).

17 & 18 Vict. c. 103, s. 71.

"Any person who shall in any public road or street of a town turn loose any horse or cattle . . . or who by negligence or ill usage in driving cattle shall in any public road or any street of a town cause any mischief to be done by such cattle"—*Penalty*, not exceeding 10s. (*Summary Jurisdiction Act*, 1851, s. 10 (1)). "Turn loose" means to allow cattle to be on the thoroughfare without any control at all, and does not apply to cattle turned out in the care of a boy (*Sherborne v. Wells* (1863), 3 B. & S. 784).

14 & 15 Vict. c. 92, s. 10 1.

"Any person who shall allow any swine or other beast to wander upon any public road, or about the streets or passages of any town, shall be liable to a fine not exceeding 22s.; and in case the owner shall not be known, it shall be lawful for any person by whom any such swine or other beast shall be found wandering upon any such road, street, or passage to

<sup>1</sup> Includes horse, mare, gelding, foal, colt, filly, bull, cow, heifer, ox, calf, ass, mule, ram, ewe, wether, lamb, goat, kid, or swine (s. 1).

<sup>2</sup> Includes road, bridge, lane, square, court, alley, and thoroughfare or public passage (s. 1).

<sup>3</sup> As to which, see TOWNS IMPROVEMENT, *post*.

impound the same, subject to the provisions hereinafter contained as to the impounding of distresses"<sup>1</sup> (*Summary Jurisdiction Act*, 1851, s. 10 (11)).  
 Horses grazing on the side of a road, with a man in charge and control of them, were held not liable to be impounded as "wandering, straying, or lying" about the road (*Morris v. Jeffries*, (1866) L.R. 1 Q.B. 261; cf. *Laurence v. King*, (1868) L.R. 3 Q.B. 345).

As to trespassing on land, where the owner<sup>2</sup> of the cattle is known, the occupier or person finding the cattle should either deliver up the cattle to the owner or his servant, or show them in the act of trespassing and allow them to be taken away; and is then entitled to the rates of trespass mentioned in the section. But if the owner is not known, the animals may be impounded in the prescribed manner. Justices at petty sessions are empowered by the section to determine disputes as to rates of trespass (including the right to withhold the whole or part of such rates where the trespass was caused by any neglectful conduct on the part of the occupier of the land, or there were other justifying circumstances), to award the amount of actual damage done, and to order repair of fences. Justices may appoint arbitrators as to damages (*Summary Jurisdiction Act*, 1851, s. 20).

14 & 15 Vict.  
c. 92, s. 10(11).

Trespass of  
cattle upon  
lands.

14 & 15 Vict.,  
c. 9, s. 20.

Where a summons was brought alleging eight trespasses on several days, and the justice imposed fines in respect of each trespass and made up eight distinct orders, with 5s. costs in each, the orders were set aside on the ground that there should have been only one order, with costs not exceeding 20s., the limit allowed by section 22 of the Petty Sessions Act (*R. (Daly) v. Cork J.J.*, (1898) 2 I.R. 695; see also *R. v. Rawson*, (1909) 2 K.B. 748).

Persons wrongfully impounding, or failing to give prescribed notice to poundkeeper, or poundkeeper wrongfully detaining animals, or to pay over amount received by him—*Penalty*, not exceeding £5 (*Summary Jurisdiction Act*, 1851, s. 20). See further, **POUND**.

### CENSUS.

Under the Census (Ir.) Act, 1910, a census is directed to be taken in the year 1911, as therein directed, the census day to be Sunday, the second day of April in that year (s. 1). "(1) If any enumerator makes wilful default in the performance of any of his duties under this Act, he shall for each offence be liable on conviction under the Summary Jurisdiction (Ireland) Acts to a fine not exceeding £5. (2) If any person refuses to answer or wilfully gives a false answer to any question necessary for obtaining the information required to be obtained under this Act, he shall for each offence be liable on conviction under the Summary Jurisdiction (Ireland) Acts to a fine not exceeding £5: Provided that no person shall be subject to any such penalty for refusing to state his religious profession. (3) If any person employed in taking the census communicates without lawful authority any information acquired in the course of his employment, he shall be guilty of a breach of official trust within the meaning of the Official Secrets Act, 1889, and that Act shall apply accordingly" (s. 7).

10 Ed. 7 and  
1 Geo. 5, c. 11.

A certificate from the General Register Office, purporting to be signed by the Registrar-General of Births, Deaths, and Marriages in Ireland, shall be admitted in any court of law as evidence of the population at the

<sup>1</sup> As to which, see s. 20 of the Act, **APPENDIX OF STATUTES**.

<sup>2</sup> In the case of cattle sent for agistment, the late Mr. Molloy seems to have thought that the agister is the "owner" within the section (see Molloy, p. 605 n. (g)); but there is no authority for the statement, and the writer does not agree with it.

census taken under the Act, of any county, borough, town, district, or area to which it refers, and the Registrar-General shall be bound, if possible, to deliver such certificate to any person on payment of a fee of 1s. (s. 8).

### CENSUS OF PRODUCTION.

6 Ed. 7, c. 49. The Census of Production Act, 1906, provides for the taking of a census of production in the year 1908, and subsequently at such intervals as may be determined by an order made by the Board of Trade as soon as practicable after the taking of the first census, and laid before Parliament. The following is a list of persons required to make returns under the Act:—(a) the occupier of every factory or workshop within the meaning of the Factory and Workshop Act, 1901; (b) the owner, agent, or manager of every mine and quarry; (c) every builder, that is to say, a person who by way of trade or business undertakes the construction or alteration of a building, or any part thereof; (d) every person who by way of trade or business executes works of construction, alteration, or repair of railroads, tramroads, harbours, docks, canals, sewers, roads, embankments, reservoirs, or wells, or of laying or altering gas or water pipes, or telegraphic, telephonic, or electric lines or works, or any other prescribed works; (e) every person who by way of trade or business gives out work to be done elsewhere than on his own premises; (f) every person carrying on any other trade or business which may be prescribed.

Offences under the Act are—publishing individual returns; misdemeanour (s. 6): any person required to make a return, wilfully refusing or without lawful excuse neglecting to fill up the form, or wilfully making, &c., false return, or refusing to answer, or wilfully giving a false answer to any question necessary for obtaining information required to be furnished under the Act—*Penalty*, on summary conviction, not exceeding £10; in case of a continued offence, not exceeding £5 for each day (s. 12).

### CHAFF-CUTTING MACHINES.

60 & 61 Vict.  
c. 60. See Chaff-Cutting Machines (Accidents) Act, 1897, APPENDIX OF STATUTES.

### CHARITABLE LOAN SOCIETIES.

6 & 7 Vict.  
c. 91. Officer of charitable loan society, refusing to account either with the society, or with Loan Fund Board, and pay over moneys in his hands—*Penalty*, sum equal to amount retained, and further sum not exceeding £5 (*Charitable Loan Societies (Ir.) Act*, 1843, s. 23). Business of loan society not to be transacted at public house—*Penalty*, not exceeding £10 (s. 38). Accounts of loan societies to be kept in manner directed by Loan Fund Board, and all books, &c., to be produced for inspection to officer of Loan Fund Board on demand—*Penalty*, for breach, not exceeding £5 (s. 39). Clerk or servant of loan society not to receive present from borrower or surety—*Penalty*, not exceeding £20 (s. 43). Societies not certified under the Act, and their members and officers prohibited from acting as loan society—*Penalty*, not exceeding £20 (s. 53). Penalties may be recovered in a summary way (s. 55). Trustee



or other unpaid officer, or member of society, not to be precluded from adjudicating (s. 58), except as regards proceedings under the Charitable Loan Societies (Ir.) Act, 1900 (*Charitable Loan Societies (Ir.) Act, 1900*,<sup>1</sup> s. 5).

63 & 64 Vict.  
c. 65.

## CHEMISTS.

	PAGE		PAGE
Distinction between apothecary and chemist, . . . . .	395	Wrongfully using title, . . . . .	396
31 Geo. 3, c. 34, . . . . .	395	Other offences, . . . . .	396
Pharmaceutical chemists, . . . . .	395	Continuation of business in case of death, . . . . .	396
Chemists and druggists and registered druggists, . . . . .	395	Registers to be evidence, . . . . .	396

As distinguished from an apothecary, "a chemist is one who sells medicines which are asked for" (*per* Cresswell, J., *Apothecaries' Company v. Lotinga*, (1813) 2 Moo. & R. 500); "a chemist may prepare and vend, but not prescribe or administer, medicine" (*per* Best, C.J., *Allison v. Haydon*, (1828) 4 Bing. 621; see also *Apothecaries' Company v. Greenough*, (1841) 1 Q.B. 800).

Distinction  
between  
apothecary  
and chemist

An apothecary prescribes drugs, and prepares and sells drugs that he himself has prescribed,<sup>2</sup> and also prepares and sells drugs prescribed by others (*Rose v. College of Physicians*, (1703) 5 Bro. P.C. 553; *Woodward v. Ball*, (1834) 6 C. & P. 577).

By the statute 31 Geo. 3, c. 34 (Ir.), s. 22,<sup>3</sup> it is enacted that no person can carry on business as an apothecary<sup>4</sup> unless he be a licentiate of Apothecaries' Hall; but no penalty is provided for breaches of this enactment, and such breaches, if not such as to be punishable under the Medical Acts or under the Acts that are mentioned further on in this article, are punishable only on indictment as common law misdemeanours.

31 Geo. 3,  
c. 34 (Ir.),  
s. 22.

The Pharmacy Act (Ireland), 1875, created the Pharmaceutical Society of Ireland. By s. 22 of that Act and s. 10 of the Pharmacy Act (Ireland) Amendment Act, 1890, it is provided that, subject to the conditions contained in those Acts respectively, certain persons shall be registered as pharmaceutical chemists.

"Pharmaceutical chemists";  
"chemists and druggists"; and  
"registered druggists."  
53 & 54 Vict.  
c. 48.

Under s. 6 of the Act of 1890 certain persons are entitled to be registered as "chemists and druggists," and under ss. 7 and 8 of the same Act certain other persons are entitled to be registered as "registered druggists."

A regulation, made by the Pharmaceutical Society pursuant to s. 17 of the Act of 1875, requiring that a candidate for a qualifying examination should have been an apprentice or assistant for four years in the sole employ of a pharmaceutical chemist, or a firm of fully qualified pharmaceutical chemists, is a valid regulation (*R. (Conyngham) v. Pharmaceutical Society of Ireland*, (1899) 2 I.R. 132). A limited company carrying on business as pharmaceutical chemists, of which company all the members are, and under its articles of association are required to be, registered

38 & 39 Vict.  
c. 57.

<sup>1</sup> The Act of 1843 and 1900, and an amending Act of 1906 (6 Edw. 7, c. 23) are all to be read as one (Act of 1900, s. 1; Act of 1906, s. 8).

<sup>2</sup> As to the other functions of an apothecary, see MEDICAL PRACTITIONERS.

<sup>3</sup> So much of the section as prohibits the keeping of open shop within the meaning of the Act by any person other than a licentiate of Apothecaries' Hall is repealed by 38 & 39 Vict. c. 57, s. 30: a chemist, for instance, can keep open shop subject to the statutory restrictions.

<sup>4</sup> See s. 3 of the Pharmacy Act (Ireland), 1875.

pharmaceutical chemists, is "a firm of fully qualified pharmaceutical chemists" within the regulation (*ib.*); but it is otherwise where some only of the members of such a limited company are duly registered pharmaceutical chemists (*R. (Clelland) v. Pharmaceutical Society of Ireland*, (1896) 2 I.R. 368).

Wrongfully  
using title.

"It shall be unlawful for any person . . . to assume or use the title of pharmaceutical chemist, or pharmaceutist, or pharmacist, or dispensing chemist, or the title of chemist and druggist, in any part of Ireland, unless such person shall be registered as a pharmaceutical chemist or as a chemist and druggist respectively under this Act"; *penalty*, £5; nothing in the section to affect a licentiate of Apothecaries' Hall, or a person registered as a legally qualified medical practitioner before the passing of the Act, or who shall be registered as a legally qualified practitioner after the passing of the Act, and who, in order to obtain his diploma, has passed an examination in pharmacy (*Pharmacy (Ir.) Act*, 1875, s. 30).

Where a person not registered as a pharmaceutical chemist sold medicines in a shop over which was his name followed by the words "The Pharmacy," and the medicine bore the same words, it was held that he committed no offence against s. 12 of the Pharmacy (E.) Act, 1852, which provides that no person shall unless registered as a pharmaceutical chemist under that Act assume or use the title of pharmaceutical chemist or pharmaceutist . . . or assume, use, or exhibit any name, title, or sign implying that he is so registered or is a member of the Pharmaceutical Society of Great Britain (*Pharmaceutical Society v. Mercer*, (1910) 1 K.B. 74).

Other offences.

As to offences relating to sale of poisons, compounding prescriptions, &c., see POISONS, *post*.

Continuation  
of business in  
case of death.

Pursuant to s. 32 of the Act of 1875 the representatives of a deceased registered pharmaceutical chemist, who was actually in business at the time of his death, may have the business of the deceased carried on by an assistant who is himself registered as a pharmaceutical chemist under either the Act of 1875 or the Act of 1890. There is no analogous provision regarding the business of an apothecary, or the business of a "chemist and druggist" or of a "registered druggist."

Registers and  
extracts  
therefrom to  
be evidence.

Section 27 of the Act of 1875, and s. 5 of the Act of 1890,<sup>1</sup> read together, provides that the registrar of the Pharmaceutical Society is to keep a register of "pharmaceutical chemists," a register of "chemists and druggists," and a register of "registered druggists in Ireland," and copies thereof, purporting to be printed and published in compliance with those sections, or any extract therefrom, or from the original registers,<sup>2</sup> certified under the hand of the registrar and countersigned by the president or two members of the council of the society, shall be evidence that the person specified therein is legally registered; and the absence of any name from the printed copy above referred to shall be evidence, until the contrary is proved, that no person of that name is legally registered.

<sup>1</sup> The Acts of 1875 and 1890 are to be read as one (Act of 1890, s. 23).

<sup>2</sup> Such printed copies of the registers as are provided for by the sections in question do not require to be certified and countersigned in like manner as extracts (*Barrett v. Henry*, (1905) 5 N.I.J.R. 8).

## CHILDREN, OFFENCES RELATING TO.

	PAGE		SECTS.
Assaults upon children, . . . .	397	Pt. III.—Juvenile Smoking, . .	39-43
Children's Dangerous Performances			
Acts, 1879 and 1897, . . . .	397	Pt. IV.—Reformatory and Indus-	
Restrictions on employment of chil-		trial Schools—	
dren, . . . .			
Employment of Children Act,		Certification and inspection of	
1903, . . . .	398	schools, . . . .	45-51
Prevention of Cruelty to Chil-		Duties and powers of managers, .	52-56
dren Act, 1904, . . . .	400	Mode of sending children to re-	
Liability of parent to support child, .	403	formatories and industrial	
Liability of child to support parent, .	404	schools, . . . .	57-70
Inciting infant to bet or borrow, . .	404	Offences in relation to certified	
Offences by children—		schools, . . . .	71-72
Jurisdiction, procedure, and		Expenses of certified schools, .	73-76
punishment, . . . .	405	Day industrial schools, . .	77-83
Children Act, 1908, . . . .	405	Supplemental, . . . .	84-93
(See also APPENDIX OF STATUTES)			
	SECTS.		
Pt. I.—Infant Life Protection, . .	1-11	Pt. V.—Juvenile Offenders, . .	94-113
Pt. II.—Prevention of Cruelty—		Pt. VI.—Miscellaneous and General—	
Cruelty, . . . .	12-13	Miscellaneous, . . . .	114-122
Other offences, . . . .	14-18	General, . . . .	123-134
Arrest of offender, and pro-			
vision for safety of children, . .	19-25		
Power as to habitual drunkards, . .	26		
Evidence and procedure, . . . .	27-34		
Supplemental, . . . .	35-38		

## Assaults upon children, see ASSAULT, ante.

"Any person who shall cause any child under the age of fourteen years to take part in any public exhibition or performance whereby, in the opinion of a court of summary jurisdiction, the life or limbs of such child shall be endangered, and the parent or guardian, or any person having the custody of such child, who shall aid or abet the same, shall severally be guilty of an offence against this Act, and shall on summary conviction be liable for each offence to a penalty not exceeding £10" (*Children's Dangerous Performances Act, 1879, s. 3*).

If an accident is caused to a child in the course of a public performance which in its nature is dangerous to life or limb, the employer may be indicted for assault, and the Court may on conviction award compensation not exceeding £20 (*ib.*). Where the child is apparently of the age alleged by the informant, the burthen is on the defendant of proving the contrary (*s. 4*). The provisions of the Act now apply to males under sixteen and females under eighteen (*Dangerous Performances Act, 1897, s. 1*). Except where an accident causing actual bodily harm occurs to any child or young person, no prosecution shall be instituted without the consent in writing of the chief officer of police of the area in which the offence is committed, i.e., in Dublin, the police commissioners, elsewhere, a district inspector of the R. I. C. (*ib.*, *s. 2*).

The provisions of ss. 19-21 (arrest of offender, and provision for safety for children), 24 (warrant to search), 26, 32 (power as to habitual drunkards), of the Children Act, 1908, apply to offences against the Dangerous Performances Acts, 1879 and 1897. See these sections, APPENDIX OF STATUTES.

Assaults upon.  
Children's Dangerous Performances Act, 1879 & 1897.  
42 & 43 Vict. c. 34.

60 & 61 Vict. c. 52.



Restrictions  
on employ-  
ment.  
Bye-laws  
generally.

"Any local authority<sup>1</sup> may make bye-laws<sup>2</sup>—(i) prescribing for all children,<sup>3</sup> or for boys and girls separately, and with respect to all occupations or to any specified occupation (a) the age below which employment<sup>4</sup> is illegal; and (b) the hours between which employment is illegal; and (c) the number of daily and weekly hours beyond which employment is illegal: (ii) prohibiting absolutely, or permitting, subject to conditions, the employment of children in any specified occupation"

3 Ed 7, c. 45. (*Employment of Children Act, 1903, s. 1*).

Bye-laws as to  
street trading.

"Any local authority<sup>1</sup> may make bye-laws<sup>2</sup> with respect to street trading<sup>5</sup> by persons under the age of sixteen, and may by such bye-laws—(a) prohibit such street trading, except subject to such conditions as to age, sex, or otherwise, as may be specified in the bye-law, or subject to the holding of a licence to trade to be granted by the local authority; (b) regulate the conditions on which such licences may be granted, suspended, and revoked; (c) determine the days and hours during which, and the places at which, such street trading may be carried on; (d) require such street traders to wear badges; (e) regulate generally the conduct of such street traders: Provided as follows:—(1) The grant of a licence of the right to trade shall not be made subject to any conditions having reference to the poverty or general bad character of the person applying for a licence or claiming to trade; (2) the local authority,<sup>1</sup> in making bye-laws under this section, shall have special regard to the desirability of preventing the employment of girls under sixteen in streets or public places" (s. 2).

General  
restrictions.

"(1) A child<sup>3</sup> shall not be employed between the hours of nine in the evening and six in the morning: Provided that any local authority<sup>1</sup> may, by bye-law, vary these hours either generally or for any specified occupation. (2) A child under the age of eleven years shall not be employed in street trading. (3) No child who is employed half-time under the Factory and Workshop Act, 1901, shall be employed in any other occupation. (4) A child shall not be employed to lift, carry, or move anything so heavy as to be likely to cause injury to the child. (5) A child shall not be employed in any occupation likely to be injurious to his life, limb, health, or education, regard being had to his physical condition. (6) If the local authority send to the employer of any child a certificate signed by a registered medical practitioner that the lifting, carrying, or moving of any specified weight is likely to cause injury to the child, or that any specified occupation is likely to be injurious to the life, limb, health, or education of the child, the certificate shall be admissible as evidence in any subsequent proceedings against the employer in respect of the employment of the child" (s. 3).

<sup>1</sup> "Local authority" means, in the case of an urban district with a population, according to the census of 1901, of over 5,000, the district council, and elsewhere the county council (s. 16).

<sup>2</sup> Bye-laws require to be confirmed by the Lord Lieutenant, after at least thirty days' prior publication in manner required by the Lord Lieutenant, who shall consider any objections and may direct a local inquiry: bye-laws may apply either to the whole or a part only of the area of the local authority: bye-laws made by a county council shall not have effect within any borough or urban district the council of which is constituted a local authority under the Act (ss. 4, 16). Bye-laws do not apply to child over twelve employed in pursuance of the Factory and Workshop Act, 1901, or the Metalliferous Mines Regulation Act, 1872, or the Coal Mines Regulation Act, 1887, so far as regards that employment (s. 9).

<sup>3</sup> "Child" means a person under the age of fourteen years (s. 13).

<sup>4</sup> "Employ" and "employment" include employment in any labour exercised by way of trade or for the purposes of gain, whether the gain be to the child or to any other person (s. 13).

<sup>5</sup> "Street trading" includes the hawking of newspapers, matches, flowers, and other articles; playing, singing, or performing for profit, shoe-blackening; and any other like occupation carried on in streets or public places (s. 13).

(1) "If any person employs a child<sup>1</sup> or other person under the age of sixteen in contravention of this Act, or of any bye-law under this Act, he shall be liable on summary conviction to a fine not exceeding 40s., or, in case of a second or subsequent offence, not exceeding £5. (2) If any parent or guardian<sup>2</sup> of a child or other person under the age of sixteen has conducted to the commission of the alleged offence by wilful default, or by habitually neglecting to exercise due care, he shall be liable on summary conviction to the like fine. (3) If any person under the age of sixteen contravenes the provisions of any bye-law as to street trading made under this Act, he shall be liable on summary conviction to a fine not exceeding 20s., and in case of a second or subsequent offence, if a child, to be sent to an industrial school, and, if not a child, to a fine not exceeding £5. (4) In lieu of ordering a child to be sent under this section to an industrial school, a court of summary jurisdiction may order the child to be taken out of the charge or control of the person who actually has the charge or control of the child, and to be committed to the charge and control of some fit person who is willing to undertake the same until such child reaches the age of sixteen years. And the provisions of sections<sup>3</sup> [7 and 8 of the Prevention of Cruelty to Children Act, 1894] shall, with the necessary modifications, apply to any order for the disposal of a child made under this sub-section" (s. 5).

Restrictions  
on employ-  
ment.  
Offences and  
penalties.  
3 Ed. 7, c. 45.

"(1) Where the offence of taking a child into employment in contravention of this Act is in fact committed by an agent or workman of the employer, such agent or workman shall be liable to a penalty as if he were the employer. (2) Where a child is taken into employment in contravention of this Act on the production, by or with the privity of the parent, of a false or forged certificate, or on the false representation of his parent that the child is of an age at which such employment is not in contravention of this Act, that parent shall be liable to a penalty not exceeding forty shillings. (3) Where an employer is charged with any offence under this Act he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the court is satisfied that the employer had used due diligence to comply with the provisions of the Act, and that the other person had committed the offence in question without the employer's knowledge, consent, or connivance, the other person shall be summarily convicted of the offence, and the employer shall be exempt from any fine. (4) When it is made to appear, to the satisfaction of an inspector or other officer charged with the enforcement of this Act, at the time of discovering the offence, that the employer had used all due diligence to enforce compliance with this Act, and also by what person the offence had been committed, and also that it had been committed without the knowledge, consent, or connivance of the employer, and in contravention of his order, then the inspector or officer

Offences by  
agents or  
workmen, and  
by parents.

<sup>1</sup> The expression "child" means a person under the age of fourteen years (s. 13). In the application of section 3 to children employed under the Factory and Workshop Act, 1901, the Metalliferous Mines Regulations Act, 1872, or the Coal Mines Regulation Act, 1887, the inspectors appointed under these Acts should be substituted for the local authority in respect of such employment (s. 9).

<sup>2</sup> Includes any person who is liable to maintain or has the actual custody of the child (s. 13).

<sup>3</sup> For the words enclosed in square brackets the words "22 & 23 of the Children Act, 1908," are now to be substituted. This is the effect of the Prevention of Cruelty to Children Act, 1904, 2nd Sch., and ss. 7 and 8; the Children Act, 1908, Sch. III., and ss. 22, 23; and the Interpretation Act, 1889, s. 38 (1). As to the maintenance of child when committed to custody of any person under order of court, see CHILDREN ACT, 1908.

Restrictions  
on employ-  
ment.  
3 Ed. 7.  
c. 45.

shall proceed against the person whom he believes to be the actual offender in the first instance, without first proceeding against the employer" (s. 6).

A vanman in the employment of the respondent, a baker, employed for his own convenience and benefit a child to deliver bread to the respondent's customers during hours forbidden by the bye-law. The child was actually engaged and his wages paid by the vanman, and his engagement was a voluntary and gratuitous act on the part of the vanman, and formed no part of any arrangement between him and the respondent. The respondent had no knowledge that the child was so employed except during permitted hours. The respondent was charged with having unlawfully employed the child during prohibited hours contrary to the bye-law. *Held* (1), that the mere fact that the respondent was charged with the offence did not, in the absence of any evidence of a contract of employment of the child during prohibited hours by or on behalf of the respondent, make it incumbent upon him, under s. 6 (3) of the Act, in order to claim exemption from a fine, to charge the vanman as the actual offender; (2) that as there was no evidence of any unlawful employment of the child by the respondent, either directly or by an agent purporting to employ the child on his behalf, no offence by the respondent had been proved (*Robinson v. Hill*, (1910) 1 K. B. 94).

Power of  
officer of local  
authority to  
enter place of  
employment.

"If it appear to any justice of the peace, on the complaint of an officer of the local authority acting under this Act, that there is reasonable cause to believe that a child is employed in contravention of this Act in any place, whether a building or not, such justice may by order under his hand empower an officer of the local authority to enter such place at any reasonable time, within forty-eight hours from the date of the order, and examine such place, and any person therein, touching the employment of any child therein. Any person refusing admission to an officer authorized by an order under this section, or obstructing him in the discharge of his duty, shall for each offence be liable on summary conviction to a penalty not exceeding £20" (s. 8).

Saving for  
industrial and  
other schools.

"Nothing in this Act, or in any bye-law made thereunder, shall apply to the exercise of manual labour by any child under order of detention in a certified industrial or reformatory school, or by any child while receiving instruction in manual labour in any school" (s. 10).

Procedure  
under 3 Ed.  
7, c. 45.

The information shall be laid within three months after the commission of the offence (s. 7). Proceedings under the Act may be brought by or in the name of any officer of the local authority, or by an officer of a school attendance committee, or by a constable (s. 16 (3)).

4 Ed. 7, c. 15.  
Employment  
in public  
places.

Where the child appears to be under the age charged, such child shall for the purposes of the Employment of Children Act, 1903, be deemed to be under such age unless the contrary is proved (*Prevention of Cruelty to Children Act*, 1904, s. 17).

"If any person . . . (b) causes or procures any child, being a boy under the age of fourteen years, or being a girl under the age of sixteen years, or, having the custody, charge, or care of any such child, allows that child, to be in any street,<sup>1</sup> or in any premises licensed for the sale of any intoxicating liquor,<sup>2</sup> other than premises licensed according to law for public entertainments, for the purpose of singing, playing, or performing, or being exhibited for profit, or offering anything for sale, between nine p.m. and six a.m.; or (c) causes or procures any child under the

<sup>1</sup> For definition of "street" see the Children Act, 1908, s. 131, in APPENDIX OF STATUTES.

<sup>2</sup> For definition of "intoxicating liquor" see the Children Act, 1908, s. 131. See also s. 120 of that Act.



age of eleven years, or, having the custody, charge, or care<sup>1</sup> of any such child, allows that child, to be at any time in any street, or in any premises licensed for the sale of any intoxicating liquor, or in premises licensed according to law for public entertainments, or in any circus or other place of public amusement to which the public are admitted by payment, for the purpose of singing, playing, or performing, or being exhibited for profit, or offering anything for sale; or (d) causes or procures any child under the age of sixteen years, or, having the custody, charge, or care of any such child, allows that child, to be in any place for the purpose of being trained as an acrobat, contortionist, or circus performer, or of being trained for any exhibition or performance which in its nature is dangerous, that person shall, on summary conviction, be liable, at the discretion of the court, to a fine not exceeding twenty-five pounds, or alternatively, or in default of payment of such fine, or in addition thereto, to imprisonment, with or without hard labour, for any term not exceeding three months: Provided that—(1) This section shall not apply in the case of any occasional sale or entertainment the net proceeds of which are wholly applied for the benefit of any school, or to any charitable object, if such sale or the entertainment is held elsewhere than in premises which are licensed for the sale of any intoxicating liquor, but not licensed according to law for public entertainment, or if, in the case of a sale or entertainment held in any such premises as aforesaid a special exemption from the provisions of this section has been granted in writing under the hands of two justices of the peace. And (2) any local authority<sup>2</sup> may, if they think it necessary or desirable so to do, from time to time by bye-law<sup>3</sup> extend or restrict the hours mentioned in paragraph (b) of this section, either on every day or on any specified day or days of the week, and either as to the whole of their district or as to any specified area therein. And (3) paragraphs (c) and (d) of this section shall not apply in any case in respect of which a licence granted under this Act is in force, so far as that licence extends”<sup>3</sup> (*Prevention of Cruelty to Children Act, 1904*, s. 2).

Restrictions  
on employ-  
ment.  
4 Ed. 7,  
c. 15.  
Employment  
in public  
places.

“(1) A petty sessional court may, notwithstanding anything in this Act, or in the Employment of Children Act, 1903, or any bye-law made thereunder, grant a licence for such time and during such hours of the day, and subject to such restrictions and conditions as the court think fit, for any child exceeding ten years of age—(a) To take part in any entertainment or series of entertainments to take place in premises licensed according to law for public entertainments, or in any circus or

Relaxation of  
restrictions.

<sup>1</sup> Any person who is the parent of a child shall be presumed to have the custody of the child, and any person to whose charge a child is committed by its parent shall be presumed to have charge of the child; and any other person having actual possession or control of a child shall be presumed to have the care of the child (s. 23 (3)). The provisions of the Act relating to the parent of a child shall apply to the step-parent of the child, and to any person cohabiting with the parent of the child, and the expression “parent” when used in relation to a child includes guardian and every person who is by law liable to maintain the child (s. 23 (1)). The expression “parent” was held not to include the father of an illegitimate child in respect of whom no affiliation order had been made (*Butler v. Gregory*, (1902) 18 T.L.R. 370). The explanation of the qualification in this case, “in respect of whom no affiliation order had been made,” is that, apart from such order, the law imposes no duty on a father towards his illegitimate child. As to liability to maintain a child see p. 403, *post*. See also s. 38 of the Children Act, 1908, APPENDIX OF STATUTES. A father cannot, by leaving his home and living elsewhere, divest himself of the custody of his children so as to free himself from his liability to maintain them (*R. v. Connor*, (1908) 2 K.B. 26).

<sup>2</sup> “Local authority” has the same meaning as in the Employment of Children Act, 1903, *ante*, p. 398 n. (ss. 29, 31).

<sup>3</sup> To be made and confirmed as under Employment of Children Act, 1903, *ante*, p. 398 (s. 22).

Restrictions  
on employ-  
ment.

4 Ed. 7, c. 15.  
Relaxation of  
restrictions.

other place of public amusement as aforesaid: or (b) to be trained as aforesaid; or (c) for both purposes; if satisfied of the fitness of the child for the purpose, and if it is shown to their satisfaction that proper provision has been made to secure the health and kind treatment of the children taking part in the entertainment or series of entertainments or being trained as aforesaid, and the court may, upon sufficient cause, vary, add to, or rescind any such licence. Any such licence shall be sufficient protection to all persons acting under or in accordance with the same. (2) It shall be the duty of inspectors and other officers charged with the execution of the Employment of Children Act, 1903, to see whether the restrictions and conditions of any licence under this section are duly complied with, and any such inspector or officer shall have the same power to enter, inspect, and examine any place of public entertainment at which the employment of a child is for the time being licensed under this section, as an inspector appointed under the Factory and Workshop Act, 1901,<sup>1</sup> has to enter, inspect, and examine a factory or workshop under s. 119 of that Act, and that section shall apply accordingly. (3) Where any person applies for a licence under this section he shall, at least seven days before making the application, give notice thereof to the chief officer of police for the district in which the licence is to take effect, and that officer may appear or instruct some person to appear before the authority hearing the application, and show cause why the licence should not be granted; and the authority to whom the application is made shall not grant the same unless they are satisfied that notice has been properly so given. (4) Where a licence is granted under this section to any person, that person shall forthwith cause a copy thereof to be sent to the local authority for the district in which the licence is to take effect, and if he fails to cause such copy to be sent shall be liable on summary conviction to a fine not exceeding £5" (s. 3).

Procedure  
under  
4 Ed. 7,  
c. 15.

A constable may arrest without warrant any person offending against the Act in his view, where the name and residence of the offender are unknown to, and cannot be ascertained by, such constable; the station inspector or constable may release such persons on entering into recognizances (s. 4). The accused and the husband and wife of accused are competent, but not compellable witnesses (s. 12). The evidence of a child of tender years may be admitted, though not on oath, in the cases mentioned in chapter on EVIDENCE, p. 260, but corroboration of such evidence is necessary (s. 15). Where the child appears to the court to be under the age, the burthen of proof to the contrary lies on the defendant (s. 17). The same information or summons may charge an offence in respect of several children, but there shall not be a separate penalty unless upon separate informations (s. 18). A person shall not be summarily convicted unless the information is laid within six months; but evidence may be taken of acts constituting or contributing to constitute the offence, and committed at any previous time; in the case of a continuous offence the date of the acts constituting the offence need not be stated (s. 18); but if the dates on which the offence is charged to have been committed are set out in the summons, then evidence as to the commission of the offence on other dates is not admissible (see *R. v. Miller*, (1901) 65 J.P. 313).

There is an appeal to quarter sessions in case of any conviction where the defendant does not plead guilty (s. 19); this section does not apply the appeal provisions of the Dublin Police Acts (see *R. (Harty) v. Dublin JJ.*, (1899) 2 I.R. 310).<sup>2</sup> In any proceedings under the Act, a copy of an entry in the wages-book of any employer of labour, or, if no

<sup>1</sup> As to which see that statute, APPENDIX OF STATUTES.

<sup>2</sup> Noted p. 131, *ante*; and decided on the identical terms of section 19 of the 57 & 58 Vict. c. 41 (repealed).

wages-book be kept, a written statement signed by such employer, or by his foreman, shall be *prima facie* evidence that the wages therein entered, or stated as having been paid to any person, have in fact been so paid: provided that such copy or statement has been signed by such employer, or his foreman, and that the signature of such employer, or foreman, has been witnessed by the person producing the said copy or statement (s. 24).

“For the purposes of this Act every husband shall be liable to maintain his wife, and every child under the age of fifteen, whether legitimate or illegitimate, which she may have had at the time of her marriage with such husband, and every father shall be liable to maintain his child, and every widow to maintain her child, and the mother of every bastard child to maintain such bastard child, until every such child respectively shall attain the age of fifteen years: provided always, and be it declared, that nothing herein contained shall be taken to remove or lessen the obligations to which any husband or parent is by law liable<sup>1</sup> in regard to the maintenance of his wife or children, legitimate or illegitimate respectively, independently of this Act” (*Poor Relief (Ir.) Act*, 1838, s. 53). Warrant may be issued for the arrest of the offender (s. 60).

Liability of parent to support child.

1 & 2 Vict. c. 56.

Under the Married Woman's Property Act, 1882, a married woman having separate property is liable for the cost of poor law relief given to her husband (s. 20), and is also (s. 21) subject to all such liability for the maintenance of her children and grandchildren as the husband is by law subject to for the maintenance of his children and grandchildren,<sup>2</sup> provided that nothing in the Act shall relieve her husband from any liability to maintain her children or grandchildren.

45 & 46 Vict. c. 75.

An order under the Children Act, 1908, to contribute to the support of a young person or child shall include his step-parent, and if the court having cognizance of the case thinks fit, a person cohabiting with his mother, whether or not the person so cohabiting is his putative father, and in the case of illegitimacy his putative father (s. 125).

8 Ed. 7. c. 67.

“Every person who shall desert or wilfully neglect to maintain his wife or any child whom he may be liable to maintain,” so that such wife or

10 & 11 Vict. c. 84, s. 2.

<sup>1</sup> The proviso is superfluous, as there seems to be no common law obligation on a parent to support his child, unless the neglect to do so should bring the case within the criminal law: *per Cockburn, C.J.*, in *Buzeley v. Forder*, (1868) L.R. 3 Q.B. 559. For decisions upon this section, see *HUSBAND AND WIFE*, *post*.

<sup>2</sup> In Ireland a person is not liable to maintain his grandchildren. In England a grandfather and grandmother are each liable to maintain a poor grandchild (43 Eliz. 2, c. 7). The above section, therefore, imposes no obligation on a grandmother in Ireland having separate property to support her grandchild.

<sup>3</sup> As to the recovery of the cost of maintenance in a workhouse of an illegitimate child, the Bastardy (Ireland) Act, 1863, 26 & 27 Vict. c. 21, s. 2, enacts that “it shall be lawful for the board of guardians of any union to recover, by civil bill process at their own suit, the cost of the maintenance of any illegitimate child during the time that such child, while under the age of fourteen years, has been or shall be in receipt of relief from the poor rates, from the putative father of such child. Provided always that no person shall be sued by the said board of guardians as aforesaid, save such person only as the mother of such illegitimate child shall have stated to be the father of such child in an affidavit in the form to this Act annexed, or to the like effect sworn to by her before one or more justice or justices of the peace in petty sessions, or if made in the police district of Dublin metropolis before one or more divisional justices within the said district, which affidavit the said justice or justices are hereby authorized to take on the application of the guardians.” The following is the form of affidavit given in the schedule:—Petty Sessions District of \_\_\_\_\_, County of \_\_\_\_\_, The information of \_\_\_\_\_, residing at \_\_\_\_\_ Workhouse, in the County of \_\_\_\_\_, who saith on oath that she is the mother of an illegitimate child, called or known by the name of \_\_\_\_\_, and that the said child was born at \_\_\_\_\_ on or about the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and that one \_\_\_\_\_, of \_\_\_\_\_, in the County of \_\_\_\_\_ is the father of such child, and that within ten months previous to the birth of such child she was residing at \_\_\_\_\_, in the County of \_\_\_\_\_ as a servant with \_\_\_\_\_ Sworn, &c. The mother's statement must be supported by corroborative evidence before a decree can be made (s. 3): letters written by the mother to defendant are not corroboration in themselves (*South Dublin Guardians v. Egan*, (1903) 4 N.I.J. 4).



child shall become destitute and be relieved in or out of the workhouse of any union in Ireland"—*Penalty*, imprisonment with hard labour not exceeding three calendar months (*Vagrancy (Ireland) Act*, 1847, s. 2). A warrant may be issued for the apprehension of the offender (s. 4).

The fact of the wife's adultery was held by a majority of the King's Bench Division to afford a defence to a charge of wife desertion (*Phillips v. Guardians of South Dublin Union*, (1902) 2 I.R. 112, 1 N.I.J.R. 3). The word "wilfully" implies ability on the part of the defendant to contribute to the support (*ib.*); and the burthen of proving such ability rests upon the complainants (*Guardians of Drogheda Union v. McCann*, (1905) 39 I.L.T.R. 210, 5 N.I.J.R. 216). In a prosecution under the section, the guardians are persons aggrieved, and not merely common informers (*R. (Ferris) v. Londonderry J.J.*, (1903) 3 N.I.J.R. 298).

Liability of  
child to sup-  
port parent.

"Where any poor person shall, through old age, infirmity, or defect, be unable to support himself, every child of such poor person shall be liable, according to his ability, to support or contribute to support such poor person; and in case relief shall be given under this Act to any poor person whose child shall be liable to support him or contribute to his support, it shall be lawful for any two justices of the peace of the jurisdiction within which such child may dwell, on the application of the guardians of the union in which such relief shall have been given, by their order to direct what sum, not exceeding the cost price of such relief, shall be paid by such child to such guardians in respect of the relief which shall have been so given, and also what weekly or other periodical payments shall be made by such child to such guardians in respect of such relief as shall subsequently be given to such poor person, and the sum so directed to be paid, and also such weekly or other periodical payments, when and as they shall become due, shall be recoverable by such guardians in the same manner as any penalties are recoverable under this Act" (*Poor Relief (Ireland) Act*, 1838, s. 57).

1 & 2 Vict.  
c. 56, s. 57.  
Inciting  
infants  
to bet or to  
borrow.

(1) Betting.

"(1.) If anyone, for the purpose of earning commission, reward, or other profit, sends or causes to be sent to a person whom he knows to be an infant any circular, notice, advertisement, letter, telegram, or other document which invites or may reasonably be implied to invite the person receiving it to make any bet or wager, or to enter into or take any share or interest in any betting or wagering transaction, or to apply to any person or at any place, with a view to obtaining information or advice for the purpose of any bet or wager, or for information as to any race, fight, game, sport, or other contingency upon which betting or wagering is generally carried on, he shall be guilty of a misdemeanour, and shall be liable, if convicted on indictment, to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine, not exceeding one hundred pounds, or to both imprisonment and fine, and if convicted on summary conviction, to imprisonment, with or without hard labour, for a term not exceeding one month, or to a fine not exceeding twenty pounds, or to both imprisonment and fine.

"(2.) If any such circular, notice, advertisement, letter, telegram, or other document as in this section mentioned, names or refers to anyone as a person to whom any payment may be made, or from whom information may be obtained, for the purpose of or in relation to betting or wagering, the person so named or referred to shall be deemed to have

<sup>1</sup> That is by summons before two justices, who may order the defendant to pay the penalty, and may issue a distress warrant to levy same. In case the penalty is not forthwith paid upon conviction, the justices may order the offender to be detained until a return can be made to the warrant, and if no sufficient distress can be found, can order committal for a period not exceeding three months (ss. 99, 103), but see now Small Penalties Act as to term of imprisonment.

sent or caused to be sent such document as aforesaid, unless he proves that he had not consented to be so named, and that he was not in any way a party to, and was wholly ignorant of, the sending of such document" (*Betting and Loans (Infants) Act, 1892, s. 1*). Inciting infants to bet or borrow.  
55 Vict. c. 4.

Soliciting infant to make an affidavit or statutory declaration for the purpose of or in connection with loan—*Penalty*, on summary conviction, imprisonment, with or without hard labour, not exceeding one month, a fine not exceeding £20, or both imprisonment and fine; if convicted on indictment, imprisonment, with or without hard labour, not exceeding three months or fine not exceeding £100 (s. 4).

"(1.) If anyone for the purpose of earning interest, commission, reward, or other profit, sends or causes to be sent to a person whom he knows to be an infant any circular, notice, advertisement, letter, telegram, or other document which invites or may reasonably be implied to invite the person receiving it to borrow money, or to enter into any transaction involving the borrowing of money, or to apply to any person or at any place with a view to obtaining information or advice as to borrowing money, he shall be guilty of a misdemeanour, and shall be liable, if convicted on indictment, to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding one hundred pounds, or to both imprisonment and fine, and if convicted on summary conviction, to imprisonment, with or without hard labour, for a term not exceeding one month, or to a fine not exceeding twenty pounds, or to both imprisonment and fine. (2) Borrowing.

"(2.) If any such document as above in this section mentioned sent to an infant purports to issue from any address named therein, or indicates any address as the place at which application is to be made with reference to the subject-matter of the document, and at that place there is carried on any business connected with loans, whether making or procuring loans or otherwise, every person who attends at such place for the purpose of taking part in or who takes part in or assists in the carrying on of such business shall be deemed to have sent or caused to be sent such document as aforesaid, unless he proves that he was not in any way a party to and was wholly ignorant of the sending of such document" (*Betting and Loans (Infants) Act, 1892, s. 2*).

In proceedings under section 2, if it is proved that the person to whom such a document was sent was an infant, the party charged is deemed to have known that the person to whom the document was sent was an infant, unless he proves that he had reasonable ground for believing the infant to be of full age (*Moneylenders Act, 1900, 62 & 63 Vict. c. 51, s. 5*).

Knowledge of the infancy is presumed where such document is sent to any person at any university, college, school, or other place of education (*Betting and Loans (Infants) Act, 1892, s. 3*). The sender of a betting circular to an infant undergraduate is deemed to have knowledge that the addressee is an infant only where the address to which the circular is sent shows that it is at a University. Where, therefore, a betting circular was sent to an infant undergraduate who resided at licensed lodgings within the precincts of a University, but there was nothing in the mere address to indicate that it was a lodging licensed by the University authorities or that it was at the University, *held*, that the sender could not, under s. 3 of the Betting and Loans (Infants) Act, 1892, be deemed to have had knowledge that the addressee was a person at a University (*Milton v. Studd, (1910) 2 K.B. 118*). (3) Evidence, &c.

The person charged, or wife or husband of such person, is a competent witness (s. 6).

The Children Act, 1908, is printed *verbatim*, APPENDIX OF STATUTES, and reference should be made thereto. The statute consists of 134 sections, divided into—PART I., ss. 1–11 (infant life protection); PART II., Children Act, 1908,  
8 Ed. 7, c. 67.

Children Act, 1908. ss. 12-38 (prevention of cruelty to children and young persons); PART III., ss. 39-43 (juvenile smoking); PART IV., ss. 44-93 (reformatory and industrial schools); PART V., ss. 94-113 (juvenile offenders); PART VI., ss. 114-134 (miscellaneous and general).

The procedure is regulated by ss. 27-34. The reference to the Criminal Evidence Act, 1898, in s. 27, does not apply to Ireland; but a defendant, or wife or husband of a defendant, charged under Part II. of the Act is a competent but not compellable witness (s. 133 (28)) Provisions as to juvenile courts are contained in ss. 111-112. Where any person is convicted under Part II., or in the case of any application to a court of summary jurisdiction for an order committing a child or young person to the care of any person, or for an order for contribution to the maintenance of a child or young person, any party aggrieved thereby may appeal to quarter sessions (s. 33). The Vexatious Indictments Act applies to every misdemeanour under the Act (s. 35).

The information must be laid within six months from the time when the offence was wholly or partly committed, but evidence may be taken of acts constituting or contributing to constitute the offence, though committed at any previous time (s. 32 (3)). Where the offence charged is a continuing offence, it shall not be necessary to specify in the summons, information, or indictment, the date of the acts constituting the offence (s. 32 (4)); but where dates are given evidence as to other dates is inadmissible (*R. v. Miller*, (1901) 65 J.P. 313). Offences may be charged in respect of several children in the same information, but there shall not be a separate penalty for each child except on separate information (s. 32 (1)). Several offences may be charged in the same summons, but when so charged there shall not be a separate penalty for each (s. 32 (2)). The statutory rules are printed at the end of the Act.

Offences by children.

A table showing the punishments to which children and young persons are liable, if convicted upon indictment, will be found under INDICTABLE OFFENCES. As to procedure in charges against children, an punishment when convicted summarily, see Summary Jurisdiction over Children Act (Ir.) Act, 1884, 47 & 48 Vict. c. 19, noted *ante*, p. 74, and printed *verbatim*, APPENDIX OF STATUTES; and Children Act, 1908, *verbatim*, APPENDIX OF STATUTES.

Offences by licensed person.

See INTOXICATING LIQUOR, *post*.

## CHIMNEY-SWEEPERS.

Persons under twenty-one.

Any person who shall compel or knowingly allow any person under the age of twenty-one years to ascend or descend a chimney or enter a flue for the purpose of sweeping, cleaning, or coring the same, or extinguishing fire therein—*Penalty*, not exceeding £10, or imprisonment not exceeding six months, with or without hard labour (*Chimney-Sweepers and Chimneys Regulation Act*, 1840, s. 2; amended by *Chimney-Sweepers Regulation Act*, 1864); and may be deprived of certificate for residue of current year\* (*Chimney-Sweepers Act*, 1875, 38 & 39 Vict. c. 70, s. 20).

3 & 4 Vict. c. 85.  
27 & 28 Vict. c. 37.  
38 & 39 Vict. c. 70.

Children under ten.

Chimney-sweeper employing any child under ten years of age to do or assist in doing any work or thing in the business of a chimney-sweeper elsewhere than within the house or place of business of such chimney-sweeper, or the yard or buildings connected therewith (*Chimney-Sweepers Regulation Act*, 1864, s. 6). Chimney-sweeper entering a building to sweep chimneys or extinguish fire therein, causing or knowingly allowing any person under sixteen years of age, in his employment or under his control, to enter before, with, or after him into any

Under sixteen.



part of such building, or to be therein for any part of the time during which such chimney-sweeper continues therein, for any of the purposes aforesaid (s. 7)—*Penalty*, not exceeding £10 (s. 8), may be deprived of certificate for residue of current year (*Chimney-Sweepers Act*, 1875, s. 20). Proof of age to lie on defendant (*Chimney-Sweepers Regulation Act*, 1864, s. 10).

Any person who shall, for the purpose of soliciting employment as a chimney-sweeper, knock at the houses from door to door, or ring a bell, or use any noisy instrument, or to the annoyance of any inhabitant thereof ring the door-bell of any house, or cause anyone to do any of the acts aforesaid—*Penalty*, not exceeding, first offence 10s., subsequent offence, 20s. (*Chimney-Sweepers Act*, 1894, s. 1). Causing disturbance. 57 & 58 Vict. c 51.

Two justices are required in proceedings under the Act of 1840 and 1864 (Act of 1840, s. 7, Act of 1864, s. 4).

Chimney-sweeper who employs journeyman, assistant, or apprentice, to take out certificate (*Chimney-Sweepers Act*, 1875, s. 6), to be issued by chief officer<sup>1</sup> of police of the district (s. 5); carrying on business without certificate, *penalty*, not exceeding, first offence, 10s., subsequent offence, 20s. (s. 15); obligation to give name and address to, or to produce certificate to person for whom he acts or offers to act, or to justice, constable, *penalty*, not exceeding 10s. (ss. 16, 17); transferring, lending certificate, or using another's certificate, *penalty*, not exceeding 20s. (s. 18); false representations, forging certificate, *penalty*, first offence, not exceeding 40s., subsequent offence, like *penalty*, with or without imprisonment, not exceeding six months, with or without hard labour, or imprisonment alone with or without hard labour, not exceeding six months (s. 19); power of court to deprive of certificate on conviction under Act of 1840 or 1864 (s. 20). Certificates.

## CINEMATOGRAPHS.

See Cinematograph Act, 1909, APPENDIX OF STATUTES.

## CLERK OF PETTY SESSIONS, OFFENCES BY.

Clerk of Petty Sessions neglecting or refusing to enter any summons in the order required<sup>1</sup>—*penalty*, not exceeding 40s. (*Petty Sessions Act*, 1851, s. 35); demanding or receiving greater fees than legally payable—*penalty*, not exceeding £5 (*ib.*); engaging in the business forbidden by s. 35, *post*—*penalty*, not exceeding £20 (*ib.*); wilfully neglecting to perform duty—*penalty*, not exceeding £5; any person improperly retaining books, etc., of clerk—*penalty*, not exceeding £10 (*ib.*); any person hindering search under justice's warrant for such books, etc., *penalty*, not exceeding £5 (*ib.*). The above penalties may be awarded by the justices (*ib.*). 14 & 15 Vict. c. 93, ss. 35, 5.

If guilty of wilful default or neglect in preparing or transmitting informations, examinations, or recognizances, or improperly divulging the contents of such informations or examinations, a petty sessions clerk is liable, by order of judge of assize, or justices at quarter sessions, as the case may be, to *penalty*, not exceeding £20, and in default three months' imprisonment (s. 5).

As to appointment, &c., see Part I, CLERKS OF PETTY SESSIONS, *ante*.

<sup>1</sup> In Dublin, one of the commissioners, elsewhere, a sub-inspector: see schedule.

<sup>2</sup> That is in the order in which the summonses shall be issued at petty sessions, or if issued out of petty sessions, then in the order in which the application shall be made to him by the complainant or his agent to enter the same (*Petty Sessions Act*, 1851, s. 5 (5)).

## COINAGE OFFENCES.

For offences in relation to coin, see **INDICTABLE OFFENCES.**

The following offences are punishable summarily under the Coinage Offences Act, 1861, and the Coinage Act, 1870:—

**Uttering defaced coin.**

“No tender of payment in money made in any gold, silver, or copper coin so defaced by stamping as in the last preceding section mentioned<sup>1</sup> shall be allowed to be a legal tender; and whosoever shall tender, utter, or put off any coin so defaced shall, on conviction thereof [before two justices], be liable to forfeit and pay any sum not exceeding forty shillings”—(*Act of 1861*, s. 17). One justice at petty sessions is now sufficient (25 & 26 Vict. c. 50, s. 2). No proceedings to be taken without consent of the Attorney-General (*ib.*).

**24 & 25 Vict. c. 99.**

**Possession of more than five pieces of counterfeit foreign coin.**

“Whosoever, without lawful authority or excuse (the proof whereof shall lie on the party accused), shall have in his custody or possession any greater number of pieces than five pieces of false or counterfeit coin resembling, or apparently intended to resemble or pass for, any gold or silver coin of any foreign prince, state, or country, or any such copper or other coin as in the last preceding section mentioned”<sup>2</sup>—*Penalty*, forfeiture of coin, fine not less than ten shillings or more than forty shillings for each coin; in default three months’ imprisonment with hard labour (s. 23).

**Making coins and tokens.**

“No piece of gold, silver, copper, or bronze, or of any metal or mixed metal, of any value whatever, shall be made or issued, except by the mint, as a coin or token for money, or as purporting that the holder thereof is entitled to demand any value denoted thereon”—*Penalty*, on summary conviction, not exceeding £20 (*Coinage Act*, 1870, s. 5).

**33 & 34 Vict. c. 10, s. 5.**

## COMMON.

**Damaging surface of common.**

Skinning or destroying surface of common—*Penalty*, not exceeding £5 (Irish currency), nor less than 5s. (Irish currency), for every square yard skinned or destroyed (29 Geo. 3, c. 30 (Ir.), s. 1; 31 Geo. 3, c. 38 (Ir.), s. 1). Not to be construed to extend to prohibit the cutting and carrying away the surface of heathy, mountainous, or moory ground, heretofore used as fuel (29 Geo. 3, c. 30, s. 4).

## COMPANIES.

**8 Ed. 7. c. 69.** A great number of offences by or in respect of companies are made punishable by the Companies Consolidation Act, 1908. The following is an enumeration of offences punishable summarily under the Act.

**Offences by company, its officers and others.**

Making default in sending copy memorandum and articles to a member on payment of prescribed fee, not exceeding 1s. (s. 18); failing to keep register, and director or manager knowingly and wilfully authorizing or permitting such default (s. 25); company having share capital failing to make annual list and summary, and to forward copy to registrar of companies, and every director and manager knowingly and wilfully authorizing or permitting default (s. 26); company refusing inspection of register of members gratis to members, and by other persons on payment of prescribed sum, not exceeding 1s., or to furnish copies of register or list and summary, or of any part thereof, on payment of prescribed

<sup>1</sup> That is, by stamping thereon any names or words (s. 16).

<sup>2</sup> That is, counterfeit foreign coin other than gold or silver coin.

sum, not exceeding sixpence, for every 100 words or fractional part thereof; and director and manager knowingly authorizing or permitting refusal (s. 30); company after altering share capital issuing copy memorandum not containing the alteration, and every director and manager knowingly and wilfully authorizing or permitting same (ss. 41, 52); not giving notice to registrar of increase of share capital or of members, and every director and manager knowingly and wilfully authorizing or permitting default (s. 44); director, manager, or proposer not adding to proposal of a person as director or manager statement that his liability is unlimited, or any promoter, director, manager, or secretary not giving such person notice of his liability being unlimited (s. 60); company not embodying in or annexing to memorandum special resolution making liability of directors unlimited, and every director or manager knowingly and wilfully authorizing or permitting default (s. 61); company carrying on business without having a registered office (s. 62); limited company not affixing and keeping affixed name outside of its offices or places of business, and every director and manager knowingly and wilfully authorizing or permitting default (s. 63); any person on behalf of limited company using or authorizing the use of any seal purporting to be seal of the company, whereon name not engraved in legible characters, or authorizing issue of any publication, or signing or authorizing to be signed on behalf of the company any bill of exchange, &c., or issuing or authorizing to be issued any bill of parcels, invoice, &c., wherein its name is not mentioned (s. 63); company not holding general meeting once at least every year, and not more than fifteen months after last preceding general meeting, and every director, manager, secretary, and other officer knowingly a party to the default (s. 64); company not forwarding to registrar copy of special or extraordinary resolution, or not embodying in, or annexing to, copy of articles, or not forwarding in print to member a copy of special resolution, and every director and manager knowingly and wilfully authorizing or permitting default (s. 70); applicant for registration of company including in list of directors name of any person who has not consented to be director (s. 72); unqualified person, after expiration of specified period, acting as director (s. 73); company failing to keep register of names, addresses, and occupations of directors and managers, and to send copy to registrar with notification of changes, and every director and manager knowingly and wilfully authorizing or permitting default (s. 75); company and any person who is knowingly a party to issue of prospectus which is not filed as prescribed (s. 80); company commencing business or exercising borrowing powers in contravention of section 87; officer knowingly a party to default in complying with requirements of section as to filing returns as to allotments (s. 88); company not issuing certificates of stock allotted or transferred, and every officer knowingly a party to default (s. 92); any person not giving notice to registrar of appointment of receiver or manager as prescribed (s. 94); receiver or manager failing to file accounts with registrar as prescribed (s. 95); company failing to send to registrar particulars of charge or debentures, and every director, manager, secretary, or other person knowingly a party to default (s. 99 (1)); company making default in complying with requirements of Act as to registration of charge, and officer knowingly and wilfully authorizing or permitting default (s. 99 (2)); any person knowingly and wilfully authorizing or permitting delivery of debenture or certificate without copy of certificate of registration endorsed thereon (s. 99 (3)); officer knowingly and wilfully authorizing or permitting omission of any entry on company's register of mortgage (s. 100); officer of company refusing inspection of copies of instruments creating mortgage or charge, or of register of

Offences by company, its officers and others.



Offences by  
company, its  
officers and  
others.

mortgages, and every director and manager authorizing or knowingly and wilfully permitting refusal (s. 101); refusal to allow inspection of register of debenture-holders, or to supply copy of trust deed (s. 102); limited banking company, insurance company, deposit, provident, or benefit society, failing to publish statement in schedule, and director and manager knowingly and wilfully authorizing or permitting default (s. 108); officer or agent refusing to produce any book or document to inspectors of Board of Trade, or to answer questions relating to affairs of company (s. 109); like as to inspectors appointed by company (s. 110); company issuing unsigned copy of balance sheet, and every officer knowingly a party to default (s. 113); any person without reasonable excuse making default in complying with requirements of section 147 as to furnishing statement of company's affairs to official receiver; liquidator not reporting to registrar order of court dissolving company (s. 172); liquidator not filing with registrar notice of his appointment (s. 187); liquidator not making to registrar return of final meeting on voluntary winding up (s. 195); person on whose application order of court deferring date of dissolution of company made, not filing office copy of order with registrar (s. 195); person obtaining order declaring dissolution of company void not filing with registrar (s. 223); company incorporated outside of United Kingdom, and having a place of business within the United Kingdom failing to file certain documents with registrar, &c. (s. 274); any person in return. report, &c., required for the purposes mentioned in the fifth schedule, wilfully making false statement (s. 281); any person using term "limited," unless duly incorporated as limited company (s. 282).

Procedure.

All offences under the Act made punishable by fine may be prosecuted under the Summary Jurisdiction Acts (s. 276). As to service on company, see p. 49; as to making company amenable summarily, see p. 49; and on indictment, p. 20. As to offences punishable on indictment, see INDICTABLE OFFENCES.

Indictable  
offences.

Assurance  
Companies.  
9 Ed. 7. c. 49.

The Assurance Companies Act, 1909, provides (s. 4) for the preparation by assurance companies of an annual statement of accounts and balance sheet in the forms prescribed in the schedules; for (s. 7) the deposit of every account, &c., with the Board of Trade; and that (s. 8) a copy shall be forwarded to any shareholder or policy-holder on application (s. 8). Default in compliance with the Act is punishable by fine of £100, or in case of a continuing default, £50 a day, and every officer or agent who is knowingly a party to the default is liable to the like penalty (s. 23). Falsifying accounts, &c.—*Penalty*, fine and imprisonment on conviction on indictment; on summary conviction, not exceeding £50 (s. 24). Penalties are recovered in the same manner as penalties under the Companies Consolidation Act, 1908 (s. 25).

The Act applies to all persons or bodies of persons, whether corporate or unincorporate, not being registered under the Acts relating to friendly societies or trade unions, whether established before or after the Act, and whether established within or without the United Kingdom, who carry on life insurance, fire insurance, accident insurance, employers' liability insurance, or bond investment business (s. 1).

## CONSTABLES.

As to offences by and relating to constables, see POLICE, OFFENCES BY AND RELATING TO.

## CONTEMPT OF COURT.

Wilfully insulting justices, or committing any other contempt of court—*Penalty*, imprisonment not exceeding seven days, or fine not exceeding 40s. (*Petty Sessions (Ir.) Act, 1851, s. 9*). See also p. 72, *ante*.

## COPYRIGHT.

	PAGE		PAGE
Copyright of books, . . .	411	Copyright of music—	
Copyright of music, . . .	411	Right of entry by police under	
Seizure of pirated copies, . .	411	Act of 1906, . . .	413
Seizure of hawked copies, . .	412	Appeal under Act of 1906, .	413
Procedure under Act of 1902, .	412	Copyright of works of art, . .	413
Possession of pirated music, .	412		

“It shall not be lawful for any person, not being the proprietor of the copyright,<sup>1</sup> or some person authorized by him, to import into any part of the United Kingdom, or into any other part of the British dominions, for sale or hire, any printed book<sup>2</sup> first composed or written, or printed and published in any part of the said United Kingdom, wherein there shall be copyright, and re-printed in any country or place whatsoever out of the British dominions”—*Penalty*, for above, or for knowingly selling, publishing or exposing to sale or letting to hire, or having in possession for sale or hire, such book; forfeiture of book, which may be seized by customs officer, and penalty, conviction before two justices for the county or place in which such book shall be found, £10 for each offence, and double value of every copy, £5 of the penalty to go to customs officer, and remainder to proprietor of copyright (*Copyright Act, 1842, s. 17*). Copyright of books.  
5 & 6 Vict.  
c. 45, s. 17.

Save the above, there is no remedy, save by civil process, for infringement of copyright in books.<sup>3</sup>

“A court of summary jurisdiction, upon the application of the owner of the copyright<sup>4</sup> in any musical work, may act as follows: if satisfied by evidence that there is reasonable ground for believing that pirated copies of such musical work<sup>5</sup> are being hawked, carried about, sold, or offered for Copyright of music.  
Seizure of pirated copies.

<sup>1</sup> The copyright of a book published in the lifetime of the author endures for his lifetime and seven years after his death, or for forty-two years, whichever is the longer term; if the work is first published after his death, the copyright endures for forty-two years from the date of first publication (s. 3). The validity of a copyright does not depend upon registration; but registration is a condition precedent to bringing proceedings for infringement whether by action or summary proceeding (s. 24).

<sup>2</sup> Including every volume, part, or division of a volume, pamphlet, sheet of letter-press, sheet of music, map, chart, or plan separately published (s. 2). A perforated music roll is not a “sheet of music” within the meaning of s. 2 (*Boosey v. Wright*, (1900) 1 Ch. 122).

<sup>3</sup> Copyright in lectures, sermons, &c., may be secured by taking advantage of the Lectures Copyright Act, 1835, 5 & 6 Wm. 4, c. 65, s. 5, but the sole remedy for infringement is by action.

<sup>4</sup> “Musical copyright” means the exclusive right of the owner of such copyright, under the Copyright Acts in force for the time being, to do, or to authorize another person to do, all or any of the following things in respect of a musical work: (1) to make copies by writing or otherwise of such musical work; (2) to abridge such musical work; (3) to make any new adaptation, arrangement, or setting of such musical work, or of the melody thereof, in any notation or system (s. 3). A musical composition is a “book” within the Copyright Act, 1842, and therefore the duration of musical copyright is the same as that of a book.

<sup>5</sup> “Musical work” means any combination of melody and harmony, or either of them, printed, reduced to writing, or otherwise graphically produced or reproduced. “Pirated musical work” means any musical work written, printed, or otherwise reproduced, without the consent lawfully given by the owner of the copyright in such musical work (s. 3). A perforated music roll, being merely a mechanical contrivance for producing musical notes, is not a pirated “copy” of a musical work (*Mabe v. Connor*, (1909) 1 K.B. 515; and see 6 Ed. 7, c. 36, s. 3, noted p. 412, *infra*).

**Copyright of music.**

Possession of  
pirated music.  
2 Ed. 7,  
c. 15.

sale, may, by order, authorize a constable to seize such copies without warrant and to bring them before the court; and the court, on proof that the copies are pirated, may order them to be destroyed or to be delivered up to the owner of the copyright, if he makes application for that delivery" (*Musical (Summary Proceedings) Copyright Act, 1902, s. 1*).

An order may be made under the section even though the sale of the music takes place at a private house (*Ex parte Francis, Day, and Hunter* (No. 2), (1903) 88 L.T. 806).

Power to seize  
copies on  
hawkers.

"If any person shall hawk, carry about, sell, or offer for sale any pirated copy of any musical work, every such pirated copy may be seized by any constable without warrant, on the request in writing of the apparent owner of the copyright in such work, or of his agent thereto authorized in writing, and at the risk of such owner. On seizure of any such copies, they shall be conveyed by such constable before a court of summary jurisdiction, and, on proof that they are infringements of copyright, shall be forfeited or destroyed, or otherwise dealt with as the court may think fit" (s. 2).

Procedure  
under 2 Ed. 7.  
c. 15.

A summons or notice must be served upon the person from whom the "copies" have been seized, giving him an opportunity to show cause why an order under the Act should not be made (*Ex parte Francis, Day, and Hunter*, (1903) 1 K.B. 275). There is no provision making the Summary Jurisdiction Acts applicable or giving any appeal in respect of an order under this Act, and it is to be noted that there is no provision in this Act or in the Act of 1906, section 1 of which provides for an appeal, that said Acts should be construed as one Act. Proceedings under the Act are not criminal in their nature, so that an appeal lies from the judgment of the King's Bench Division (*Mabe v. Connor*, (1909) 1 K.B. 515, 522).

Possession of  
pirated music.

"(1) Every person who prints, reproduces, or sells, or exposes, offers, or has in his possession for sale, any pirated copies<sup>1</sup> of any musical work,<sup>2</sup> or has in his possession any plates<sup>3</sup> for the purpose of printing or reproducing pirated copies of any musical work, shall (unless he proves that he acted innocently) be guilty of an offence punishable on summary conviction, and shall be liable to a fine not exceeding £5, and on a second or subsequent conviction to imprisonment, with or without hard labour, for a term not exceeding two months, or to a fine not exceeding £10: Provided that a person convicted of an offence under this Act who has not previously been convicted of such an offence, and who proves that the copies of the musical work in respect of which the offence was committed had printed on the title-page thereof a name and address purporting to be that of the printer or publisher, shall not be liable to any penalty under this Act unless it is proved that the copies were to his knowledge pirated copies. (2) Any constable may take into custody without warrant any person who in any street or public place sells or exposes, offers, or has in his possession for sale any pirated copies of any such musical work as may be specified in any general written authority addressed to

<sup>1</sup> Meaning any copies of any musical work written, printed, or otherwise reproduced without the consent lawfully given by the owner of the copyright in such musical work s. 3.

<sup>2</sup> Meaning a musical work in which there is a subsisting copyright, and which has been registered in accordance with the provisions of the Copyright Act, 1842, or of the International Copyright Act, 1844, which registration may be effected notwithstanding anything in the International Copyright Act, 1836 (s. 3). Registration of a musical piece may be effected under the Copyright Act, 1842, s. 11, and a certified copy of the entry in the register is evidence of ownership of the copyright (5 & 6 Vict. c. 45, s. 11).

<sup>3</sup> The expression "plates" includes any stereotype or other plates, stones, matrices, transfers, or negatives used, or intended to be used, for printing or reproducing copies of any musical work: Provided that the expressions "pirated copies" and "plates" shall not, for the purposes of this Act, be deemed to include perforated music rolls used for playing mechanical instruments, or records used for the reproduction of sound-waves, or the matrices or other appliances by which such rolls or records respectively are made (s. 3).



the chief officer of police,<sup>1</sup> and signed by the apparent owner of the copyright in such work, or his agent thereto authorized in writing, requesting the arrest, at the risk of such owner, of all persons found committing offences under this section in respect to such work, or who offers for sale any pirated copies of any such specified musical work by personal canvass or by personally delivering advertisements or circulars. (3) A copy of every written authority addressed to a chief officer of police under this section shall be open to inspection at all reasonable hours by any person without payment of any fee, and any person may take copies of or make extracts from any such authority. (4) Any person aggrieved by a summary conviction under this section may in England or Ireland appeal to a court of quarter sessions, and in Scotland under and in terms of the Summary Prosecutions Appeals (Scotland) Act, 1875" **Copyright of music.** **Possession of pirated music.** 6 Ed. 7, c. 36.

(*Musical Copyright Act, 1906, s. 1*).

"(1) If a court of summary jurisdiction is satisfied by information on oath that there is reasonable ground for suspecting that an offence against this Act is being committed on any premises, the court may grant a search warrant authorizing the constable named therein to enter the premises between the hours of six of the clock in the morning and nine of the clock in the evening, and, if necessary, to use force for making such entry, whether by breaking open doors or otherwise, and to seize any copies of any musical work or any plates in respect of which he has reasonable ground for suspecting that an offence against this Act is being committed. (2) All copies of any musical work and plates seized under this section shall be brought before a court of summary jurisdiction, and if proved to be pirated copies or plates intended to be used for the printing or reproduction of pirated copies shall be forfeited and destroyed, or otherwise dealt with as the court think fit" (s. 2.) **Entry by police under** 6 Ed. 7, c. 36.

As to whether the procedure as to appeal laid down by the Petty Sessions Act is applicable, *quære* (see p. 131, *ante*). **Appeal under** 6 Ed. 7, c. 36.

The Fine Arts Copyright Act, 1862, which applies to paintings, drawings, and photographs (s. 1), forbids the unlawful multiplication of any such work or design thereof, or (with knowledge that a copy has been unlawfully made) the importation, sale, distribution, &c., of such copy—*Penalty*, not exceeding £10 for each offence, payable to the proprietor of the copyright (s. 6). Fraudulent productions, e.g. by affixing on a work of art the name of a person who did not execute same—*Penalty* not exceeding £10, payable to the party aggrieved, or a sum not exceeding double the full sale price, with forfeiture of the works (s. 7). All pecuniary penalties may be recovered by the person empowered to recover the same either by action or by summary proceedings before two justices of the peace (s. 8). The court are not obliged to award the full penalty for each offence, but may give any sum, even though less than a farthing, for each offence (*Hildersheimer v. Faulkner*, (1901) 2 Ch. 552; *Nicholls v. Parker*, (1902) 18 T.L.R. 459).<sup>2</sup> A separate penalty is incurred on each copy made, and not one penalty only on a number of infringing copies sold at the same time (*Ex parte Beal*, (1868) L.R. 3 Q.B. 387). As to the copyright in a painting or photograph, this rests in the artist if taken gratuitously, but if for good or valuable consideration, in the person giving the consideration (s. 2) (*Melville v. Mirror of Life Co.*, (1895) 2 Ch. 531; *Petty v. Taylor*, (1897) 1 Ch. 465; *Pollard v. Photographic Co.*,

**Copyright of works of art.** 25 & 26 Vict. c. 68.

<sup>1</sup> Meaning in the police district of Dublin metropolis either of the Commissioners of police for the said district, elsewhere in Ireland the district inspector of the Royal Irish Constabulary (s. 3).

<sup>2</sup> *Nicholls v. Parker* is a decision of the English Court of Appeal, and it may be taken to have settled the law, though *Porter, M.R.*, in *Green v. Irish Independent Co.*, (1899) 1 I.R. 386, was of opinion that less than a farthing could not be awarded.

Copyright of  
works of art.  
25 & 26 Vict.  
c. 68.

(1888) 40 C.D. 345; *Boucas v. Cooke*, (1903) 2 K.B. 227). Permitting a photographer to enter a school to take photographs has been held to be "good consideration" within s. 2 so as to vest the copyright in the proprietors of the school (*Stackemann v. Paton*, (1906) 1 Ch. 774). The copyright endures for the life of the author and seven years after his death (s. 1). The proprietor of the copyright cannot take advantage of the Act unless he has registered the copyright at Stationers' Hall (s. 4). *Semble*, in the case of a photograph, the person who takes the negative is the author, and the registration should be in his name (*Nuttage v. Jackson*, (1883) 11 Q.B.D. 627). A photograph of a picture (*Ex parte Beal*, (1868) L.R. 3 Q.B. 387) or an engraving (*Ex parte Walker, in re Graves*, (1869) L.R. 4 Q.B. 715) is a photograph within the Act.

## CRABS AND LOBSTERS.

Sale of  
edible crabs  
under a cer-  
tain size.

"A person shall not take, have in his possession, sell, expose for sale, consign for sale, or buy for sale: (1) any edible crab which measures less than four inches and a quarter across the broadest part of the back; or (2) any edible crab carrying any spawn attached to the tail or other exterior part of the crab, whether known as 'berried crab,' 'seed crab,' 'spawn crab,' or 'ran crab,' or by any other name; or (3) any edible crab which has recently cast its shell, whether known as 'castor,' 'white crab,' 'white-footed crab,' 'white-livered crab,' 'soft crab,' 'glass crab,' or by any other name"—*Penalty*, not exceeding, first offence, £2, subsequent offence £10, and forfeiture of the crabs.—(*Fisheries (Oyster, <sup>1</sup> Crab, and Lobster) Act, 1877, s. 8.*)

40 & 41 Vict.  
c. 42.

A person shall not be convicted if he satisfies the court that the crabs were intended for bait for fishing (*ib.*).

Sale of  
lobsters  
under certain  
size.

"A person shall not take, have in his possession, sell, expose for sale, consign for sale, or buy for sale, any lobster which measures less than eight inches from the tip of the beak to the end of the tail when spread as far as possible flat"—*Penalty*, not exceeding, first offence, £2, subsequent offence, £10, and forfeiture of the lobsters.—(*Fisheries (Oyster, Crab, and Lobster) Act, 1877, s. 9.*)

Search and  
seizure of  
such crabs  
and lobsters.

All such crabs and lobsters may be searched for, seized, condemned, destroyed, and disposed of by any authority lawfully acting, under any Act, charter or bye-law, or by any persons appointed by that authority, or in Ireland by the *inspectors of Irish fisheries*,<sup>2</sup> with the approval of the Lord Lieutenant, in like manner as if such crabs and lobsters respectively were found to be diseased, unsound, unwholesome, corrupt, unfit to be sold, or unfit for the food of man (s. 12).<sup>3</sup>

Order of  
Department  
restricting  
the taking of  
crabs and  
lobsters in  
certain areas.

Under section 10, the *inspectors of Irish fisheries*,<sup>2</sup> after such public inquiry and notice as they think expedient, were authorized to make orders restricting or prohibiting the fishing for and taking of edible crabs or lobsters within the area named in such order, and for such period as mentioned therein, and to provide for the enforcement of the order by fines not exceeding £20. By section 8 of the *Mussels, Periwinkles, and Cockles (Ireland) Act, 1898, 61 & 62 Vict. c. 28, s. 8*, any such order shall be enforced by the persons appointed by the inspectors of Irish Fisheries, with the approval of the Lord Lieutenant, under section 12 of the Act. The powers and duties of the inspectors of Irish fisheries are now vested in the Department of Agriculture (Agriculture and Technical Instruction (Ireland) Act, 1899, 62 & 63 Vict. c. 50, s. 2 (1) i).

<sup>1</sup> The provisions as to oysters in the Act do not apply to Ireland (s. 3).

<sup>2</sup> Now the Department of Agriculture, *infra*.

<sup>3</sup> See PUBLIC HEALTH, *post*.

The procedure is regulated by the Summary Jurisdiction Act, the **Procedure.** offence being cognizable either in the place where it was committed or in any place in which the offender may for the time being be found (s. 11). The court must be constituted of at least two justices or a divisional justice (s. 13 (4) (a)). There is no special provision as to appeal (see p. 131, *ante*).

### CUSTOMS.

As to offences against the Customs Laws, see "SMUGGLING," "SHIPS."

### DENTISTS.

	PAGE		PAGE
Register of dentists, . . . . .	415	Procedure, . . . . .	416
Unqualified person using title of		Other offences, . . . . .	416
"dentist," . . . . .	415		

The Dentists Act, 1878, provides for the keeping of a register of all persons qualified to practise dentistry (s. 11). The following are entitled to be registered: any person who (a) is a licentiate in dental surgery or dentistry of any of the medical authorities;<sup>1</sup> or (b) is entitled as therein-after mentioned to be registered as a foreign or colonial dentist; or (c) was at the passing of the Act *bona fide* engaged in the practice of dentistry or dental surgery, either separately or in conjunction with the practice of medicine, surgery, or pharmacy (s. 6). Ss. 8 to 10 provide for the registration of colonial or foreign dentists with recognized certificates. Powers are given to the General Council to erase from the register the name of any practitioner convicted of a crime, or guilty of any infamous or disgraceful conduct in a professional respect<sup>2</sup> (s. 13).

**Register of dentists.**  
41 & 42 Vict.  
c. 33.

"A person shall not be entitled to take or use the name or title of 'dentist' (either alone or in combination with any other word or words) or of 'dental practitioner,' or any name, title, addition, or description,<sup>3</sup> implying that he is registered under this Act, or that he is a person specially qualified to practise dentistry, unless he is registered under this Act. Any person who, not being registered under this Act, takes or uses any such name, title, addition, or description, as aforesaid, shall be liable, on summary conviction, to a fine not exceeding £20; provided that nothing in this section shall apply to legally qualified medical practitioners" (s. 3).

**Unqualified person using title of "dentist."**

"A person . . . shall not be guilty of an offence under this Act (a) if he shows that he is not ordinarily resident in the United Kingdom, and that he holds a qualification which entitles him to practise dentistry or dental surgery in a British possession or foreign country, and that he did not represent himself to be registered under this Act; or (b) if he shows that

<sup>1</sup> Under section 18 the governing body of the Royal College of Surgeons in Edinburgh, and of the Faculty of Physicians and Surgeons in Glasgow, and of the Royal College of Surgeons in Ireland, and of any University, have power to hold examinations in dentistry and dental surgery.

<sup>2</sup> The publication of an advertisement that, among other advantages, the instruments were always sterilized before use, and that a trained lady nurse was always present at operations so as to prevent any possibility of scandal between an operator and a lady patient, amounts to professional misconduct (*Clifford v. Timms*, (1908) A.C. 12).

<sup>3</sup> The words "title, addition, or description," as used in this section, include any title, addition to a name, designation, or description whether expressed in words or by letters, or partly in one way and partly in the other (Medical Act, 1886, 49 & 50 Vict. c. 48, s. 26).



Unqualified  
person using  
title of  
"dentist."

he has been registered and continues to be entitled to be registered under this Act, but that his name has been erased on the ground only that he has ceased to practise. If any person takes or uses the designation of any qualification or certificate in relation to dentistry or dental surgery which he does not possess"—*Penalty*, not exceeding £20 (s. 4).

The word "person" in the statute does not refer to a corporation (*O'Duffy v. Jaffe*, (1904) 2 I.R. 27, 37 I.L.T.R. 236). But an unregistered person calling himself "the West Central Dental Institute, Ltd." and not using his own name, was held rightly convicted because this was the same thing as if he put "dentist" on his own door (*Panhaus v. Browne*, (1904) 68 J.P. 435). The Registrar of Joint Stock Companies was held to be entitled to refuse to register a company which was formed for the purpose of deceiving the public by the name "A. B., Dentists, Ltd."; neither A. B. nor any of the signatories to the Memorandum of Association being registered (*R. (Rowell) v. Registrar of Joint Stock Companies for Ireland*, (1904) 2 I.R. 634; see also *A.-G. v. Myddletons, Ltd.*, (1907) 1 I.R. 471; *A.-G. v. George C. Smith, Ltd.*, (1909) 2 Ch. 524).

The words "specially qualified" in section 3 gave rise to contrary decisions of the King's Bench Divisions in England and Ireland. In *Barnes v. Brown*, (1909) 1 K.B. 38, it was held that an advertisement in the following terms:—"H. J. Barnes. Finest artificial teeth at moderate prices. Extractions, advice free. Hours 10-7. English and American teeth, advice free. Painless extractions"—constituted an offence under the Act. But in *Byrne v. Rogers*, (1910) 2 I.R. 220, it was held that the words refer to a description of the person himself, implying that he has a "qualification" in the nature of a degree, diploma, &c., and do not include the case of a description implying mere personal skill or accomplishment; and that therefore an advertisement, "Mr. Byrne, the world's expert adapter of teeth. Extraction 1s. by my own special system," was not within the section. The House of Lords held that the view of the King's Bench Division in Ireland was correct, and expressly approved of the judgment of Lord O'Brien, L.C.J., in that case (*Bellerby v. Heyworth*, (1910) A.C. 377).

An unregistered person may recover the price of material, e.g., the price of a set of teeth, as distinguished from the price of the work of fitting them in (*Herman v. Duckworth*, (1904) 20 T.L.R. 436; *Seymour v. Pickett*, (1905) 1 K.B. 715).

#### Procedure.

49 & 50 Vict.  
c. 48.

A prosecution for an offence may now be instituted by a private person without the consent of the General Medical Council or a branch thereof (*Medical Act*, 1886, s. 26). A copy of the register of dentists, purporting to be printed and published in pursuance of the Act of 1878 (*Dentists Act*, 1878, s. 11 (8)), shall be *prima facie* evidence of registration or non-registration (s. 29). Penalties may be recovered pursuant to the Petty Sessions Act or Dublin Police Act (s. 40). Two justices are required in a petty sessions district (*ib.*).

#### Other offences.

Wilful falsification of register, indictable misdemeanour, imprisonment not exceeding twelve months (*Dentists Act*, 1878, s. 34); obtaining registration by false representations—indictable misdemeanour, imprisonment not exceeding twelve months (s. 35).

### DESTRUCTIVE INSECTS AND PESTS.

40 & 41 Vict.  
c. 68.

The Department of Agriculture in Ireland<sup>1</sup> has power to make orders for the purpose of preventing the introduction and spreading of the Colorado Beetle (*Destructive Insects Act*, 1877) and any insect, fungus, or

<sup>1</sup> Under the Act of 1877, s. 7, the power to make orders was vested in Ireland in the Lord Lieutenant acting with the advice of the Privy Council, but such powers are now

other pest destructive of agricultural or horticultural crops, or to trees or bushes (*Destructive Insects and Pests Act, 1907*). These Acts confer power to make orders<sup>1</sup> prohibiting or regulating the landing of any vegetable substance or other articles likely to introduce the said pests, and the destruction of same if landed; person offending against the order to be liable as for importing goods prohibited by the Customs Acts (Act of 1877, s. 1); orders directing or authorizing the removal or destruction of crops on which the said pests are found, or by means of which such pests may be likely to spread, with penalties not exceeding £10 for any offence against such order (s. 2); compensation for crops (Act of 1877, s. 3; Act of 1907, s. 1). Penalties, other than the penalties recoverable under the Customs Acts, to be recoverable in a summary manner, and to be applied according to the provisions of the Fines Act, 1851 (Act of 1877, s. 7 (4)). Two justices requisite in prosecutions under s. 2 of the Act of 1877.

As to Bee Pest, see Bee Pest Prevention (Ir.) Act, 1908, APPENDIX OF STATUTES. 8 Ed. 7, c. 34.

## DISTRESS.

	PAGE		PAGE
Excessive charges for distress, . . .	417	Divisional justices' jurisdiction as to	
Bailiff to give copy charges, . . .	418	goods seized, . . . . .	418
Exemptions from distress for rent and		What may be taken under justices'	
small debts, . . . . .	418	warrant, . . . . .	418
Offences by Dublin bailiffs, . . .	418		

On complaint by party aggrieved, a person taking higher charges in connection with distress for rent, rates, or taxes than allowed by the Act, may be ordered by justices in petty sessions to pay treble the amount of the moneys unlawfully taken to the party aggrieved, together with *full costs*,<sup>2</sup> same to be leviable by distress, and if no sufficient distress, the offender may be committed to prison (*Ejectment and Distress (I.) Act, 1846*, s. 16); no judgment to be given against any landlord unless he personally levies the distress (s. 18); parties aggrieved not to be barred from other legal remedies, but determination of justices to be a bar to other proceedings (*ib.*). Excessive charges for distress, &c. 9 & 10 Vict. c. 111, s. 16.

Sheriff, under-sheriff, or bailiff, or assistant of sheriff, under-sheriff, or bailiff, or keeper demanding or receiving in respect of the execution of any decree, any money or gratuity other than poundage fees legally payable, or having, permitting, or suffering anyone on his behalf to receive the same—*Penalty*, £20, recoverable by civil bill (*Civil Bill Courts (Ir.) Act, 1864*, s. 17). Bailiff or assistant extorting money—misdemeanour punishable by fine not exceeding £20,<sup>3</sup> or imprisonment not exceeding twelve months, with or without hard labour, or by fine and imprisonment (s. 18). 27 & 28 Vict. c. 99.

vested in the Department by order of the Lord Lieutenant, dated the 24th March, 1900, made pursuant to the Agricultural and Technical Instruction (Ireland) Act, 1899. As regards local authorities, county councils are substituted for boards of guardians by the Local Government (Ireland) Act, 1898, s. 6, and "administrative county" is substituted for poor law union by Article 42 of the Adaptation of Enactments (Ireland) Order, 1899.

<sup>1</sup> Such orders now (December 31, 1910) in force are :—

The Colorado Beetle Customs (Ireland) Order, 1877, dated 20th Aug., 1877.

Articles 5 and 7 (2) of the American Gooseberry and Black Currant Mite (Ireland) Order, 1908, dated 24th Feb., 1908.

Article 5 of the Black Scab in Potatoes (Ireland) Order, 1908, dated 1st Oct., 1908.

<sup>2</sup> The words in italics are those used in the section, and they are unaffected by s. 22 (9) of the Petty Sessions Act, (1898) 2 I.R. 28 (see *Hosford v. Devine*, (1898) 2 I.R. 28).

<sup>3</sup> Not punishable summarily.

**Bailiff to give copy charges** 9 & 10 Vict. c. 111, s. 20. Broker, bailiff, or other person making any distress shall, on demand, give copies of their charges to the person distrained—*Penalty*, on default, not exceeding 40s. (*Ejectment and Distress (I.) Act*, 1846, s. 20). The court may give costs to either party under s. 22 (9) of the Petty Sessions Act, not exceeding 20s.

**Exemptions from distress for rent and small debts.** 51 & 52 Vict. c. 47. Wearing apparel, bedding, tools, and implements of trade not exceeding in the whole the value of £5, are exempt from distress for rent, or execution of the Dublin Court of Conscience or the Court of Conscience of any other municipal borough, and from execution under the small debts jurisdiction of the Dublin divisional justices or justices in petty sessions; (*Law of Distress and Small Debts (Ir.) Act*, 1888, s. 5).

**Offences by Dublin bailiffs** 5 & 6 Vict. c. 24. Bailiff in Dublin, guilty of misconduct or illegality—*Penalty* not exceeding £10, or three months' imprisonment with or without hard labour, and certificate may be withdrawn or suspended (s. 13); guilty of extortion or acting without authority, misdemeanour punishable by fine not exceeding £20, or imprisonment not exceeding twelve months, with or without hard labour, or offender may be proceeded against summarily—*Penalty* on conviction, not exceeding £10, or six months' imprisonment with or without hard labour (s. 12). Summary proceedings and the right of appeal are governed by the Dublin Police Acts; and such proceedings shall be in addition to and not in substitution for remedies existing before the Act (s. 14), as to which see the Dublin Police Act, 1842, s. 67, printed in APPENDIX OF STATUTES.

**Divisional justices' jurisdiction as to goods seized.** The Dublin divisional justices have power to determine summarily disputes as to goods seized under the Act (*Law of Distress and Small Debts (Ir.) Act*, 1888, s. 13).

**What may be taken under justice's warrant.** Growing crops, trees, shrubs, plants, or vegetable matters not severed from the soil cannot be taken in execution under a justice's warrant (*Seizure of Crops (I.) Act*, 1863, 26 & 27 Vict. c. 62); but, with this exception and the exception noted *ante* as regards small debts jurisdiction, all chattels of the defendant which might be taken under a writ of *fiery facias* at common law may be taken.<sup>1</sup>

### DISTURBANCE IN CHURCHES, &c.

**Disturbances in churches, &c.** 23 & 24 Vict. c. 32. "Any person who shall be guilty of riotous, violent, or indecent behaviour, in England or Ireland, in any cathedral, church, parish or district church, or chapel of the *Church of England and Ireland*,<sup>2</sup> or in any chapel of any religious denomination, . . . whether during the celebration of divine service, or at any other time, or in any churchyard or burial ground, or who shall molest, let, disturb, vex, or trouble, or by any other unlawful means disquiet or misuse any preacher duly authorized to preach therein, or any clergyman in Holy Orders ministering or celebrating any sacrament or any divine service, rite, or office in any cathedral, church, or chapel, or in any churchyard or burial ground"—*Penalty*, on conviction before two justices, not exceeding £5, or imprisonment not exceeding two months (*Ecclesiastical Courts Jurisdiction Act*, 1860, s. 2). An appeal lies from any conviction to the quarter sessions next held not less than twelve days after such conviction (s. 4).

<sup>1</sup> Under a *fiery facias* at common law the sheriff could seize every chattel belonging to the defendant (including chattels real in which defendant had a legal title), except his necessary wearing apparel; bank-notes, bills, bonds, deeds, writings could not be seized, and it was doubtful if money could (Nun & Walsh, 1st ed., p. 66).

<sup>2</sup> As regards Ireland, the words in italics are now to be read as "Church of Ireland" (*Irish Church Act*, 1869, 32 & 33 Vict. c. 42, s. 69).



The word "person" is not limited to laymen, and the Act applies to a clergyman who is guilty of violent and indecent behaviour in the churchyard of his own parish church (*Vallancey v. Fletcher*, (1897) 1 Q.B. 265). To persist in reading an objection to the service, after request to desist, is an offence within the section (*Kensit v. St. Paul's Dean and Chapter*, (1905) 2 K.B. 249, 255). Churchwardens of a Church of England church with free seats have authority to direct, for the maintenance of order and decorum, in which of those seats certain classes of the congregation may, and others may not, sit (*Asher v. Calcroft*, (1887) 18 Q.B.D. 607), but have no right forcibly to prevent an inhabitant of a parish or district from entering the church for the purpose of attending service, even though they are of opinion that he cannot be conveniently accommodated (*Taylor v. Timson*, (1888) 20 K.B.D. 671). The occupation of a pew in a Roman Catholic church is merely by revocable licence from the parish priest; and no property or estate therein vests in a parishioner (*Linehan v. Hartnett*, (1897) 31 I.L.T. and S.J. 429, Cir. Cas., Palles, C.B.).

See also INDICTABLE OFFENCES.

## DOGS.

	PAGE		PAGE
Licences for dogs, . . . .	419	Dangerous Dogs, . . . .	421
Licence to be taken out, . .	419	Summary Jurisdiction Act, s. 10, .	421
Liability of occupier, . . .	419	Dogs Act, 1871, . . . .	421
Licence duty, . . . .	420	Orders by local authority, . .	421
Sale of dog, . . . .	420	Dogs Act, 1906, . . . .	422
Keeping of unlicensed dog, .	420	Towns Improvement Act, 1854, .	422
Neglect not wilful, . . .	420	Stray dogs, . . . .	423
Production of licence, . . .	420	Setting on dog, . . . .	423
Procedure, . . . .	420	Burying carcase, . . . .	423
		Orders by Department of Agriculture, .	423

"Any person having in his possession or custody any dog or dogs, shall on or before the the thirty-first day of March in each year, take out a licence for such dog or dogs in the petty sessions district in which he shall reside; and the petty sessions clerk, upon payment by such person of the proper licence duty, shall deliver such licence to such person, which shall entitle such person to keep such dog or dogs for one year from and after the date of such licence: Provided always, that where the owner of a dog or dogs has given the custody of such dog or dogs to another person who shall not reside in the same petty sessions district as the owner, the licence for such dog or dogs shall be taken out by the person having the custody of such dog or dogs, and not by the owner" (*Dogs Regulation (Ir.) Act*, 1865, s. 6).

"The occupier of any house or premises where any dog or dogs are kept or permitted to live or remain shall be liable to pay the licence duty for such dog or dogs, and in default of such payment shall be liable to the penalties incurred by persons keeping unlicensed dogs, unless the said occupier can prove to the satisfaction of the justice or justices that he is not the owner, or has not the custody of such dog or dogs, and that such dog or dogs were kept or permitted to live or remain in the said house or premises without his sanction or knowledge: Provided always, that where there are more occupiers than one in any house or premises let in separate apartments or lodgings, or otherwise, the occupier of that particular part of the premises in which such dog or dogs shall have been kept or permitted to live and remain shall be liable to pay the licence duty for such dog or dogs" (s. 7).

Licences for dogs,  
28 & 29 Vict.  
c. 50.  
Licence to be  
taken out.

Liability of  
occupier.

**Licences for dogs.****Licence duty.**

The licence duty is for each dog two shillings (Schedule A), to which has to be added sixpence for the stamp on the certificate of registration (s. 8). The clerk of petty sessions is to make entries of licences in books to be kept for the purpose, which shall be open for inspection, and shall certify at the foot or on the back of every licence that the same has been duly registered (s. 8).

**Sale of dog.**

Where a dog shall be transferred by sale or gift of its owner to any other person, it shall not be necessary for such other person to take out a new licence for such dog, if such dog shall be licensed for the year, but such person shall obtain from the petty sessions clerk a certificate (Schedule D), and cause same to be registered in the registry of dogs licence book. In default such person shall be liable to the penalties incurred by persons keeping unlicensed dogs (s. 9).

**Keeping of unlicensed dog.**

"Any person who shall, from and after the thirty-first day of March in each year, have in his possession or custody any dog or dogs not duly licensed in accordance with the provisions of this Act, shall be liable to a penalty not exceeding two pounds; and the justice or justices shall further order such persons forthwith to take out a licence for such dog or dogs; and the petty sessions clerk shall thereupon issue such licence, upon payment of the proper licence duty by such person, and such licence shall be held to be valid to the thirty-first day of March next following the date of such licence; and if after such order such person shall continue to keep any dog or dogs without having obtained a licence, he shall, in addition to the penalty imposed for the second and any subsequent offence, pay a sum not exceeding one shilling for each day he shall have kept a dog without a licence" (s. 20).

The words "each year" in the section mean each calendar year; and, therefore, to charge possession of an unlicensed dog on the 17th February discloses no offence, for the defendant has between the 1st of January and the 31st of March to take out a licence, and could not be prosecuted before the 31st March (*McElroy v. Freeman*, (1905) 2 I.R. 367). But if a person acquires possession of an unlicensed dog after the 31st March, and before the following 1st January, he is liable to the penalty (*ib.*). The Act is not limited, as is the English Act, to dogs over six months old, but the word "dog" means an animal so matured as to be capable of doing injury to property (*ib.*, *per* Madden, J.).

**Neglect not wilful.**

"No penalty shall be exacted in any case where it shall appear to the satisfaction of the justice or justices that the person failing to comply with the provisions of this Act has not wilfully been guilty of such failure, but that such failure has been occasioned by accident: Provided always that such justice or justices shall forthwith order such person to take out a licence for the dog or dogs in his possession or custody, or otherwise comply with the provisions of this Act, and that such person shall forthwith comply with such order" (*Dogs Regulation (Ir.) Act, 1865*, s. 23).

**Production of licence.**

"Every person having in his possession or custody any dog or dogs shall produce the licence for such dog or dogs whenever so required by a justice of the peace, officer, head or other constable of constabulary, or of the Dublin metropolitan or other local police force; and in case of refusal he shall, if licensed, be liable to a penalty not exceeding five shillings" (s. 21).

**Procedure.**

Penalties under the Dogs Regulation (Ir.) Act, 1865, are recoverable in Dublin under the Dublin Police Acts, elsewhere under the Petty Sessions Act, 1851 (s. 22).

**Dangerous dogs.  
14 & 15 Vict.  
c. 92.**

"Any person who shall keep or suffer to be at large within fifty yards of any public road any dog without having such dog muzzled, or without having a block of wood fastened to the neck of such dog, of sufficient weight to prevent such dog from being dangerous, shall be liable to a

fine not exceeding ten shillings; and it shall be lawful for the justices of the petty sessions district to issue a warrant to any *sub-inspector, head or other*<sup>1</sup> constable, directing him to seize or kill any dangerous dog which shall be so kept near any public road contrary to the provisions of this Act, and such *sub-inspector, head or other constable*,<sup>1</sup> may, accordingly, seize or kill any such dog" (*Summary Jurisdiction Act, 1851, s. 10 (7)*).

"Any court of summary jurisdiction may take cognizance of a complaint that a dog is dangerous, and not kept under proper control, and if it appears to the court having cognizance of such complaint that such dog is dangerous, the court may make an order in a summary way directing the dog to be kept by the owner under proper control or destroyed, and any person failing to comply with such order shall be liable to a penalty not exceeding twenty shillings for every day during which he fails to comply with such order" (*Dogs Act, 1871, s. 2*).

"The local authority may, if a mad dog, or a dog suspected of being mad, is found within their jurisdiction, make, and when made vary or revoke, an order placing such restrictions as they think expedient on all dogs not being under the control of any person during such period as may be prescribed in such order throughout the whole of their jurisdiction, or such part thereof as may be prescribed in such order. Any person who acts in contravention of any order made in pursuance of this section shall be liable to a penalty not exceeding twenty shillings" (*Dogs Act, 1871, s. 3*).

"Due notice of such order shall be published at the expense of the local rate. The provisions in this Act contained as to the detention and sale or destruction of dogs found straying on the highway shall apply to dogs found at large in contravention of any order made in pursuance of this section" (*ib.*).

Penalties under this Act are recoverable in manner provided by the Summary Jurisdiction Acts (s. 4).

The local authority is:—in Dublin, and towns corporate, the corporation; in towns having commissioners, the commissioners; elsewhere, the justices for the petty sessions of the district (s. 5, sch.). Dangerous is not confined to "dangerous to mankind," so that the fact that a dog has attacked and killed sheep is evidence of its being "dangerous" within the section (*Williams v. Richards, (1907) 2 K.B. 88*). An order for destruction may be made without giving the owner the option of keeping the dog under control (*R. v. Dymock, (1901) 17 T.L.R. 593*). It is probable that an order to keep the dog under control should be in general terms, and should not specify the manner of control (see *R. v. Owen, (1907) 52 S.J. 132*). A dog having bitten a person, was sent by the owner, before the issuing of the information, out of the jurisdiction of the police court of the district, and was out of said jurisdiction at the hearing of the information. The justices found that the dog was the property of the defendant, that there had been no *bona fide* disposal of it, and made an order for its destruction. *Held*, that the fact that the dog was sent out of the jurisdiction of the particular court did not prevent the justices from making the order (*Lockett v. Withey, (1909) 25 T.L.R. 16*). A dog ran out of defendant's house and barked at two foals which were being driven along the road in charge of a man who held each of them by a halter. The foals broke loose and injured themselves. *Held*, that the defendant was not responsible under the section (*Campbell v. Wilkinson, (1909) 43 I.L.T.R. 237, Cir. Cas., Wright, J.*).

Where a dog is proved to have injured cattle or chased sheep, it may be dealt with under section 2 of the Dogs Act, 1871, as a dangerous dog (*Dogs Act, 1871, s. 2 (4)*).

<sup>1</sup> The words in italics now mean "district-inspector, head-constable, sergeant, acting sergeant, or constable."

Dangerous dogs.

34 & 35 Vict. c. 56.

Orders by local authority.

Dogs Act, 1906, 6 Ed. 7, c. 32.



**Dangerous Dogs.**

Towns Improvement Act, 1854, 17 & 18 Vict. c. 103.

Under the Towns Improvement Act, 1854, s. 72,<sup>1</sup> every person who suffers to be at large any unmuzzled ferocious dog, or sets on or urges any dog or other animal to attack, worry, or put in fear any person or animal, shall be liable to a fine not exceeding 10s.; every owner of any dog who suffers such dog to be at large, knowing or having reasonable ground for believing it to be in a rabid state, or to have been bitten by any dog or other animal in a rabid state, shall be liable to a fine not exceeding 10s.; every person who, after public notice given that dogs are to be confined, suffers any dog to be at large during the time specified in such notice, shall be liable to a fine not exceeding 10s. As to procedure see *TOWNS IMPROVEMENT, post*.

**Stray dogs.**

“(1) Where a police officer has reason to believe that any dog found in a highway or place of public resort is a stray dog, he may seize the dog and may detain it until the owner has claimed it and paid all expenses incurred by reason of its detention. (2) Where any dog so seized wears a collar having inscribed thereon or attached thereto the address of any person, or the owner of the dog is known, the chief officer of police, or any person authorized by him in that behalf, shall serve on the person whose address is given on the collar, or on the owner, a notice in writing stating that the dog has been so seized, and will be liable to be sold or destroyed if not claimed within seven clear days after the service of the notice. (3) A notice under this section may be served either—(a) by delivering it to the person on whom it is to be served; or (b) by leaving it at that person's usual or last-known place of abode, or at the address given on the collar; or (c) by forwarding it by post in a prepaid letter addressed to that person at his usual or last-known place of abode, or at the address given on the collar. (4) Where any dog so seized has been detained for seven clear days after the seizure, or, in the case of such a notice as aforesaid having been served with respect to the dog, then for seven clear days after the service of the notice, and the owner has not claimed the dog and paid all expenses incurred by reason of its detention, the chief officer of police, or any person authorized by him in that behalf, may cause the dog to be sold or destroyed in a manner to cause as little pain as possible. (5) No dog so seized shall be given or sold for the purposes of vivisection. (6) The chief officer of police of a police area shall keep, or cause to be kept, one or more registers of all dogs seized under this section in that area which are not transferred to an establishment for the reception of stray dogs. The register shall contain a brief description of the dog, the date of seizure, and particulars as to the manner in which the dog is disposed of, and every such register shall be open to inspection at all reasonable times by any member of the public on payment of a fee of 1s. (7) The police shall not dispose of any dog seized under this section by transferring it to an establishment for the reception of stray dogs, unless a register is kept for that establishment containing such particulars as to dogs received in the establishment as are above mentioned, and such register is open to inspection by the public on payment of a fee not exceeding 1s. (8) The police officer or other person having charge of any dog detained under this section shall cause the dog to be properly fed and maintained” (*Dogs Act, 1906, s. 3*).

6 Ed. 7, c. 32.

The expressions “chief officer of police,” and “police area,” respectively mean, as regards the Dublin metropolitan police district, the said district, and either of the commissioners of police thereof, and elsewhere the district inspector Royal Irish constabulary, and the district over which he is appointed (s. 9 (b)).

<sup>1</sup> The Act applies only to towns within the statute; see *TOWNS IMPROVEMENT, post*.

"Any person who takes possession of a stray dog shall forthwith either return the dog to its owner or give notice in writing to the chief officer of police of the district where the dog was found, containing a description of the dog, and stating the place where the dog was found, and the place where the dog is being detained, and any person failing to comply with the provisions of this section shall be liable, on conviction under the Summary Jurisdiction Acts, to a fine not exceeding 40s." (s. 4).

Stray Dogs.

"Any person who shall in any public road or street of a town set on or urge any dog or other animal to attack or worry any person, horse, or other animal"—*Penalty*, not exceeding 10s. (*Summary Jurisdiction (Ir.) Act*, 1851, s. 10 (1)). Like provisions in *Towns Improvement Act*, 1854, s. 72, see p. 492, *ante*.

Setting on dog.

Any person who shall knowingly and without reasonable excuse permit the carcase of any head of cattle (including horses, mules, asses, sheep, goats, and swine, see s. 7) belonging to him to remain unburied in a field or other place to which dogs can gain access shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding 40s. (*Dogs Act*, 1906, s. 6).

Burying carcase.

The Department of Agriculture and Technical Instruction for Ireland may make orders under the Diseases of Animals Act, 1894, s. 22, for the following purposes:—for prescribing the seizure, detention, and disposal (including the slaughter) of stray dogs, and of dogs not muzzled, and dogs not kept under control, and the recovery from the owners of the expenses incurred in respect of their detention; for prescribing and regulating the wearing by dogs, while in a highway or place of public resort, of a collar with the name and address of the owner inscribed on the collar, or on a plate or badge attached thereto, with a view to the prevention of worrying of cattle, for preventing any dogs or any class of dogs from straying during all or any of the hours between sunset and sunrise, as if that section included such purposes.<sup>1</sup>

Orders by Department of Agriculture. 57 &amp; 58 Vict. c. 57.

Such orders may provide that any dog in respect of which an offence is committed against the orders may be seized and treated as a stray dog (*Dogs Act*, 1906, ss. 22, 9 (a)). As to penalties for breach of such orders and procedure, see *ANIMALS, DISEASES OF*, *ante*.

A regulation made under the section provided that dogs should wear a collar, but exempted any pack of hounds or any dog while being used for sporting purposes. A farmer walked a foxhound puppy for a certain hunt, the dog having the initial letter of the hunt and the number of the litter marked on its ear. The dog was found on the highway without a collar. The dog belonged to the hunt, and was registered as one of the pack of hounds. *Held*, that as the dog belonged to the pack of hounds, the regulation did not apply (*Burton v. Atkinson*, (1908) 21 Cox 575; see also *Rasdall v. Coleman*, (1909) 25 T.L.R. 638).

As to the civil jurisdiction of justices under s. 1 of this Act to award compensation in respect of damages to cattle by dogs, see p. 167.

<sup>1</sup> Such orders, each applying to a particular county, have been made as regards several counties. For an example of such an order see the *Irish Law Times*, 1907, Appendix of Rules, p. 10.

## DRAINAGE.

	PAGE		PAGE
Opening drains, . . . . .	424	Assaulting commissioners, &c., . . . . .	425
Obstructing rivers, &c., . . . . .	424	Civil jurisdiction, . . . . .	425
Obstructing, &c., drains, . . . . .	425		

Opening  
drains, &c.  
5 & 6 Vict.  
c. 89, s. 132.

"If any person, other than such persons as are authorized by virtue of this Act, shall at any time draw or open any of the cloughs, sluices, or canals, which shall be made under the authority of this Act, or shall wilfully or maliciously let off the water of any of the said reservoirs, rivers, canals, or drains"—*Penalty*, not exceeding £20 (*Drainage (Ir.) Act, 1842, s. 132*).

Obstructing  
rivers, &c.  
s. 134.

"If any person shall throw or deposit any ballast, gravel, or other matter or thing, so as to interrupt or obstruct the free passage of water through, or the navigation of any of the rivers, streams, watercourses, or any of the cuts, sluices, or canals, which shall have been improved by the said commissioners under this Act, or shall, without the consent of the said commissioners, lay any ballast, gravel, stones, dirt, rubbish, lime, timbers, or clay, on any of the banks, locks, or trackways of any of the rivers, drains, canals, or side-cuts aforesaid, or if any person shall maliciously open any lock, sluice, dam, gate, or watercourse, belonging to the said navigation or drainage, or shall so leave any of the same open after any boat has passed, or otherwise maliciously mis-spend or waste the water of the said navigation, or shall raise any wall, building, or other obstruction in said drains, canals, rivers, or streams, without the consent in writing of the commissioners"—*Penalty*, not exceeding £10; obstructions may be forthwith removed by commissioners, and materials sold to defray cost of removal (s. 134).

19 & 20 Vict.  
c. 62

"If any person shall throw or deposit any ballast, gravel, or other matter or thing, so as to interrupt or obstruct the free passage of water or vessels into, through, or in any of the said navigations, or any of the cuts, sluices, or canals, or any of the off-branches, or shall, without the consent of the said trustees, lay any ballast, gravel, stones, dirt, rubbish, lime, timbers, or clay on any of the banks, locks, or trackways of any of the navigations aforesaid, or do any other damage to the said navigations, or any of them, or if any person shall maliciously open any lock, sluice, dam, gate, or watercourse, belonging to any of the said navigations, or shall so leave any of the same open after any boat has passed, or otherwise mis-spend or waste the water of any of the said navigations, every such person on summary conviction of any of the offences aforesaid shall be subject to a penalty not exceeding £10" (*Drainage (Ir.) Act, 1856, s. 34*).

Under the Drainage (Ireland) Act, 1856, trustees have power to make bye-laws for regulating the management, &c., of the works, &c., under their control, and to impose fines for offences against bye-laws (s. 32); the production of a written or printed copy of the bye-laws authenticated by the seal of the trustees to be evidence (s. 33); if any offence be continued after notice, it shall be considered a new offence, subject to a penalty not exceeding £5 a day (s. 35); penalty on persons assaulting trustees, officers, &c., in execution of the Act, not exceeding £5 (s. 36).

"If any person shall wilfully throw or place any stones, gravel, or other material in any stream, river, or watercourse, and thereby, or by any other means, create any obstruction in the free discharge of the waters therein, whereby the lands of any other person or persons may be flooded, or in any manner injured"—*Penalty*, not exceeding £5, to be paid



to person aggrieved in case of injury to private property; justices may direct removal of obstruction and include the expense of removal in their order as to costs; the section not to extend to a case where the person complained of acted under a fair reasonable supposition that he had a right to do the act complained of (*Drainage (Ir.) Act*, 1842, s. 152).

"Any person who wilfully obstructs any person making any drains or improvements in drains, in pursuance of this Act, and any person who wilfully dams up, obstructs, or in any way injures any drains or improvements in drains so opened or made, shall for each offence incur a penalty not exceeding £10, to be recovered in a summary manner before two or more justices at petty sessions" (*Land Drainage (I.) Act*, 1863, s. 13).

For procedure under this statute as to compulsory powers to enter lands for the purpose of the Act, see CIVIL JURISDICTION, p. 181, *ante*.

Assaulting commissioners or their servants, or wilfully destroying tools, &c.—*Penalty* not exceeding £5 (*Drainage Act*, 1842, s. 135).

As to civil jurisdiction of justices relating to drainage, see CIVIL JURISDICTION, p. 181, *ante*.

Obstructing the making of, or injuring, drains.  
26 & 27 Vict. c. 26, s. 13.

Assaulting commissioners, destroying tools, &c.

### DRUNKENNESS.

	PAGE		PAGE
Drunkenness in street, &c., . . .	425	Other offences, . . . . .	426
„ on licensed premises, . . .	426	Probation of offenders, . . .	426
Simple drunkenness triable of session, . . . . .	426	Habitual drunkards, . . . .	426

Person found drunk in any street, square, lane, roadway, or other public thoroughfare or place—*penalty*, 5s.—may be arrested and forthwith brought before justice of the peace (6 & 7 Wm. 4, c. 38, s. 12).

Drunkenness on any highway or other public place, whether a building or not, or on licensed premises—*Penalty*, first offence, not exceeding, 10s.; second conviction, within twelve months, 20s., third or subsequent conviction within twelve months, 40s. (*Licensing Act*, 1872, s. 12).<sup>1</sup> A person so drunk on any highway or public place whether a building or not as to be incapable of taking care of himself may be detained by a constable until he can with safety to himself be discharged<sup>2</sup> (*Licensing Act (Ireland)*, 1874, s. 25). Every person who, on any highway or other public place, whether a building or not, is guilty, while drunk, of riotous or disorderly behaviour; or who is drunk while in charge, on any highway, or other public place, of any carriage,<sup>3</sup> horse, cattle, or steam-engine; or who is drunk while in possession of any loaded firearms, may be apprehended, and is liable to a penalty not exceeding 40s., or imprisonment not exceeding one month (*Licensing Act*, (1872) s. 12). Every person drunk in any street, or guilty of any riotous or indecent behaviour in any street, police-office, or petty sessions court, or any police-station-house, within the town (i.e., a town

Drunkenness in street, public place, &c.  
6 & 7 Wm. 4, c. 38, s. 12.  
35 & 36 Vict. c. 94, s. 12.  
37 & 38 Vict. c. 69, s. 25.  
17 & 18 Vict. c. 103, s. 72 (30).

<sup>1</sup> A justice of the peace, district-inspector, or constable thereto authorized by justice, may enter and arrest persons found drunk in licensed premises during prohibited hours (6 & 7 Wm. 4, c. 38, s. 6). As to refusal to leave when required, see INTOXICATING LIQUOR.

<sup>2</sup> This section does not affect the power of a constable to bring such person before a justice under s. 12 of the Act of Wm. 4, *supra*, and a constable in practice does so bring a person whose name and address he does not know, or who is not likely to appear on summons.

<sup>3</sup> A carriage includes anything on which men or goods are carried. It consequently includes a pedal bicycle, as well as a motor-cycle or a motor car of any kind. (See Stroud, *Jud. Dict.*, *sub verb.*).

within the Act) is liable to a penalty not exceeding 40s., or imprisonment not exceeding seven days (*Towns Improvement (Ireland) Act, 1854*, s. 72). Half of the penalty shall go to the informer, and the other half to the commissioners (s. 92). A constable can prosecute under this section without obtaining the consent of the Attorney-General, and, on conviction, is entitled to half the penalty, the other half going to the town commissioners (*Coulter v. Martin*, (1887) I.R. 11 C.L. 477).

**Drunkenness  
cognizable  
out of session.**

A charge of simple drunkenness can be heard out of petty sessions (*Petty Sessions Act, 1851*, s. 8 (2)). As to Dublin, see DUBLIN METROPOLITAN POLICE DISTRICT.

**Drunkenness  
on licensed  
premises.**

As regards drunkenness on licensed premises, a customer, not being an inmate or lodger, who is drunk in a public-house after closing hour can be convicted under section 12 of the Licensing Act, 1872 (*R. v. Pelly*, (1897) 2 Q.B. 33). If a licensed person is drunk on his own premises while they are closed, he cannot be convicted under the section; but he can be convicted if drunk while the premises are open (*Lester v. Torrens*, (1877) 2 Q.B.D. 403). See also INTOXICATING LIQUOR.

**Other offences  
8 Ed. 7. c. 24.**

Drunkenness while in charge of any person or animal or vehicle, or in possession of any loaded firearm or dangerous instrument, tool, or article—Penalty, not exceeding 40s., or imprisonment, with or without hard labour, not exceeding one month (*Summary Jurisdiction (Ireland) Act, 1908*, s. 7). Owner or manager of any premises may require constable on duty to arrest and remove from such premises any person in his employment who is found drunk thereon (s. 8). Person found drunk in any place, whether a building or not, to which the public have access, whether on payment or not, or on any licensed premises, while in charge of a child, apparently under the age of seven years, may be apprehended, and shall, if the child is under that age, be liable to fine not exceeding 40s., or imprisonment, with or without hard labour, not exceeding one month (s. 9). If the child appears to the Court to be under seven, the onus of proving that it is over seven lies on the accused (*ib.*).

**Probation of  
offenders.  
7 Ed. 7.  
c. 17.**

The Probation of Offenders Act, 1907 (*verbatim*, APPENDIX OF STATUTES), authorizes a court of summary jurisdiction before whom an offence is proved to have been committed to (*inter alia*) release the offender conditionally on his entering into recognizances, with or without sureties, to be of good behaviour, and to appear for judgment when called on at such time, not exceeding three years, as may be specified in the order (s. 1). Such recognizance may contain certain additional conditions, including a condition as to abstention from intoxicating liquor, where the offence was drunkenness or an offence committed under the influence of drink (s. 2).

There is no power under the Act to order defendant to enter into a recognizance to abstain from intoxicating liquor unless the offence is one of drunkenness, or is committed under the influence of drink (*R. v. Davies*, (1909) 1 K.B. 892).

**Habitual  
drunkards.**

As to habitual drunkards, see "HABITUAL DRUNKARDS," *post*.

## EDUCATION.

	PAGE		PAGE
Irish Education Acts, . . . . .	427	Exceptions to prohibition of employ-	
Application of ss. 1-14 of the Irish		ment of children, . . . . .	430
Education Act, 1892, . . . . .	427	Exemptions, . . . . .	430
Duty of parent to send child to school,	427	Authority to prosecute, . . . . .	430
School attendance committee, . . . . .	428	Register, . . . . .	430
Attendance order and enforcement		Meaning of "parent," . . . . .	430
thereof, . . . . .	428	Forgery, false entries, and false in-	430
Prohibition of employment of chil-		formation, . . . . .	430
dren required to attend school, . . . . .	429	Procedure, . . . . .	430

The Acts governing the compulsory education of children in Ireland are the Irish Education Act, 1892, and the Irish Education Act, 1893, the latter being merely an amending Act. The two Acts are to be construed as one (s. 3 of the Act of 1893).

The first fourteen sections of the Act of 1892 apply to every place which is a municipal borough, for which place the council or commissioners are the local authority for the purposes of the Act (*Irish Education Act, 1892, s. 15 (1)*).

Any county council may by resolution,<sup>1</sup> and shall on application made by any rural district council with reference to their rural district, or any part thereof, apply the first fourteen sections of the Act to any part of their county, and thereupon the county council shall be, for the purposes of the Act, the local authority of the place to which it is so applied (*ib.*, s. 15 (2); *Local Government (Ir.) Act, 1898, s. 74 (1)*).

The Commissioners of National Education may, with such consent as is specified in s. 15 (3), apply the first fourteen sections of the Act to any area adjoining, but outside, a municipal borough, or town, or township under commissioners, whereupon they shall be carried out by the local authority and school attendance committee (see *post*) of the borough, town, or township that such area adjoins, until applied to such area by resolution of a council, as if such area were within such borough, town, or township (s. 15 (3)). A copy of the Dublin Gazette shall be conclusive evidence that such order was duly made and published in accordance with that subsection, and of the date and contents of such order (s. 15 (4)).

The first fourteen sections, so far as justices are concerned with them, are as follows :—

“(1) In every place to which this section applies, the parent<sup>2</sup> of every child not less than six nor more than fourteen years of age shall cause the child to attend school during such number of days in the year and for such time on each day of attendance as are prescribed in the first Schedule<sup>3</sup> to this Act unless there is a reasonable excuse for non-attendance. (2) Provided that a child over eleven years of age shall not be required to attend school if the child has received such certificate of his proficiency in reading, writing, and elementary arithmetic as is prescribed in the

**Duty of parent to send child to school.**

<sup>1</sup> It is submitted that this resolution will have to be proved by production of the original minute; but cf. *Leahy v. Reddy*, (1895) 1 I.W.L.R. 139.

<sup>2</sup> As to meaning of “parent,” see p. 430.

<sup>3</sup> This schedule is as follows :—“The number of attendances for the purposes of the first section of this Act shall be seventy-five complete attendances in each half year ending respectively the thirtieth day of June and the thirty-first day of December at any national or other efficient school.” No definition of the term “efficient school” is given. The question as to whether any school, other than a national school, that has been attended is or is not an efficient school, is a question of fact for the justices in each case.



Duty of  
parent to send  
child to  
school.

second schedule<sup>1</sup> to this Act. (3) Any of the following reasons shall be a reasonable excuse for non-attendance of a child: namely—(a) That there is not within two miles, measured according to the nearest road, from the residence of the child, any national school or other efficient school at which the child can attend, and to which the parent of the child does not object, on religious grounds, to send the child; (b) That the child has been prevented from attending school by sickness, domestic necessity, or by reason of being engaged in necessary operations of husbandry and the in-gathering of crops, or giving assistance in the fisheries, or other work requiring to be done at a particular time or season, or other unavoidable or reasonable cause; (c) That the child, being under seven years of age, lives at too great a distance from any national school, or other efficient school which he can attend, even though that distance is less than two miles; (d) That the child is receiving suitable elementary education in some other manner” (s. 1).

Truancy is apparently not an answer to an application under this section; but *may* afford a defence if it is sought to punish the parent under s. 4 (see *London County Council v. Hearn*, (1909) 73 J.P. 211, noted *infra*).

School  
attendance  
committee.

Attendance  
order, and  
enforcement  
thereof.

The appointment of a school attendance committee for every place to which the Act applies is provided for by s. 3.

“(1) If any parent who is required by this Act to cause his child to attend school makes default without reasonable excuse in so doing, the school attendance committee shall, after due warning<sup>2</sup> to the parent, make a complaint to a court of summary jurisdiction, unless they think that it is inexpedient to take such proceedings; and the court, if satisfied of the truth of the complaint, may make an order<sup>3</sup> (in this Act called an attendance order) that the child do attend, in accordance with the requirements of this Act, some national school or other efficient school, and, subject to the provisions of section 1 of this Act, the child shall attend some such school in such regular manner as is specified in the order. (2) If the school attendance committee have reason to believe that an attendance order<sup>4</sup> has not been complied with, and that there is not any reasonable excuse, within the meaning of this Act, for non-compliance therewith, they may make a further complaint to a court of summary jurisdiction, and thereupon, if the parent does not satisfy the court that the order has been complied with, or that he has used all reasonable efforts to comply therewith, the court may impose on him a fine not exceeding, including costs, 5s. (3) A complaint under this section with respect to a continuing non-compliance with an attendance-order shall not be repeated by the school attendance committee at any less interval than two months” (s. 4).

In *Belper School Attendance Committee v. Bailey*, (1882) 9 Q.B.D. 259, it was held, on the construction of a bye-law,<sup>5</sup> that there might be other reasonable excuses than those enumerated in the bye-law, and that truancy which the parent had used reasonable efforts to prevent was a “reasonable excuse.” In *Hewett v. Thompson*, (1889) 60 L.T. 268,

<sup>1</sup> This schedule is as follows:—“(2) A certificate of proficiency for the purposes of this Act shall be a certificate issued by the principal teacher of the school which the child has last attended of such proficiency in reading, writing, and elementary arithmetic as is now prescribed for the fourth class in the programme of instruction of the Commissioners, or such higher proficiency as may hereafter be prescribed by them.” The term “Commissioners” means Commissioners of National Education (56 & 57 Vict. c. 41, s. 2).

<sup>2</sup> It is advisable that this warning should be in writing. But this is not essential.

<sup>3</sup> It is submitted the order should bear a sixpenny stamp, as required by the Petty Sessions Act.

<sup>4</sup> Service of this order is not required.

<sup>5</sup> Providing that a parent should, under a penalty, send his child to school, unless there was a “reasonable excuse” for non-attendance, and then enumerating “reasonable excuses.”

decided on the construction of the English Elementary Education Act, 1876, 39 & 40 Vict. c. 79,<sup>1</sup> it was held that, to give the magistrate jurisdiction to order a boy to be sent to an industrial school under s. 12 of that Act, truancy was not a "reasonable excuse" within s. 11, "reasonable excuses" being limited to those specified in s. 11. In *London County Council v. Hearn*, (1909) 73 J.P. 211, the magistrate found that the irregular attendance of the child was not owing in any way to neglect on the part of the parent, but was due to truancy on the part of the child, and dismissed an application for an attendance order against the parent. *Held*, that the magistrate was wrong, and that the order should have been made. "I think the order ought to be made, mainly upon the ground that the object of the attendance order is to give control over the matter, so that if necessary in a proper case the parent may be fined, or that in a proper case where the parent is not at fault the child may be dealt with . . . I express no opinion as to what may be a proper or sufficient answer by the parent when there is a summons issued under s. 12, asking that he should be fined, and he desires to prove to the court that he has used all reasonable efforts to enforce compliance with the order. In my judgment, when a child is absent from the school so as to show that there is an habitual neglect to provide efficient elementary instruction under s. 11, construed as I have construed it, the magistrate ought to make an order for attendance . . . There may be the necessity for an attendance order being made in consequence of the child in fact not attending school, although it may be quite possible that if the parent is afterwards summoned under s. 12, he will have a good answer in so far as the personal punishment of himself is concerned" (*ib.*, per Lord Alverstone, C.J.). "It seems to me that if the parent appears and shows that he has done all that he reasonably could, having regard to all the circumstances, to get the child to go to school, then he could not be fined under s. 12, and if he does satisfy the court that, in the circumstances, the child is practically uncontrollable, and that he cannot prevent the truancy, then the section provides what is to be done" (*ib.*, per Walton, J.).

Attendance order and enforcement thereof.

There is no power to award costs under s. 4 (1), in respect of obtaining an attendance order (*Glasgow v. Henry*, (1907) 41 I.L.T.R. 245).

"(1) A person shall not, except as in this Act mentioned, take into his employment in any place to which this section applies, any child, except for the setting or planting potatoes, haymaking, or harvesting, (i) who is under the age of eleven years; or (ii) who, being of the age of eleven years or upwards, and less than fourteen years of age, has not obtained such certificate of his proficiency in reading, writing, and elementary arithmetic, as is prescribed in the second schedule<sup>2</sup> to this Act, unless the child is employed and is attending school in accordance with the [Factory and Workshop Acts, 1878 to 1891<sup>3</sup>], but no employer shall compel a child to attend a school to which its parent objects on

Prohibition of employment of children required to attend school.

<sup>1</sup> Sections 11 & 12 respectively of that Act are very similar to ss. 1 & 4 of the Irish Education Act, 1892, respectively.

<sup>2</sup> That is, a certificate issued by the principal teacher of the school which the child has last attended, of such proficiency in reading, writing, and elementary arithmetic, as is now prescribed for the fourth class in the programme of the Commissioners, or such higher proficiency as may hereafter be prescribed by them (schedule 2).

<sup>3</sup> These Acts have been repealed by the Factory and Workshop Act, 1901 (1 Ed. 7, c. 22), s. 161, except as regards certain sections of the Act of 1891 which did not deal with the attendance at school of children. But the provisions of the Factory and Workshop Acts, 1878 to 1891, as to the attendance at school of children have been, by force of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 38 (1), replaced (see p. 334, *ante*) by the provisions as to the attendance at school of children contained in ss. 68 & 69 (for which see APPENDIX OF STATUTES) of the Factory and Workshop Act, 1901. Consequently the words "Factory and Workshop Act, 1901," must now be read instead of the words "Factory and Workshop Acts, 1878 to 1891."



religious grounds. (2) If any person acts in contravention of this section, he shall be liable, on summary conviction, to a fine not exceeding 40s." (*Irish Education Act, 1892, s. 2*).

Exceptions to prohibition of employment of children.

"A person shall not be deemed to have taken a child into his employment in contravention of this Act, if it is proved to the satisfaction of the court having cognizance of the case either—(1) that during the employment there is not within two miles, measured according to the nearest road, from the residence of the child, any national school or other efficient school which the child can attend, subject to the provisions of section one of this Act; or (2) that the employment, by reason of being during the school holidays, or during the hours during which the school is not open, or otherwise, does not interfere with the efficient elementary instruction of the child, and that the child obtains such instruction by attendance, in accordance with the requirements of this Act, at a national school, or in some other equally efficient manner" (s. 5).

Exemptions.

"(1) Where the offence of taking a child into employment in contravention of this Act is in fact committed by an agent or workman of the employer, that agent or workman shall be liable to a fine as if he were the employer. (2) Where a child is taken into employment in contravention of this Act on the production by or with the privity of the parent of a false or forged certificate, or on the false representation of his parent that the child is of an age at which the employment is not in contravention of this Act, that parent shall be liable on summary conviction to a fine not exceeding 40s. (3) Where an employer, charged with taking a child into his employment in contravention of this Act, proves that he has used due diligence to enforce the observance of this Act, and either that some agent or workman of his employed the child without his knowledge or consent or that the child was employed either on the production of a forged or false certificate and under the belief in good faith in the genuineness and truth of the certificate, or on the representation by his parent that the child was of an age at which his employment would not be in contravention of this Act, and under the belief in good faith in the representation, the employer shall be exempt from any fine. (4) Where an employer satisfies the person about to institute a prosecution that he is exempt under this section by reason of some agent, workman, or parent being guilty, and gives all facilities in his power for proceeding against and convicting that agent, workman, or parent, proceedings shall be instituted against that agent, workman, or parent, and not against the employer" (s. 6).

Authority to prosecute.

"No legal proceedings for non-attendance or irregular attendance at school shall be commenced in a court of summary jurisdiction by any person on behalf of a school attendance committee, except by the direction of not less than three members of the said committee" (s. 8).

Register.

The keeping of registers by school attendance committees and national school teachers is provided for (s. 9).

Meaning of "parent."

"For the purposes of this Act the expression 'parent' shall include the guardian of a child, and every person who is liable to maintain or has the actual custody of the child" (s. 13).

A parent cannot evade his liability under the Act by allowing the child to live with some other person (*London School Board v. Jackson*, (1881) 7 Q.B.D. 502). The extension of the term "parent" to include "guardian" is intended to meet cases where there is no parent, and possibly cases where the child permanently resides away from its parent (*ib.*, *per* Pollock, B.).

Forgery, false entries, and false information.

"If any person forges or counterfeits any certificate which is by this Act made evidence of any matter, or gives or signs any such certificate which is, to his knowledge, false in any material particular, or knowing



any such certificate to be forged or counterfeit, makes use thereof, or makes or knowingly uses any false entry in any register kept in pursuance of this Act, he shall be liable on summary conviction to imprisonment for a period not exceeding three months, with or without hard labour" (s. 14).

"(1) For the purposes of this Act a court of summary jurisdiction shall be constituted of not less than two justices of the peace, or of a divisional justice of Dublin metropolis, and every judgment of such court imposing a penalty shall be subject to appeal. (2) Any justice of the peace may by summons require any parent of a child required under this Act to attend school to produce the child before a court of summary jurisdiction; and any person failing without reasonable excuse to the satisfaction of the court to comply with such a summons shall be liable on summary conviction to a fine not exceeding 20s. (3) A certificate purporting to be under the hand of the principal teacher of a national school, or other efficient school, stating that a child is or is not attending the school or stating the particulars of the attendance of a child at the school, shall be conclusive evidence of the facts stated in the certificate. (4) A certificate purporting to be under the hand of the dispensary medical officer of any district, stating that a child is ill, or that there is illness in the family of the child, or where the child resides, shall be conclusive evidence of the facts. (5) When a child is apparently of the age alleged by the complainant in the course of any proceedings under this Act, it shall lie on the defendant to prove that the child is not of that age. (6) Any person may appear in any proceedings under this Act by any member of his family or any other person authorized by him in this behalf. (7) A school attendance committee may appear in any such proceedings by any person appointed by them in that behalf" (s. 7).

Section 3 (5) provides that the expenses of the committee shall be defrayed out of the local rate, "but any revenue from penalties in the place or district shall be applied in relief of the local rate." These words do not authorize the justices to award the school attendance committee as complainants the entire of the penalty, but only such portion as can be awarded to them under section 13 of the Fines Act (Ireland), 1851, or the Petty Sessions (Ireland) Act, 1851, s. 22 (8), that is to say, a sum not exceeding one-third of the fine, the remainder being payable to the Crown (*R. (Co. Council of Dublin) v. Keating*, (1908) 2 I.R. 375).

## ELECTION OFFENCES.

Illegal practices<sup>1</sup> at Parliamentary elections are punishable on summary conviction—*Penalty*, not exceeding £100, and the offender is incapacitated for five years from being registered or voting as an elector within the county or borough in which the illegal practice was committed (*Corrupt and Illegal Practices (Prevention) Act*, 1883, s. 10). Any person charged with a corrupt practice may, if the circumstances warrant such finding, be found guilty of an illegal practice (which offence shall for that

Illegal practices at parliamentary elections. 46 & 47 Vict. c. 51.

<sup>1</sup> As regards elections, sections 7, 8, 9, 18, 21 (2), 28 (2), and 29 (2) (4) declare certain things to be "illegal practices"; sections 13, 15, and 16 declare certain payments to be "illegal payments"; sections 14 and 20 declare certain hirings to be "illegal hirings," and s. 17 declares certain forms of employment to be "illegal employments." Corrupt practices include bribery, treating, undue influence, personation, false declaration as to election expenses (s. 3). Corrupt intention is of the essence of a corrupt practice. A corrupt practice is a thing the mind goes with. An illegal practice is a thing the legislature is determined to prevent, whether it is done honestly or dishonestly (*Barrow-in-Furness*, (1886) 4 O'M. & H. 77, *per* Field, J.). Corrupt practices are not triable summarily.

purpose be an indictable offence); any person guilty of an illegal practice may be found guilty of that offence, notwithstanding that the act constituting the offence amounted to a corrupt practice (s. 52).

The offences of illegal payment, illegal employment, and illegal hiring are also punishable summarily by fine, not exceeding £100 (s. 21 (1)).

Prosecutions under the Act must be instituted within one year after the commission of the offence, or within three months after the report of the election commissioners, whichever last expires, so that in any event it be commenced within two years after the commission of the offence (s. 51 (1)). The Summary Jurisdiction Acts<sup>1</sup> are applicable, and a person aggrieved by any conviction may appeal (s. 54).

Like penalties, recoverable on summary conviction, with the like right of appeal, are enacted in respect of the like offences by the Municipal Election (Corrupt and Illegal Practices) Act, 1884, ss. 7, 17, 30 (as applied by various orders under the Local Government (Ir.) Act, 1898).

Illegal  
practices at  
municipal  
elections.  
47 & 48 Vict.  
c. 70.

### ELECTRICITY.

Adaptation of  
Gas Works  
Clauses Act,  
1847.  
45 & 46 Vict.  
c. 56, s. 12.

The Electric Lighting Act, 1882, s. 12,<sup>2</sup> incorporates the provisions of the Gas Works Clauses Act, 1847, 10 & 11 Vict. c. 15, with regard to the breaking up of streets for the purpose of laying pipes (namely, ss. 6-12), and with respect to waste or misuse of the gas or injury to the pipes and other works (namely ss. 18-20), and also ss. 38-42 and ss. 45 and 46 of the Gas Works Clauses Act, 1871, 34 & 35 Vict. c. 41, providing for the recovery of rents. See GAS.

Offences.

45 & 46 Vict.  
c. 56.

Injuring works with intent to cut off supply of electricity, felony, punishable with penal servitude not exceeding five years, nor less than three years or imprisonment with or without hard labour not exceeding two years (*Electric Lighting Act*, 1882, s. 22). Any person who maliciously or fraudulently abstracts, causes to be wasted or diverted, consumes or uses any electricity shall be guilty of simple larceny, and is punishable accordingly (s. 23). Non-compliance with Board of Trade requirements as to the removal of electric line or work—*Penalty* £20, and the court may order the removal of the line or works (*Electric Lighting (Clauses) Act*, 1888, s. 4 (3)).

51 & 52 Vict.  
c. 12, s. 4 (3).

### EMBEZZLEMENT.

As to what constitutes the offence of embezzlement, see CATALOGUE OF INDICTABLE OFFENCES, "EMBEZZLEMENT."

All the provisions of the Criminal Justice Act, 1855, shall extend and be applicable to the offence of embezzlement by clerks and servants (*Larceny Act*, 1868, s. 2); so that, therefore the provisions as to jurisdiction and procedure in certain cases of larceny conferred by the Act of 1855 are applicable, *mutatis mutandis*, to embezzlement. See LARCENY.

31 & 32 Vict.  
c. 116.

### EXCISE OFFENCES.

For procedure in EXCISE OFFENCES, see p. 79, *ante*.

<sup>1</sup> As to which see p. 335.

<sup>2</sup> See further amending Acts, *Electric Lighting Act*, 1888, 51 & 52 Vict. c. 12; *Electric Lighting (Clauses) Act*, 1899, 62 & 63 Vict. c. 19; and *Electric Lighting Act*, 1909, 9 Ed. 7, c. 34.

## EXPLOSIVES.

	PAGE		PAGE
Explosives Act, 1875, . . . .	433	Other explosives, . . . .	434
Gunpowder—		Administration, . . . .	434
Manufacture, . . . .	433	Legal proceedings, . . . .	435
Retail dealing, . . . .	433	Local authority, . . . .	435
Sale of, . . . .	433	Indictable offence, . . . .	435
Conveyance, . . . .	434		

The Explosives Act, 1875, and Orders in Council and Home Office orders made thereunder contain numerous provisions with regard to the manufacture, storing, conveyance, and sale of gunpowder and other explosives. The following are included in the term “explosives”:—gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting-powders, fulminate of mercury, or of other metals, coloured fires, and every other substance, whether similar to those above mentioned or not, used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect, including fog-signals, fireworks, fuses, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined (s. 3); to which are added, by orders made in pursuance of s. 104 of the Act, picric-acid, picrates, and acetylene. Section 104 authorizes the extension, by Order in Council, of the definition of explosive to other explosives, and s. 106 the definition and classification, by order in Council, of explosives. No objection can be made to the legality of any order in Council, or order of Secretary of State, purporting to be made in pursuance of the Act (s. 83). Bye-laws, notices, and documents shall, save where otherwise provided, be published in the places affected by advertisement, or by placards or handbills, as the Secretary of State may direct (s. 84).

To be manufactured only at factory lawfully existing, or factory licensed under the Act (s. 4); application for licence, with sanction of Secretary of State, to local authority (ss. 6–8); rules and regulations of factories and magazines (ss. 9–11); supplemental (ss. 12, 13); existing factories (s. 14).

Gunpowder, except for private use, to be kept only in (a) factory; (b) magazine or store, either lawfully existing or licensed under the Act; or (c) premises registered under the Act for keeping gunpowder. This section not to apply to a person keeping for private use an amount not exceeding 30lb.; or the keeping of gunpowder by a carrier or other person for the purpose of conveyance in accordance with the provisions as to conveyance. *Penalty*—forfeiture of gunpowder, and fine not exceeding 2s. for every pound of gunpowder illegally stored (s. 5).

A licence for storing may be granted in accordance with the provisions of Order in Council made in pursuance of Act (s. 15). General rules for stores, store licences, and for workmen (ss. 17, 19). Form and renewal of store licence, not to be transferable (s. 18). Application to existing stores (s. 20).

Premises to be registered with local authority (s. 21), and to be subject to certain rules (s. 22); precautions against fire (s. 23); explanation as to quantities of gunpowder allowable (ss. 24, 25, 27); fees for licences (s. 26); register of store licences and registered premises to be kept by local authority (s. 28); provision in case of death of occupier (s. 29).

“Gunpowder shall not be hawked, sold, or exposed for sale upon any highway, street, public thoroughfare, or public place”—*Penalty*, not exceeding 40s. and forfeiture (s. 30). Gunpowder shall not be sold to any

General provisions of Explosives Act, 1875. 38 & 39 Vict. c. 17.

Gunpowder.

Manufacture.

Storing.

Retail dealing.

Sale of gunpowder.



**Gunpowder.** child apparently under the age of thirteen years—*Penalty*, not exceeding £5 (s. 31).

"All gunpowder exceeding 11lb. in weight, when publicly exposed for sale or sold, shall be in a substantial case, bag, canister, or other receptacle, made and closed so as to prevent the gunpowder from escaping, and (except when the same is sold to any person employed by or on the property occupied by the vendor for immediate use in the service of the vendor or on such property), the outermost receptacle containing such gunpowder shall have affixed the word 'Gunpowder' in conspicuous characters, by means of a brand, or securely attached label, or other mark"—*Penalty*, not exceeding 40s., and forfeiture of gunpowder (s. 32).

No gunpowder shall be sold within a town<sup>1</sup> by candle or other artificial light—*Penalty*, not exceeding £1. No person shall keep at any time more than 10lb. of gunpowder, except by special permission of the commissioners, signed by the chairman and two commissioners, and subject to regulations—*Penalty*, for first offence, not exceeding £1; for second offence, not exceeding £3; for the third, or any subsequent offence, not exceeding £5, besides the forfeiture of the gunpowder (*Towns Improvement Act*, 1854, s. 56).

17 & 18 Vict.  
c. 103.

Conveyance of  
gunpowder.

General rules as to packing of gunpowder for conveyance (*Explosives Act*, 1875, s. 33); bye-laws by harbour authority (s. 34); bye-laws by railway and canal company (s. 35); bye-laws as to wharves (s. 36); bye-laws by Secretary of State as to conveyance by road or otherwise, or loading of gunpowder (s. 37); confirmation and publication of bye-laws (s. 38).

Other  
explosives.  
Administra-  
tion of law.

Part I of the Explosives Act of 1875 is applied to other explosives, with certain modifications (ss. 39-51).

Inspectors may be appointed by Secretary of State (s. 53), who shall have power to enter and inspect factories, registered premises, and to require samples—*penalty*, not exceeding £100 (s. 55); and serve notice to remedy dangerous matters—*penalty*, not exceeding £20 a day for non-compliance; with arbitration clause (s. 56); other provisions as to powers and duties of government inspectors (ss. 57-62). Notice of accidents to be given by occupier of factory or premises to the Secretary of State—*Penalty*, not exceeding £20 (s. 63); reconstruction of buildings destroyed by accident (s. 64); duty and power of coroner to adjourn inquest unless inspector, or some person on behalf of the Secretary of State, is present to watch the proceedings, the coroner to send four days' notice of an inquest to Secretary of State (s. 65); special inquiry, by directions of Secretary of State, into explosions, and formal investigation in serious cases (s. 66); undertaking of carriage by harbour authority and canal company (s. 71); provision of magazines by local authority (s. 72); powers of search to government inspector, and constable or officer of local authority when authorized by justices' warrant, or, in case of emergency, by written order from superintending officer or inspector of police (s. 73); seizure and detention of explosives liable to forfeiture (s. 74); inspection of wharf, carriage, boat, &c., with explosives in transit (s. 75); right of inspector to get samples on tender of reasonable sum (s. 76); *penalty*, not exceeding £5, on, and removal of, trespassers from factories and stores, and *penalty*, not exceeding £50 on trespasser doing acts likely to cause fire, etc. (s. 77); arrest without warrant of person committing dangerous offence (s. 78); *imprisonment* for wilful act or neglect endangering life or limb (s. 79); throwing fireworks in thoroughfare—*penalty*, not exceeding £5 (s. 80); forgery and falsification of documents—*penalty*, imprisonment with or without hard labour, not

<sup>1</sup> That is a town within the Towns Improvement Act.

exceeding two years (s. 81); defacing notice—*penalty*, not exceeding £2 (s. 82); provisions as to Orders in Councils and Orders of Secretary of State, publication of bye-laws, notices &c. (ss. 83–86).

Exemption of occupier from penalty upon proof of another being real offender (s. 87); of owner and master of ship where consignee, &c., in default (s. 88); supplemental provisions as to forfeiture of explosive (s. 89); jurisdiction in tidal-waters or boundaries (s. 90). Every offence under the Act may be prosecuted either on indictment or before a court of summary jurisdiction in manner directed by the Summary Jurisdiction Acts, provided that the penalty imposed by a court of summary jurisdiction shall not exceed £100, exclusive of costs, and exclusive of any forfeiture, or penalty in lieu of forfeiture, and the term of imprisonment shall not exceed one month (s. 91). A court of summary jurisdiction may prohibit the doing of a thing for which the offender has been twice convicted—*Penalty* on breach, imprisonment not exceeding six months (*ib.*). Where the penalty for which the offence charged is liable exceeds £100, the accused may elect to be tried on indictment (s. 92). Right of appeal is given where the sum adjudged to be paid, including costs, and including the value of any forfeiture, exceeds £20, the appeal to be in manner provided in respect of appeals in larceny cases by s. 110 of the Larceny Act, 1861 (s. 93).<sup>1</sup> Court of summary jurisdiction to be constituted of two or more justices of the peace (s. 94).

Legal proceedings.

In the application of the Act to Ireland, the “local authority” shall be, in Dublin, the town council (s. 116 (1)), in an urban sanitary district, the urban district council (s. 116 (2)); *Local Government (Ireland) Act*, 1898, s. 22 (1)<sup>2</sup>; in any harbour within the jurisdiction of a harbour authority, the harbour authority (s. 116 (3)), elsewhere the county council (s. 116 (4)); *Local Government (Ireland) Act*, 1898, s. 6 (c.).<sup>3</sup>

Local authority in Ireland.

As to Indictable Offences in connection with Explosives, see CATALOGUE OF INDICTABLE OFFENCES.

Indictable offences.

## FACTORIES AND WORKSHOPS.

See also LAUNDRY, SHOP HOURS, MASTER AND SERVANT.

The law relating to factories and workshops is laid down by the Factory and Workshop Act, 1901, and by the Factory and Workshop Act, 1907 (relating to laundries and other institutions). These statutes, with notes, are printed *verbatim*, APPENDIX OF STATUTES.

1 Ed. 7,  
c. 22.  
7 Ed. 7,  
c. 39.

## FAIRS AND MARKETS.

Boards specifying customs, duties, or tolls shall be erected at fairs, markets, and ports (*Tolls (Ir.) Act*, 1817, s. 1). Levying tolls without having such boards erected—*Penalty*, 40s. (s. 2). Defacing or removing such boards—*Penalty*, £5 (s. 4). Penalties under the Act recoverable before two justices of the peace (s. 5). Appeal against conviction to quarter sessions (s. 6).

Toll Boards  
57 Geo. 3,  
c. 108.

<sup>1</sup> That is, to the next quarter sessions held not less than twelve days after the conviction, notice to be given within three days after conviction, and seven clear days before the sessions, appellant to enter into recognizances.

<sup>2</sup> For enumeration of urban sanitary districts, see Vanston's “Law of Municipal Towns.”

<sup>3</sup> The power to appoint an Explosives Officer, formerly vested in justices at petty sessions, ceases by virtue of the *Local Government (Ireland) Act*, 1898, s. 6 (c).

As to disputes arising at fairs and markets, see CIVIL JURISDICTION, p. 160.

As to weighing of cattle at fairs and markets, see WEIGHTS AND MEASURES.

### FALSE ALARM OF FIRE.

58 & 59 Vict.  
c. 28.

Any person knowingly giving or causing to be given a false alarm of fire to the fire brigade of any town or parish outside the metropolitan area,<sup>1</sup> or to any officer thereof, whether by means of a street fire alarm, statement, message, or otherwise—*Penalty*, not exceeding £20 (*False Alarms of Fire Act*, 1895, s. 1). The defendant and wife of the defendant are competent but not compellable witnesses (s. 2.)

### FERTILIZERS AND FEEDING STUFFS.

6 Ed 7. c. 27. See Fertilizers and Feeding Stuffs Act, 1906, APPENDIX OF STATUTES.

### FINANCE (1909-10) ACT, 1910.

Particulars  
on transfer or  
lease.

“It shall be the duty of the transferor or lessor, on the occasion of any transfer or sale of the fee-simple of any land or of any interest in land or on the grant of any lease of any land for a term exceeding fourteen years, to present to the Commissioners, in accordance with regulations made by them, the instrument by means of which the transfer or the lease is effected or agreed to be effected, or reasonable particulars thereof, for the purpose of assessment of duty thereon”—*Penalty*, in default, not exceeding £10 and interest at 5 per cent. on duty; appeal to quarter sessions from any conviction or order (*Finance (1909-10) Act*, 1910, s. 4 (2)).

10 Ed. 7, c. 8,  
s. 4 (2).

Valuation of  
licensed  
premises.

“The licence-holder and any person interested in licensed premises shall, if required by the Commissioners, make a return in such form and containing such particulars as the Commissioners may properly require for the purpose of the ascertainment under this section of the annual value or the annual licence value of the premises, and if any person fails to make such a return within the time, not being less than thirty days, specified in the notice requiring the return, he shall be liable on summary conviction to a fine not exceeding £20” (s. 44 (3)).

Making false  
statement or  
represent-  
ation.

10 Ed. 7, c. 8,  
s. 94.

“If any person, for the purpose of obtaining any allowance, reduction, rebate, or repayment in respect of any duty under this Act, either for himself or for any other person, or in any return made with reference to any duty under this Act, knowingly makes any false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding six months with hard labour” (s. 94).

<sup>1</sup> That is the London Metropolitan area.



## FISHERY LAWS.

	PAGE		PAGE
Acts relating to summary jurisdiction, . . . . .	437	Illegal methods of taking fish:—	
Procedure—		Taking salmon or trout in eel-	
Generally, . . . . .	438	weirs, . . . . .	444
Costs, . . . . .	438	Illegal nets, . . . . .	444
Appeal, . . . . .	438	Taking fish in weirs, &c., . .	445
Conservators adjudicating, .	438	Watercourses and millraces, .	446
Limits of jurisdiction, . . .	438	Queen's Gap, . . . . .	446
Application of penalties, . .	438	Boxes and cribs, . . . . .	447
Who may prosecute, . . . . .	439	Fixed nets, . . . . .	447
Poaching, . . . . .	439	Unseasonable, &c., fish:—	
Rating of fisheries, . . . . .	440	Unseasonable fish, . . . . .	448
Licences:—		Fry and spawn, . . . . .	448
When required, . . . . .	441	Undersized pollen, . . . . .	448
Using net, engine, &c., without		Close seasons:—	
licence, . . . . .	441	Annual close season, . . . . .	448
Angling without licence, . .	441	Weekly close season, . . . . .	449
Misusing or counterfeiting licence,	441	Export of unseasonable salmon,	450
Nonproduction of licence, . .	442	Times for setting nets, . . .	450
Using fixed engine for capture of		Offences as to boats, . . . . .	450
salmon without certificate, .	442	Obstructing the fishermen, bailiffs,	
Bye-laws, . . . . .	442	&c., . . . . .	451
Illegal methods of taking fish:—		Powers of bailiffs and constabulary	
Poisoning, &c., rivers, . . .	442	to search, &c., . . . . .	451
Using explosives, . . . . .	443	Forfeiture of illegal nets, &c., .	452
Taking salmon, trout, &c., at		Trawling, . . . . .	453
night, . . . . .	443	Steam trawling, . . . . .	453
Otters, spears, . . . . .	443	Landing and selling fish illegally	
Gaffs, . . . . .	443	trawled, . . . . .	454
Cross-lines, . . . . .	444	Oysters, . . . . .	454
		Mussels, periwinkles and cockles, .	455
		Crabs and lobsters, . . . . .	455

The Acts relating to summary jurisdiction as to fisheries in Ireland are as follows:—

Acts relating  
to summary  
jurisdiction.

The Fisheries (Ir.) Acts, 1842, 1844, 1845, 1848, and 1850 (5 & 6 Vict. c. 106; 7 & 8 Vict. c. 108; 8 & 9 Vict. c. 108; 11 & 12 Vict. c. 92, and 13 & 14 Vict. c. 88); the Salmon Acts Amendment Act, 1863 (26 Vict. c. 10); the Salmon Fishery (Ir.) Act, 1863 (26 & 27 Vict. c. 114); the Oyster Beds (Ir.) Act, 1866 (29 & 30 Vict. c. 88); the Oyster Fishery (Ir.) Amendment Act, 1866 (29 & 30 Vict. c. 97); the Salmon Fishery (Ir.) Act, 1869 (32 Vict. c. 9); and the Fisheries (Ir.) Act, 1869 (32 & 33 Vict. c. 92) (all of which Acts are to be construed as one—see s. 20 of the Act of 1869); the Salmon Acts Amendment Act, 1870 (33 & 34 Vict. c. 33), which amends the Salmon Fishery (Ir.) Act, 1863; the Pollen Fishing (Ir.) Act, 1881 (44 & 45 Vict. c. 66), which extends the provisions of the Fisheries (Ir.) Act, 1869; the Oyster Cultivation (Ir.) Act, 1884 (47 & 48 Vict. c. 48); the Steam Trawling (Ir.) Act, 1889 (52 & 53 Vict. c. 74); the Pollen Fisheries (Ir.) Act, 1891 (54 & 55 Vict. c. 20), which (see s. 2) is to be construed as one with the Salmon Fishery Acts in force in Ireland at the date of its being passed, that is to say with the Acts above enumerated; the Fishery (Ir.) Act, 1888 (51 & 52 Vict. c. 30), extending the powers of fishery inspectors under s. 91 of the Fisheries (Ir.) Act, 1842; the Mussels, Periwinkles, and Cockles (Ir.) Act, 1898 (61 & 62 Vict. c. 28), which, by s. 1, incorporates the procedure sections of the Act of 1842 and the other Acts to be read as one with that Act; the Fisheries (Ir.) Act, 1901 (1 Ed. 7, c. 38).<sup>1</sup>

<sup>1</sup> The Larceny Act, 1861, also creates certain offences as to poaching; see p. 440, *post*. The procedure will be regulated by the Petty Sessions Act. See also the Trawling in Prohibited Areas Prevention Act, 1909, noted p. 454, *post*, which creates a new offence under the Customs Consolidation Act, 1876, and the Whale Fisheries (Ir.) Act, 1908, in

Procedure.  
Generally.  
Costs.

The procedure under the above statutes is regulated by the Summary Jurisdiction (Ir.) Acts,<sup>1</sup> with the following variations:—

The justices may award to the successful party the costs, charges, and expenses<sup>2</sup> of and incidental to the proceedings, without limiting themselves to the maximum of 20s. fixed by s. 22 of the Petty Sessions Act (*Fisheries (Ir.) Act*, 1842, s. 94; *Fisheries (Ir.) Act*, 1850, s. 54; *Hosford v. Devine*, (1898) 2 I.R. 28; *B. (Coleman) v. Pettit*, (1902) 2 I.R. 1).

Appeal.

Besides the ordinary right of appeal given to a defendant under s. 24 of the Petty Sessions Act,<sup>3</sup> the following special rights of appeal are given:—

(a) An unsuccessful complainant can appeal, the appeal to be taken in manner provided by s. 24 of the Petty Sessions Act, and the amount of the recognizance to be such as to the justices shall seem reasonable (*County Officers and Courts (Ir.) Act*, 1877, s. 74).<sup>4</sup>

(b) Probably the right of appeal to the judge of assize given by the *Fisheries (Ir.) Act*, 1850, s. 51 (read along with the *Fisheries (Ir.) Act*, 1842, s. 99, now repealed, but in force in 1850), to any person aggrieved by any judgment, order, proceeding, or conviction in respect of any fixed net, weir, or engine may still be availed of. Apart from this enactment no right of appeal exists from any order for the abatement or forfeiture of an alleged illegal engine, unless such order imposes a penalty exceeding 20s., or unless it were to be held that an order<sup>5</sup> that the engine should be removed at the expense of the offender was, on the facts of any particular case, an order within the meaning of s. 24 of the Petty Sessions Act “for the doing of anything at a greater expense than 40s.” It has been suggested (see, for instance, the *dictum* of Gibson, J., in *R. (Alton) v. McAuliffe*, (1894) 2 I.R. 127) that a judge of assize has not now jurisdiction to hear such an appeal; but in *R. (Alton) v. McAuliffe*, *supra*, as well as in *Doran v. Cunningham*, (1887) 20 L.R.I. 544, and in *McAuliffe's Case* (Clare Spring Assizes, 1890, before Lord O'Brien, L.C.J.), such appeals, without objection being taken, were heard at assizes.

Right of  
conservators  
to adjudicate.

A justice who is also a conservator is not *ipso facto* disqualified from adjudicating (*Fisheries (Ir.) Act*, 1842, s. 11); but if he has been present at the meeting of conservators at which the prosecution was directed, or has taken any active steps in the matter, he should not sit (*R. v. Henley*, (1892) 1 Q.B. 504, noted, with other cases on bias, at p. 222, *ante*).

Limits of  
jurisdiction.

Where any offence is committed on a lake or river forming the boundary between two petty sessions districts, such offence may be prosecuted in either district (*Fisheries (Ir.) Act*, 1850, s. 47). And as regards offences under those Acts that are committed at sea, justices of counties adjoining the sea coast or any of the estuaries thereof have jurisdiction as if such offences were committed on land within the jurisdiction of such justices (*Fisheries (Ir.) Act*, 1842, s. 96; *Fisheries (Ir.) Act*, 1901, s. 1 (5)).

Application of  
penalties.

All fines, penalties, and forfeitures (with the exception of those under the Oyster Cultivation (Ir.) Act, 1884, and the Steam Trawling (Ir.) Act,

<sup>1</sup> For meaning of which see p. 335.

<sup>2</sup> Which should be ascertained by the justices and specified in the Order, see p. 68, n. 4, *ante*.

<sup>3</sup> As to which see p. 133, *ante*. It is submitted that the words in said section, “the doing of anything at a greater expense than 40s.,” do not include the forfeiture or destruction of a net, &c., value for more than 40s. (see p. 132, *ante*).

<sup>4</sup> The *Fisheries (Ir.) Act*, 1850, s. 52, gave a complainant under the Acts in Class I a right of appeal to the judge of assize. The cases provided for by this enactment have been expressly provided for by s. 74 of the *County Officers and Courts (Ir.) Act*, 1877, *supra*; no case of such an appeal having been heard at assizes since 1877 has been discovered; and it is probable that such appeals are not now triable at assizes.

<sup>5</sup> For instance, under s. 3 of the *Fisheries (Ir.) Act*, 1845.

1889) are to be applied as follows:—One-third of each fine, &c., “shall be paid to the person who shall be the means of bringing to justice any person committing any offence against any of the provisions” of those Acts (which, it may be argued, does not necessarily mean the informer or person in whose name the prosecution is brought)—such person to be named by the justices in their order (*R. (Quinn) v. Tyrone JJ.*, (1905) 39 I.L.T. & S.J., p. 166; Paley, 8th ed., p. 304), and the remaining two-thirds shall be paid to the conservators of the district where the offence is committed, or their authorized officer, and is to be applied for the purpose of those Acts for such district (*Fisheries (Ir.) Act*, 1869, s. 19).

Procedure.

The application of penalties under the Oyster Cultivation (Ir.) Act, 1884, is governed by section 13 of that Act, under which the court may direct that same may be paid or delivered to the grantees of the fishery, to be applied by them for the improvement and cultivation of the fishery. Penalties and the proceeds of forfeitures under the Steam Trawling (Ir.) Act, 1889, as amended by the Fisheries (Ir.) Act, 1901, are payable to the Department of Agriculture and Technical Instruction for Ireland (*Act of 1901*, s. 1 (4)).

Excepting offences under the Fisheries (Dynamite) Act, 1877, the Steam Trawling (Ir.) Act, 1889, the Oyster Cultivation (Ir.) Act, 1884, and the Fisheries (Ir.) Act, 1901, it is clear that any person can prosecute as a common informer for any offence under the above statutes (*R. (Gibson) v. Fermanagh JJ.*, (1897) 2 I.R. 603; *Midleton v. Gale*, (1838) 8 A. & E. 155).

Who may prosecute.

It is submitted that a common informer can prosecute for an offence under the Fisheries (Dynamite) Act, 1877; and it is also submitted that, as regards offences under the Steam Trawling (Ir.) Act, 1889, and Fisheries (Ir.) Act, 1901, which seem to be of a public nature,<sup>1</sup> a common informer can prosecute notwithstanding that by the Fisheries (Ir.) Act, 1901, s. 1 (4), the penalties under these statutes go to the Department of Agriculture. As to offences under the Oyster Cultivation (Ir.) Act, 1884, the matter seems more doubtful; but probably under that Act also a common informer would be held entitled to prosecute.

A person may prosecute as a common informer, though he has not been an eye-witness of the matter alleged in the complaint (*M'Cormack v. Carroll*, (1911) 45 I.L.T.R. 7, in which case the prosecution was brought by a fishery inspector in respect of an offence committed outside his district, and not in his presence).

The following are the principal offences under the Fishery (Ireland) Acts, triable at petty sessions:—

“If any person shall kill, take, or destroy any . . . fish in or out of any pond, private canal, or reservoir wherein the same are kept, and wherein he has no property, without the consent or licence of the owner of such pond,” etc.—*Penalty*, not exceeding £10 (*Fisheries (Ir.) Act*, 1842, s. 79).

Poaching.

“If any person or persons shall enter upon any lands or premises for the purpose or under the pretence of fishing or angling in any lake, river, stream, pond, or water without authority in writing from the proprietor or occupier”—*Penalty*, not exceeding £2 (s. 71).

“If any person or persons not being authorized by the owner, lessee, or occupier of a several fishery<sup>2</sup> . . . shall enter into or upon such several

<sup>1</sup> See p. 44, *ante*.

<sup>2</sup> “Several fisheries” shall mean and include all fisheries lawfully possessed and enjoyed as such under any title whatsoever, being a good and valid title at law, exclusively of the public, by any person or persons, whether in navigable waters or in waters not navigable, and whether the soil covered by such waters be vested in such person or persons, or in any other person or persons” (13 & 14 Vict. c. 88, s. 1).



**Poaching.**

fishery for the purpose or under the pretence of killing fish therein or taking fish therefrom, or shall kill fish therein or take fish therefrom"—*Penalty*, not less than 10s. or more than £5" (*Fisheries (Ir.) Act*, 1848, s. 41).

A prosecution was brought under this section, and the justices ordered the defendant's nets to be forfeited, which was not authorized by this section, but might have been ordered had the proceedings been brought under the *Fisheries (Ir.) Act*, 1842, s. 22. The conviction was quashed (*R. (O'Sullivan) v. Kerry JJ.*, (1901) 1 N.I.J.R. 180).

Taking fish in any water situate in land belonging to a dwelling-house.

In a private fishery elsewhere.

"Whosoever shall unlawfully and wilfully take or destroy any fish in any water which shall run through or be in any land adjoining or belonging to the dwelling house of any person being the owner of such water, or having a right of fishery therein, shall be guilty of a misdemeanour; and whosoever shall unlawfully and wilfully take or destroy, or attempt to take or destroy, any fish in any water not being such as hereinbefore mentioned, but which shall be private property, or in which there shall be any private right of fishery, shall, on conviction thereof before a justice of the peace, forfeit and pay, over and above the value of the fish taken or destroyed (if any), such sum of money, not exceeding five pounds, as to the justice shall seem meet: Provided, that nothing hereinbefore contained shall extend to any person angling between the beginning of the last hour before sunrise and the expiration of the first hour after sunset; but whosoever shall by angling between the beginning of the last hour before sunrise and the expiration of the first hour after sunset unlawfully and wilfully take or destroy, or attempt to take or destroy, any fish in any such water as first mentioned, shall, on conviction before a justice of the peace, forfeit and pay any sum not exceeding five pounds, and if in any such water as last mentioned, he shall, on the like conviction, forfeit and pay any sum not exceeding two pounds as to the justice shall seem meet" (*Larceny Act*, 1861, s. 24).<sup>1</sup>

Seizure of tackle.

"If any person shall at any time be found fishing against the provisions of this Act, the owner of the ground, water, or fishery where such offender shall be so found, his servant, or any person authorized by him, may demand from such offender any rod, line, hook, net, or other implement for taking or destroying fish which shall then be in his possession, and in case such offender shall not immediately deliver up the same, may seize and take the same from him for the use of such owner: Provided, that any person angling<sup>2</sup> against the provisions of this Act, between the beginning of the last hour before sunrise and the expiration of the first hour after sunset, from whom any implement used by anglers shall be taken, or by whom the same shall be so delivered up, shall by the taking or delivering thereof be exempted from the payment of any damages or penalty for such angling;" (*ib.*, s. 25.)

Rating of fisheries.

By the *Fisheries (Ir.) Act*, 1848, ss. 23, 24, 25, 26, and the *Fisheries (Ir.) Act*, 1850, s. 7, all salmon, trout, and eel fisheries rated for the relief of the poor are subject to an annual rate (in addition to the licence duty paid for the engines used in fishing such fishery) equal to the amount of the difference between the sums paid for such licence duty, and ten per cent. on the poor law valuation of the fishery, such rate to be paid by the person using, occupying, or holding such fishery, whether such occupation and holding shall be by lease, demise, agreement, or tenancy at will, or in fee simple, fee tail, or for life, in two equal half-yearly gales on every 1st February and 1st July. The rate may be recovered in a summary way before a justice in like manner as wages

<sup>1</sup> This Act is not one of the Fishery Acts. The procedure, right of appeal, etc., are governed by the Petty Sessions Act.

<sup>2</sup> "Angling" does not include night-line fishing (*Barnard v. Roberts*, (1907) 23 T.L.R. 439).

(see 14 & 15 Vict. c. 92, s. 16, p. 156), at the suit of the Department of Agriculture,<sup>1</sup> if no board of conservators of the district shall have been formed, or if such board shall have been formed, then at the suit of the clerk of the said board of conservators (*Fisheries (Ir.) Act*, 1848, s. 24).

The following shows the cases in which licences are required (11 & 12 Vict., c. 92, Schedule, as amended by 26 & 27 Vict. c. 114):—

Scale of licence duties for each engine, net, instrument, or device used in salmon, trout, pollen, or eel fisheries:—

(1) single salmon rods, £1; (2) cross-lines and rods, £2; (3) snap-nets, £1 10s.; (4) draft-nets or seines, including (*R. (Johnston) v. Coleraine Conservators*, (1906) 2 I.R. 219, 244) draft-nets for eels, £3; (5) drift-nets, £3; (6) trammel-nets, or draft-nets for pollen, £1 10s.; (7) pole-nets, £2; (8) other nets, or similar engines not named above—such licence duties as shall be fixed by commissioners<sup>2</sup> or conservators as provided by the Act (that is, by section 21); (9) bag-nets, £10; (10) fly-nets, £5; (11) stake-nets, or stake-weirs (Scotch), £30; (12) head-weir, £6; (13) for every box, cruive, or drum-net in any weir for taking salmon or trout, £10; (14) for every gap, eye, or basket in any weir for taking eels, £1.

The licence is available to the 31st December next after issue (*Hosford v. Mackey*, (1897) 2 I.R. 292).

“Any persons using or erecting any engine, net, instrument, or device whatsoever, without being duly licensed under the provisions of the before-recited Act of the twelfth year of Her Majesty,<sup>3</sup> or this Act, shall be liable to pay such penalty, not less than double nor more than treble the licence duty which the engine, net, instrument, or device he shall have been so using or erecting would, for the time being, be subject to under the said Act or this Act, in addition to the forfeiture of the engine so used, anything in the said-recited Act to the contrary notwithstanding” (*Fisheries (Ir.) Act*, 1850, s. 12).

An owner is not liable for the fishing of an eel-weir, his property, without a licence by his servants, during his absence and contrary to his express instructions (*Hosford v. Mackey*, (1897) 2 I.R. 292). It has been held that a conviction for “using, fishing, or erecting a draft-net” is not bad as alleging alternative offences (*R. (Coyle) v. Tyrone J.J.*, (1908) 42 I.L.T.R. 26).

Any person fishing with single rod and line, without a licence<sup>4</sup> so to do, shall be subject to the same penalty<sup>5</sup> as is imposed by section 12 of 13 & 14 Vict. c. 88, upon persons using any engine, net, instrument, or device without being duly licensed (*Fisheries (Ir.) Act*, 1869, s. 17).

The licence, which costs £1, is required for salmon (11 & 12 Vict. c. 92, sch.), which includes sea-trout (13 & 14 Vict. c. 88, s. 1), and is available throughout Ireland (11 & 12 Vict. c. 92, s. 30), to 31st December next after issue (*Hosford v. Mackey*, (1897) 2 I.R. 292). A person with one licence using more than one rod at the same time is subject to the penalty (*Combridge v. Harrison*, (1895) 72 L.T. 592).

“Such licence shall be only good and valid for the year, district,<sup>6</sup> and purpose for which the same shall be issued, and for no other; and . . . any party using or presenting the same for any other year, district, or

Licences,  
when  
required.

Using net,  
engine, &c.,  
without  
licence.

Angling with-  
out licence.

Misusing  
or counter-  
feiting  
licence.

<sup>1</sup> Originally “the Commissioners” (Act of 1848, s. 24), which meant the Commissioners of Public Works in Ireland and the Inspecting Commissioners of Fisheries (s. 1). By the 32 & 33 Vict. c. 92, s. 8, all the powers of the Commissioners of Public Works in Ireland under the Fishery Acts were transferred to the Inspectors of Irish Fisheries, from whom those powers were by the 62 & 63 Vict. c. 50, s. 2, transferred to the Department.

<sup>2</sup> Now the Department of Agriculture.

<sup>3</sup> The 11 & 12 Vict. c. 92.

<sup>4</sup> Which, under the section, is not transferable.

<sup>5</sup> That is, not less than double, or more than treble, the licence duty, with forfeiture.

<sup>6</sup> But a rod licence is good for every fishery district in Ireland (*Fisheries (Ir.) Act*, 1848 (s. 30)).



**Licences.**

purpose, or in any manner altering or fraudulently counterfeiting the same, shall be liable to a penalty, not less than the whole amount of the licence duty for which the same shall have been issued, or which the party so misusing or counterfeiting the same would be liable to under this Act, and not exceeding double the amount of the same, at the discretion of such justice or justices before whom the offence may be tried" (*Fisheries (Ir.) Act, 1848, s. 28*).

**Not producing  
licence when  
required.**

"Any person using any such engine, net, instrument, or device, as aforesaid, or having the same erected or in fishing order, or found with the same in his possession in or near any fishing place, or going to or returning from fishing, shall, and is hereby required to, produce to any of the said commissioners or any officer of the said commissioners, or any conservator of the district, or any inspector, water bailiff, or officers, or men of the navy, coast-guard, or constabulary, when demanded, the licence for the same, under and subject to like penalties (in case of failure) as in the last preceding provision mentioned: Provided always, that such parties as shall to the satisfaction of the justices or justice be proved to have them in possession as manufacturers or sellers of the same, and not for the purposes of using the same within the year in which such demand shall be made of them respectively, shall be exempt from any such penalty" (*s. 29*).

**Fishing for  
salmon with  
fixed engine  
without  
certificate.**

"Any person who shall fish with, make use of, or erect any fixed engine for the capture of salmon without having obtained a certificate from the Special Commissioners for Irish Fisheries under the provisions of the Salmon Fishery (Ireland) Act, 1863, or a certificate from the inspectors acting in the execution of this Act in regard to such fixed engine, shall forfeit such fixed engine, and incur a penalty of £50, and a further penalty of £20 for every day during which such fixed engine shall have been erected, used, or fished with; and any person authorized to enforce the provisions of this Act and of the Acts therewith incorporated, may seize and take possession of any such fixed engine: Provided always, that where the Court of Queen's Bench shall on appeal from the decision of the said Commissioners or inspectors have decided that any such fixed engine is legal, the said inspectors shall give a certificate to that effect to the person entitled thereto" (*Fisheries (Ir.) Act, 1869, s. 16*).

**Bye-laws.**

The Department of Agriculture and Technical Instruction for Ireland have power, formerly vested in the inspectors of fisheries, to make bye-laws for the regulation of the fishing of any district, and to impose penalties not exceeding £5 for their breach (*Fisheries (Ir.) Act, 1842, s. 91*). A printed copy of any bye-law obtained from the clerk of petty sessions at a price not exceeding one shilling, and certified by him to be correct, is sufficient evidence of the existence of the bye-law and of its due publication (*Fisheries (Ir.) Act, 1842, s. 93*).

Every document purporting to be an instrument issued by the Department, and purporting to be sealed with the seal of the Department or signed by the secretary or person authorized to act on his behalf, shall be admissible in evidence, and be deemed to be such instrument without further proof unless the contrary is shown (*Agriculture and Technical Instruction (Ir.) Act, 1899, s. 21 (1)*).

For a list of bye-laws made under s. 91 of the Act of 1842, see Conner and Farran's Fisheries Acts, App. B and C.

**Illegal  
methods of  
taking fish.  
Poisoning  
river.**

"No person shall throw, empty, or cause to run or flow into any river or lake any dye stuff, or other deleterious or poisonous liquid, or shall throw into such river or lake any lime, spurge, or other deleterious or poisonous matter, or shall steep in such river or lake any flax or hemp"—Penalty, not exceeding £10 (*Fisheries (Ir.) Act, 1842, s. 80*).

In *Murphy v. Conservators Ilan River*, (1887) 21 I.L.T.R. 20, it was



held in the county court that dynamite<sup>1</sup> was deleterious matter under the above section. See also s. 32 of the Malicious Damage Act, 1851, 24 & 25 Vict., c. 97, which makes the putting of lime, &c., into a private fishery an indictable offence, under "MALICIOUS INJURIES TO PROPERTY" in INDEX OF INDICTABLE OFFENCES.

Illegal  
methods of  
taking fish.

"Any person found on the bank of or near any river with any deleterious matter in his possession, under such circumstances as shall satisfy the court before whom he may be tried that such person had employed or was about to employ such deleterious matter for the capture or destruction of fish . . . *penalty* not less than £5 nor more than £10 for every such offence: and any person found taking fish from any river or lake, where it shall be proved to the satisfaction of any justice or justices that such fish have been wilfully poisoned . . . *penalty* of not less than 10s. nor more than £5" (*Fisheries (Ir.) Act*, 1850, s. 36).

To sustain a conviction it is not necessary to prove that the person taking the fish had poisoned them himself (*Stead v. Tillotson*, (1900) 16 T.L.R. 170).

"Any person who uses dynamite or other explosive substance to catch or destroy fish in a public<sup>2</sup> fishery"—*Penalty*, not exceeding £20 or two months' imprisonment with or without hard labour (*Fisheries (Dynamite) Act*, 1877, s. 2).

Using  
explosives.

"Any offence committed under this Act on the sea-coast or at sea within one marine league of the coast shall be deemed to be committed in a public fishery, and if beyond the ordinary jurisdiction of any court of summary jurisdiction, shall be deemed either to have been committed on the land abutting on such sea-coast or adjoining such sea, or to have been committed in any place where the offender is found, and may be tried and punished accordingly" (s. 3).

"If any person shall, between sunset and sunrise, have or use any light or fire of any kind, or any spear, gaff, strokeall, or other such instrument, with intent to take salmon or other fish in or on the banks of any lake or river, or if any person shall be found at any time chasing, injuring, or disturbing spawning fish or fish on the spawning beds, or attempting to catch fish in such places (except with rod and flies only, within the lawful period), or damming or teeming or emptying any river or mill-race for the purpose of taking or destroying any salmon or trout, or the fry thereof, every person so offending in any of the cases aforesaid shall forfeit all such instruments, and shall also forfeit and pay any sum not exceeding £10" (*Fisheries (Ir.) Act*, 1842, s. 78).

Taking  
salmon, trout,  
&c., at night  
in inland  
rivers, &c.

"It shall not be lawful, in any fresh-water river or lake, at any season of the year, to use for the purpose of taking fish any otter, lyster, spear, strokehaul, dree draw, or gaff (except when the latter implement may be used solely as auxiliary to angling with rod and line, or for the purpose of removing fish from any legal weir or box by the owner or occupier thereof), and if any person shall offend against this provision he shall upon conviction thereof forfeit and pay any sum not exceeding £10 nor less than £4, and shall also forfeit such implement and the materials thereof: Provided always, that nothing herein contained shall be construed to extend to eel spears" (*Fisheries (Ir.) Act*, 1850, s. 40).

Otters, spears,  
gaffs, &c.

The exception mentioned in the section need not be negatived in the summons or conviction (*R. (Sheahan) v. Cork JJ.*, (1907) 2 I.R. 5). An "otter" does not mean the animal so called, but a board to which a line is attached (*Alton v. Parker*, (1896) 30 I.L.T. & S.J. 87).

<sup>1</sup> The grounds upon which the court so held would have applied equally to any other explosive substance.

<sup>2</sup> As to using dynamite, &c., in any fishery, see under POISONING RIVER, *ante*, p. 442.

Illegal  
methods of  
taking fish.  
Cross-lines.

"It shall not be lawful for any person (save the proprietor of a several fishery, or any person duly authorized by him in writing, within the limits thereof) to take, catch, or fish for any salmon or trout by means of cross-lines in any river"—*Penalty*, not exceeding, £5 (*Fisheries (Ir.) Act, 1842, s. 70*).

Taking salmon  
or trout in  
eel-weir.

"If the proprietor or tenant of any eel-weir shall take or suffer to be taken therein any salmon or trout, or salmon or trout fry, or spent salmon, every such proprietor or tenant shall forfeit and pay for each and every such offence any sum not exceeding £10" (*Fisheries (Ir.) Act, 1842, s. 77*).

Illegal nets.

"No net or other engine covered with canvas, hide, or other material by which unsizable and young fish may be taken or destroyed shall be used on the sea-coast or within any estuary, except for the purpose of dredging for shell-fish"—*Penalty*, forfeiture of net or engine and fine not exceeding £10 (*Fisheries (Ir.) Act, 1842, s. 6*).

"No net . . . for the taking of salmon or trout in the sea, estuaries, or tideways, or for the taking of any fish in the inland and fresh-water portions of rivers and lakes, shall be used with a mesh of less size than  $1\frac{3}{4}$  inches from knot to knot, to be measured along the side of the square, or 7 inches to be measured all round each such mesh, such measurements being taken in the clear when the net is wet"—*Penalty*, not exceeding £10 and forfeiture of net (*Fisheries (Ir.) Act, 1845, s. 11*). The fishery inspectors may alter the size of mesh required (*s. 12*).

"No person shall make use of or fish with any such net" [*i.e. haul or draft net, or seine*] "formed with a false bottom (except nets for the taking of eels), or shall place two or more such nets one behind the other, or use any nets covered with canvas, hide, or other substance, for the purpose of taking small fish, or shall affix or keep up continued nets stretched across any river; and . . . no person shall lay, draw, make use of or fish with any nets within the limits of any several fishery without a licence in writing from the owner or renter of such fishery"—*Penalty*, forfeiture of net and fine not exceeding £10 (*Fisheries (Ir.) Act, 1842, s. 66*).

Nets are "across" a river whenever there is not left open a channel sufficiently wide and sufficiently deep for the passage of salmon (*Wilson v. Moy Fishery Coy.*, (1886) 19 L.R.I. 270, at p. 295). The owner of any land forming the bank of a river is the owner of a several fishery in the water between his bank and the middle thread of the river, unless the several fishery in such water is vested in some other person (*Waterford Conservators v. Connolly*, (1889) 241, 4 I.L.T.R. 7).

Erecting (save by the proprietor of a several fishery in the whole of an estuary or river) any stake weir, stake net, bag net, fixed net,<sup>1</sup> or contrivance for placing or erecting a net in any part of any estuary or the mouth of or tidal part of any river of which the breadth of the channel at low-water of spring-tides is less than three-quarters of a statute mile. Placing, or erecting, save by the proprietor of a several fishery within the limits thereof, any such weir or net within one statute mile seaward, coastwards, or inwards from or on either side of the mouth<sup>2</sup> or entrance of any river, the inland portion of which is frequented by salmon, if the breadth of the mouth is less than one half statute mile at low water of spring tides—*Penalty*, not exceeding £30 and forfeiture of net, &c., and

<sup>1</sup> Fixed nets shall extend to and include weirs, stake bag, stop and still nets, and all other engines or devices used for the like purposes, of whatsoever construction or material the same may be, or however known or styled, and whether fixed to the soil or held by hand or made stationary in any other way (13 & 14 Vict. c. 88, s. 1). Drift nets are not within the definition (*Irish Society v. Fleming*, 1910, M.R. as yet unreported).

<sup>2</sup> These have been defined in nearly every case by the inspectors of fisheries, and copy of the definition and map can be obtained from the Department of Agriculture.

justice shall order the stakes thereof to be pulled down or destroyed at the expense of the person so offending (*Fisheries (Ir.) Act, 1842, s. 22*).

Illegal  
methods of  
taking fish.  
Illegal nets.

Erecting or maintaining a stake net or stake weir so that they or the leaders thereof extend further than from high to low water-mark of spring-tides, or so that such weir is capable of taking young or unsizable fish, or so that the meshes are not stretched to their full opening, or so that the netting of the leaders of bag nets cannot be raised and kept out of the waters; or erecting or maintaining stake weirs, stake nets, or other fixed nets so that clear opening cannot be made during the close seasons—*Penalty*, not exceeding £10 or less than £1 (*Fisheries (Ir.) Act, 1842, s. 26*; *Fisheries (Ir.) Act, 1850, s. 43*). See CLOSE SEASON, *post*.

Placing or continuing a bag net within a river or estuary as defined by the inspectors of fisheries or within three statute miles of the mouth of any river as defined by the inspectors—*Penalty* not less than £5 or more than £20 for every day placed or allowed to continue, and forfeiture of net and salmon (*Salmon Fishery (Ir.) Act, 1863, s. 3*). The section is not to apply to bag nets legally erected within three miles of mouth of a river before 28th July, 1863, where the proprietor has the exclusive right of catching salmon in the whole of river and tributaries (*ib.*).

Using (except by the proprietor of a several fishery within the limits thereof) any net for taking salmon at the mouth of any river opening into the sea, where the breadth of such mouth between the banks does not exceed a quarter of a mile statute measure.

Using (except by the proprietor of a several fishery within the limits thereof) any net for taking salmon within half a mile seaward or half a mile inward or along the coast from the mouth of any river, such mouth to be defined and mapped in case of dispute by the Commissioners.

Using (save by the owner of a several fishery in the whole of a river and its tributaries within the limits of such several fishery) nets in any part of a river prohibited by bye-law—*Penalty*, fine not exceeding £10 nor less than £1, and also 5s. for every fish taken, and forfeiture of net (*Fisheries (Ir.) Act, 1850, s. 44*). The net, even though not seized, may be ordered to be forfeited (*Grant v. Corcoran, (1868) I.R. 2 C.L. 317*).

Shooting, drawing, or stretching nets entirely across the mouth or across any other part of a river (save by the proprietor of a several fishery in the whole of a river and its tributaries)—*Penalty*, not exceeding £10 (*Fisheries (Ir.) Act, 1842, s. 27*). The word "across" in this section means so far across as to completely obstruct the passage of salmon (*Wilson v. Moy Fishery Co., (1886) 19 L.R.I. 295*).

"It shall not be lawful to use any net, instrument, or device for taking fish (save and except rods and lines only) within 200 yards of any such weir,<sup>1</sup> either above or below the same"—*Penalty*, not less than £2 or more than £10, and forfeiture of net, &c. (*s. 37*). Exemption to owner of several fishery who has exercised right since before 14th August, 1830 (*ib.*).

Taking fish  
near weirs.

It shall not be lawful for any person or persons, although lawfully possessed of a several fishery before 14th August, 1830, "to use any box, crib, cruive, net, instrument, or device for taking fish (save and except rods and lines only) at or within fifty yards, either above or below a mill-dam, unless there is attached to such mill-dam a fish-pass of such form and dimensions as may be approved of by the Fishery Inspectors, nor unless such fish-pass has constantly running through it such a flow of water as will enable salmon to pass up and down it"—*Penalty*, not exceeding £20, nor less than £5 (*Salmon Fishery (Ir.) Act, 1863, s. 16*).

It is a statutory misdemeanour under 5 & 6 Vict. c. 106, s. 63, not cognizable by a court of summary jurisdiction, to erect a mill or irrigation

<sup>1</sup> That is a weir used for supplying water to mills or factories, or for navigation (preceding part of section).



Illegal  
methods of  
taking fish.  
Watercourses  
and mill-  
races.

dam which has not a fish-pass approved of by the Fishery Inspectors (*Kavanagh v. Glorney*, (1876) I.R. 10 C.L. 210).

Not closing up waste-gates when mill or factory is not working in dry season, so as to turn supply of water through a fish-pass erected under 5 & 6 Vict. c. 106, s. 63—*Penalty*, not exceeding £5 (*Fisheries (Ir.) Act*, 1842, s. 63).

Not closing sluices of mill-wheel for twenty-four consecutive hours between 6 p.m. Saturday and 6 a.m. Monday—*Penalty*, not exceeding £5 (*ib.*).

Taking, destroying, obstructing, or attempting to take, destroy, or obstruct fish in any mill-pool, or mill-dam, or watercourse leading water to or from mill or factory, except by rod and line—*Penalty*, not exceeding £10, and forfeiture of net or engine (s. 75). In case the person actually committing the offence shall not be known or found, and if the offence shall have been committed by means of shutting down or closing any gate or sluice which is under the exclusive power of the occupier of any mill or factory, or if the offence is committed under such circumstances as appear to the justices to afford reasonable grounds for believing that the offence was committed by some person in the employment or under the control of the owner or occupier of such mill or factory, or that it was committed with the knowledge or connivance of such owner or occupier or the person in charge of such mill or factory, or through the default of reasonable precaution on the part of such owner or occupier to prevent such offence, in such case such owner or occupier of such mill or factory shall be deemed and taken to be liable to and shall incur the penalty and forfeiture aforesaid, as if such offence had been actually committed by him (*ib.*).

Not fixing a gateway with bars two inches apart at point of divergence and return of all watercourses from and to rivers, and not stretching during March, April, May, and such other periods as the fry of salmon or trout shall be descending the rivers, over the surface of the gateway a wire network of such dimensions as effectually to prevent the passing of salmon fry and other small fish—*Penalty*, not exceeding £10 (s. 76). This section is not to apply to watercourses for the supply of water for navigation (*ib.*), or as a moving power for machinery where it is proved to the satisfaction of the Inspectors of Fisheries that such exemption is necessary for the effective working of such machinery (*Salmon Fishery (Ir.) Act*, 1869, s. 4).

The onus is on the prosecutor to show (1) that there is a constructed watercourse, (2) the point of divergence or return, (3) that the defendant is the occupier, (4) that he has failed to place a grating (*R. (Hosford) v. Limerick JJ.*, (1908) 42 I.L.T.R. 105).

“Where a turbine or similar hydraulic machine which may be injurious to salmon or the young of salmon in their descent to the sea is supplied from a river frequented by salmon, the person owning or using such machine shall, during the time in which such descent to the sea takes place, provide grating or other efficient means to prevent such salmon or young of salmon from passing into such machine”—*Penalty*, fine not exceeding £50, and not exceeding £5 for each day during which such injury to the fry continues (*Salmon Fishery (Ir.) Act*, 1869, s. 30).

Queen's Gap.

“In every fishing-weir there shall be a free gap or opening in accordance with the regulations following, under the powers of this Act (that is to say)—(1) The free gap shall be situate in the deepest part of the stream; (2) the sides of the gap shall be in a line with and parallel to the direction of the stream at the weir; (3) the bottom of the gap shall be level with the natural bed of the stream above and below the gap; (4) the width of the gap in its narrowest part shall be not less than one-tenth part of the width of

the stream: Provided always, that such gap shall not be required to be wider than 50 feet, and shall not in any case be narrower than 3 feet; and provided also that no existing gap in any weir shall be reduced in width, or a gap of less width substituted in lieu thereof, or any alteration made therein so as to reduce the flow of water through such gap." (*Salmon Fishery (Ir.) Act, 1863, s. 9*).

Illegal ?  
methods of  
taking fish.  
Queen's Gap.

"Where a free gap has been made in a weir, but the same is not maintained in accordance with this Act, the owner of such weir shall incur a penalty not exceeding £5 a day for each day he is in default (*Salmon Fishery (Ir.) Act, 1863, s. 12 (2)*).

"No alteration shall be made in the bed of any river in such manner as to reduce the flow of water through a free gap"—*Penalty*, not less than £5, and not exceeding £50, and £1 a day till bed of river is restored to its original state (*s. 12 (3)*). "No person shall place any obstructions, use any contrivance, or do any act whereby fish may be scared, deterred, or in any way prevented from freely entering and passing up and down a free gap at all periods of the year, or shall use any nets or other engines within fifty yards above or below any free gap"—*Penalty*, first offence not less than £5, nor exceeding £20; subsequent offence not less than £10, nor exceeding £50 (*s. 12 (4)*).

"No person or persons shall fish with rod and line, or in any other manner in any part of such free gap or Queen's share in any weir, in any river, or hang, fix, set, or use within the space of fifty yards above or below any part of such weir any net, basket, or other engine whatsoever for the taking of fish, or in order to deter or prevent fish from going up or down the same, or place any obstruction, or throw any gravel, clay, stones, or other matter into the same, nor shall beat the water, or place or set any bridge, board, cloth, or any other thing whatsoever in, over, or across the same (save and except a temporary bridge or board during the time only when the persons engaged in the fishing of the said weir shall be passing over the same), nor shall in any manner prevent the free and uninterrupted passage of fish through the same, at all periods of the year"—*Penalty*, not exceeding £30, and order for removal of obstruction (*Fisheries (Ir.) Act, 1842, s. 57*). In any proceedings against any person for the recovery of any penalties incurred by violation of the provisions aforesaid, proof that such person is the owner or occupier of such weir shall be taken as *prima facie* evidence that such obstructions were placed by him (*ib.*).

"The following rules shall be observed in relation to the construction of boxes and cribs in fishing-weirs and fishing mill-dams (that is to say):—

- (1) The upper surface of the sill shall be level with the bed of the river.
- (2) The bars or inscales of the heck or upstream side of the box or crib shall not be nearer each other than two inches, and shall be capable of being removed, and shall be placed perpendicularly: The boxes, cribs, or cruives shall not be . . . hidden from public inspection." Failure by the owner of any fishing-weir, or fishing mill-dam, that has attached thereto any box or crib, to comply with the provisions of this section—*Penalty*, not less than £1, and not exceeding £5 for every day such breach continues (*Salmon Fishery (Ir.) Act, 1863, s. 10*).

"No fixed net that was not legally erected for catching salmon or trout during the open season of 1862 shall be placed or used for catching salmon or trout in any inland or tidal waters"—*Penalty*, forfeiture of net and fine of not less than £5, nor exceeding £20 for every day (*s. 4*). For a full discussion of this section, see Conner and Farran's "Fishery Laws," p. 221.

Re-erecting a fixed net after an order of any court abating same.—*Penalty*, order by justices for removal at expense of person re-erecting same, and forfeiture and sale of materials, and fine not less than £20, and

**Unseasonable fish.** further fine not less than £2, or greater than £10, for every day erected (*Fisheries (Ir.) Act, 1850, s. 17*). "Order of any court" includes order of fishery inspectors (*Fisheries (Ir.) Act, 1869, s. 20*).

**Unclean fish.**

"If any person shall at any time wilfully take, kill, destroy, expose to sale, or have in his possession any red, black, foul, unclean, or unseasonable salmon, or trout"—*Penalty*, not exceeding £2 for every such fish. But person taking such fish accidentally, and immediately putting it back without injury, not to be liable (*Fisheries (Ir.) Act, 1842, s. 74*).

**Fry and spawn.**

"If any person shall wilfully take, sell, purchase, or have in his possession the spawn, smolts, or fry of salmon or of trout, or of eels, or in any way, or by any device, wilfully obstruct the passage of the said smolts or fry, or injure or disturb any such spawn or fry, or any spawning-bed, bank, or shallow where the same may be"—*Penalty*, not exceeding £10, and forfeiture of nets or engines used (*Fisheries (Ir.) Act, 1842, s. 73*).

**Selling under-sized pollen.**

"It shall be illegal to take pollen of less size than eight inches in length, measured from the nose to the utmost extent of the tail, and any person wilfully taking, killing, destroying, buying, selling, or exposing for sale, sending, or having in his custody or possession any pollen of less size than that hereinbefore mentioned"—*Penalty*, one shilling for each such fish, and forfeiture of fish (*Pollen Fisheries (Ir.) Act, 1891, s. 3*). This does not apply where the pollen are taken for scientific purposes, with the written permission of the Inspectors of Fisheries (s. 4).

**Close seasons.**

The annual close seasons, both as to net and rod and line fishing, vary in each district.<sup>1</sup>

There is also a general weekly close season from six o'clock on Saturday morning to six o'clock on Monday morning, between which hours fishing, except rod and line fishing, is prohibited (*Salmon Fishery (Ir.) Act, 1863, s. 20*).

**Annual close season.**

"... No person shall angle for salmon<sup>2</sup> or trout in any lake or river during the close season prescribed . . ."—*Penalty*, not exceeding £5 (*Fisheries (Ir.) Act, 1842, s. 69*).

"If, during the close season for salmon<sup>2</sup> . . . any person shall wilfully take or fish for, or aid or assist in taking or fishing for any salmon or trout"—*Penalty*, forfeiture of fish and net, &c., and fine not less than 10s., and not exceeding £10 (*Fisheries (Ir.) Act, 1842, s. 36*).

"... If any person shall buy, sell, expose to sale, or have in his custody or possession any salmon or trout so caught in such close time as aforesaid, such person shall forfeit each and every such fish, and a sum not exceeding £2, nor less than 10s., for each such fish; and in any proceeding for the last-mentioned penalty proof that such person had the salmon or trout in his custody or possession during such close season shall be *prima facie* evidence that the said salmon or trout was caught during the close season as aforesaid (*Fisheries (Ir.) Act, 1842, s. 36; Fisheries (Ir.) Act, 1848, s. 42*). (These sections apply to a part or portion of a salmon or trout" (*Fisheries (Ir.) Act, 1850, s. 35*).

It is an offence under section 36 for a person to buy, sell, expose for sale, or have in his custody or possession, salmon or trout caught by net during the close season for net fishing, notwithstanding that at the

<sup>1</sup> The annual close season may be varied by bye-law to be made by the Department, with, however, a right of appeal therefrom to the Privy Council by any person who may consider himself aggrieved thereby (see 5 & 6 Vict. c. 106, ss. 34, 35; 58 & 59 Vict. c. 29; 9 Ed. 7, c. 25).

<sup>2</sup> "Salmon" includes grilse, peal, sea-trout, samlets, par, and all other fish of the salmon kind, and the spawn and fry thereof. "Trout" includes pollen or fresh-water herring, and all fish of the trout kind, and the spawn and fry thereof (13 & 14 Vict. c. 88, s. 1).

<sup>3</sup> The section must be read as if the words "or trout" were inserted after the word "salmon" (*Devlin v. Hurst*, (1897) 2 I.R. 290).



time of his buying them, &c., angling for them by rod and line is lawful Close seasons.  
(*King v. Russell*, (1909) 2 I.R. 25). In that case the defendant had in his possession, on 10th October, salmon only a few hours out of the water, which, from the marks of the meshes of a "set-net" upon them, and from the absence of any mark made by hooks or gaffs, were shown to have been taken by net; and it was proved that no fishery in Ireland was open for net fishing during October.

"... If any person shall place or hang any coghill or eel-nets or baskets... in the eyes, gaps, or sluices of eel or other weirs within the periods prohibited..."—*Penalty*, not exceeding £10, nor less than 10s., for each net (*Fisheries (Ir.) Act*, 1842, s. 36; *Fisheries (Ir.) Act*, 1848, s. 42).

Occupier or owner of fishery failing during close season to remove therefrom any machine, tackling, &c., for the taking of salmon or trout, or any obstruction to the passage of fish, unless prevented by stress of weather—*Penalty*, not exceeding £50, and £5 a day (*Fisheries (Ir.) Act*, 1842, s. 37).

Failing to remove from fixed engines during the annual close season, unless prevented by stress of weather, all devices for taking of salmon or trout, except where such devices shall be formed of wood, iron, copper, or other rigid substance, when a clear opening of four feet wide is to be made and maintained through the pouches, traps, or chambers of such devices, and in the eyes of all head-weirs—*Penalty*, forfeiture of net or engine and fine not exceeding £50, and £5 a day (*Fisheries (Ir.) Act*, 1842, s. 38). These sections do not apply to weirs in the tideway for sea-fish if licensed by the Fishery Inspectors (s. 39).

Not removing from any strand, or the banks of a river, or the vicinity thereof during close season all nets used for capture of salmon—*Penalty* not exceeding £10, and not less than £2, and forfeiture of nets (*Fisheries (Ir.) Act*, 1850, s. 34).

The person or persons who shall be proved to have used any boat, cot, or curragh found on or near waters frequented by salmon or trout, for the capture of salmon or trout during the annual or weekly close season—*Penalty*, first offence, not exceeding £5; subsequent offence, same fine, and forfeiture of boat: boat not to be forfeited if owner proves its use was without his knowledge or consent (*Salmon Fishery (Ir.) Act*, 1863, s. 18).

"No person shall place, affix, or attach any nets to any stakes, bridges, sluices, lock-gates of canals, or other such fixed erections, or shall lay, draw, or fish with any nets whatsoever, except nets for the taking of eels as by this Act provided," during the annual or weekly close seasons—*Penalty*, forfeiture of net, and fine not exceeding £10 (*Fisheries (Ir.) Act*, 1842, s. 66; *Salmon Fishery (Ir.) Act*, 1863, s. 20).

"... No salmon or trout shall be fished for or taken in any way except by single rod and line between 6 a.m. on Saturday and 6 a.m. on the succeeding Monday morning..." (*Salmon Fishery (Ir.) Act*, 1863, s. 20). Weekly close season.  
—*Penalty*, forfeiture of net or engine, and fine not less than £10 or more than £50 (*ib.*; *Fisheries (Ir.) Act*, 1850, s. 46).

Not maintaining a clear opening of at least four feet in width in the pouches, traps, chambers, or eyes of nets and head-weirs; not raising and keeping out of the water the netting of the leader of every fixed net; not removing all nets and baskets, save those used for taking of eels; not removing the inscales, gates, or framework of all cribs, boxes, and cruives for catching salmon; not maintaining a clear opening of at least four feet in width from bottom to top through such cribs, boxes, and cruives during the weekly close season—*Penalty*, forfeiture of net or instrument; fine not less than £10 or more than £50 (*Fisheries (Ir.) Act*, 1842, s. 40; *Fisheries (Ir.) Act*, 1850, s. 46).

**Close seasons,**

It is no defence for an occupier of a weir to prove that a failure to comply with this section was due to the default of his servants in charge of the weir, and that he had instructed them to conform to the statute (*Fitzgerald v. Hosford*, (1900) 2 I.R. 391).

"No person shall in any manner whatever scare, impede, or obstruct the free passage of salmon or trout during the weekly close season"—*Penalty*, forfeiture of fish and net or instrument, and fine not less than £2, and not exceeding £10. "But this section shall not apply to any person who takes fish legally by the single rod and line during the weekly close season" (*Salmon Fishery (Ir.) Act*, 1863. s. 25).

Using a boat for capture of salmon or trout during weekly or annual close season (see *Salmon Fishery (Ir.) Act*, 1863, s. 18, noted, p. 449, *ante*).

Fixing nets to stakes, etc., during annual or weekly close season: see Fisheries (Ir.) Act, 1842, s. 66; Salmon Fisheries (Ir.) Act, 1863, s. 20, noted, p. 449, *ante*.

**Export of unclean or unseasonable salmon.**

"No unclean or unseasonable salmon, and no salmon caught during the time at which the sale of salmon is prohibited in the district where it is caught, shall be exported or entered for exportation from any part of the United Kingdom to parts beyond seas"—*Penalty*, forfeiture of fish, and fine not exceeding £5 in respect of each salmon (*Salmon Acts Amendment Act*, 1863, s. 3). The burthen of proving that any salmon entered for exportation . . . between the 3rd September and 30th April is not so entered in contravention of the Act, shall lie on the person entering the same for exportation (*ib.*; *Salmon Acts Amendment Act*, 1870, s. 3). No part of the United Kingdom shall be deemed beyond seas (*Salmon Acts Amendment Act*, 1863, s. 2).

**Nets: illegal times for setting.**

"No person shall, at any time between sunrise and sunset,<sup>1</sup> set either in the sea or within the tideway in any estuary any sea-net for the catching of herrings, or any trammel-nets, or leave any drag or other net in the water between sunrise and sunset, except stake or fixed nets for the catching of salmon, as is hereinafter provided,<sup>2</sup> and save also seines or drift-nets for pilchards or fish other than herrings" and save "seine nets for the taking of herrings"—*Penalty*, forfeiture of net, and fine not exceeding £10 (*Fisheries (Ir.) Act*, 1842; s. 7; *Fisheries (Ir.) Act*, 1844, s. 7).

"Every person offending by not . . . hauling up and removing such net<sup>3</sup> before sunrise," unless prevented by stress of weather—*Penalty*, forfeiture of net, and fine not exceeding £5 (*Fisheries (Ir.) Act*, 1842, s. 8).

"It shall not be lawful for any person to use any net, except a landing-net, for the capture of salmon or trout in the fresh-water portion of any river, . . . between 8 p.m. and 6 a.m., except so far as the same may have heretofore been used within the limits of a several fishery next above the tidal flow, and held under grant or charter, or by immemorial usage"—*Penalty*, not exceeding £10, and forfeiture of boats and gear used (*Salmon Fishery (Ir.) Act*, 1863, s. 24).

**Offences as to boats.**

Using boat without permission.

"If any person or persons shall remove, take, use, or employ any cot, barge, boat, or vessel without permission of the owner thereof, such person so offending shall for every such offence forfeit and be liable to pay a sum not exceeding the sum of £2" (*Fisheries (Ir.) Act*, 1842, s. 72).

The boat must be taken out of the possession of the owner (*R. (Moriarty) v. Kerry JJ.*, (1883) 12 L.R.I. 384).

**Name on boat.**

"Every boat, cot, or curragh shall have upon some conspicuous place thereof the name of the owner, or of one of the owners where more than one, and of his place of residence, painted in clear legible characters or

<sup>1</sup> That is, of course, local sunrise and sunset; see *Gordon v. Cann*, (1899), 15 T.L.R. 165.

<sup>2</sup> That is, fixed nets for which certificates have been obtained; see p. 442.

<sup>3</sup> That is to say, the nets prohibited by s. 7.

letters of not less than two inches in length"—*Penalty* for default, fine not exceeding £2 (*Fisheries (Ir.) Act, 1842, s. 81*). **Offences as to boats.**

"Any person who shall find or pick up at sea any fishing-boat, rigging, gear, or other appurtenance of fishing-boats, or any net, buoy, float, or fishing implement whatsoever, shall as soon as possible deliver up same to the officer in command of the nearest coast-guard station, and such officer shall be considered as the agent of the receiver of wreck, and shall place the same in the custody of the receiver; and any person wilfully acting in contravention of this section shall, upon conviction thereof before any justice or justices sitting in petty sessions, be liable to a penalty not exceeding £10" (*Fisheries (Ir.) Act, 1869, s. 11*). **Recovery of fishing boats and gear picked up at sea.**

No person shall throw out or unlade from any vessel the ballast thereof within any estuary, harbour, or place, unless permitted by the Department of Agriculture or the local regulations of such harbour or place—*Penalty*, not exceeding £10 (*Fisheries (Ir.) Act, 1842, s. 14*). **Discharging ballast in harbour, &c.**

"If any person shall resist or obstruct any persons lawfully engaged in fishing, or in proceeding to fish, or in returning from fishing as aforesaid, or shall wilfully and maliciously place any net or other engines, with the intent and design to prevent fish from entering the nets of other persons set or placed in a legal manner according to the provisions of this Act"—*Penalty*, not exceeding £5 and forfeiture of net or engine (*Fisheries (Ir.) Act, 1842, s. 28*). **Obstructing, &c., fishermen and bailiffs.**

"If any person shall resist or forcibly obstruct any fisherman or person employed by him in entering upon and using in the manner and for the purposes aforesaid the said beaches, strands, wastes, and other lands, save gardens and lands with a growing crop as aforesaid"—*Penalty*, fine not exceeding £5 (*Fisheries (Ir.) Act, 1842, s. 5*).

The preceding sections (3 and 4) authorize fishermen to enter on beaches, strands, or wastes on or adjoining the sea-shore for the purposes of sea-fishing, drawing up and spreading their nets, and landing their fish, and to enter on lands near a fishing place (except any enclosed garden or any tillage land with a growing crop thereon) for the purpose of watching sea fish and directing sea-fishermen.

The above does not apply to salmon, as these are not sea fish (*R. (Gallagher) v. Mayo JJ., (1887) 20 L.R.I. 69*).

Persons to the number of three or more together impeding or obstructing by violence, intimidation, or menace, persons lawfully fishing may be apprehended by water bailiffs, etc.—*Penalty*, not exceeding £20 (*Fisheries (Ir.) Act, 1842, s. 88*).

"If any person shall assault, resist, or obstruct any of the" inspectors of fisheries<sup>1</sup> "or any person acting by their authority, or any officer of his Majesty's navy or coast-guard, or any person acting under him or them, or any water bailiff, in the execution of any of the powers conferred on him or them by this Act, or by any rule, order, or bye-law to be made in pursuance of this Act as aforesaid"—*Penalty*, not exceeding £10 (*Fisheries (Ir.) Act, 1842, s. 90*).

"It shall be lawful for all officers and men of the constabulary and for all persons empowered to enforce the provisions of the Salmon Fishery Acts, to open and examine all baskets and boxes and other packages containing fish, whether at railway stations, docks, or quays, markets, stores, fishing places, or any other places whatsoever, for the purpose of enforcing the provisions of this Act and of the said Acts . . ." (*Pollen Fisheries (Ir.) Act, 1891, s. 5*). **Search by constabulary, water-bailiffs,**

It is suggested in Conner and Farran's "Fishery Laws" (at p. 305), on the authority of *Marks v. Frogley*, (1896) 1 Q.B. 888, that this section

<sup>1</sup> See foot-note, p. 441.



Search by  
constabulary.  
water-bailiffs.

gives a right to open a package "reasonably believed to contain fish," but in fact not containing fish. In England, where the right is given by the Salmon Fishery Act, 1873 (36 & 37 Vict. c. 71), s. 36, to search and examine all nets, baskets, bags, and other instruments used in fishing, it was held that the pocket of a man's coat, which the justices found was frequently used for the purpose of carrying fish, was a bag or other instrument within the section (*Taylor v. Pritchard*, (1910) 2 K.B. 320).

"All officers and men of the constabulary and any inspectors, water bailiffs, or other officers appointed under the said Acts, acting within the limits of his district, may do all or any of the following things in addition to all other powers or duties conferred on him by the said Acts or this Act (that is to say):—(1) stop and search on any river, lake, or estuary, or part of the sea coast, any boat, barge, corach, or other vessel used in fishing, or which there is reasonable cause to suspect contains any pollen, and seize any fish, instrument of fishing or other articles forfeited in pursuance of the said Acts or this Act; and any person refusing to allow any such boat, barge, corach, or other vessel to be stopped and searched, or resisting or obstructing any such officer or man of the constabulary, or any such inspector, water bailiff, or other officer in any such search, shall, for every such offence, be liable to a penalty not exceeding £5 and not less than £2; (2) search and examine all nets, baskets, bags, hampers, boxes, or other instruments used in fishing or in carrying fish by persons whom there is reasonable cause to suspect of having possession of fish illegally caught; seize all fish and other articles forfeited in pursuance of the said Acts or this Act. Any person refusing to allow any nets, baskets, bags, hampers, boxes, or other instruments used in fishing or in carrying fish to be searched or examined, or resisting or obstructing any such officer or man of the constabulary or any such inspector, water bailiff, or other officer in any such search or examination, shall for every such offence be liable to a penalty not exceeding £5 and not less than £2" (*Pollen Fisheries (Ir.) Act*, 1891, s. 6; see *Taylor v. Pritchard*, *supra*).

Forfeiture of  
illegal nets,  
&c.

"In case any officer or person hereby authorized and empowered to seize illegal nets or engines, or nets or engines of a legal form and size when used contrary to the provisions of this Act, or any of the bye-laws to be made in pursuance hereof, shall seize the same, it shall and may be lawful for him to retain the same in his custody until the next sitting of the petty sessions court, or any adjournment thereof, in the district where the same shall be seized, and at such petty sessions court it shall and may be lawful for the justices to order and direct the same to be forfeited, and in case the same shall be such as cannot be legally used under the provisions of this Act, to order the same to be destroyed, and in case the same shall be such as may be legally used according to the provisions of this Act, that then and in such case it shall be lawful for such justices to order the same to be sold, and the money arising therefrom to be applied in the same manner as the penalties thereby imposed for violation of the provisions of this Act are hereby directed to be applied" (*Fisheries (Ir.) Act*, 1842, s. 103).

The words "next sitting" mean the next sitting at which it is reasonably practicable to make the application (*R. (Mackey) v. Limerick J.J.*, (1898) 2 I.R. 135).

Trawling.

"Every person who shall use any trawl or trammel net at any season or any place, either in the sea or within the tide-way in any estuary, when or where the use of the same shall have been prohibited by any bye-law"—Penalty, not exceeding £20 and forfeiture of net (*Fisheries (Ir.) Act*, 1842, s. 9).

"Trawl" includes an otter trawl (*Colbeck v. Ashford*, (1898) 62 J.P. 214).

Section 91 of this statute empowers the Commissioners (now the Department of Agriculture) to make bye-laws for the protection and improvement of fisheries, and, *inter alia*, regulating the manner at and in which any trammel, trawl, or other net or nets, engine or engines shall be used. Upon petition by two-thirds of the registered owners of fishing boats in a district, the Department are empowered by the Fishery (Ireland) Act, 1888 (51 & 52 Vict. c. 30, s. 1), to altogether prohibit trawling within the limits mentioned in such petition, or any limits of less extent.

“The Inspectors of Irish Fisheries” (*now the Department of Agriculture*, 62 & 63 Vict. c. 50, s. 2 (11)) “may from time to time make, alter, and revoke bye-laws in the manner and under the regulations in the Fisheries Act, 1842, mentioned, prohibiting the use in or from any steamer or steamship, or vessel propelled by steam,<sup>1</sup> of the method of fishing known as beam trawling or other trawling within three miles of low-water mark of the coast of Ireland, or within the waters of any other defined areas specified in any such bye-laws, and subject to any conditions or regulations contained in such bye-laws” (*Steam Trawling (Ir.) Act*, 1889, s. 3(1)).

A bye-law made under this section prohibiting steam trawling within an area extending more than three miles seaward of low-water mark is not *ultra vires*, at least as regards British subjects (*R. (Coleman) v. Pettit*, (1902) 2 I.R. 1).

“(1) Every person who uses any trawl net or any method of fishing in contravention of any bye-law of the Department of Agriculture and Technical Instruction for Ireland (in this Act referred to as the Department) made in pursuance of section 3 of the Steam Trawling (Ireland) Act, 1889 (in this Act referred to as the principal Act), shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding one hundred pounds, and every net used or attempted to be used in contravention of any such bye-law, and every rope, warp, tackle, beam, pole, iron, and other thing fastened to, or used with, any such net, shall be forfeited, and may be seized by any duly authorized officer of the Department, or any officer appointed by the Department for the purposes of the Fisheries (Ireland) Act, 1842, and shall, when seized, be dealt with, subject to the provisions of this Act, in the manner provided by section one hundred and three of the said Act of 1842, and for the purpose of such seizure any such officer may go on board any vessel propelled by steam<sup>1</sup> employed in fishing. (2) If the person to whom a summons under the principal Act is directed cannot be conveniently met with, it shall be deemed sufficient service of such summons upon him if a copy thereof is left for him at the usual place of abode or place of business, the same being within the United Kingdom, of the owner of the vessel on which such person was when the offence was committed. (3) The court before whom a person is convicted under this Act may by the order provide that, if the fine imposed upon him is not paid within eight days after the conviction, one-half thereof shall be paid by, and may be recovered under the Summary Jurisdiction Acts from such owner as aforesaid; and that in default of payment by the person convicted of the remainder of the said fine within a further period of eight days, the same may be recovered from him under the said Acts: provided that any sum paid by the owner under this enactment may be recovered by him as a debt from the person convicted. (4) Every sum of money levied as a fine or arising from the sale of anything ordered to be sold in pursuance of the principal Act as amended by this Act, shall be paid to the Department, and shall be applied for the purposes of sea fisheries as defined by the Agriculture and

<sup>1</sup> This, it will be noted, does not, it would seem, include a vessel propelled by internal combustion engines; see, however, *Herbert v. Leigh Mills Co.*, (1889) 53 J.P. 679.

Technical Instruction (Ireland) Act, 1899. (5) Section eighty-nine (which relates to the powers of officers), and section ninety-six (which relates to the jurisdiction of magistrates of maritime counties) of the Fisheries (Ireland) Act, 1842, shall apply with the necessary modifications for the purposes of the principal Act as amended by this Act" (*Fisheries (Ir.) Act, 1901, s. 1*).

Landing and  
selling fish  
taken by  
illegal  
trawling  
prohibited

"It shall not be lawful to land or sell in the United Kingdom any fish caught by the methods of fishing known as beam trawling, and other trawling within prohibited areas as defined in this Act; and fish so caught shall be added to the table of prohibitions and restrictions contained in s. 42 of the Customs Consolidation Act, 1876, and upon being brought to land in the United Kingdom shall be dealt with as goods imported and brought into the United Kingdom contrary to the said prohibitions and restrictions" (*Trawling in Prohibited Areas Act, 1909, s. 1*).

"If a trawling or other vessel shall have been employed (a) in fishing by the methods and within the areas aforesaid; or (b) in taking on board fish caught by the methods and within the areas aforesaid, within two months prior to the landing or selling, or attempt to land or sell, fish therefrom in the United Kingdom, any fish on board such trawling or other vessel shall for the purposes of this Act be presumed to have been caught by the methods and within the areas aforesaid" (s. 2).

"Prohibited area" means any waters within which trawling from any vessel propelled by steam is prohibited by any bye-law made under s. 3 of the Steam Trawling (Ir.) Act, 1889, "but does not include any such waters within three miles from low-water mark of any part of the coast of Ireland, unless such water form part of an area which, as defined for the purposes of the bye-law, extends more than three miles from low-water mark as aforesaid" (s. 5 (2)).

"References to the methods of fishing known as beam trawling and other trawling shall, as regards any prohibited area of the sea adjoining Ireland, be construed as references to any method of fishing prohibited by the bye-law relating to the area; provided that nothing in this Act shall operate to prohibit the landing or selling of fish caught in any such area by the use of any such method in or from any vessel other than a vessel propelled by steam" (s. 6 (d)).

Oysters.

Close season.

"It shall not be lawful for any person between the first day of May and the first day of September in any year to dredge for, take, catch, or destroy any oyster or oyster brood, save and except where the season for taking the same shall be changed by the commissioners<sup>1</sup> according to the provisions hereinafter contained" (*Fisheries (Ir.) Act, 1842, s. 32*).

"If any person shall dredge for, take, catch, or destroy, have in his possession, sell, or buy, any oyster or oyster brood within the period prohibited by this Act, or within the period to be prohibited by the said commissioners<sup>2</sup> in pursuance of this Act, such person shall forfeit such oysters, and forfeit and pay a sum not exceeding five pounds for each offence; provided that nothing herein contained shall be construed to prevent the proprietor of any oyster bed, or any person deriving under him, from removing or laying down oyster brood during such close season" (*Fisheries (Ir.) Act, 1842, s. 36*).

The Act does not apply to the proprietor of an oyster bed removing oysters from a natural public bed to an artificial bed during period allowed by inspectors (8 & 9 Vict. c. 108, s. 19), or to dredging for,

<sup>1</sup> That is to say, they "shall be forfeited, and may be destroyed or otherwise disposed of as the Commissioners of Customs may direct" (*Customs Consolidation Act, 1876, s. 42*). They may be seized by any member of the R.I.C. as well as by a customs officer (*Illicit Distillation (Ir.) Act, 1857, ss. 5, 8*) (*Trawling in Prohibited Areas Act, 1909*).

<sup>2</sup> Now the inspectors of fisheries; see p. 441, n.



taking, or having in possession foreign oysters during period allowed by inspectors (47 & 48 Vict. c. 48, s. 14), or to grantees of an order under 47 & 48 Vict. c. 48, s. 11, if they do not sell oysters during the close season.

"It shall not be lawful for any person other than the licensees or their assigns, their agents, servants, and workmen, within the limits of any oyster bed or laying, knowingly to do any of the following things:—to use any implement of fishing, except a line and hook or a net adapted solely for catching floating fish, and so used as not to disturb or injure in any manner any oyster bed or oysters, or the oyster fishery; to dredge for any ballast or other substance except under a lawful authority for improving the navigation; to deposit any ballast, rubbish, or other substance; to place any implement, apparatus, or thing in the opinion of the commissioners' prejudicial, or likely to be prejudicial, to any oyster bed or oysters, or brood or spawn thereof, or to the oyster fishery, except for a lawful purpose of navigation or anchorage<sup>2</sup>; to disturb or injure in any manner, except as last aforesaid, any oyster bed or oysters, or brood or spawn thereof, or the oyster fishery; to interfere with or take away any of the oysters from such bed without the consent of the licensees or owners or occupiers of such bed"—*Penalty*, first offence not exceeding £2, second offence £5, subsequent offence £10, with full compensation to licensees for all damage (*Oyster Beds (Ir.) Act*, 1866, s. 2).

Under 8 & 9 Vict. c. 108, s. 20, the Inspectors of Fisheries have power to make bye-laws for the protection of oyster fisheries. A list of these will be found in Conner and Farran's "Fishery Laws," 2nd ed., Appx. B.

Breach of regulations made under 47 & 48 Vict. c. 48 (by which oyster fisheries may be established) or trespass on beds licensed under that Act—*Penalty*, fine not exceeding £20 and forfeiture of oysters (*Oyster Cultivation (Ir.) Act*, 1884, s. 13).

As to larceny of oysters or oyster brood, see CATALOGUE OF INDICTABLE OFFENCES, "LARCENY."

The Oyster Cultivation Act, 1884, applies "to mussels, and to mussel beds and fisheries in the same way as it applies to oysters, and to oyster beds and fisheries" (*Oyster Cultivation (Ir.) Act*, 1884, s. 19).

"The Inspectors of Irish Fisheries are hereby empowered from time to time to make, alter and revoke bye-laws, rules, orders or regulations, in the manner and under the regulations set forth in the Fisheries (Ir.) Act, 1842, dealing with the mussel, periwinkle, and cockle fisheries of Ireland, and all the provisions relating to bye-laws, rules, orders and regulations, . . . and to the enforcing of the same, contained in the said Act shall apply to bye-laws, rules, orders, and regulations made, altered, or revoked under the provisions of this Act" (*Mussels, Periwinkles, and Cockles (Ir.) Act*, 1898, s. 2).

AS TO CRABS AND LOBSTERS, see under that head, p. 414.

Crabs and  
Lobsters.

<sup>1</sup> Now the inspectors of fisheries; see p. 441, n.

<sup>2</sup> As to the meaning of this exception, see the following cases:—*Mayor of Colchester v. Brooke*, (1845) 7 Q.B. 339; *The Swift*, (1901) P. 168; *Petrie v. S. S. Rostrevor*, (1898) 2 I.R. 556.

Injuring  
oyster-beds.

Larceny of  
oysters.

Mussels,  
periwinkles,  
and cockles.

## FOOD AND DRUGS.

	PAGE		PAGE
Statutes, . . . . .	456	Procedure under Acts of 1875 and 1879:	
Mixing injurious ingredients with		Application of Petty Sessions Act, . . . . .	468
food or drugs, . . . . .	457	Analyst's certificate necessary, . . . . .	468
Sale of food or drug not of nature, sub-		Penalties, . . . . .	469
stance, and quality demanded, . . . . .	457-460	Time limit, . . . . .	469
Offences generally, p. 457; stan-		Contents of summons, . . . . .	469
dard for spirits, p. 458; pur-		Evidence, . . . . .	469
chase for analysis, p. 458; de-		Analysis by direction of justices, . . . . .	470
ficiency in any respect, p. 458 :		Application of penalties, . . . . .	470
nature, quality, and substance		Appeal to quarter sessions, . . . . .	470
demand, p. 458; "prejudice		Margarine and margarine cheese—	
of the purchaser," p. 459;		Penalties for offences, . . . . .	471
guilty knowledge not essential,		Margarine to be sold as such, . . . . .	471
p. 459; master's responsibility		Dealing, &c., in margarine and	
for acts of servant, p. 459;		margarine cheese contrary to	
defect not arising from adul-		Acts, . . . . .	471
teration, p. 460; adulteration		Packages to be marked, . . . . .	471
unavoidable, p. 460, . . . . .		Misdescribing margarine in	
Sale of compound article of food or		wrapper, . . . . .	472
drug not of ingredients demanded, . . . . .	460	Branding margarine cheese, . . . . .	472
Abstraction of part of article of food, . . . . .	461	Consignment of margarine, . . . . .	472
Analysis—		Registration of manufactory, . . . . .	472
(1) at instance of private purchaser, . . . . .	462	Restriction on amount of butter	
(2) at instance of public officer, . . . . .	462	fat in margarine, . . . . .	473
Purchasing samples for analysis, . . . . .	462	Taking samples, . . . . .	473
Refusal to sell to officer, . . . . .	463	Procedure under Marg. Act, 1887, . . . . .	473
Defence of purchase with warranty, . . . . .		Acts done by servant, . . . . .	473
What is a warranty, . . . . .	464	Presumption against vendor, . . . . .	474
Warranty as to future deliveries, . . . . .	464	Division of samples taken in delivery	
"Without accepting any respon-		or transit, . . . . .	474
sibility after delivery," . . . . .	465	Condensed separated or skimmed milk, . . . . .	474
Notice of intention to rely on		Imported impoverished articles to be	
warranty, . . . . .	465	marked, . . . . .	474
Forging certificate or warranty, . . . . .	466	Regulations as to preservatives, . . . . .	476
Wilfully misapplying certificate of		Moisture in butter or margarine in	
warranty, . . . . .	466	factory, . . . . .	476
False label, . . . . .	466	Moisture in milk-blended butter, . . . . .	476
Giving false warranty, . . . . .	466	Sale of milk-blended butter, . . . . .	476
Taking samples in course of delivery—		Butter and margarine factories:	
(1) Milk, . . . . .	467	Registers to be kept, . . . . .	477
(2) Other articles of food, . . . . .	468	Premises to be used as butter	
Name and address of person selling		factories, . . . . .	477
milk or cream in public place, . . . . .	468	Inspection, . . . . .	477
Obstruction of officer in discharge of		Adulterants in butter factory, . . . . .	478
duty, . . . . .	468	Regulations by "Department" as to	
Seizure of unwholesome food, . . . . .	468	standards, . . . . .	478
		Power of L. G. B. and "Department"	
		to take samples, . . . . .	478
		Procedure and penalties under Acts of	
		1899 and 1907, . . . . .	478

## Statutes.

The principal statutes relating to the adulteration of food and drugs are:—the Sale of Food and Drugs Act, 1875, 38 & 39 Vict. c. 63; the Sale of Food and Drugs Act Amendment Act, 1879, 42 & 43 Vict. c. 30; the Sale of Food and Drugs Act, 1899, 62 & 63 Vict. c. 51; the Margarine Act, 1887, 50 & 51 Vict. c. 29; and the Butter and Margarine Act, 1907, 7 Ed. 7, c. 21; all of which Acts are, by s. 14 of the Act of 1907, collectively entitled the Sale of Food and Drugs Acts. There are also special provisions in various statutes as to the sale of specific articles, e.g., the Bread Acts, 1822 and 1836, which will be found under appropriate headings, e.g., "BREAD," etc.

The Acts of 1899 and 1907 are to be read as one (*Act of 1907*, s. 14 (1)). The Act of 1907, by s. 11 (2), enacts that s. 5 (see p. 473), s. 11 (see p. 473), and s. 12 (see p. 473) of the Margarine Act, 1887, shall

apply to proceedings under the Act of 1907, with the substitution of references to the Act of 1907 for references to the Margarine Act, 1887. Section 12 of the Margarine Act, 1887, enacts that all proceedings under that Act shall, save as expressly varied thereby, "be the same as prescribed by ss. 12 to 28 inclusive" of the Act of 1875, and that all officers employed under the Act of 1875 are empowered and required to carry out the provisions of the Margarine Act, 1887.

"No person shall mix, colour, stain or powder, or order or permit any other person to mix, colour, stain or powder, any article of food<sup>1</sup> with any ingredient or material so as to render the article injurious to health, with intent that the same may be sold in that state, and no person shall sell any such article so mixed, coloured, stained or powdered"—*Penalty*, first offence, not exceeding, £50; every offence after conviction for first offence, misdemeanour, punishable by imprisonment, with hard labour, not exceeding six months (*Act of 1875*, s. 3).

Mixing  
injurious  
ingredients

(1) with food.

The article of food must, as the result of the addition, be injurious to health, and it is not sufficient that the added article is by itself injurious (*Hull v. Horsnell*, (1904) 20 Cox 759).

It is an offence if the article of food is injurious to the health of a delicate person (*Cullen v. M'Nair*, (1908) 24 T. L. R. 692).

"No person shall, except for the purpose of compounding as hereinafter described, mix, colour, stain or powder, or order or permit any other person to mix, colour, stain or powder, any drug with any ingredient or material so as to affect injuriously the quality or potency of such drug, with intent that the same may be sold in that state, and no person shall sell any such drug so mixed, coloured, stained or powdered"—*Penalty* as in s. 3 (*Act of 1875*, s. 4). "The term 'drug' shall include medicine for internal or external use" (s. 2).

(2) with drugs.

The complainant purchased linseed meal, stating that he was doing so for the purpose of having it analysed. A notice in the shop stated that linseed was sold as cattle food. *Held*, that as complainant had not purchased the linseed as a medicine or drug, no offence was committed under s. 4 by reason of the adulteration of the meal (*Conroy v. M'Cann*, (1896) 2 I. W. L. R. 217).

It seems doubtful as to whether a limited company can be prosecuted under sections 3 and 4 (*Pearks v. Ward*, (1902) 2 K. B. 1, 8).

"Provided that no person shall be liable to be convicted under either of the two last foregoing sections of this Act in respect of the sale of any article of food, or of any drug, if he shows to the satisfaction of the justice or court before whom he is charged that he did not know of the article of food or drug sold by him being so mixed, coloured, stained or powdered, . . . and that he could not with reasonable diligence have obtained that knowledge" (*Act of 1875*, s. 5).

Absence of  
guilty  
knowledge.

"No person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser under a penalty not exceeding £20 :<sup>2</sup> Provided, that an offence shall not be deemed to be committed under this section . . . (1) where any matter or ingredient not injurious to health has been added to the food or drug because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight, or measure of the food or drug, or conceal the inferior quality

Sale of food  
or drug not of  
nature, sub-  
stance, and  
quality  
demanded.  
Offences,  
generally.

<sup>1</sup> "Food shall include every article used for food or drink by man, other than drugs or water, and any article which ordinarily enters into or is used in the composition or preparation of human food, and shall also include flavouring matter and condiments" (Sale of Food and Drugs Act, 1899, s. 26). Chewing-gum, which is not intended to be swallowed, is not within the definition (*Bennett v. Tyler*, (1900) 19 Cox. 434).

<sup>2</sup> As to penalties for subsequent offences (see s. 17 of the Act of 1899, p. 469).



Sale of food or drug not of nature, substance, and quality demanded.

thereof; (2) where the drug or food is a proprietary medicine, or is the subject of a patent in force, and is supplied in the state required by the specification of the patent; (3) where the food or drug is compounded as in this Act mentioned; (4) where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation"—(Act of 1875, s. 6).

Standard for spirits.

It is a good defence to a prosecution under the section for adulterating spirits with water that such adulteration has not reduced the spirit more than twenty-five degrees under proof for brandy, whiskey, or rum, or thirty-five degrees under proof for gin (Act of 1879, s. 6).

Purchase for analysis.  
Deficiency in any respect.

It is no defence to a prosecution under s. 6 of the Act of 1875 that the purchase was made only for the purpose of analysis, nor that the article, though defective in nature, or in substance, or in quality, was not defective in all three respects (Act of 1879, s. 2).

Whether an article is of the nature, substance, and quality demanded is one of fact for the justices.

Nature, quality, and substance demanded.  
(1) no standard.

Where no standard is set up by statute or by any recognized authority, justices must form the best judgment they can, having regard to the evidence adduced before them as to the nature, substance, and quality of the article demanded. Thus, where a customer asked for brandy, but got instead an article composed of 35 per cent. of what is usually known as brandy<sup>1</sup> and 65 per cent. of other spirit, it was held that the justices were justified in convicting (*Wilson v. M'Phee*, (1903) 68 J.P. 175). So, too, a vendor does not fulfil an order for "lard" by supplying 85 per cent. of lard and 15 per cent. of water (*Rook v. Hopley*, (1878) 3 Ex. D. 209). See also cases noted (p. 460, *infra*) under DEFECT NOT ARISING FROM ADULTERATION.

In arriving at their conclusion, the justices are entitled to take into consideration the usages and understanding of commerce in relation to the article in question. Thus, in *Smith v. Wisden*, (1901) 85 L.T. 760, it was held that the selling of marmalade containing 13 per cent. of glucose instead of cane or beet sugar was not an offence, evidence being given that glucose was used by many manufacturers of marmalade. Similarly, justices were held entitled to find that the sale of a particular kind of tapioca as "sago" was lawful, it having been proved that such tapioca was known to the trade and the public as "sago" (*Sandys v. Rhode*, (1903) 67 J.P. 352).

(2) Statutory standards.  
Spirits, butter, and margarine.

If the statute fixes a standard, regard must, of course, be had to the words of the statute. Thus, s. 6 of the Act of 1879, *supra*, fixes the standard for spirits; and s. 4 of the Butter and Margarine Act, 1907, prescribes the limit of moisture in butter and margarine in factories. Moreover, the Department of Agriculture have made the following regulations under the powers vested in them by ss. 4 and 24 of the Act of 1899 and s. 6 of the Butter and Margarine Act, 1907.<sup>2</sup> These regulations do not absolutely fix a standard of genuineness, but shift the burden of proof to the defendant:—(1) Where a sample of milk (not being sold as skimmed or separated or condensed milk) contains less than 3 per cent. of milk fat, it shall be presumed for the purposes of the Sale of Food and Drugs Acts, until the contrary is proved, that the milk is not genuine by reason of the abstraction therefrom of milk fat or the addition thereto of water (2) Where a sample of milk (not being sold as skimmed or separated or condensed milk) contains less than 8·5 per cent. of milk solids other than milk fat, it shall be presumed for the purposes of the Sale of Food and Drugs Acts, until the contrary is proved, that the milk is not genuine by reason of the abstraction of milk solids other than milk fat or the addition thereto of

Milk.

<sup>1</sup> Brandy has been defined by a London metropolitan police magistrate as an alcoholic liquor the spirit of which is obtained by the distillation of wine from grapes (see 48 S.J. 518).

<sup>2</sup> Noted p. 478, *post*.

water. (3) Where a sample of skimmed or separated milk (not being condensed milk) contains less than 9 per cent. of milk solids, it shall be presumed for the purposes of the Sale of Food and Drugs Acts, until the contrary is proved, that the milk is not genuine by reason of the abstraction therefrom of milk solids other than milk fat or the addition thereto of water. (4) Where the proportion of water in a sample of butter exceeds 16 per cent., it shall be presumed for the purposes of the Sale of Food and Drugs Acts, unless the contrary is proved, that the butter is not genuine by reason of the excessive amount of water therein.

Sale of food or drug not of nature, substance, and quality demanded.

Skimmed or separated milk.

With regard to drugs, where the British Pharmacopœia has fixed a standard of the composition, that standard is *prima facie* the one to be followed (*Dickins v. Randerson*, (1901) 1 K.B. 437); and though evidence should be admitted which tends to show that there is a different commercial standard, such evidence would have to be strong to displace the standard of the British Pharmacopœia (*Boots v. Cowling*, (1903) 19 T.L.R. 370).

Drugs.

Where the vendor, before the sale is completed, makes the purchaser aware that the article is not what he originally demanded, the sale is not to the prejudice of the purchaser (*Sandys v. Small*, (1878) 3 Q.B.D. 449; *Higgins v. Hall*, (1886) 51 J.P. 293 (coffee and chicory); *Gage v. Elsey*, (1883) 10 Q.B.D. 518 (gin sold more than thirty-five degrees under proof where there was a notice exhibited that all spirits were sold as diluted spirits, and that no alcoholic strength was guaranteed). But it was held that an offence under s. 6 was committed where rum more than twenty-five degrees under proof was sold by a publican exhibiting the following notice:—"All spirits . . . are of the same quality and strength as heretofore, but in order to comply with the Food and Drugs Act will not be of any guaranteed strength" (*Dawes v. Wilkinson*, (1907) 1 K.B. 278). The notice in fact must be clear and unmistakable (*ib.*; *Collett v. Walker*, (1895) 59 J.P. 600; *Star Tea Company v. Neale*, (1909) 78 J.P. 511; *Souter v. McLean*, (1903) 41 Sc. L.R. 192; *Wilson v. M'Phee*, (1903) 68 J.P. 175). The knowledge of the purchaser that the article purchased was not of the nature, substance, and quality demanded by him must be derived from information given by the vendor, and the fact that the purchaser had acquired such knowledge otherwise is no defence (*Pearks v. Ward*, (1902) 2 K.B. 1: see, however, *contra*, *Morris v. Johnson*, (1890) 54 J.P. 612.) Where the vendor told the purchaser that some cans contained new milk, but when the purchaser asked for same the vendor said it was old milk, the justices were held to be right in not convicting (*Kirk v. Coates*, (1885) 16 Q.B.D. 49). Even though the purchaser cannot but be aware from the price charged (as where milk was sold as new milk at 1d. a pint<sup>1</sup>) that he is getting an inferior article, the vendor has committed an offence (*Heywood v. Whitehead*, (1898) 18 Cox, 615).

Prejudice of the purchaser.

It is no defence to show that the vendor was not aware of the composition of the article unless he brings himself within s. 25, *post*, pp. 463, 464 (*Betts v. Armstead*, (1888) 20 Q.B.D. 771).

Guilty knowledge not essential.

A master is responsible for the acts of his servants, even though unauthorized or acting in disobedience to orders (*Brown v. Foot*, (1892) 17 Cox, 509; *contra*, *Kearley v. Tonge*, (1891) 17 Cox, 328), and has even been held responsible for the acts of a stranger, as where milk was watered in a railway truck on a journey to London by a stranger unknown to the vendor (*Parker v. Alder*, (1899) 1 Q.B. 20). A servant can also be convicted if he actually makes the sale (*Hotchin v. Hindmarsh*, (1891) 2 Q.B. 181). The respondent, a grocer, while his

Master's responsibility for acts of servant.

<sup>1</sup> This case was obviously decided with regard to a place where the ordinary price was more than a penny a pint.



Sale of food or drug not of nature, substance, and quality demanded.

assistant was out of the shop, had made up for his own use a half pound packet consisting of a mixture of butter and margarine. This packet was inadvertently left upon the counter while the respondent went to attend to a customer in another part of the shop, but it was not placed there for the purpose of sale. The respondent's assistant then came in, and immediately afterwards a man came in and asked for half a pound of salt butter, and was served by the assistant with the same half pound of mixed butter and margarine. The assistant, seeing the half pound packet lying on the counter ready made, thought that it was there for the purpose of sale, but in selling it he was acting without the authority and contrary to the express instructions of the respondent, that he was to sell butter always from the bulk and not in ready-made packages. *Held*, that the respondent was liable for the act of his servant, and that he should have been convicted under s. 6 (*Houghton v. Mundy*, (1910) 103 L.T. 60; cf. *Keenan v. Costelloe*, (1910) 44 I.L.T.R. 218). As to other cases on the liability of a master for the acts of his servant see MASTER AND SERVANT, chapter xxiv.

Defect not arising from adulteration.

An article may, as the result of improper treatment, not be of the nature, substance, and quality demanded, even though there has, in fact, been no adulteration. Questions on this frequently arise as to milk, where there has been no adulteration. In *Smithies v. Bridge*, (1902) 2 K.B. 13, the purchaser was supplied with milk as taken direct from the cow, but, in consequence of the length of time which had elapsed since the cow was last milked (sixteen hours), the milk supplied was deficient in fat to an extent of 30 per cent., the remainder of the fat having been absorbed by the cow during the unduly long interval between the milkings. *Held*, that the vendor was rightly convicted. In *Wolfenden v. McCulloch*, (1905) 20 Cox, 864, the appellant sold milk which, on examination, was proved to contain 2.81 per cent. of milk fat.<sup>1</sup> There had been no adulteration, but the deficiency of fat was due to the cows not having been milked for fourteen hours, being the time usual in the district. The justices thought they were obliged by the decision in *Smithies v. Bridge*, *supra*, to convict. *Held*, that the justices were wrong; that in each case it was a question of fact for the justices to determine whether the milk was of the nature, substance, and quality demanded; and that, unless the quantity of fat which was absent was so large as to point to an abnormal state of things, there was no evidence to warrant a conviction. In the latter case Lord Alverstone, L.C.J., repeated the test laid down by him in *Smithies v. Bridge*: "If, however, the article produced, although produced by the cow, is the result of an abnormal condition of things, arising either from disease or from unusual treatment of the cow, I think that that does amount to evidence on which the magistrates can find that the article is not of the nature, substance, and quality of the article demanded." Where milk has been added to butter it is an offence (*Pearks v. Knight*, (1901) 2 K.B. 825).

Adulteration unavoidable.

As regards defences under s. 6 (4), whether the extraneous matter was unavoidably mixed, seems a question of fact for the justices; and the Scotch courts refused to interfere with a finding excusing a defendant for adding 30 per cent. of water to buttermilk (*Warnock v. Johnstone*, (1881) 4 Coup. 509; see also *Belfast Guardians v. McIlroy* (1903) 3 N.I.J.R. 17); and a finding the other way (where the percentage was 34.9) was also upheld (*Reynolds v. McBride*, (1904) 4 N.I.J.R. 238).

Sale of compound article of food or drug not of ingredients demanded.

"No person shall sell any compound article of food or compounded drug which is not composed of ingredients in accordance with the demand of the purchaser"—*Penalty*, not exceeding £20 (*Act of 1875*, s. 7); as to penalties for offences subsequent to a first offence (see s. 17 of the

<sup>1</sup> The standard is three per cent. See p. 458.



*Act of 1899*, p. 469).—"Provided that no person shall be guilty of any such offence as aforesaid in respect of the sale of an article of food or a drug mixed with any matter or ingredient not injurious to health and not intended fraudulently to increase its bulk, weight, or measure, or conceal its inferior quality, if at the time of delivering such article or drug he shall supply to the person receiving the same a notice by a label distinctly and legibly written or printed on or with the article or drug to the effect that the same is mixed" (*Act of 1875*, s. 8).

Sale of compound article of food or drug not of ingredients demanded.

It is a question of fact whether the mixture was made for a fraudulent purpose. Where a mixture of coffee and chicory labelled as such was sold for the price of pure coffee, and contained sixty per cent. of chicory, and the justices found that the mixture was for a fraudulent purpose, the conviction was upheld (*Liddiard v. Reece*, (1880) 44 J.P. 233); but where "French coffee" was asked for and supplied, containing sixty per cent. of chicory, with a label stating it was a mixture, it was held that the justices should not have convicted, there being no evidence of fraud (*Otter v. Edgley*, (1883) 57 J.P. 457; see also *Hayes v. Rule*, (1902) 18 T.L.R. 535 (butter), *Horder v. Meddings*, (1880) 44 J.P. 234 (coffee), *Jones v. Jones*, (1894) 10 T.L.R. 300 (cocoa), *Jones v. Davies*, (1893) 69 L.T. 497 (condensed milk)).

In *Jones v. Jones*, *supra*, where a tin of cocoa, on which was pasted the label, was wrapped up in a sheet of paper before delivering, it was held that there was sufficient notice of the contents. In *Pearks and others v. Houghton*, (1902) 1 K.B. 889, however, where butter containing an excess of moisture was enclosed in a wrapper stating that the butter was blended with milk and retained 20 per cent. of moisture, that wrapper being in turn enclosed in a second wrapper without any reference to its contents, the King's Bench held that the label was no defence. Lord Alverstone, C.J., stated: "In my opinion the delivery of the article with a notice printed on an inner label, covered with an opaque wrapper, would not be sufficient. *Jones v. Jones* is not a sufficient authority on the facts of the present case. There the article sold was a tin of cocoa, and it was assumed to be a matter of common knowledge that tins had labels on them, and, therefore, the fact that they were wrapped up when delivered to the purchaser could not prevent the label having the effect of a notice to the purchaser. The question of the sufficiency of the notice is one to be decided on the particular facts of each case; but I doubt whether a purchaser of a pound of butter, on being handed such a packet, could be taken to have notice that there was another label inside the outside wrapper."

By section 12 of the Sale of Food and Drugs Act, 1899, the label referred to in the above section "shall not be deemed to be distinctly and legibly written or printed within the meaning of the section, unless it is so written or printed that the notice of mixture given by the label is not obscured by other matter on the label. Provided that nothing in this enactment shall hinder or affect the use of any registered trade-mark, or of any label which has been continuously in use for at least seven years before" 1st January, 1900.

"No person shall, with the intent that the same may be sold in its altered state without notice, abstract from an article of food any part of it so as to affect injuriously its quality, substance, or nature, and no person shall sell any article so altered without making disclosure of the alteration"—*Penalty*, first offence, not exceeding £20 (*Act of 1875*, s. 9); for subsequent offences, see s. 17 of 1899 (*post*, p. 469).

Abstraction of part of article of food.

Ignorance by the seller of the abstraction is no defence to the latter part of the section (*Pain v. Boughtwood*, (1890) 24 Q.B.D. 353); *Dyke v. Gower*, (1892) 1 Q.B. 220). Where milk for sale was taken out of a

Abstraction  
of part of  
article of  
food.

large vessel by a small measure, and, owing to the fact that the cream was continually rising to the surface from which the milk was taken, the milk supplied to the last customers showed a deficiency of 33 per cent. in fats, it was held that an offence was committed under this section (*Dyke v. Gower*, (1892) 1 Q.B. 220). Where a police-officer procured a sample from each of five cans forming a consignment in course of delivery to a workhouse, each of which proved deficient in cream: *Held*, that the procuring of each sample was a separate transaction, that an offence was committed under s. 9, *supra*, in respect of each can, and that five convictions obtained against the appellant were right (*Fecitt v. Walsh*, (1891) 2 Q.B. 304). The Scotch Court refused to follow this case in *Telford v. Fyfe*, (1908) Sess. Ca. (J.) 83, which case is fully noted, p. 106, *ante*.

Analysis at  
instance of  
private pur-  
chaser.

"Any purchaser of an article of food or of a drug in any place being a district, county, city, or borough where there is any analyst appointed . . . shall be entitled, on payment to such analyst of a sum not exceeding ten shillings and sixpence, or if there be no such analyst then acting for such place, to the analyst of another place, of such sum as may be agreed upon between such person and the analyst, to have such article analysed by such analyst, and to receive from him a certificate of the result of his analysis" (*Act of 1875*, s. 12).

Analysis at  
instance of  
public officer.

"(1) Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable under the direction and at the cost of the local authority appointing such officer, inspector, or constable, or charged with the execution of this Act, may procure any sample of food or drugs, and if he suspect the same to have been sold to him contrary to any provision of this Act" (*i.e.*, *Sale of Food and Drugs Acts*), "shall submit the same to be analysed by the analyst of the district or place for which he acts, or if there be no such analyst then acting for such place to the analyst of another place; and such analyst shall, upon receiving payment as is provided in the last section, with all convenient speed, analyse the same and give a certificate to such officer wherein he shall specify the result of the analysis" (*Act of 1875*, s. 13).

Though the local authority can appoint only the persons specified to procure samples, such person need not make the purchase himself, but may depute some one else to do so (*Horder v. Scott*, (1880) 5 Q. B. D. 552; *Smith v. Stace*, (1881) 45 J. P. 141). Once an inspector has been appointed he can act generally at his own discretion (*Connor v. Butler*, (1902) 2 I. R. 569). It is not necessary for him to prove his authority (*Hale v. Cole*, (1891) 55 J. P. 376). Where an official purchases for analysis it has been held that the analysis must be made under the next section before a prosecution can be instituted, even though the vendor admits at the time of the purchase that he is in fault (*Smart v. Watts*, (1895) 1 Q. B. 219).

Purchasing  
samples for  
analysis.

"The person purchasing any article with the intention of submitting the same to analysis shall, after the purchase shall have been completed, forthwith notify to the seller or his agent selling the article his intention to have the same analysed by the public analyst, and shall divide the article into three parts, to be then and there separated, and each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall, if required to do so, deliver one of the parts to the seller or his agent. He shall afterwards retain one of the said parts for future comparison, and submit the third part, if he deems it right to have the article analysed, to the analyst" (*Act of 1875*, s. 14).

This section does not apply to a private person purchasing for consumption, even though he subsequently obtains an analysis (*Enniskillen*



*Guardians v. Hilliard*, 1884) 14 L. R. I. 214; *Buckler v. Wilson*, (1896) 1 Q. B. 83). Purchasing samples for analysis.

The person purchasing for analysis must strictly comply with the provisions of the section. Where the inspector remained outside and within two minutes after the purchase came in and complied with the requirements of the section, it was held that he acted "forthwith" (*Smith v. Stace*, (1881) 45 J. P. 141; *Somerset v. Miller*, (1890) 54 J. P. 614); but two days after is not "forthwith" (*Parsons v. Birmingham Dairy Co.*, (1882) 9 Q. B. D. 172).

The purchaser must make the vendor aware that he is purchasing for an official analysis, but whether he uses the words public analyst, or county analyst, or similar words with the same import, is immaterial (*Wheeler v. Webb*, (1887) 51 J. P. 661). The fact that a wrong date is marked on the sample will not render the taking of the sample nugatory (*Howe v. Knowles*, (1909) S. C. (Just. Cas.) 61). A railway porter at the station to which milk is consigned is not the agent within this section (*Rouch v. Hall*, (1880) 6 Q. B. D. 17). Each part must be sufficient for analysis (*Lowery v. Hallard*, (1906) 1 K. B. 398). The three parts must be taken from the same sample (*Mason v. Cowdary*, (1900) 2 Q. B. 419); but the mixing together of several small packages of the same article, purchased at the same time, before taking the samples for analysis, does not render the analysis bad (*Smith v. Savage*, (1905) 2 K. B. 88—a case where the purchaser mixed together four penny packets of cream of tartar).

If the analyst does not reside within two miles of the person requiring the analysis, the article may be sent by registered parcel, and the charges are to be deemed part of the expenses of the prosecution (*Act of 1875*, s. 16).

"If any such officer, inspector, or constable as above described, shall apply to purchase any article of food or any drug exposed for sale or on sale by retail on any premises or in any shop or stores, and shall tender the price for the quantity which he shall require for the purpose of analysis, not being more than shall be reasonably requisite, and the person exposing the same for sale shall refuse to sell the same to such officer, inspector, or constable, such person shall be liable to a penalty not exceeding £10" (*Act of 1875*, s. 17). Any street or open place of public resort shall be held to come within the above section (*Act of 1879*, s. 5). "Notwithstanding anything in s. 17 of the Sale of Food and Drugs Act, 1875, where any article of food or drug is exposed for sale in an unopened tin or packet duly labelled, no person shall be required to sell it except in the unopened tin or packet in which it is contained" (*Act of 1899*, s. 18). Refusal to sell to officer.

Any person may prosecute under section 17 as a common informer (*Connor v. Butler*, (1902) 2 I. R. 569). The section does not apply to private persons purchasing for analysis. Section 14, p. 462, *ante*, does not apply to prosecutions under this section (*Clarkin v. McCartan*, (1888) 22 I. L. T. R. 95). The inspector has a right to be supplied out of the same vessel as other purchasers (*Payne v. Hack*, (1894) 58 J. P. 165). The inspector is not bound to produce his authority till it is demanded (*ib.*).

The section applies to articles of sale exposed for sale by wholesale (*McHugh v. McGrath*, (1894) 2 I. R. 78). As to obstruction, bribery, etc., of an official acting under this section, see s. 16 of the Act of 1899, p. 468.

"If the defendant in any prosecution under this Act prove to the satisfaction of the justices or court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor, and with a written warranty to that effect, that he had no reason to believe at the time when he sold it that the article Defence of purchase with warranty.



Defence of  
purchase with  
warranty.

was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor unless he shall have given due notice to him that he will rely on the above defence" (*Act of 1875*, s. 25). See s. 20 of the *Act of 1899*, *infra*, pp. 465, 466.

What amounts  
to a warranty.

An invoice which contains a mere description of the goods sold is not a "written warranty" within the section (*Book v. Hopley*, (1878) 3 Ex. D. 209, in which case the defendant, charged with selling adulterated lard, unsuccessfully relied on an invoice describing the article as "lard"). But the document need not state upon the face of it that it is a warranty, and it is enough if its language imports a warranty, and shows an intention on the part of the vendor to warrant (*Laidlaw v. Wilson*, (1894) 1 Q. B. 74, where a contract for the sale of "Kilvert's Pure Lard" was held to be a written warranty). There must be some express individual representation from the seller to the buyer, forming part of the contract (*per Wright, J.*, in *Iorns v. Van Tromp*, (1895) 18 Cox 182). Therefore an invoice or a label, or an invoice and label, as an incident of delivery, and not connected with any antecedent warranty, affords no defence (*ib.*; *Elder v. Smithson*, (1893) 57 J. P. 809). In *Iorns v. Van Tromp* the appellant had purchased ginger, and had received an invoice describing the article as "ground ginger," and each of the canisters delivered to him by his vendor had affixed on the outside a label upon which were printed the words "warranted genuine pure ground ginger." *Held* that the magistrate was right in declining to look at the invoice, as it formed no part of the contract; that there was no written warranty, and the label would not import one. A guarantee contained in an invoice which is given at the time of the sale, and which in effect forms the contract, will, however, afford a defence (*Hawkins v. Williams*, (1895) 59 J. P. 533). And where there is a previous general written contract, the label may be looked at for the purpose of showing that the specific delivery is under that contract (*Iorns v. Van Tromp*, *supra*, *per Cave J.*), which principle was applied in *Farmers and Cleveland Dairies Co., Ltd. v. Stevenson*, (1891) 63 L. T. 776, where there was a contract to supply daily "genuine good new milk," and each churn bore a label bearing the same words.

Warranty as  
to future  
deliveries

The warranty must be a warranty in respect of the delivery in question; and therefore, a written contract merely for a future supply of a pure and unadulterated article is generally not sufficient (*Harris v. May*, (1883) 12 Q. B. D. 97; but see *Elliott v. Pilcher*, (1901) 2 K. B. 817). Therefore, in the following circumstances it was held that there was no warranty:—a written contract to supply "new and pure milk each and every day for six months" (*Harris v. May*, *supra*); a written agreement to sell 1,000 gallons of milk weekly, "the milk to be pure new milk" (*Robertson v. Harris*, (1900) 2 Q. B. 117); a contract to supply milk, with a guarantee "that the milk supplied by me to Mr. S. is perfectly pure" (*Watts v. Stevens*, (1906) 1 K. B. 323).

But the section will be complied with if it can be shown by some evidence in writing that the particular consignment was purchased under an antecedent general contract to supply an unadulterated article (*Robertson v. Harris*, *supra*; *Watts v. Stevens*, *supra*). Thus, a label (*Farmers & Cleveland Dairies Co., Ltd. v. Stevenson*, *supra*), or an invoice (*Laidlaw v. Wilson*, *supra*), may amount to written evidence connecting the particular consignment with the general warranty.

Moreover, a general warranty as to future deliveries may be so framed as necessarily to extend to every delivery. Thus, the appellant agreed to purchase from a company "the whole of the milk required for his dairy" for twelve months from 1st October, 1905, and the contract contained a warranty that all milk to be delivered to the

appellant by the company should be pure. In June, 1906, milk was delivered to the appellant by the company under the contract, accompanied by a delivery note, which showed that the milk came from the company, but which did not in terms refer to the contract. *Held*, that as the warranty was by the contract expressly applied to all milk sold by the company to the appellant during the specified period, the contract itself was sufficient evidence in writing to connect the particular consignment of milk with the warranty, and that the requirement of s. 25 had been satisfied (*Evans v. Weatheritt*, (1907) 2 K.B. 80). The decision in this case in no way turned upon the delivery note, and the case was distinguished from *Watts v. Stevens*, *supra*, on the ground that there was nothing on the face of the letter of guarantee in *Watts v. Stevens* to show that the warranty applied to more than one consignment of milk;<sup>1</sup> whereas in *Evans v. Weatheritt* the warranty extended to the whole of the milk required for defendant's dairy, and in the absence of any evidence of breach of contract by the vendor, the milk in question was necessarily covered by the warranty. In *Draper v. Newnham*, (1910) 74 J.P. 124, the respondent proved that the milk in question had been supplied to him by a farmer who had for several years under a verbal contract supplied him with all the milk required by him, and that in September, 1908, the farmer had given him the following written warranty:—"I hereby guarantee and warranty that all milk supplied by me to you is of the nature, quality, and substance demanded by law, and I give this warranty for the purposes of the Sale of Food and Drugs Act, 1899." The justices found that this document was intended by both parties to cover the delivery in question, and that it did cover such delivery. *Held*, that the written document could fairly be construed as "I guarantee and warrant from this date that as long as I supply you with milk, that milk shall be within this warranty"; that, therefore, the case came within the principle of *Evans v. Weatheritt*, *supra*, and that the warranty was a sufficient compliance with the section.

Defence of purchase with warranty.

If, too, a written warranty is given in pursuance of a previous verbal contract to give such written warranty, the section will be complied with (*Bacon v. Callow Park Dairy Co.*, (1902) 18 T.L.R. 573). In that case the original contract was a verbal contract that pure milk should be supplied, and that a written guarantee should be given with each churn, and it was held that the words "warranted pure," stamped on the churn, amounted to a written warranty within the section.

A written warranty may be available as a defence, though it contains a term "without accepting any responsibility after delivery" (*Wilson v. Playle*, (1903) 88 L.T. 554: *Evans v. Weatheritt*, *supra*).

"Without accepting any responsibility after delivery."

"(1) A warranty or invoice shall not be available as a defence to any proceeding under the Sale of Food and Drugs Acts, unless the defendant has, within seven days after service of the summons, sent to the purchaser a copy of such warranty or invoice with a written notice stating that he intends to rely on the warranty or invoice, and specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to such person. (2) The person by whom such warranty or invoice is alleged to have been given shall be entitled to appear at the hearing and to give evidence, and the court may, if it thinks fit, adjourn the hearing to enable him to do so. (3) A warranty or invoice given by a person resident outside the United Kingdom shall not be available as a defence to any proceeding under the Sale of Food

Notice of intention to rely on warranty.

<sup>1</sup> "In *Watts v. Stevens*, the view I took was that the document . . . was a document which was open to the construction that it might apply to milk to be supplied on that particular day only, and did not of necessity apply to all milk that would be supplied": per Lord Alverstone, C.J., in *Draper v. Newnham*, (1910) 74 J.P. 124.

**Defence of purchase with warranty.**

and Drugs Acts unless the defendant proves that he has taken reasonable steps to ascertain and did in fact believe in the accuracy of the statement contained in the warranty or invoice. (4) Where the defendant is a servant of the person who purchased the article under a warranty or invoice he shall, subject to the provisions of this section, be entitled to rely on section 25 of the Sale of Food and Drugs Act, 1875,<sup>1</sup> and section 7 of the Margarine Act, 1887,<sup>2</sup> in the same way as his employer or master would have been entitled to do if he had been the defendant, provided that the servant further proves that he had no reason to believe that the article was otherwise than that demanded by the prosecutor. (5) Where the defendant in a prosecution under the Sale of Food and Drugs Acts has been discharged under the provisions of section 25 of the Sale of Food and Drugs Act, 1875, as amended by this Act, any proceedings under the Sale of Food and Drugs Acts for giving the warranty relied on by the defendant in such prosecution may be taken as well before a court having jurisdiction in the place where the article of food or drug to which the warranty relates was purchased for analysis as before a court having jurisdiction in the place where the warranty was given" (*Act of 1899, s. 20*).

The terms of the warranty must be distinctly set out, though not necessarily *verbatim* (*Irving v. Callow Park Dairy Co., Ltd.*, (1902) 87 L.T. 70; *Farthing v. Parkinson*, (1904) 20 Cox 661). Sub-sect. 5 applies only if the warranty was given to the person from whom the article in question was purchased for analysis (*Manners v. Tyler*, (1902) 1 K.B. 901).

**Forging certificate or warranty.**

"Any person who shall forge, or shall utter, knowing it to be forged for the purposes of this Act, any certificate, or any writing purporting to contain a warranty, shall be guilty of a misdemeanour, and be punishable on conviction by imprisonment for a term of not exceeding two years, with hard labour. Every person who shall wilfully apply to an article of food, or a drug, in any proceedings under this Act, a certificate or warranty given in relation to any other article or drug shall be guilty of an offence under this Act, and be liable to a penalty not exceeding £20. . . . and every person who shall wilfully give a label with any article sold by him which shall falsely describe the article sold shall be guilty of an offence under this Act, and be liable to a penalty not exceeding £20" (*Act of 1875, s. 27*). As to penalties for offences subsequent to a first offence, see s. 17 of the *Act of 1899, p. 469*.

**Wilful misapplication of warranty.****False label.****Giving false warranty.**

"(6) Every person who, in respect of an article of food or drug sold by him as principal or agent, gives to the purchaser a false warranty in writing, shall be liable on summary conviction for the first offence to a fine not exceeding £20, for the second offence to a fine not exceeding £50, and for any subsequent offence to a fine not exceeding £100, unless he proves to the satisfaction of the court that when he gave the warranty he had reason to believe that the statements or descriptions contained therein were true"<sup>3</sup> (*Act of 1899, s. 20 (6)*).

The analyst's certificate,<sup>4</sup> given under sect. 21 of the Sale of Food and Drugs Act, 1875, is not evidence in a prosecution for giving a false warranty (*R. v. Smith*, (1896) 1 Q.B. 596; *Tyler v. Kingham*, 1900)

<sup>1</sup> *Supra*.<sup>2</sup> See *infra*, p. 471.<sup>3</sup> As to imprisonment for any offence subsequent to the first, see s. 19 of the *Act of 1899, p. 462*.<sup>4</sup> The following is the form of certificate set out in the schedule in the *Act of 1875*:—

To (a)

I, the undersigned, public analyst for the  
received on the day of 19, from  
for analysis (which then weighed (

, do hereby certify that I  
(b) a sample of  
(c)), and have analysed



2 Q.B. 413). Prosecutions under this section must be instituted within six months (*Whitaker v. Pomfret Bros.*, (1902) 1 K.B. 661). As to a comparison between the evidence necessary to support a conviction under this sub-section and under section 6 of Sale of Food and Drugs Act, 1875, see *Oatley v. Lemon*, (1905) 20 Cox, 791.

"Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable under the direction and at the cost of the local authority appointing such officer, inspector, or constable, or charged with the execution of this Act, may procure at the place of delivery any sample of any milk in course of delivery to the purchaser or consignee in pursuance of any contract for the sale to such purchaser or consignee of such milk, and such officer, inspector, or constable, if he suspect the same to have been sold contrary to any of the provisions of the principal Act,<sup>1</sup> shall submit the same to be analysed, and the same shall be analysed and proceedings shall be taken and penalties" awarded as under section 13 of the principal Act (*Act of 1879*, s. 3). A portion of the sample is to be sent to the consignor if his name and address appear on the can or package (*Act of 1899*, s. 10, noted, *post*, p. 474).

Taking  
samples in  
course of  
delivery  
(1) Milk.

"The seller or consignor, or any person or persons entrusted by him for the time being with the charge of such milk, if he shall refuse to allow such officer, inspector, or constable to take the quantity which" he may require for the purpose of analysis shall be liable to a penalty not exceeding £10 (*Act of 1879*, s. 4).

An inspector can act only in his own district (*M<sup>r</sup>. Nair v. Cove*, (1903) 1 K.B. 24), but can take samples by deputy (*Tyler v. Dairy Supply Co.*, (1908) 94 L.T. 867). The words "in pursuance of any contract" apply to the case of a milkman hawking milk round who was asked for a sample while pouring the milk into a customer's jug (*Phelan v. Rorke*, (1883) 17 I.L.T. & S.J. 649). Where a contract provided for a sale of milk to be delivered at London or such other station as the purchasers might appoint, the carriage to be paid by the purchasers, and the purchasers subsequently named Hull as the station for delivery, it was held that, notwithstanding the provision for payment of the carriage by the purchasers, Hull was the place of delivery within the section (*Filshie v. Erington*, (1892) 2 Q.B. 200). It is not necessary to comply with s. 14 of the Act of 1875 (*supra*, p. 462) when procuring a sample under this section (*Rouch v. Hall*, (1880) 6 Q.B.D. 17). As to proceeding in respect of several cans of milk forming

the same, and declare the result of my analysis to be as follows:—I am of opinion that the same is a sample of genuine

or,

I am of opinion that the said sample contained the parts as under, or the percentages of foreign ingredients as under:—

Observations (d)

As witness my hand this day of

H. B.

at

(a) Here insert the name of the person submitting the article for analysis.

(b) Here insert the name of the person delivering the sample.

(c) When the article cannot be conveniently weighed, this passage may be erased, or the blank may be left unfilled.

(d) Here the analyst may insert at his discretion his opinion as to whether the mixture (if any) was for the purpose of rendering the article portable or palatable, or of preserving it, or of improving the appearance, or was unavoidable, and may state whether in excess of what is ordinary or otherwise, and whether the ingredients or materials mixed are or are not injurious to health. In the case of a certificate regarding milk, butter, or any article liable to decomposition the analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis.

<sup>1</sup> i.e. The Act of 1875. (Act of 1879, Preamble.)

**Taking samples in course of delivery.**

(2) Other articles of food.

**Name and address of person selling milk or cream in a public place.**

**Obstruction of officer in discharge of his duties.**

**Procedure and penalties under Acts of 1875 & 1879.**

Application of P. S. Act.

**Analyst's certificate necessary.**

part of the same consignment, see *Fecitt v. Walsh*, (1891) 2 Q.B. 304; *Telford v. Fyfe*, (1908) Sess. Ca. (J.), 83, noted p. 106, *ante*.

"The provisions of ss. 3 and 4 of the Sale of Food and Drugs Amendment Act, 1879 (relating to the taking of samples of milk in the course of delivery) shall apply to every other article of food: Provided that no samples shall be taken under this section except upon the request or with the consent of the purchaser or consignee" (*Act of 1899*, s. 14).

"Every person who, himself or by his servant, in any highway or place of public resort, sells milk or cream from a vehicle or from a can or other receptacle shall have conspicuously inscribed on the vehicle or receptacle his name and address, and in default shall be liable on summary conviction to a fine not exceeding £2" (*Sale of Food and Drugs Act, 1899*, s. 9). It is not enough to have the name and address on the cart where the milk is sold from a can which is carried about by hand (*Crabtree v. Skelton*, (1901) 70 L.J.K.B. 560).

"Any person who wilfully obstructs or impedes any inspector or other officer in the course of his duties under the Sale of Food and Drugs Acts, or by any gratuity, bribe, promise, or other inducement prevents or attempts to prevent the due execution by such inspector or officer of his duty under those Acts, shall be liable, on summary conviction, for the first offence to a fine not exceeding £20, for the second offence to a fine not exceeding £50, and for any subsequent offence to a fine not exceeding £100" (*Sale of Food and Drugs Act, 1899*, s. 16). In *Taylor v. Nixon*, (1910) 2 I.R. 94, it was held that a married woman, the owner of a public-house, is not responsible under this section for the acts of her husband who was employed by her to manage the business during her absence.

As to seizure and destruction of unwholesome food, see PUBLIC HEALTH. The Act of 1879 is merely emendatory of the Act of 1875, and the two Acts are consequently to be read as one.

"When the analyst, having analysed any article, shall have given his certificate of the result, from which it may appear that an offence against some one of the provisions of this Act has been committed, the person causing the analysis to be made may take proceedings for the recovery of the penalty herein imposed for such offence before any justices in petty sessions assembled having jurisdiction in the place where the article or drug sold was actually delivered to the purchaser, in a summary manner," the proceedings to be taken in Dublin, according to the Dublin Police Acts; elsewhere in Ireland, before a justice or justices at petty sessions according to the Petty Sessions (Ir.) Act, 1851, and any Act amending the same. Every penalty may be reduced or mitigated according to the judgment of the justices (*Act of 1875*, s. 20). Nothing in the Act shall take away the power of proceeding by indictment (s. 28).

The analyst's certificate is a *sine qua non* in any prosecution, whether a public one or by a private prosecutor (*R. v. Smith*, (1896) 1 Q.B. 596; *R. (Barry) v. Mahony*, (1909) 2 I.R. 490, 43 I.L.T.R. 263), in which latter case the Irish King's Bench Division refused to follow *Buckler v. Wilson*, (1896) 1 Q.B. 83.

A copy of the certificate must be served with the summons (*Act of 1899*, s. 19). Where a limited company is prosecuted, the summons must be served as directed by the Companies Acts, 1908, that is at the registered office of the company (*Pearks & others v. Richardson*, (1902) 1 K.B. 91, see also p. 48). The local inspector may himself institute proceedings though the L.G.B., or the Department of Agriculture may

<sup>1</sup> As to imprisonment for any offence subsequent to a first offence, see s. 17 of the Act of 1899, p. 469.

procure the samples and cause the analysis to be made (*Connor v. Butler*, (1902) 2 I.R. 369). As to contents of summons see *Act of 1899*, s. 19 (2), *infra*.

**Procedure and penalties under Acts of 1875 & 1879.**  
Penalties.

“(1) Where under any provision of the Sale of Food and Drugs Act, 1875, a person guilty of an offence is liable to a fine which may extend to £20 as a maximum, he shall be liable for a second offence under the same provision to a fine not exceeding £50, and for any subsequent offence to a fine not exceeding £100. (2) Where under any provision of the Sale of Food and Drugs Acts,<sup>1</sup> a person guilty of an offence is liable to a fine exceeding £50, and the offence in the opinion of the court was committed by the personal act, default, or culpable negligence of the person accused, that person shall be liable (if the court is of opinion that a fine will not meet the circumstances of the case) to imprisonment with or without hard labour for a period not exceeding three months” (*Act of 1899*, s. 17). See also *Act of 1875*, s. 20, noted *supra*, p. 468, as to power to mitigate penalties.

“(1) When any article of food or drug has been purchased from any person for test purposes, any prosecution under the Sale of Food and Drugs Acts in respect of the sale thereof, notwithstanding anything contained in s. 20 of the Sale of Food and Drugs Act, 1875, shall not be instituted after the expiration of 28 days from the time of the purchase. (2) In any prosecution under the Sale of Food and Drugs Acts the summons shall state particulars of the offence or offences alleged, and also the name of the prosecutor, and shall not be made returnable in less time than 14 days from the day on which it is served, and there must be served therewith a copy of any analyst's certificate obtained on behalf of the prosecutor” (*Act of 1899*, s. 19).

Time limit.

Contents of summons.

The words “in respect of the sale” include exposure for sale (*R. (Gieraghty) v. Dublin J.J.*, (1901) 35 I.L.T.R. 136, I.N.I.J.R. 172). The laying of the information is the institution of proceedings (*Beardsley v. Giddings*, (1904) 1 K.B. 847). It has been held in a Scotch case (*Frer v. Morris*, (1897) 34 Sc.L.R. 527) that the day on which the purchase is made is to be excluded from the 28 days, but the contrary was decided in England under similar words in 12 & 13 Vict. c. 92 (*Radcliffe v. Bartholemew*, (1892) 1 Q.B. 161). Sub-section (2) does not apply to prosecutions for giving a false warranty (*Cook v. White*, (1896) 1 Q.B. 284). “Fourteen days” in that sub-section means clear days (*McQueen v. Jackson*, (1903) 2 K.B. 163). An information was laid and a summons issued thereon within the 28 days, but the summons not having been served within the time prescribed by s. 19 (2), it was allowed to drop, and, after the expiration of the 28 days, a fresh summons was applied for on the same information and issued. *Held*, that there having been no adjudication on the merits of the first summons, a second summons could be issued on the information, and that it was immaterial that the second summons was issued after the expiration of the 28 days, the information, which was the institution of the prosecution, having been laid within that time (*Brooks v. Bagshaw*, (1904) 2 K.B. 798).

“At the hearing of the information in such proceeding, the production of the certificate of the analyst shall be sufficient evidence of the facts therein stated, unless the defendant shall require that the analyst shall be called as a witness, and the parts of the articles retained by the person who purchased the article shall be produced; and the defendant may, if he think fit, tender himself and his wife to be examined on his behalf, and he or she shall, if he so desire, be examined accordingly” (*Act of 1875*, s. 21). The burthen of proof of an exception or provision is cast upon the defendant (s. 24).

Evidence.

“(1) At the hearing of the information in any proceeding under the

<sup>1</sup> For meaning of which see p. 456.



Procedure and penalties under Acts of 1875 and 1879.

Sale of Food and Drugs Acts, the production by the defendant of a certificate of analysis by a public analyst in the form prescribed in s. 18 of the Sale of Food and Drugs Act, 1875, shall be sufficient evidence of the facts therein stated, unless the prosecutor requires that the analyst be called as a witness. (2) A copy of every such certificate shall be sent to the prosecutor at least three clear days before the return day, and if it be not so sent, the court may, if it thinks fit, adjourn the hearing on such terms as may seem proper" (*Act of 1899, s. 22*).

The defendant after having established as a defence under s. 25 of the Act of 1875, that he bought the article with a written warranty and sold it in the same state as purchased, it was held that the analyst's certificate was not admissible in evidence in subsequent proceedings against the defendant's vendor (*Tyler v. Kingham*, (1900) 2 Q.B. 413). "The analyst's duty is merely to analyze and report the result of the analysis, and he has no right, as I think, to report extraneous facts unconnected with the analysis; and if he does so, his certificate would, in my judgment, be inadmissible as evidence of such facts" (per Hawkins, J., in *R. v. Smith*, (1896) 1 Q.B. 596, at p. 603). The analyst's certificate is not conclusive, and may be repelled by rebutting evidence, e.g., in a prosecution for selling watered milk, by evidence that the milk was sold as it came from the cow (*Hewitt v. Taylor*, (1896) 1 Q.B. 287), but the justices are bound to act on the analyst's certificate in the absence of any evidence to displace it (*Elder v. Dryden*, (1908) 99 L.T. 20).

Analysis by direction of justices.

Either party has a right to require the justices, or the court on appeal, to send the article for analysis to Somerset House; or the justices may, without any such request, send it of their own motion (*Act of 1899, s. 21; Act of 1875, s. 22*). Somerset House shall send a certificate of the result to the justices; the expense of such analysis shall be paid by the complainant or the defendant as the order may direct (*Act of 1875, s. 22*). The Somerset House certificate has been held by the Scotch courts not to be absolutely conclusive (*Fyfe v. Hamilton*, (1894) 1 Adam, 484; *Todd v. Cochrane*, (1901) 38 Sc. L. R. 801). It has been held that if the justices are requested to send the samples to Somerset House, the omission to do so is fatal to a conviction, even if it is impossible owing to the loss of the sample (*Hutchison v. Stevenson*, (1902) 39 Sc. L. R. 789).

Application of penalties.

In the case of a prosecution by an officer, inspector, or constable of the authority who shall have appointed an analyst, or agreed to the acting of an analyst, within their district, the penalties are to be paid to such officer, etc., and to be by him paid to the authority for whom he acts and to be applied towards the expenses of executing the Act; in other cases the penalty is applicable as directed by the Fines (Ir.) Act, 1851 (*Act of 1875, s. 26*).

Appeal to quarter sessions.

An appeal is given by section 23 of the Act of 1875 to a person convicted of any offence, irrespective of the amount of the penalty. The appeal is to the next quarter sessions for the division, or to the Recorder of Dublin or of any corporate or borough town in respect of a conviction by justices of such corporate or borough town; if the quarter sessions are held within ten days, the appellant, at his option, may appeal to the next quarter sessions but one; the appeal is to be made in the form and manner and with such notices as prescribed by the Petty Sessions Act, and all the provisions of that Act as to making appeals<sup>1</sup> and executing orders on appeal are made applicable.

Margarine and Margarine cheese, "Margarine."

"The expression 'margarine' shall mean any article of food, whether mixed with butter or not, which resembles butter, and is not milk-blended butter" (*Butter and Margarine Act, 1907, s. 13*). "The expression

<sup>1</sup> It is submitted that this does not limit the jurisdiction to cases where the penalty imposed exceeds 20s.

'margarine cheese' means any substance, whether compound or otherwise, which is prepared in imitation of cheese, and which contains fat not derived from milk" (*Act of 1899*, s. 25). "The word 'butter' shall mean the substance usually known as butter, made exclusively from milk or cream, or both, with or without salt or other preservative, and with or without the addition of colouring matter" (*Margarine Act*, 1887, s. 3). "The expression 'cheese' means the substance usually known as cheese, containing no fat derived otherwise than from milk" (*Act of 1899*, s. 25). "Milk-blended butter" means "any mixture produced by mixing or blending butter with milk or cream other than condensed milk or cream" (*Act of 1907*, s. 1 (b)).

**Margarine and Margarine cheese.**  
 "Margarine cheese."  
 "Butter."  
 "Cheese."  
 "Milk-blended butter."

"Every person dealing in margarine [or "margarine cheese"<sup>1</sup>], whether wholesale or retail, whether a manufacturer, importer, or as consignor or consignee, or as commission agent or otherwise, who is found guilty of an offence against this Act"—*Penalty*, first offence, fine not exceeding £20; second offence, not exceeding £50; third and subsequent offences, not exceeding £100<sup>2</sup> (*Margarine Act*, 1887, s. 4).

Penalties for offences against Margarine Act, 1897.

Margarine shall not be sold "except under the name of margarine, and under the conditions set forth in this Act" (*Margarine Act*, 1887, s. 3).

Margarine to be sold as such only.

"Every person dealing with, selling, or exposing, or offering for sale, or having in his possession for the purpose of sale any quantity of margarine [or "margarine cheese"<sup>1</sup>] contrary to the provisions of the Act shall be liable to conviction for an offence against this Act, unless he shows to the satisfaction of the court before whom he is charged that he purchased the article in question as butter [or cheese<sup>1</sup>], and with a written warranty or invoice to that effect, that he had no reason to believe at the time when he sold it that the article was other than butter [or cheese<sup>1</sup>], and that he sold it in the same state as when he purchased it, and in such case he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor unless he shall have given due notice to him that he will rely upon the above defence" (s. 7; see also *Act of 1899*, s. 20, p. 465).

Dealing, &c., in margarine or margarine cheese contrary to Act.

"Every person dealing in margarine [or margarine cheese<sup>1</sup>] in the manner described in the preceding section<sup>3</sup> shall conform to the following regulations: Every package, whether open or closed and containing margarine, shall be branded or durably marked 'Margarine' [or 'margarine cheese'<sup>1</sup>] on the top, bottom, and sides in printed capital letters, not less than  $\frac{3}{4}$  of an inch square, and if such margarine [or 'margarine cheese'<sup>1</sup>] be exposed for sale by retail there shall be attached to each parcel thereof so exposed, and in such manner as to be clearly visible to the purchaser, a label marked in printed capital letters not less than  $1\frac{1}{2}$  ins. square 'Margarine' [or 'margarine cheese'<sup>1</sup>]; and every person selling margarine [or margarine cheese<sup>1</sup>] by retail save in a package duly branded or durably marked as aforesaid shall in every case deliver the same to the purchaser<sup>4</sup> in a paper wrapper on which shall be printed in capital block letters no less than half an inch long<sup>5</sup> and distinctly legible, 'Margarine' or 'margarine cheese'<sup>1</sup>, and no other printed matter shall appear on the wrapper"<sup>6</sup> (*Margarine Act*, 1887, s. 6; *Sale of Food and Drugs Act*, 1899, s. 6).

Package to be marked.

<sup>1</sup> Words in brackets inserted by s. 5 of the Act of 1899.

<sup>2</sup> As to imprisonment for any offence subsequent to a first offence, see s. 17 of the Act of 1899, p. 469.

<sup>3</sup> That is, "whether wholesale or retail, whether a manufacturer, importer, or as consignor or consignee, or as commission agent or otherwise" (s. 4).

<sup>4</sup> The words "or with" which here occurred in the section were repealed by the Sale of Food and Drugs Act, 1899, s. 6.

<sup>5</sup> "Half an inch long" substituted for quarter of an inch square (s. 6 of the Act of 1899).

<sup>6</sup> The words in italics added by Sale of Food and Drugs Act, 1899, s. 6.



Margarine  
and  
Margarine  
cheese.

"Where under this Act or the Margarine Act, 1887, it is required that any package containing margarine or margarine cheese shall be branded or marked, the brand or mark shall be on the package itself and not solely on a label, ticket, or other thing attached thereto" (*Sale of Food and Drugs Act, 1899, s. 6 (1)*).

An open tub kept in a shop in the sight of purchasers is a package within the section (*M'Nair v. Horan, (1904) 20 Cox 729, Maguire v. Porter, (1905) 2 I.R. 147*). Where a tub is kept behind a screen out of sight of customers, it is not exposed within the section (*Crane v. Lawrence, (1890) 25 Q.B.D. 152*), but where packages of made up margarine are kept on shelves so as to be visible to purchasers they are exposed (*Wheat v. Brown, (1892) 1 Q.B. 418*). Selling slices of bread spread with margarine is not within the section (*Moore v. Pearce, (1895) 2 Q.B. 657*).

Misdescribing  
margarine in  
wrapper.

"If in any wrapper enclosing margarine, or on any package containing margarine, or on any label attached to a parcel of margarine, or in any advertisement or invoice of margarine a person dealing in margarine describes it by any name other than either 'margarine,' or a name combining the word 'margarine' with a fancy or other descriptive name approved by the Department of Agriculture,<sup>1</sup> and printed in type not larger than and in the same colour as the word 'margarine,' he shall be guilty of an offence under this Act" (*Butter and Margarine Act, 1907, s. 8*). For penalties see s. 11 of the Act, noted p. 478, *post*.

The defendant sold a half pound of Kurmo (a kind of margarine) in a paper wrapper on which the words "Kurmo Margarine" were printed. The word Kurmo was a duly approved fancy or descriptive name. *Held*, that the above section had not impliedly repealed section 6 of the Act of 1899, and that the word "margarine" and no other printed matter should appear "on" the wrapper (*Williams v. Baker, (1910) W.N. 280*).

Branding  
margarine  
cheese.

"The provisions of the Margarine Act, 1887, as amended by this Act, shall extend to margarine cheese, and shall apply accordingly, with the substitution of 'margarine cheese,' and 'cheese' for 'margarine' and 'butter,' and provided that all margarine cheese, sold or dealt in otherwise than by retail, shall either be enclosed in packages marked in accordance with the Margarine Act, 1887, as amended by this Act, or be itself conspicuously branded with the words 'margarine cheese'" (*Sale of Food and Drugs Act, 1899, s. 5*).

Consignment  
of margarine.

"All margarine<sup>2</sup> imported into the United Kingdom of Great Britain and Ireland, and all margarine,<sup>2</sup> whether imported or manufactured within the United Kingdom of Great Britain and Ireland, shall, whenever forwarded by any public conveyance, be duly consigned as margarine,<sup>2</sup> and it shall be lawful for any officer of H.M. Customs or Inland Revenue, or any medical officer of health, inspector of nuisances, [inspector of weights and measures<sup>3</sup>] or police constable, authorized under s. 13 of the Sale of Food and Drugs Act, 1875, to procure samples for analysis, if he shall have reason to believe that the provisions of this Act are infringed on<sup>4</sup> this behalf, to examine and take samples from any package, and ascertain, if necessary by submitting the same to be analysed, whether an offence against this Act has been committed"<sup>5</sup> (*Margarine Act, 1887, s. 8*).

Registration  
of manufac-  
tory.

"Every manufactory of margarine<sup>2</sup> within the United Kingdom of Great Britain and Ireland shall be registered by the owner or occupier thereof with the local authority<sup>6</sup> from time to time in such manner as the

<sup>1</sup> See Act of 1899, s. 24, and Act of 1907, s. 14.

<sup>2</sup> Or margarine cheese (Act of 1899, s. 5).

<sup>3</sup> By s. 12 of the Butter and Margarine Act, 1907, it is provided that this section shall have effect as if the words in brackets were inserted after the word "nuisances."

<sup>4</sup> *Sic*.

<sup>5</sup> As to the penalties see s. 4, p. 471, *supra*.

<sup>6</sup> "Local authority" means any local authority authorized to appoint a public analyst under the Sale of Food and Drugs Act, 1875 (*Margarine Act, 1887, s. 13*). See Act of 1875, s. 13, noted p. 462, *ante*.



Local Government Board . . . of Ireland . . . may direct, and every such owner or occupier carrying on such manufacture in a manufactory not duly registered, shall be guilty of an offence under this Act" (*Margarine Act*, 1887, s. 9). These provisions are extended to any premises wherein the business of a wholesale dealer in margarine or margarine cheese is carried on (*Sale of F. and D. Act*, 1899, s. 7 (4)), and are also extended to certain butter factories by s. 1 (1) of the *Butter and Margarine Act*, 1907, namely "(a) butter factories, that is to say, any premises on which by way of trade butter is blended, reworked, or subjected to any other treatment, but not so as to cease to be butter; and (b) any premises on which there is manufactured any milk-blended butter (that is to say, any mixture produced by mixing or blending butter with milk or cream other than condensed milk or cream) or on which there is carried on the business of a wholesale dealer in milk-blended butter" (*Butter and Margarine Act*, 1907, s. 1 (1)). As to notifying registration, &c., see *SALE OF FOOD AND DRUGS ACT*, 1899, s. 7, noted, *post*, p. 477.

Margarine and Margarine cheese.

"It shall be unlawful to manufacture, sell, expose for sale, or import any margarine, the fat of which contains more than 10 per cent. of butter-fat, and every person who manufactures, sells, exposes for sale, or imports any margarine which contains more than that percentage shall be guilty of an offence under the *Margarine Act*, 1887,<sup>1</sup> and any defence which would be a defence under s. 7 of that Act<sup>2</sup> shall be a defence under this section, and the provisions of the former section shall apply accordingly" (*Sale of Food and Drugs Act*, 1899, s. 8). A mixture of butter and fresh milk is not margarine within the section (*Bayley v. Pearks*, (1902) 87 L.T. 67). But it is milk-blended butter; as to which see the definition thereof at p. 471, and s. 9 of the *Act of 1907*, p. 476.

Restriction on amount of butter-fat in margarine.

"Any officer authorized to take samples under the *Sale of Food and Drugs Act*, 1875, may, without going through the form of purchase provided by that Act, but otherwise acting in all respects in accordance with the provisions of the said Act as to dealing with samples, take for the purposes of analysis samples of any butter, or substances purporting to be butter,<sup>3</sup> which are exposed for sale, and are not marked Margarine<sup>4</sup> as provided by this Act; and any such substance not being so marked shall be presumed to be exposed for sale as butter"<sup>5</sup> (*Margarine Act*, 1887, s. 10.)

Taking samples.

All proceedings under the *Margarine Act*, 1887, shall, save as expressly varied, be taken as prescribed by ss. 12-28 inclusive of the *Sale of Food and Drugs Act of 1875*, and all officers employed under the *Act of 1875* are empowered to carry out the provisions of the *Act (Margarine Act, 1887, s. 12)*. Reference should therefore be made to *PROCEDURE UNDER ACTS OF 1875 & 1879*, p. 468, *et seq.*

Procedure under Margarine Act, 1887.

Any part of the penalty recovered under the *Act of 1887* may, if the court so direct, be paid to the person who proceeds for the same, to reimburse him for the legal costs of obtaining the analysis and any other reasonable expenses to which the Court shall consider him entitled (*Margarine Act*, 1887, s. 11). Section 11 only applies to prosecutions by private persons (*R. v. Titterton*, (1895) 2 Q.B. 61).

"Where an employer is charged with an offence against this Act he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the employer proves to the satisfaction of

Acts done by servant, &c.

<sup>1</sup> As to the penalties for such offence, see s. 4 of the *Act of 1887*, p. 471, and s. 17 of the *Act of 1889*, p. 469.

<sup>2</sup> For which see p. 474.

<sup>4</sup> Or margarine cheese (*Act of 1899*, s. 5).

<sup>3</sup> Or cheese (*Act of 1899*, s. 5).

<sup>5</sup> Or cheese (*Act of 1899*, s. 6).

Margarine and Margarine cheese.

the court that he had used due diligence to enforce the execution of this Act, and that the said other person had committed the offence in question, without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the employer shall be exempt from any penalty" (*Margarine Act, 1887, s. 5*).

Presumption against vendor.

"Every person dealing with, selling, or exposing or offering for sale, or having in his possession for the purpose of sale any quantity of margarine<sup>1</sup> contrary to the provisions of this Act, shall be liable to conviction . . . unless he shows to the satisfaction of the court . . . that he purchased the article in question as butter<sup>2</sup> and with a written warranty or invoice to that effect, that he had no reason to believe at the time when he sold it that the article was other than butter,<sup>2</sup> and that he sold it in the same state as when he purchased it, and in such case he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor unless he shall have given due notice to him that he will rely upon the above defence" (*Margarine Act, 1887, s. 7*).

Division of samples taken in course of delivery or transit.

"In the case of a sample taken of milk in course of delivery, or of margarine or margarine cheese forwarded by a public conveyance, the person taking the sample shall forward by registered parcel or otherwise a portion of the sample marked and sealed or fastened up, to the consignor if his name and address appear on the can or package containing the article sampled" (*Sale of Food and Drugs Act, 1899, s. 10*).

Provisions as to condensed, separated, or skimmed milk.

"Every tin or other receptacle containing condensed separated or skimmed milk must bear a label clearly visible to the purchaser, on which the words 'Machine-skimmed Milk' or 'Skimmed Milk,' as the case may require, are printed in large and legible type, and if any person sells or exposes or offers for sale condensed separated or skimmed milk in contravention of this section, he shall be liable on summary conviction to a fine not exceeding £10" (*Sale of Food and Drugs Act, 1899, s. 11*). It has been said that the section applies only to condensed milk (*French v. Card, (1909) 101 L.T. 428*).

Imported impoverished articles to be marked.

"(1) If there is imported into the United Kingdom any of the following articles, namely:—(a) margarine or margarine cheese except in packages conspicuously marked 'Margarine' or 'Margarine Cheese,' as the case may require; or (b) adulterated or impoverished milk or cream, except in packages or cans conspicuously marked with a name or description indicating that the milk or cream has been so treated; or (c) condensed separated or skimmed milk, except in tins or other receptacles which bear a label whereon the words 'Machine-skimmed Milk' or 'Skimmed Milk,' as the case may require, are printed in large and legible type; or (d) any adulterated or impoverished article of food to which Her Majesty may by Order in Council direct that this section shall be applied, unless the same be imported in packages or receptacles conspicuously marked with a name or description indicating that the article has been so treated, the importer<sup>3</sup> shall be liable on summary conviction for the first offence to a fine not exceeding £20, for the second offence to a fine not exceeding £50, and for any subsequent offence to a fine not exceeding £100"<sup>4</sup> (*Sale of Food and Drugs Act, 1899, s. 1*). This section is extended to the following articles by the Butter and Margarine Act, 1907, s. 5:—(e) "Butter containing more than sixteen per cent. of water; (f) margarine

<sup>1</sup> Or margarine cheese (Act of 1889, s. 5).

<sup>2</sup> Or cheese (Act of 1889, s. 5).

<sup>3</sup> "The word 'importer' shall include any person who, whether as owner, consignor, or consignee, agent, or broker is in possession of, or in anywise entitled to the custody or control of the article" (s. 1 (2)).

<sup>4</sup> As to imprisonment for any offence subsequent to a first offence, see s. 17, p. 469. As to alternative to the above-mentioned penalty, see s. 5 (2) of the Act of 1907, p. 475, *infra*.

containing more than sixteen per cent. of water, or more than ten per cent. of butter fat; (g) milk-blended butter containing more than twenty-four per cent. of water; (h) milk-blended butter, except in packages conspicuously marked with such name as may be approved by the Department of Agriculture<sup>1</sup> for that purpose; (i) butter, margarine, or milk-blended butter which contains a preservative prohibited by any regulation made under this Act, or an amount of a preservative in excess of the limit allowed by any such regulation" (*Butter and Margarine Act, 1907, s. 5 (1)*).

"Prosecutions for offences under this section shall be undertaken by the Commissioners of Customs; subject to the provisions of this Act, this section shall have effect as if it were part of the Customs Consolidation Act, 1876" (*Sale of Food and Drugs Act, 1899, s. 1 (2)*). "The maximum fine for an offence under the said section one<sup>2</sup> as amended by this section,<sup>3</sup> shall, where the article in respect of which the offence was committed is butter, margarine, margarine cheese, or milk-blended butter, be either such as is provided in the said section one, or, at the election of the Commissioners of Customs, a fine equal to the value of the goods imported bearing the same mark or description, to be estimated and taken according to the rate and price for which goods of the like kind, but of the best quality, were sold at or about the time of the importation" (*Butter and Margarine Act, 1907, s. 5 (2)*).

"(4) Where the Commissioners of Customs take a sample of any consignment . . . they shall divide it into not less than three parts, and send one part to the importer and one part to the principal chemist of the Government laboratories, and retain one part. (5) In any proceeding under this section, the certificate of the principal chemist of the result of the analysis shall be sufficient evidence of the facts therein stated, unless the defendant require that the person who made the analysis be called as a witness. (7) For the purposes of this section an article of food shall be deemed to be adulterated or impoverished if it has been mixed with any other substance, or if any part of it has been abstracted so as in either case to affect injuriously its quality, substance, or nature: Provided that an article of food shall not be deemed to be adulterated by reason only of the addition of any preservative or colouring matter of such a nature and in such quantity as not to render the article injurious to health" (*Sale of Food and Drugs Act, 1899, s. 1*).

(3) "The certificate of the principal chemist of the Government laboratories, or, if the person who made the analysis be called as a witness, the evidence of that person, that an imported substance is margarine or milk-blended butter shall raise a presumption, until the contrary is proved, that the substance is margarine or milk-blended butter, and the defendant shall not be entitled to require the person who made the analysis to be called as a witness, unless he shall, at least three clear days before the return day, give notice to the prosecutor that he requires his attendance, and deposit with the prosecutor a sum sufficient to cover the reasonable costs and expenses of his attendance, which costs and expenses shall be paid by the defendant in the event of his conviction. (4) Where a sample, taken under the said section one<sup>4</sup> as amended by this section, is certified by the principal chemist to be margarine or milk-blended butter, the Commissioner of Customs shall, upon receiving the certificate, forthwith notify the importer thereof" (*Butter and Margarine Act, 1907, s. 5*).

Imported impoverished articles to be marked.

Proceedings and penalties.

Taking samples.

Certificate of analysis.

What is "adulterated or impoverished"?

Requiring attendance of analyst.

<sup>1</sup> See s. 14 and Act of 1899, s. 24.

<sup>2</sup> Of the Act of 1899, *supra*, p. 474.

<sup>3</sup> In sub-section 1, *supra*.

<sup>4</sup> Of the Act of 1899.



Regulations  
as to  
preservatives.

“(1) The Local Government Board<sup>1</sup> may, after such inquiry as they deem necessary, make regulations for prohibiting the use as a preservative of any substance specified in such regulations in the manufacture or preparation for sale of butter, margarine, or milk-blended butter, or for limiting the extent to which either generally or as regards any particular substance or substances, preservatives may be used in the manufacture or preparation for sale of butter, margarine, or milk-blended butter.<sup>2</sup> (2) Any regulations . . . shall be notified in the . . . Dublin Gazette, and shall also be made known in such other manner as the Local Government Board may direct. (3) Any person who manufactures, sells, or exposes or offers for sale, or has in his possession for the purpose of sale, any butter, margarine, or milk-blended butter which contains a preservative prohibited by a regulation under this section or an amount of a preservative in excess of the limit allowed by any such regulation, shall be guilty of an offence under this Act” (*Butter and Margarine Act, 1907, s. 7*). For penalties see s. 11, p 478, *post*.

Moisture in  
butter or in  
margarine in  
factory or  
for sale.

(1) “If any butter which, when prepared for sale or consignment, contains more than sixteen per cent. of water is in any butter factory, or if any margarine<sup>3</sup> which, when prepared for sale or consignment, contains more than sixteen per cent. of water is in any margarine factory, or if any such butter or margarine is consigned from a butter factory or margarine factory, the occupier of the factory or consignor, as the case may be, shall (whether the excess of moisture is due to adulteration or not) be guilty of an offence under this Act, unless the occupier or consignor proves to the satisfaction of the court that the butter or margarine was not made, blended, reworked, or treated in the factory. (2) Any person who manufactures, sells, or exposes or offers for sale, or has in his possession for the purpose of sale, any milk-blended butter which contains more than twenty-four per cent. of water, shall be guilty of an offence under this Act” (*Butter and Margarine Act, 1907, s. 4*). For penalties see s. 11, 478, *post*.

Moisture in  
milk-blended  
butter.

See further, as to weighing butter, and mixing with excessive salt, under BUTTER, p. 391.

Sale of milk-  
blended  
butter.

“(1) Milk-blended butter shall be dealt with under such name or names as may be approved by the Department of Agriculture,<sup>4</sup> and under the conditions applicable to the sale or description of margarine, with the substitution of an approved name for the word “margarine,” and with this modification, that in any case where in order to comply with those conditions the article is delivered to the purchaser in a wrapper, there shall, in addition to the approved name, be printed on the wrapper, in such manner as the Department approve, such description of the article, setting out the percentage of moisture or water contained therein, as may be approved by the Department. (2) Milk-blended butter, whenever forwarded by any public conveyance, shall be duly consigned under the name which as respects the article consigned has been approved by the Department under this section; subject to this modification, s. 8 of the Margarine Act, 1887, shall apply to milk-blended butter in like manner as it applies to margarine. (3) If any person deals with, sells, or exposes or offers for sale, or has in his possession for the purpose of sale, or describes any milk-blended butter contrary to the provisions of this section, he shall be guilty of an offence under this Act, but any defence which would be a defence under s. 7 of the Margarine Act, 1887,<sup>5</sup> as

<sup>1</sup> For Ireland (Act of 1907, s. 14; Act of 1899, s. 24).

<sup>2</sup> No such regulations have been made to date (December 31st, 1910).

<sup>3</sup> Defined as “any article of food, whether mixed with butter or not, which resembles butter and which is not milk-blended butter” (s. 13).

<sup>4</sup> Act of 1907, s. 14; Act of 1899, s. 24.

<sup>5</sup> See p. 474, *supra*.

respects margarine, shall be a defence under this section as respects milk-blended butter" (*Butter and Margarine Act, 1907, s. 9*).

"(1) Every occupier of a manufactory of margarine or margarine cheese, and every wholesale dealer in such substances, shall keep a register showing the quantity and destination of each consignment of such substances sent out from his manufactory or place of business, and this register shall be open to the inspection of any officer of the Department of Agriculture<sup>1</sup> . . . (3) If any such occupier or dealer (a) fails to keep such a register, or (b) refuses to produce the register when required to do so by an officer of the Department of Agriculture, or (c) fails to keep the register posted up to date, or (d) wilfully makes any entry in the register which is false in any particular, or (e) fraudulently omits to enter any particular which ought to be entered in the register, he shall be liable on summary conviction for the first offence to a fine not exceeding £10, and for any subsequent offence to a fine not exceeding £50.<sup>2</sup> (4) The provisions of s. 9 of the Margarine Act, 1887, relating to registration of manufactories,<sup>3</sup> shall extend to any premises wherein the business of a wholesale dealer in margarine or margarine cheese is carried on. (5) The registration of a manufactory or other premises shall be forthwith notified by the local authority to the Department of Agriculture"<sup>1</sup> (*Sale of Food and Drugs Act of 1899, s. 7*).

**Butter and  
margarine  
factories.  
Registers.**

"The provisions of section 7 of the Sale of Food and Drugs Act, 1899, relating to registers of consignments of margarine, shall, with the necessary adaptations, apply to consignments of milk-blended butter" (*Butter and Margarine Act, 1907, s. 1 (2)*).

"Premises shall not be used as a butter factory if they form part of or communicate, otherwise than by a public street or road, with any other premises which are required to be registered under the Sale of Food and Drugs Acts, or under paragraph (b) of this section,<sup>4</sup> and if any premises are so used, the occupier thereof shall be guilty of an offence under this Act, and the local authority shall remove from the register of butter factories kept by them any premises used as a butter factory contrary to this provision: Provided that this sub section shall not apply to premises which on the 1st day of January, 1907, were being used as a butter factory and formed part of or communicated with premises which were then registered under the Sale of Food and Drugs Acts, if and so long as the Department of Agriculture so direct" (*Butter and Margarine Act, 1907, s. 1 (3)*).

**Premises that  
may be used  
as butter  
factories.**

"(1) Any officer of the Department of Agriculture<sup>1</sup> or of the Local Government Board shall have power to enter at all reasonable times any premises registered under the Sale of Food and Drugs Acts or this Act, and to inspect any process of manufacture, blending, reworking, or treatment used therein, and to take samples for analysis of any butter, margarine, margarine cheese, milk-blended butter, or of any article capable of being used in the manufacture, treatment, or adulteration of any such article as aforesaid. (2) An officer of a local authority who is authorized to procure samples under the Sale of Food and Drugs Acts shall, if specially authorized in that behalf by the local authority, have the like powers of entry, inspection, and sampling as regards any premises registered with the authority as a butter factory. (3) If the Department of Agriculture<sup>1</sup> "have reason to believe (a) that on any unregistered premises there is carried on any process of manufacture, blending, reworking, or treatment or any wholesale dealing

**Inspection.**

<sup>1</sup> See s. 24 of the Act of 1899, and s. 14 of the Act of 1907.

<sup>2</sup> As to imprisonment for any offence subsequent to a first offence see Act of 1899, s. 17, p. 469.

<sup>3</sup> See p. 472 under *Registration of Manufactory*.

<sup>4</sup> See p. 473.

**Butter and  
margarine  
factories.**

which under the Sale of Food and Drugs Acts or this Act cannot be carried on except on registered premises; or (b) that on any premises butter is by way of trade either made or stored, and that for the purposes of those Acts inspection is desirable, the Department<sup>1</sup> may specially authorize any officer of the Department<sup>1</sup> to enter the premises, and in such case the officer shall have the like powers of entry, inspection, and sampling as if the premises were registered. (4) Where under this section a special authority is required, an officer of the Department<sup>1</sup> or of a local authority shall not be entitled to exercise any of his powers under this section unless, if so requested by or on behalf of the occupier of the premises to be entered, he produces his authority" (*Butter and Margarine Act, 1907, s. 2*). As to penalties for obstructing officer, see Sale of Food and Drugs Act, 1899, s. 16.

**Adulterants  
in butter  
factories.**

"If any substance intended to be used for the adulteration of butter is found in any butter factory, the occupier of the factory shall be guilty of an offence under this Act, and if any oil or fat capable of being so used is found, it shall be deemed to be intended to be so used unless the contrary is proved" (*Butter and Margarine Act, 1907, s. 3*). As to penalties see s. 11 of Act of 1907, *post*.

**Regulations  
by Depart-  
ment as to  
standard.**

"The Department of Agriculture<sup>1</sup> may, after such inquiry as they deem necessary, make regulations for determining what deficiency in any of the normal constituents of genuine milk, cream, butter, or cheese, or what addition of extraneous matter or proportion of water in any sample of milk (including condensed milk), cream, butter, or cheese, shall for the purpose of the Sale of Food and Drugs Acts raise a presumption, until the contrary is proved, that the milk, cream, butter, or cheese is not genuine or is injurious to health, and an analyst shall have regard to such regulations certifying the result of an analysis under those Acts" (*Sale of Food and Drugs Act, 1899, s. 4*). This power is extended to making regulations as to the proportion of any milk solid, other than milk fat, in any sample of butter or milk-blended butter (*Butter and Margarine Act, 1907, s. 6*).

**Powers of  
L. G. B. and  
Department to  
take samples.**

Sections 2 and 3 of the Sale of Food and Drugs Act, 1899, empower the L.G.B. or the Department of Agriculture (see s. 24 of the Act) to authorize their officer to take samples; and also, when the local authority is in default, to act for the purposes of the Sale of Food and Drugs Acts.

The Acts of 1899 and 1907 are to be read as one (*Act of 1907, s. 14 (1)*).

**Procedure  
and penalties  
under the  
Acts of 1899  
and 1907.**

"(1) Any person guilty of an offence under this Act shall be liable, on conviction under the Summary Jurisdiction Acts, for a first offence, to a fine not exceeding £20; and for a second offence, to a fine not exceeding £50; and for a third, or any subsequent offence, to a fine not exceeding £100, and in cases where imprisonment can be inflicted under sec. 17 of the Sale of Food and Drugs Act, 1899, to such imprisonment as is by that section authorized. (2) Section 5 of the Margarine Act, 1887 (which exempts employers from liability in certain cases), section 11 of the same Act (which relates to the appropriation of penalties), and section 12 of the same Act (which relates to proceedings under that Act), shall apply to proceedings under this Act, with the substitution of references to this Act for references to the Margarine Act, 1887" (*Butter and Margarine Act, 1907, s. 11*). Reference should therefore be made to PROCEDURE UNDER THE MARGARINE ACT, 1887, p. 473.

<sup>1</sup> See s. 24 of the Act of 1899, and s. 14 of the Act of 1907.



## FRIENDLY SOCIETIES.

	PAGE		PAGE
Circulating false rules, . . . .	479	Offences by society to be offences by	
False declarations, . . . .	479	officers, . . . .	480
Fraud as to property of society, . .	479	Continuing offences, . . . .	480
Who may prosecute for above of-		Fine for offences not specially pro-	
fences, . . . .	479	vided for, . . . .	481
Falsification of accounts, &c., . .	480	Procedure, . . . .	481
Unlawful amalgamation or transfer, .	480	Appeal, . . . .	481
Other offences, . . . .	480	Civil matters, . . . .	481

“(1) If any person, with intent to mislead or defraud, gives to any other person a copy of any rules, laws, regulations, or other documents, other than the rules of a registered society or branch, on the pretence that they are the existing rules of that society or branch, or that there are no other rules of the society or branch, or gives to any person a copy of any rules on the pretence that those rules are the rules of a registered society or branch when the society or branch is not registered, the person so offending shall be guilty of a misdemeanour.<sup>1</sup> (2) If any person knowingly makes a false or fraudulent statement in any statutory declaration required by this Act, he shall be guilty of a misdemeanour.<sup>1</sup> (3) If any person obtains possession by false representation or imposition of any property of a registered society or branch, or withholds or misapplies any such property in his possession, or wilfully applies any part thereof to purposes other than those expressed or directed in the rules of the society or branch and authorized by this Act, he shall, on such complaint as is in this section mentioned, be liable on summary conviction to a *fine* not exceeding twenty pounds, and costs, and to be ordered to deliver up all such property, or to repay all sums of money applied improperly, and in default of such delivery or repayment, or of the payment of such fine and costs as aforesaid, to be imprisoned, with or without hard labour, for any time not exceeding three months. [Provided that where on such a complaint against a person of withholding or misapplying property, or applying it for unauthorized purposes, it is not proved that that person acted with any fraudulent intent, he may be ordered to deliver up all such property or to repay any sum of money applied improperly, with costs, but shall not be liable to conviction, and any such order shall be enforceable as an order for the payment of a civil debt recoverable summarily before a court of summary jurisdiction.]<sup>2</sup> (4) Complaint under this section may be made—(a) In the case of a registered society, by the society or any member authorized by the society, or the trustees or committee of the society; or (b) in the case of a registered branch, by (i) the branch or any member authorized by the branch or the trustees or committee thereof; or (ii) the central body of the society of which the branch forms part; or (iii) any member of the society or branch authorized by the central body; or (c) in any case, by the chief registrar or any assistant registrar by his authority, or by any member of the society or branch authorized by the central office. (5) Nothing in this Act shall prevent any such person from being proceeded against by way of indictment, if not previously convicted of the same offence under the provisions of this Act ” (s. 87).

Circulating false copies of rules.

False declarations.

Fraud as to property of society.

Who may prosecute under s. 87.

<sup>1</sup> Not punishable summarily.<sup>2</sup> Words in brackets added by Friendly Societies Act, 1908, 8 Ed. 7, c. 32, s. 9.

**Falsification of accounts, returns, etc.**

"If any person wilfully makes, orders, or allows to be made, any entry, erasure in, or omission from a balance sheet of a registered society or branch, or a return or document required to be sent, produced, or delivered for the purposes of this Act, with intent to falsify the same, or to evade any of the provisions of this Act, he shall be liable to a fine not exceeding £50" (s. 88).

**Unlawful amalgamation or transfer.**

"If an officer or person aids or abets in the amalgamation or transfer of engagements, or in the dissolution of a friendly society otherwise than as in this Act provided, he shall be liable on summary conviction to the fine imposed by this Act for offences thereunder, or to be imprisoned with hard labour for a term not exceeding three months" (s. 90).

**Other offences. 59 & 60 Vict. c. 25, s. 84.**

The following are the offence sections of the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25):—

"It shall be an offence under this Act if—(a) a registered society or branch, or an officer or member thereof, fails to give any notice, send any return or document, do or allow to be done anything which the society, branch, officer, or person is by this Act required to give, send, do or allow to be done,<sup>1</sup> or (b) a registered society or branch, or an officer or member thereof, wilfully neglects or refuses to do any act, or to furnish any information required for the purposes of this Act by the chief or other registrar, or by any other person authorized under this Act, or does anything forbidden by this Act: or (c) a registered society or branch, or an officer or member thereof, makes a return, or wilfully furnishes information in any respect false or insufficient: or (d) an officer or member of a body which, having been a branch of a society, has wholly seceded or been expelled from that society, thereafter uses the name of that society or any name implying that the body is a branch of that society, or the number by which that body was designated as such branch: or (e) where a dispute is referred under this Act to the chief or other registrar, a person refuses to attend or to produce any documents, or to give evidence before the chief or other registrar: or (f) a society or branch, whether registered or unregistered, pays money on the death of a child under ten years of age, otherwise than is provided by this Act: or (g) a parent or personal representative of a parent claiming money on the death of a child produces a certificate of the death other than is in this Act provided to the society or branch from which the money is claimed, or produces a false certificate, or one fraudulently obtained, or in any way attempts to defeat the provisions of this Act with respect to payments upon the death of children" (s. 84).

**Offences by society to be offences by officers, etc.**

"Where a registered society or branch is guilty of an offence under this Act, every officer of the society or branch bound by the rules thereof to fulfil any duty whereof the offence is a breach, or if there is no such officer, then every member of the committee, unless that member is proved to have been ignorant of, or to have attempted to prevent the commission of the offence, shall be liable to the same penalty as if he had committed the offence" (s. 85).

**Continuing offences.**

"Every default under this Act constituting an offence, if continued, shall constitute a new offence in every week during which the default continues" (s. 86).

<sup>1</sup> Every registered society and branch shall have a registered office, and send notice to registrar of change (s. 24); appoint trustees (s. 25); have an annual audit (s. 26); make an annual return to registrar as prescribed (s. 27); supply gratuitously to every member or person interested copy of annual return or balance sheet (s. 39); allow inspection of books by members or person interested (s. 40). A society or branch shall not pay money on death of a child under ten, except to the parent or personal representatives of the parent, and upon production of certificate of registrar of deaths, containing prescribed particulars (s. 63).

"A society or branch, and an officer or member of a society or branch, or other person guilty of an offence under this Act for which a fine is not expressly provided, shall be liable to a fine of not more than £5" (s. 89). **Fine for offences generally.**

All offences and fines may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts,<sup>1</sup> either (a) at the place where the offence was committed, or (b) as respects a prosecution against a registered society or branch or an officer thereof, at the place where the registered office of the society or branch is situated; or (c) as respects other prosecutions, at the place where the person is resident at the time of the institution of the prosecution (s. 92). **Procedure.**

"Where proceedings are taken against a society or branch for the recovery of any fine under this Act the summons . . . shall be sufficiently served by leaving a true copy thereof at the registered office of the society or branch, or at any place of business of the society or branch, within the jurisdiction of the court in which the proceeding is brought, or, if that office or place of business is closed, by posting the copy on the outer door of that office or place of business" (*Friendly Societies Act*, 1896, s. 94 (6); *Friendly Societies Act*, 1908, 8 Edw. 7, c. 32, s. 11).

Any person may appeal to quarter sessions from any order or conviction made by a court of summary jurisdiction under the Act (*Act of* 1896, s. 93). **Appeal.**

As to determination of civil matters under the Act, see **CIVIL JURISDICTION**, *ante*, p. 161 *et seq.*

## GAME LAWS.

	PAGE		PAGE
Procedure, . . . . .	481	Sunday shooting, . . . . .	489
Game, what is, . . . . .	482	Game certificates or licences, . . . . .	489
Trespass in pursuit of game—		Gun licences, . . . . .	490
Generally, . . . . .	483	Dealing in game, . . . . .	491
Procedure under 27 Geo. 3, c. 35, . . . . .	483	Who may sell game without a licence, . . . . .	491
Reservation to landlord of game, . . . . .	483	Licences required by game dealers, . . . . .	491
Killing hares or rabbits in warren in daytime, . . . . .	484	Offences as to game-dealing, . . . . .	492
Night poaching, . . . . .	484	Ground game, . . . . .	493
Killing hares and rabbits in warren in night-time, . . . . .	486	Destroying eggs or nests, . . . . .	494
Offences as to deer, . . . . .	486	Burning mountain, . . . . .	494
Tracing game in snow, . . . . .	486	Poisoned flesh and poisoned grain, . . . . .	494
Powers as to suspected poachers, . . . . .	486	Dogs, . . . . .	494
Close seasons, . . . . .	488	Wild birds, . . . . .	494

With the exception of offences under the Larceny Act, 1861, the Game Trespass Act, 1864, the Ground Game Act, 1880, the Wild Birds' Protection Acts, and possibly the Poaching Prevention Act, 1862, the Petty Sessions Act is not applicable to the offences mentioned in this article, inasmuch as section 42 of that Act excludes its operation from prosecutions relating to the game or excise laws, save as to forms of procedure. In summary proceedings for offences against the game laws, as in the case of other offences triable by magistrates, the proceedings must be commenced by an information or complaint (Paley, 8th ed., p. 75), which need not be in writing, unless the statute **Procedure.**

<sup>1</sup> As to which, see p. 335.



**Procedure.**

expressly so directs (*R. v. Millard*, (1853) 6 Cox, 150). On the making of the information, the justice should issue a summons setting out the charge. The summons should be signed by the justice, and it is thought should be served on the defendant personally (*R. v. Hall*, (1825) 6 D. & R. 84, *R. v. Simpson*, (1716) 10 Mod. 341), as it does not seem that the provisions as to substituting service contained in the Petty Sessions Act are applicable, being something more than a form of procedure. If, however, the defendant appears at petty sessions, the irregularity is waived (*R. v. Barrett*, (1710) 1 Salk. 383.) There is no jurisdiction at common law by which a summons issued in one county can be served in another.<sup>1</sup> As to the Petty Sessions Act, see *G. S. & W. R. v. Leyden*, (1907) 2 I. R. 160, noted p. 45. The justices on proof of the service of the summons can proceed in the absence of the defendant (*R. v. Simpson*, (1717) 10 Mod. 341). They can also probably issue a warrant for the arrest of the accused if he does not appear (2 Hawk. 133). In many cases prosecutions must be brought within six calendar months from the date of the offence (27 Geo. 3, c. 35 (Ir.), s. 20; 9 Geo. 4, c. 69, s. 4; 23 & 24 Vict. c. 90, s. 3). The laying of the information is the commencement of the prosecution (*R. v. Barret*, (1710) 1 Salk. 383; *Thorpe v. Priestnall*, (1897) 1 Q.B. 159; *Beardsley v. Giddings* (1904) 1 K.B. 847). The justices have no power to compel the attendance of witnesses (Paley, 8th ed.; p. 125), except in cases to which the Petty Sessions Act applies, or in prosecutions by the Inland Revenue. As to the jurisdiction of justices on a question of title being raised, see p. 210.

Speaking generally,<sup>1</sup> any person may prosecute (*Bruce v. McAlister*, (1881) 8 L.R.I. 195; *Crichton v. Brady*, (1892) 27 I.L.T.R. 42; *R. (Connolly) v. Tyrone JJ.*, (1902) 2 I.R. 78; see also p. 43, ante).

It has been held that in cases of dismissal, the dismiss should state whether it is "on the merits" or "without prejudice" (*R. (Bridges) v. Armagh JJ.*, (1897) 2 I. R. 236); but the case was decided on the erroneous assumption that the Petty Sessions Act applied, and it is submitted that the decision should have been the other way had the attention of the court been drawn to section 42 of the Petty Sessions Act; though the case is a valuable authority in all cases to which that statute applies.

Care should be taken, that where a fine mentioned in an Act is Irish currency, the amount should not be exceeded by imposing that amount in British coinage, as if this is done the amount of the fine is excessive and the conviction consequently bad (*R. v. Creagh*, (1852) 5 Ir. Jur. (O.S.) 109. If an order imposes a penalty in Irish currency, it is bad, having regard to the Coinage Act, 1870 (33 & 34 Vict.), c. 10, s. 6 (*Noble v. Hughes*, (1896) 2 I. W. L. R. 90). The justices have no power to award costs, save where specially mentioned.

As to procedure generally in cases not within the Petty Sessions Act, see further, SUMMARY CASES NOT WITHIN PETTY SESSIONS ACT, p. 76.

The power of appeal given by the Petty Sessions Act does not apply to cases of prosecutions under the game or excise laws; but the various particular statutes usually give a right of appeal. Under section 9 of the Fines (Ireland) Act a right of appeal to quarter sessions is allowed in all cases where there is an order of justices for payment of any penalty exceeding 40s.; as to this section and appeals generally, see APPEAL TO QUARTER SESSIONS, p. 130.

**Game, what is.**

Most of the statutes have a special section defining game, but where there is no definition of game the following seem to be included in the term:—deer, hares, pheasants, partridge, landrail (cornerake), black game, grouse, quail, capercaillie, bustard.

<sup>1</sup> There are some exceptions, e.g., Poaching Prevention Act, 1862, noted *post*, p. 486.

"No person or persons, not being duly authorized, shall go or enter upon the land of any other person or persons to look for, set, spring, start, follow, shoot, course, hunt, hawk, or otherwise pursue, take or destroy, any sort of game, woodcock, snipe, duck, teal or widgeon"<sup>1</sup>—*Trespass in pursuit of game. Generally.*  
*Penalty*, not exceeding £10 Irish, equivalent to £9 4s. 7½*d.* sterling (27 Geo. 3, c. 35 (Ir.), s. 10).

"No person shall be construed to be within the meaning of this Act as looking for game unless such person shall appear to be provided with a dog, or dogs, gun, net or nets, or some other implements for taking or destroying game" (*ib.*, s. 11).

To render the act innocent the authorization must precede the entry (*Morden v. Porter*, (1860) 7 C.B.N.S. 641). It is not an offence under the section for a man to remain on the adjoining land, sending a dog into his neighbour's cover (*R. v. Pratt*, (1855) 4 E. & B. 860), but if several go out in concert for the purpose of poaching, both those who remain outside and those who enter the lands may be convicted of entering (*R. v. Passy*, (1836) 7 C. & P. 282). The entry may be on the public road, as any person who uses the road for other than the purpose of passing and re-passing is a trespasser (*R. v. Pratt, supra*; *Harrison v. Rutland*, (1893) 1 Q.B. 142). It is not necessary to prove that the defendant fired at game or had game in his possession (*Tyrrell v. Flanagan*, (1901) 2 I.R. 423). Where nets were set to catch plover, but were capable of catching, and did in fact catch grouse, the Queen's Bench affirmed the conviction (*Blake v. Shea*, (1896) 30 I.L.T.R. 102).

A conviction which alleges a breach of the whole of the section is bad, as alleging alternative offences (*R. (M'Carron) v. Donegal JJ.* (1907) 2 I.R. 386, 40 I.L.T.R. 197, noted p. 88, *ante*).

Any person may prosecute as a common informer for any offence under this statute (*Bruce v. M'Alister*, (1881) 8 L.R.I. 195; *Crichton v. Brady*, (1892) 27 I.L.T.R. 42; *R. (Connolly) v. Tyrone JJ.*, (1902) 2 I.R. 78). The prosecution shall be commenced within six months from the commission of the offence (27 Geo. 3, c. 35 (Ir.), s. 20). One justice is sufficient (s. 19). There is no power to award costs. A defendant may appeal against any order, irrespective of amount of penalty, to the next quarter sessions, who may award such costs to the respondent as they may think just and reasonable, and may impanel a jury (s. 23). The appellant must enter into a recognizance with two sureties conditioned to try the appeal, and abide the order of, and pay the costs awarded by, the quarter sessions (*ib.*). A complainant has no right of appeal (*R. (Kane) v. Tyrone JJ.*, (1906) 40 I.L.T.R. 181). The complainant in a charge under this section was a gamekeeper, who was unable to produce his gamekeeper's licence, and who denied that he prosecuted as a common informer. *Held*, that in law he was a common informer, notwithstanding his own views on the subject, and that as he did not withdraw the summons, the justices were wrong in holding that he was not competent to prosecute (*Hennessey v. Ryall*, (1911) 45 I.L.T.R. 4).

"Where the landlord or lessor of any land has reserved to himself by any deed or writing the exclusive right to the game on such land, then such landlord or lessor, for the purpose of prosecuting all persons for trespassing in pursuit of game on such land without his consent, shall be deemed the legal occupier of the said land; and any person who shall enter or be upon the said land in search of, or in pursuit of, game without the consent of such landlord or lessor, shall be deemed a trespasser"—*Penalty*, not

Procedure under 27 Geo. 3, c. 35 (Ir.).

Reservation of game to landlord.

<sup>1</sup> Provided also that nothing herein contained shall subject any person duly qualified to take or kill game, his or their servants or necessary attendants, to any of the penalties hereby inflicted from following or pursuing their four-footed game into the lands of other persons (27 Geo. 3, c. 35 (Ir.), s. 10).

**Trespass in pursuit of game.**

exceeding 40s., with costs, penalty and costs to be recovered and levied in the same mode and with the same right of appeal as provided by the Petty Sessions (Ireland) Act, 1851, and the Petty Sessions Clerks (Ireland) Act, 1858 (*Game (Ireland) Act*, 1864, s. 1). "Game," for the purposes of the Act, includes hares, pheasants, partridges, grouse, heath or moor game, black game, woodcocks, snipe, quail, landrail, wild-duck, widgeon, and teal (s. 2).

As the Courts would, as far as possible, endeavour to construe the statute so as to have a uniform practice, it is conceived that the costs allowed under the section should not exceed the limit laid down by the Petty Sessions Act; and, further, that costs under the Petty Sessions Act may be awarded to a successful defendant.

This Act has no application where the shooting belongs to a person other than the landlord, e.g., where the shooting rights are vested in a shooting lessee (*Powell v. Castletown*, (1891) 30 L.R.I. 93). Where a fair rent order reserves the exclusive right to rabbits and game, the landlord can prosecute under this section for trespass in pursuit of either (*Hope v. Callaghan*, (1888) 24 I.L.T.R. 5; *Land Law (Ir.) Act*, 1881, s. 5), but not where the right to rabbits is reserved by a deed (*Clery v. De Vesci*, (1895) 2 I.R. 704).

**Killing hares or rabbits in a warren in the daytime.**

"Whosoever shall unlawfully and wilfully, between the beginning of the last hour before sunrise and the expiration of the first hour after sunset, take or kill any hare or rabbit in any such 'warren or ground, or shall at any time set or use therein any snare or engine for the taking of hares or rabbits"—Penalty not exceeding £5 (*Larceny Act*, 1861, 24 & 25 Vict. c. 96, s. 17). The procedure under this section will be regulated by the Petty Sessions Act.

**Night poaching**

"Every person who shall wilfully take, kill, or destroy any hare, pheasant, partridge, quail, landrail, moor-game, heath-game, or grouse in the night, between one hour after sunset and one hour before sunrise, unless qualified to take or kill game, and upon his or her own lands or duly authorized so to do"—Penalty, not exceeding £5 Irish (= £4 12s. 3 $\frac{3}{4}$ d., sterling) for every such hare, &c., so taken, killed, or destroyed" (27 *Geo.* 3, c. 35 (*Ir.*), s. 4).

The time of actual sunrise and sunset in the locality is the time referred to (*Gordon v. Cann*, (1899) 15 T.L.R. 165). It is doubtful whether justices may take judicial notice of the time of sunrise or sunset, or should require proof thereof (see *Collier v. Nokes*, (1849) 2 C. & K. 1012, Taylor, 10th ed., p. 16). To render the act lawful, the authorization must precede the taking, etc. (*Morden v. Porter*, (1860) 7 C.B. (N.S.) 641). As to the procedure under this Act see p. 483.

"If any person shall by night<sup>2</sup> unlawfully take or destroy any game<sup>3</sup> or rabbits in any land, whether open or enclosed, or shall by night unlawfully enter or be in any land, whether open or enclosed, with any gun, net, engine, or other instrument for the purpose of taking or destroying game"—Penalty, not exceeding, first offence, three months', subsequent offence, six months' imprisonment, with hard labour, and at the end of such period to find sureties himself in, for first offence, £10 and two sureties in £5 each, or one in £10 [for subsequent offence, £20 and two sureties in £10 each, or one in £20], for not so offending again during, in the case of a first offence one year [and in the

<sup>1</sup> That is "warren or ground lawfully used for the breeding or keeping of hares and rabbits" (preceding part of section).

<sup>2</sup> "Night" in this Act commences at the expiration of the first hour after sunset and concludes at the beginning of the last hour before sunrise (s. 12).

<sup>3</sup> Including hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards (s. 13).



It is thought desirable to add the following explanatory note as to the questions:—(a) who can prosecute for trespass in pursuit of game contrary to 27 Geo. 3, c. 35, s. 10; (b) against whom the prosecution lies; and (c) what is the effect of s. 5 of the Land Law (Ir.) Act, 1881,<sup>1</sup> as regards rabbits.

Any person whosoever, whether he has or has not any right to the game, can prosecute as a common informer (*Bruce v. M'Alister*, (1881) 8 L.R.I. 195; *Crichton v. Brady*, (1892) 27 I.L.T.R. 42; *R. (Connolly) v. Tyrone J.F.*, (1902) 2 I.R. 78).

A prosecution can be successfully maintained against any person who, in the words of 27 Geo. 3, c. 35, s. 10, "not being duly authorized, shall go, etc., upon the lands of any other person, etc., to look for, etc., game."

Therefore, if A is the person in occupation of the lands, and B is the person in whom the game rights are vested, B, or B's gamekeeper, or any person whosoever can successfully prosecute X, a person who enters upon the lands for the purpose of taking game; and this, it is submitted, is so, even if A does not dissent from, or purports to assent to, X's entry upon the lands, because A cannot (the game rights being vested in B) "duly authorize" X so to enter. Those portions of s. 1 of the Game (Ir.) Act, 1864 (*verbatim* at pp. 483, 484), of s. 5 of the Land Law Act, 1881,<sup>1</sup> and of s. 13 of the Irish Land Act, 1903,<sup>2</sup> that confer a right to prosecute were, apparently, framed in forgetfulness of the fact that no statutory authority was necessary for the purpose. Where a person prosecuting comes within these sections, he seems to be a "party aggrieved"; but whether he is a "party aggrieved" or a "common informer" is immaterial in considering the question of the *right to prosecute*. A person to whom the shooting is leased is not a "landlord or lessor" within s. 1 of the Game (Ir.) Act, 1864 (*Powell v. Castletown*, (1891) 30 L.R.I. 93).

Rabbits are not game within 27 Geo. 3, c. 35, s. 10, or within the Game (Ir.) Act, 1864; and therefore a reservation of rabbits by a deed will not enable a prosecution under these statutes to be sustained in respect of trespass in pursuit of rabbits (*Cleary v. De Veszi*, (1895) 2 I. R. 704). The effect of the definition of game in s. 5 of the Land Law (Ir.) Act, 1881,<sup>1</sup> is to include rabbits in the term "game," where that section applies, and to give the landlord of a holding held for a statutory term reserving the game to the landlord the right, under the Game (Ir.) Act, 1864, to prosecute for trespass in pursuit of rabbits against 17 Geo 3, c. 35, s. 10 (*Hope v. Callaghan*, (1888) 24 I.L.T.R. 5).

<sup>1</sup> Which section, so far as is material, is as follows:—

"The landlord, or any person or persons authorized by him in that behalf (he or they making reasonable amends and satisfaction for any damage to be done or occasioned thereby), shall have the right to enter upon the holding for any of the purposes following (that is to say): . . . hunting, shooting, fishing, or taking game or fish, and if the landlord at the commencement of the statutory term so requires, then, as between the landlord and tenant, the right of shooting and taking game, and fishing and taking fish, shall belong exclusively to the landlord, subject to the provisions of the Ground Game Act, 1880, and the provisions of the 27 & 28 Vict. c. 67 shall extend where such right of shooting and taking game belongs exclusively to the landlord as though such exclusive right were reserved by the landlord to himself by deed. The word 'game' for the purposes of this sub-section means hares, rabbits, pheasants, partridges, quails, landrails, grouse, woodcock, snipe, wild duck, widgeon, and teal."

The occupier will have a concurrent right to take ground game (hares and rabbits) under s. 1 of the Ground Game Act, 1880, noted p. 493.

<sup>2</sup> This section is as follows:—

"(1) Where at the time of sale of any land to the Land Commission or to tenants or others, the vendor has, subject to the provisions of the Ground Game Act, 1880, sporting rights, exclusive of the tenant, those rights may by agreement between the vendor and purchaser be either conveyed to the purchaser or be expressly reserved to the vendor, and in the absence of such agreement those rights shall be vested in the Land Commission, and the Land Commission may deal with the same, subject to regulations to be made by the Lord Lieutenant. (2) The expression 'sporting rights' includes any right of hunting, shooting, fishing, and taking game or fish on any land, and the expression 'game' has the same meaning as in section five of the Act of 1881, and also includes deer. . . . (4) Where any right mentioned in this section is so reserved, there shall be attached thereto a right to enter upon the land in respect of which the first-mentioned right may be exercised, and to authorize any person so to do; but any person entering upon land in pursuance of this subsection shall be liable to make reasonable amends and satisfaction for any damage done or occasioned thereby. (5) Any person authorized, by or in pursuance of the last preceding subsection, to enter upon land for the purpose of exercising a sporting right shall have the same authority to prosecute for trespass in pursuit of game or fish as if he were the occupier of that land."



case of a subsequent offence, two years], and in default of finding such sureties to be further imprisoned, with hard labour, for, in the case of a first offence, six months [and in the case of a subsequent offence twelve months]; third offence, misdemeanour, punishable on indictment with penal servitude not exceeding seven nor less than three years, or with imprisonment with or without hard labour not exceeding two years (*Night Poaching Act, 1828, 9 Geo. 4, c. 69, s. 1*).

Trespass in  
pursuit of  
game.

Two justices are required (ss. 1 and 2). Prosecution must be brought within six months (s. 4). A defendant may appeal against any conviction to the quarter sessions held not less than twelve days after the date of the conviction, for the county, riding, or division wherein the cause of complaint shall have arisen, giving notice in writing of the appeal, and of the cause and matter thereof<sup>1</sup> within three days after such conviction, and seven clear days before the sessions; remaining in custody till the appeal, unless he enters into a recognizance, with a sufficient surety conditioned to appear personally, and try such appeal, and abide the judgment of the court; and pay the costs; the court on appeal may give costs to either party<sup>2</sup> (s. 6). There is no appeal by the complainant (*R. (Kane) v. Tyrone JJ.*, (1906) 40 I.L.T.R. 181).

On an indictment for a third offence, two previous convictions under s. 1 must be proved: a previous conviction under section 9 of the misdemeanour of entering upon land by night armed, and to the number of three or more for the purpose of taking game is not a previous conviction within section 1 (*R. v. Lines*, (1902) 1 K.B. 199).

The Night Poaching Act, 1844, 7 & 8 Vict. c. 29, extends this Act to taking or destroying game or rabbits on any public road, highway, path, or the sides thereof, or at the openings, outlets, or gates, from any such land into any such public road, highway, or path in the like manner, or upon any such land, but it should be noted that it does not extend the provisions of the Act to entering or being on such road for such purpose.

The purpose must be to take game on the lands on which the offenders are (*R. v. Gainer*, (1835) 7 C. & P. 231), and the conviction should so allege (*R. v. Capewell*, (1833) 5 C. & P. 549). It is not necessary that all should enter if all are acting in concert (*R. v. Whittaker*, (1848) 2 C. & K. 636), but the sending in of a dog is not sufficient entry (*R. v. Nickless*, (1839) 8 C. & P. 757).

The owner or occupier of land or his servant can arrest any offender and hand him over to the police (*Night Poaching Act, 1828, s. 2; Night Poaching Act, 1844, s. 1*). If the offender uses violence with any offensive weapon, which includes, if brought for the purpose, a stick (*R. v. Merry*, (1847) 2 Cox 240), or a stone (*R. v. Grice*, (1837) 7 C. & P. 803), he commits a misdemeanour, punishable on indictment in like manner as a third offence under s. 1, see note, *supra* (*Night Poaching Act, 1828, s. 2*). One justice may issue a warrant for the arrest of an offender without a previous summons where the information is on oath (*ib.*, s. 3). Any person may prosecute as a common informer.

"If any persons, to the number of three or more together, shall by night unlawfully enter or be in any land, whether open or enclosed, for the purpose of taking or destroying game or rabbits, any of such persons being armed with any gun, cross-bow, firearms, bludgeon, or any other offensive weapon," each is guilty of a misdemeanour, punishable on indictment with penal servitude for not more than fourteen nor less than three years, or with imprisonment with or without hard labour not exceeding two years (9 Geo. 4, c. 69, s. 9).

<sup>1</sup> It has been held that the notice should state that the party appealing was aggrieved (*R. v. Recorder of Dublin*, (1843) 6 I.L.R. 440).

<sup>2</sup> There is nothing to limit the amount of such costs.



**Trespass in pursuit of game.**

Killing, &c., hares or rabbits in warren by night.  
Offences as to deer.

"Whosoever shall unlawfully and wilfully, between the expiration of the first hour after sunset and the beginning of the last hour before sunrise, take or kill any hare or rabbit in any warren or ground lawfully used for the breeding or keeping of hares or rabbits, whether the same be enclosed or not, shall be guilty of a misdemeanour"<sup>1</sup> (*Larceny Act*, 1861, 24 & 25 Vict. c. 96, s. 17).

Coursing, killing, etc., deer in forest, chase, or purlieu<sup>2</sup>—*Penalty*, first offence, not exceeding £50 (*Larceny Act*, 1861, s. 12), second offence, felony (*ib.*); stealing deer, felony (s. 13); suspected persons found in possession of venison, etc., and not satisfactorily accounting for same—*Penalty*, not exceeding £20 (s. 14); setting engines for taking deer or pulling down fences of land where deer are kept—*Penalty*, not exceeding £20 (s. 15).

**Tracing game in snow.**

Tracing game in snow, unless by a person qualified, and upon his own lands, is punishable by fine not exceeding £5 Irish (27 Geo. 3, c. 35 (Ir.), s. 4).

**Powers as to suspected poachers.**

"It shall be lawful for any constable or peace officer . . . in any highway, street, or public place to search any person whom he may have good cause to suspect of coming from any land where he shall have been unlawfully in search or pursuit of game, or any person aiding or abetting such person, and having in his possession any game<sup>3</sup> unlawfully obtained, or any gun, part of gun, or nets or engines used for the killing or taking game, and also to stop and search any cart or other conveyance in or upon which such constable or peace officer shall have good cause to suspect that any such game or any such article or thing is being carried by any such person, and should there be found any game or any such article or thing as aforesaid upon such person, cart, or other conveyance, to seize and detain such game, article, or thing, and such constable or peace officer shall in such case apply to some justice of the peace for a summons citing such person to appear before two justices of the peace assembled in petty sessions as provided in 18 & 19 Vict. c. 126, s. 9,<sup>4</sup> . . . and if such person shall have obtained such game by unlawfully going on any land in search or pursuit of game, or shall have used any such article or thing as aforesaid for unlawfully killing or taking game, or shall have been accessory thereto"—*Penalty*, not exceeding £5, with forfeiture of game, gun, etc., which the justices shall order to be sold or destroyed; no penalty on any person selling same by written direction of a justice; if no conviction takes place, the articles seized or their value to be returned to owner (*Poaching Prevention Act*, 1862, 25 & 26 Vict. c. 114, s. 2).

The following are the requirements of the statute to warrant a conviction:—"First, the accused must be found in a highway, street, or public place; secondly, a constable or peace officer must have good ground to suspect that he is coming from land where he has been unlawfully in search or pursuit of game; thirdly, he must have in his possession some game unlawfully obtained, or a gun, or part of a gun, or net, or engine for taking or killing game; fourthly, the game, or other article, or thing, must have been found on him, and by that I understand that it has been either heard, seen, or felt on him. It must then and there have been perceived by the finder's senses, and not inferred by conjecture. If it be found without searching, I agree there need be no search"<sup>5</sup> (*per Byles, J.*, in *Clarke v. Crowder*, (1869) L.R., 4 C.P. 638, at p. 643; see also judgment of Mathew, J., in *Lloyd v. Lloyd*, (1885) 14 Q.B.D. 725, at

<sup>1</sup> As to which see LARCENY, in CATALOGUE OF INDICTABLE OFFENCES.

<sup>2</sup> There probably is no "forest, chase, or purlieu," in Ireland; see Stroud, *sub verb.*

<sup>3</sup> Includes hare, pheasant, partridge, woodcock, snipe, rabbit, grouse, black or moor game, eggs of pheasant and partridge, eggs of grouse, black or moor game (s. 1).

<sup>4</sup> That is in open petty sessions court, as provided by that statute.

<sup>5</sup> See also *Hall v. Knox*, (1863) 4 B. & S. 515, as to search being unnecessary where the game is seen on the defendant.

p. 728). The police officer who makes the seizure, &c., is the only person entitled to bring this prosecution (*Clarke v. Crowder, supra*). Six or seven men were seen on the highway by the police, and ran, "holding up their coat laps, their pockets being large and bulky." They were pursued, but got away; but after an interval the police found them in a house where there were also found eighty live and twenty dead rabbits, with a number of rabbit nets. Held, that the defendants could not be convicted, as no game, &c., was "found" on them (*Clarke v. Crowder, supra*). The defendants drove a cart along the highway, and on being called upon by the respondent, a police officer, to stop, whipped up and drove furiously away. As the cart passed the respondent he saw a rug in it, containing something bulky underneath, which the justices rightly—as was held—inferred was game. It was also proved by witnesses other than the respondent (who lost sight of the cart) that the defendant had passed on the game to G in a street of the town close by. The respondent came up in a few minutes and got the game in G's cart. Held, that there had been no seizure of the game within the section (*Turner v. Morgan, (1875), L.R. 10 C.P. 587*). But where the seizure takes place in hot pursuit of the defendant, it is immaterial that it did not take place on the highway. The defendant was carrying rabbits, slung on his shoulder, along the highway, and on seeing the complainant, a policeman, he took to his heels across the fields. The complainant followed, and never lost sight of him, and overtook him, when defendant threw the rabbits on the ground, and they were taken possession of by the complainant. Held, (1) that the fact that the complainant saw the rabbits upon the defendant was sufficient to satisfy the requirements of the statute as to search and finding; and (2) that, the seizure and detainer having taken place then and there, and so as to be part of a continuous transaction, the provisions of the statute in that respect also were complied with; and that the defendant was rightly convicted (*Lloyd v. Lloyd, (1885) 14 Q.B.D. 725*).

**Trespass in pursuit of game.**  
Powers as to suspected poachers.

The appellants were seen by a policeman on a highway about 9.30 p.m. on the 16th December. One had a net under his arm for catching hares. Nothing else was found on them, but they had a lurcher with them. The policeman had heard a dog yelping as if in chase a little time before the defendants came along the road. The night was damp, and the net was wetish. Held, that there was evidence to support a conviction; for that it was not necessary that the appellants should have caught any game; it was sufficient if they had used the net for the purpose, though unsuccessfully, of which there was evidence (*Jenkin v. King, (1872) L.R. 7 Q.B. 478*).

It is not necessary to prove on what ground the defendants were or the game was taken (see judgments of Montague Smith, J., and Brett, J., in *Clarke v. Crowder, supra*, at p. 644).

The mere finding of the game or engine is presumptive evidence of guilt, and the burden of proof is on the accused to show that he came lawfully by them (*Brown v. Turner, (1863) 13 C.B. (N.S.) 485*). As to evidence see *R. v. Cheshire JJ., (1876) 40 J.P. 148*; *Evans v. Botterill, (1863) 3 B. & S. 787*.

A police officer on 22nd May, 1908, seized partridges' eggs that were being conveyed along the highway to a railway station, and took proceedings against the sender under s. 24 of the Game Act, 1831, charging him in substance with unlawful possession of the eggs as having been taken out of nests upon land upon which he had no right to take game. The justices convicted, but the conviction was, in October, 1908, quashed by the High Court upon a case stated. The justices, apparently purporting to act under s. 2 of the Poaching Prevention Act, 1862, made an order on

**Trespass in  
pursuit of  
game.**

the 20th November, 1908, for the destruction of the eggs. On the 19th November, 1908, the sender of the eggs took proceedings against the police officer for the value of the eggs. *Held*, that the police officer was liable to the plaintiff for the full value of the eggs as at the time of seizure, because, instead of proceeding under the Act of 1862, he had proceeded under the Act of 1831, which gave no right of seizure; but that, had he proceeded under the Act of 1862, he would only have been liable, in the event of the dismissal of the charge, to the value of the eggs at the time of the termination of the proceedings, and not to the value at the time of seizure (*Stowe v. Benstead*, (1909) 2 K.B. 415).

**Appeal under  
Poaching  
Prevention  
Act.**

A right of appeal is given by section 6, which is identical with section 6 of the Night Poaching Act, 1828, noted, p. 485.

**Close seasons.****CLOSE SEASONS.**

The following are the seasons in which it is illegal to kill, take, or have in possession winged game, both days excluded :—

Moor Game or Grouse,	10th Dec. to 12th Aug.	37 Geo. 3, c. 21 (Ir.), s. 2. 37 & 38 Vict. c. 11, s. 1.
Heath Game.	10th Dec. to 20th Aug.	37 Geo. 3, c. 21 (Ir.), s. 2.
Pheasant.	1st Feb. to 1st Oct.	28 & 29 Vict. c. 54, s. 2.
Partridge.	1st Feb. to 1st Sept.	62 Vict. c. 1, s. 1.
Quail.	10th Jan. to 20th Sept.	37 Geo. 3, c. 21 (Ir.), s. 2.
Landrail.	10th Jan. to 20th Sept.	37 Geo. 3, c. 21 (Ir.), s. 2.

**Taking, &c., in  
close season.**

The penalty for killing, taking, or having in possession the game above scheduled during the above close seasons is a fine not exceeding £5 Irish for each bird taken, &c. The Petty Sessions Act does not apply to the proceedings, and no costs can be given; any person can prosecute; and the fine is to be awarded under the Fines Act. One justice can adjudicate (27 Geo. 3, c. 35 (Ir.), s. 19; 37 Geo. 3, c. 21 (Ir.), s. 2).

Snipe, woodcock, wild fowl, and all wild birds.	1st March to 1st August, save where altered by order; for such orders see WILD BIRDS.	Wild Birds Protection Act, 1880, s. 3.
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**Selling, &c., in  
close season.**

A penalty is enacted for shooting, or taking such wild birds, or exposing or offering same for sale, or having same in control or possession, by the Wild Birds Protection Act, 1880, 43 & 44 Vict. c. 35, s. 3, as amended, which statute is fully noted under WILD BIRDS, *post*.

"If any person licensed to deal in game<sup>1</sup> . . . shall buy or sell or knowingly have in his house, shop, stall, possession, or control any bird of game after the expiration of ten days (one inclusive and the other exclusive) from the respective days in each year on which it shall become unlawful to kill or take such birds of game respectively as aforesaid; or if any person, not being licensed to deal in game . . . shall buy or sell any bird of game after the expiration of ten days (one inclusive and the other exclusive) from the respective days in each year on which it shall become unlawful to kill or take such birds of game respectively as aforesaid": *Penalty*, on conviction before two justices, for every such head of game,

<sup>1</sup> Meaning hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards (s. 2).



not exceeding £1, with costs of the conviction (*Game Act*, 1831, 1 & 2 Wm. 4, c. 32, s. 4, as applied to Ireland by the Game Licences Act, 1860, 23 & 24 Vict. c. 40, s. 13). The Petty Sessions Act is not applicable to proceedings under this section.

The section extends to live as well as dead birds (*Loome v. Bailey*, (1860) 3 E. & E. 444). Game killed abroad may be sold during the close season (*Guyer v. R.*, (1889) 23 Q.B.D. 100), but cannot be sold without a licence (*Customs and Inland Revenue Act*, 1843, 56 & 57 Vict. c. 7, s. 2).

Under the Hares Preservation (Ir.) Act, 1879, the close season for hares is between 20th April and 12th August (s. 3), unless varied by order of the Lord Lieutenant (s. 4). Such orders have been made as regards every county in Ireland.<sup>1</sup> Any person killing, wounding, or taking, or attempting so to do, whether with gun, net, snare, or dog, or having in his possession during the close season any hare or leveret—*Penalty*, for each hare or leveret so killed, wounded, taken or attempted to be so killed, &c., not exceeding £1, with costs of conviction (*Hares Preservation (Ir.) Act*, 1879, 42 & 43 Vict. c. 23, s. 3). Penalties, to be applied as directed by the Fines (Ir.) Act, 1851 (s. 5).

The close season for male fallow-deer commences on September 30th, and ends on June 9th, and as regards all other male deer commences on January 1st, and ends on June 9th—*Penalty*, £5 (Irish), on any person, except on his own land, hunting, coursing or killing any deer during the close season, for such deer (10 Wm. 3, c. 8, s. 6).

“Every person who shall make use of any gun, snare, net, or other engine to take, kill, or destroy any moor game, heath game, or grouse, pheasant, partridge, quail, landrail, wild turkey, or other wild fowl, or any hare or rabbit on a Sunday shall forfeit for every such offence a sum not exceeding £5” (Irish) (27 Geo. 3, c. 35, (Ir.), s. 4).

The procedure under this statute is noted, p. 483.

Certificates to kill game are granted under 23 & 24 Vict. c. 90, s. 2, and 46 & 47 Vict. c. 10, s. 5. The certificate, which is in force from the 31st July to the 31st July the following year, costs £3; but if taken out to expire on the 31st October of the same year, may be taken out at a cost of £2, and a certificate to kill game for a fortnight may be taken out upon payment of a sum of £1 (23 & 24 Vict. c. 90, s. 2; 46 & 47 Vict. c. 10, s. 5). A game certificate is available throughout the United Kingdom (23 & 24 Vict. c. 90, s. 18).

“If any person . . . shall have, keep, or use any . . . dog, or any gun, net, or other engine for the taking or destruction of any hare, pheasant, partridge, woodcock, snipe, heath-fowl (commonly called black game), or grouse (commonly called red game), or any other game whatsoever,” without having a certificate, such person shall forfeit £20 (*Game Certificates (Ir.) Act*, 1842, 5 & 6 Vict. c. 81, s. 5). To the above enumeration of game must also be added quail, landrail, and deer (*Game Licences Act*, 1860, 23 & 24 Vict. c. 90). As to procedure see p. 481, *ante*.

A person having a game certificate need not take out the ten-shilling gun licence required by the Gun Licence Act, 1870, s. 7; (*Gun Licence Act*, 1870, 33 & 34 Vict. c. 57, s. 7). A game certificate is not required for killing rabbits, coursing hares, hunting hares or deer with hounds, killing deer on enclosed ground (*Game Licences Act*, 1860, 23 & 24 Vict. c. 90, s. 5), nor for killing hares by occupier (*Ground Game Act*, 1880, 43 & 44 Vict. c. 47, s. 4). A person aiding or assisting in the taking of any game, &c., in the company or presence and for the use of another person who has a game certificate, and is himself using his own gun, net, &c., need not have a certificate (*Game Licence Act*, 1860, s. 5). But if the servant himself fires the gun, he should have a certificate (*Ex parte Sylvester*, (1829) 9 B. & C. 61).

<sup>1</sup> For a list of orders, see p. 494, *post*.

Game certificate or licence.  
Production of.

"If any person . . . shall be found using any dog, gun, net, or other engine for the taking or destruction of game, it shall be lawful for any officer of excise or for the occupier of the land where he shall be so found, . . . or any person having any estate whatsoever in the same lands, whether in possession, remainder, reversion, or future interest, or for any person having a certificate then in force, producing the same, to demand and require from the person so using such gun, dog, net, or engine as aforesaid to produce and show a certificate issued to him under this Act, and then in force, and every such person shall, upon such demand and requisition as aforesaid, produce such certificate to the person so requiring and demanding the same, and shall furnish the same to be inspected accordingly, and if any such person shall wilfully refuse to produce and show a certificate then in force, or shall decline to produce or show the same, or shall refuse, on being required so to do, to give and declare his name and surname, and the place of his residence, or shall give or declare any false or fictitious name, surname, or place of residence, every person so offending shall forfeit fifty pounds; and it shall be lawful for the officer of excise, or occupier of the land where any person shall be found who shall, on requisition and demand as aforesaid, refuse to produce such certificate, or who shall refuse to declare his name and surname, and place of residence, or for any other person present at such refusal, to apprehend the person so refusing as aforesaid, and to convey him forthwith before any justice of the peace within whose jurisdiction such offence shall be committed; and such justice shall proceed to the conviction of such offender, in the same manner as if such offender had been summoned to appear before any justice or justices on information for such offence" (*Game Certificates (Ir.) Act*, 1842, 5 & 6 Vict. c. 81, s. 8). It is probable that there should be both a non-production of the licence and a refusal to give the name (*Molton v. Rogers*, (1803) 4 Esp. 215). The demand must be made on the lands, or in close proximity (*Scarth v. Gardener*, (1831) 5 C. & P. 38).

Gun licence.

A gun licence, on which a duty of ten shillings is paid, is in force from the date of issue to the 31st July next following (*Gun Licence Act* 1870, s. 5; *Customs and Inland Revenue Act*, 1883, s. 6).

"Every person who shall use or carry a gun elsewhere than in a dwelling house or the curtilage thereof, without having in force a licence duly granted to him under this Act, shall forfeit the sum of £10: Provided always, that the said penalty shall not be incurred by the following persons, namely":—(1) Persons in the naval, military, or volunteer or police forces carrying a gun in the performance of their duty or when engaged in target practice; (2) persons having licences to kill game; (3) a person carrying a gun belonging to a licensed person by the orders and for the use of such person only, provided that the person carrying gives his own name and address and name and address of his employer if required; (4) an occupier of land using a gun for purpose of scaring birds or killing vermin on such land, or any person using or carrying a gun for the purpose only of scaring birds or killing vermin on any lands by order of the occupier thereof who shall be a licensed person; (5) a gun-smith or his servant carrying a gun in the ordinary course of his trade or testing a gun in a place set apart for the purpose; (6) a person carrying a gun in the ordinary course of his business as a common carrier (*Gun Licence Act*, 1870, 33 & 34 Vict. c. 57, s. 7).

"In this Act the term 'gun' includes a firearm of any description and an air gun or any other kind of gun from which any shot, bullet, or other missile can be discharged" (s. 2).

"Gun."

The word "gun" includes a pocket pistol, if capable of doing an injury, but not a mere toy (*Campbell v. Hadley*, (1876) 40 J.P. 756). Where a gun is carried in two or more parts, each person carrying a part

is liable to the penalty (s. 8). The "curtilage" is a garden, yard, or field or other piece of ground lying near or belonging to a messuage (Johnson's "Dictionary"). An orchard separated from the house by a garden is not part of the curtilage (*Asquith v. Griffin*, (1881) 48 J.P. 724). A vacant piece of ground not fenced off from the road and separated from the house by a narrow foot-passage was held to be part of the curtilage (*Masson v. L.C. & D.R. Co.*, (1868) L.R. 6 Eq. 101). "Vermin" does not include rabbits (*Ld. Advocate v. Young, W. N.*, (1899) 190).

"It shall be lawful for any officer of inland revenue, or for any officer of constabulary or any constable to demand from any person using or carrying a gun (not being a person in the naval, military, or volunteer service of Her Majesty, or in the constabulary or other police force, using or carrying a gun in the performance of his duty) the production of a licence granted to such person under this Act. If the person upon whom the demand is made shall not produce a licence duly granted to him under this Act, or a licence or certificate to kill game granted to him under the laws of excise, and permit the officer or constable demanding the production thereof to read such licence or certificate, it shall be lawful for such officer or constable to require such person to declare to him immediately his Christian and surname and place of residence, and if such person shall refuse to declare his Christian and surname and place of residence as aforesaid, he shall for such refusal forfeit the penalty of £10 over and above any other penalty to which he may be liable under this or any other Act of Parliament; and it shall be lawful for such officer or constable to arrest such person so refusing, and to convey him before any justice of the peace having jurisdiction at the place where the offence shall be committed, and such justice shall, upon due proof on oath of the offence, or upon the confession of the accused person, convict such person in the penalty aforesaid, or in some mitigated portion thereof, not being less than one-fourth"; or, in default, imprisonment with hard labour not exceeding one month, nor less than seven days or until the penalty shall be sooner paid (*Gun Licence Act*, 1870, s. 9).

"The word 'game' shall for all the purposes of this Act be deemed to include hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards" (*Game Act*, 1831, 1 & 2 Wm. 4, c. 3, s. 2).<sup>1</sup>

"Every person who shall have obtained an annual game certificate shall have power to sell game to any person licensed to deal in game according to the provisions hereinafter mentioned" (*Game Act*, 1831,<sup>2</sup> 1 & 2 Wm. 4, c. 3, s. 17).

Any inn-keeper or tavern-keeper may, without any licence to sell game, sell for consumption in his own house game procured from some person licensed to deal in game under the Act (s. 26).

Every occupier of land has the same power of selling ground game<sup>3</sup> killed by him, or by persons authorized by him pursuant to the second Game Act, 1880, as if he had a licence to kill game<sup>4</sup> (*Ground Game Act*, 1880, 43 & 44 Vict. c. 47, s. 4).

Except as regards sale by the persons above mentioned, no person can deal in game without (a) a justice's licence, and (b) an Excise licence.

Production of  
licence.

Dealing in  
game.

Who may sell  
game without  
game-dealer's  
licence.

Licences  
required by  
game-dealers.

<sup>1</sup> The provision is not necessary so far as woodcock and snipe are concerned, as these birds are not game for the purposes of sale.

<sup>2</sup> This Act, which originally related only to England, was extended to Ireland by the Game Licences Act, 1860 (23 & 24 Vict. c. 90), s. 17.

<sup>3</sup> That is to say, hares and rabbits (s. 8). But rabbits may be sold by anyone without any certificate or licence.

<sup>4</sup> A "licence to kill game" properly means a permission given by a person having the right to kill game on any lands (see cases cited at p. 2 of Farran's "Game Laws of Ireland"). But the obvious meaning in this section of these words is, "as if he had in force an annual game certificate" (see *Game Act*, 1831, s. 17, *supra*).



Dealing in  
game.  
Justices'  
licence.

"The justices of the peace of every county, riding, division, liberty, franchise, city, or town, shall hold a special session in the division or district for which they usually act . . . in the month of July for the purpose of granting licences to deal in game, of the holding of which session seven days' notice shall be given to each of the justices acting for such division or district: and the majority of the justices assembled at such session, or at some adjournment thereof, not being less than two, are hereby authorized, if they shall think fit, to grant, under their hands to any person being a householder or keeper of a shop or stall within such division or district, and not being an inn-keeper or victualler, or licensed to sell beer by retail, nor being the owner, guard, or driver of any mail coach . . . or other public conveyance, nor being a carrier or higgler, nor being in the employment of any of the above-mentioned persons, a licence<sup>1</sup> . . . to buy game at any place from any person who may lawfully sell game, . . . and also to sell the same at one house, shop, or stall only kept by him" (*Game Act, 1831, s. 18*). The justices may hold a special sessions for the above purpose any time in the year after the month of July, seven days' notice thereof being given to the justices of the district (2 & 3 Vict. c. 35, s. 4).<sup>2</sup> These powers may be exercised within the D.M.P. district by two or more divisional justices (28 & 29 Vict. c. 2). A justice's licence expires on the 1st July next following in date (2 & 3 Vict. c. 35, s. 4).

Name over  
door.

"Provided that every person while so licensed to deal in game as afore-said shall affix to some part of the outside of the front of his house, shop, or stall, and shall there keep a board having thereon in clear and legible characters his Christian name and surname, together with the following words 'Licensed to deal in game'"—*Penalty*, not exceeding £10 (*Game Act, 1831, s. 18*). The licence becomes void on conviction of an offence against the Act (s. 22). Partners need only one licence (s. 21).

Offences as to  
game dealing.

Selling or offering for sale, game without a justices' licence or annual game certificate,<sup>3</sup> or holder of such certificate selling or offering for sale game to any person other than the holder of a justices' licence—*Penalty*, on conviction before two justices, £2 for each head of game so sold or offered, and costs of conviction (*Game Act, 1831, s. 25*).

Unlicensed persons buying from any person save from a person licensed to deal in game, or *bona fide* from a person exhibiting a board as if a person licensed to deal in game—*Penalty*, not exceeding £5 for every head of game bought (*Game Act, 1831, s. 27*).

Where one pheasant farmer bought pheasants from another pheasant farmer, and the birds were tame, having never been at large, it was held that an offence was committed (*Cook v. Treverer, (1910) W.N. 211*).

Licensed game-dealers buying game from any person other than a licensed game-dealer or the holder of an annual game certificate, or selling or offering for sale game without having, in accordance with s. 22, outside the place in which he sells or offers game for sale a board bearing his Christian name and surname, and the words "licensed to deal in game," or selling elsewhere than in a place to which such board has been affixed, or any person other than a licensed game-dealer pretending, by exhibiting such board or otherwise, that he is licensed under the Act—*Penalty*, on conviction before two justices, not exceeding £10 and costs of conviction (*Game Act, 1831, s. 28*).

<sup>1</sup> This licence expires "on the day therein mentioned for the termination thereof" (*Game Licences Act, 1860, s. 16*).

<sup>2</sup> This section is incorporated and kept in force by the Game Licences Act, 1860, s. 13, notwithstanding its repeal by 32 & 33 Vict. c. 14, s. 39.

<sup>3</sup> Except in the cases of an innkeeper or occupier of land, as to which see "*Persons who may sell game without a game-dealer's licence*," p. 491.

Every person<sup>1</sup> who shall purchase or sell, or otherwise deal in game before he shall obtain an excise licence, the duty on which is £2, shall forfeit £20 (*Game Licences Act*, 1860, 23 & 24 Vict. c. 90, ss. 2, 14). Excise licence.

As to dealing in game during the close season, see CLOSE SEASONS, p. 488.

"Every occupier of land shall have, as incident to and inseparable from his occupation of the land, the right to kill and take ground game<sup>2</sup> thereon concurrently with any other person who may be entitled to kill and take ground game on the same land. Provided that the right conferred on the occupier by this section shall be subject to the following limitations:—(1) The occupier shall kill and take ground game only by himself or by persons duly authorized by him in writing: (a) The occupier himself and one other person authorized in writing by such occupier shall be the only persons entitled under this Act to kill ground game with firearms. (b) No person shall be authorized by the occupier to kill or take ground game except members of his household resident on the land in his occupation, persons in his ordinary service on such land, and any one other person *bona fide* employed by him for reward in the taking and destruction of ground game. (c) Every person so authorized by the occupier on demand by any person having a concurrent right to take and kill the ground game on the land or any person authorized by him in writing to make such demand shall produce to the person so demanding the document by which he is authorized, and in default he shall not be deemed to be an authorized person" (*Ground Game Act*, 1880, 43 & 44 Vict. c. 47, s. 1). Ground game.  
Rights of occupier.

An owner occupying land over which he has let the sporting rights is within s. 1 of the Act of 1880, so that if he has let or granted the sporting rights he is still entitled to kill ground game (*Anderson v. Vicary*, (1899) 2 Q. B. 436; (1900) 2 Q. B. 287). A person who has only a right of common over lands or an occupation for not more than nine months for the purpose of grazing cattle, sheep, or horses is not to be deemed an occupier (*Ground Game Act*, 1880, s. 1 (2)). A visitor staying in the house of the occupier has been held to be a member of his household within the meaning of s. 1 of the Act of 1880 (*Stuart v. Murray*, (1884) 12 C. of S. C. (Just.) 9); and the Scotch Court of Justiciary has also held that a person employed by the occupier to kill ground game, and receiving as his sole remuneration the ground game so killed, was a person *bona fide* employed for reward (*Bruce v. Prosser*, (1898) 35 Sc. L.R. 433).

In the case of moorlands and unenclosed lands (not being arable lands) the occupier and the persons authorized by him shall only exercise the rights conferred by this section (a) with firearms from 11th December to the 31st March, both inclusive; (b) but without firearms from 1st September to 31st March, both inclusive (*ib.*, s. 1 (3); *Ground Game Amendment Act*, 1906, 6 Ed. 7, c. 21, s. 2): but these restrictions do not apply to detached portions (less than twenty-five acres in extent) of moorlands or unenclosed lands adjoining arable lands (*Act of 1880*, s. 1 (3)). When right may be exercised.

"No person having a right of killing ground game under this Act or otherwise shall use any firearms for the purpose of killing ground game between the expiration of the first hour after sunset and the commencement of the last hour before sunrise; and no such person shall for the purpose of killing ground game, employ spring traps except in rabbit holes, nor employ poison; and any person acting in contravention of this section shall on summary conviction be liable to a penalty not exceeding £2" (*Ground Game Act*, 1880, s. 6).

<sup>1</sup> Except of course the persons mentioned under "Persons who may sell game without a game-dealer's licence" selling in manner provided respecting such persons.

<sup>2</sup> That is hares and rabbits (s. 8).

**Ground Game.** It has been held that section 6 does not apply to an owner of land who was also the occupier (*Smith v. Hunt*, (1886) 16 Cox, 54), nor to a person who by virtue of a grant from the owner exercises sporting rights over, but does not occupy, the land (*May v. Waters*, (1910) 1 K.B. 431). In the latter case Lord Alverstone, L. C. J., said:—"The Ground Game Act, 1880, was not intended to impose the restrictions in s. 6 upon the owner of the land in possession of the sporting rights, or the lessee or grantee from him of those rights who possesses or acquires those rights independently of the occupation of the land." But the section applies to an occupier of land who, by reason of the owner not having reserved the sporting rights, has the right, apart from the Act, of killing and taking game upon the land (*Waters v. Phillips*, (1910) 2 K.B. 465; *Saunders v. Pitfield*, (1888) 16 Cox 369; cf. *Anderson v. Vicary*, (1900) 2 K.B. 287).

**Close season.** Ground game are not to be killed or taken on any days or seasons prohibited by any Act in force at the time (7th September, 1880) of the passing of the Act of 1880 (*Act of 1880*, s. 10): consequently hares or rabbits cannot be killed or taken on Sundays, and hares cannot be killed during the annual close seasons for hares (see section entitled *Sunday Shooting and Close Season*, ante).

**Destroying eggs or nest.** "Every person who shall wilfully destroy the eggs or nest of any pheasant, partridge, quail, landrail, moor game, heath game, or grouse, wild duck, widgeon, plover, or snipe"—*Penalty*, not exceeding £5 (Irish) (27 Geo. 3 c. 35 (Ir.), s. 4).

This offence seems to be committed even if the destruction is done by an owner upon his own lands. As to eggs of other birds, see **WILD BIRDS**.

**Burning mountains.** It is illegal to burn any furze, heath, or fern on any moor, bog, or waste ground between the 2nd February and 14th June in any year (save the burning of furze, heath, or fern by the owner on lands broken up for the purpose of agriculture or planting (27 Geo. 3 (Ir.), c. 35, s. 3) under a penalty of £5 (Irish, equivalent to £4 12s. 3<sup>4</sup>d. sterling) (10 Wm. 3 (Ir.), c. 8, s. 7). The justices cannot reduce the fine (see *R. v. Salomons*, (1786) 1 T. R. 252). The Petty Sessions Act does not apply, and no costs can be given. A defendant has a right of appeal under 27 Geo. 3, c. 35, s. 23, noted p. 483, ante. One justice is sufficient (10 Wm. 3 (Ir.), c. 8, s. 7). A common informer can prosecute.

**Poisoned flesh and poisoned grain.** As to laying poisoned flesh, or selling or sowing poisoned grain, see **POISONED GRAIN AND POISONED FLESH** (post).

**Dogs.** As to dog licences and injury by dogs, see **Dogs**.

**Close season, &c., for wild birds.** See **WILD BIRDS**.

**Close seasons for hares.** Under the orders at present<sup>1</sup> in force the close seasons for hares (see p. 489) are as follows:—Carlow, Cavan, Clare, Cork, Kerry, Kildare, Kilkenny, Leitrim, Meath, Tipperary, Waterford, Westmeath, Wicklow—March 1st to September 20th; Antrim, Donegal, Dublin, Fermanagh, Galway, Londonderry, Mayo, Queen's County, Roscommon, Tyrone—April 1st to August 12th; Armagh, Louth, Monaghan, Sligo—April 1st to September 20th; Down—March 31st to September 20th; Longford—April 1st to September 18th; Limerick—March 17th to October 1st; King's County—March 18th to September 20th; Wexford—March 25th to September 20th.

<sup>1</sup> 31st December, 1910.



## GAMING.

	PAGE		PAGE
Keeping common gaming-house, . . . . .	495	Betting-houses—	
Keeping premises for unlawful gaming, . . . . .	496	Penalty for receiving deposits for bets, . . . . .	501
Evidence, . . . . .	497	Exception in favour of stakeholder in race, . . . . .	501
Search warrant, . . . . .	497	Advertising betting-houses, . . . . .	501
Appeal, . . . . .	498	Other betting advertisements, . . . . .	501
Cheating at play, . . . . .	498	Search and seizure, . . . . .	502
Betting-houses—		Abandonment of prosecution by complainant, . . . . .	502
Declared to be a nuisance, . . . . .	498	Appeal, . . . . .	502
No house, &c., to be kept for betting purposes, . . . . .	498	Lotteries, . . . . .	502
Betting-house deemed a gaming-house, . . . . .	499	Street betting, . . . . .	504
Penalty on owner or occupier, . . . . .	499	Thimblers and swindlers, . . . . .	505
		Inciting infant to bet, . . . . .	505

“The owner or keeper of any common gaming-house, and every person having the care or management thereof, and also every banker, croupier, and other person who shall act in any manner in conducting the business of any common gaming-house.”—*Penalty*, on conviction before two justices “*beside any penalty or punishment to which he may be liable under the said Act of King Henry the Eighth,*”<sup>1</sup> not exceeding £100, or six months’ imprisonment, with or without hard labour . . . . . “Provided always, that nothing herein contained shall prevent any proceeding by indictment against the owner or keeper, or other person having the care or management of a common gaming-house; but no person who shall have been summarily convicted of any such offence shall be liable to be proceeded against by indictment for the same offence” (*Gaming Act*, 1845, 8 & 9 Vict. c. 109, s. 4).

The Act of 1845 is aimed at persons keeping a gaming-house; the Act of 1854, *infra*, is aimed at persons keeping a house in which unlawful games are played (*per* Hawkins, J., in *Jenks v. Turpin*, (1884) 13 Q.B.D. 505, at p. 513).

“And whereas doubts have arisen whether certain houses, alleged or reputed to be opened for the use of the subscribers only, or not open to all persons desirous of using the same, are to be deemed ‘common gaming-houses: Be it declared and enacted, that in default of other evidence proving any house or place to be a common gaming-house, it shall be sufficient, in support of the allegation in any indictment or information that any house or place is a common gaming-house, to prove that such house or place is kept or used for playing therein at any unlawful game, and that a bank is kept there by one or more of the players exclusively of the others, or that the chances of any game played therein are not alike favourable to all the players, including among the players the banker or other person by whom the game is managed, or against whom the other players stake, play, or bet; and every such house or place shall be deemed a common gaming-house such as is contrary to law, and forbidden to be kept by the said Act of King Henry the Eighth, and by all other Acts containing any provision against unlawful games or gaming houses” (*Gaming Act*, 1845, s. 2).

<sup>1</sup> The Act referred to is the 33 Hen. 8, c. 9, recited in s. 1. The words in italics do not apply to Ireland, the Act of Henry 8 being an exclusively English Act.

Keeping  
common  
gaming-  
house.  
"Common  
gaming-  
house."

What is a common gaming-house? What is unlawful gaming? A common gaming-house is a house in which a large number of persons are invited habitually to congregate for the purpose of gaming (*Jenks v. Turpin*, (1884) 13 Q.B.D., 505, at p. 516). S. 2 of the Act of 1845 includes in the term any house of which it can be proved (1) that it is kept and used for playing therein at any unlawful game, and (2) that a bank is kept there either by one or more of the players, exclusively of the others, or that the chances of any game played therein are not equally favourable to all the players. A house may be a common gaming-house even though (1) it is kept open for a double purpose as an honest social club for those who do not desire to play, as well as for the purpose of gaming for those who do (*Jenks v. Turpin*, *supra*, at p. 512); (2) no annoying interference in the public street can be pointed to (*ib.*, p. 515); and (3) the use of the house is limited to the subscribers and members of the club (*ib.*). As to what is unlawful gaming, see *infra*.

Keeping  
premises for  
unlawful  
gaming.

"Any person, being the owner or occupier, or having the use of any house, room, or place, who shall open, keep, or use the same for the purpose of unlawful gaming being carried on therein, and any person who, being the owner or occupier of any house or room, shall knowingly and wilfully permit the same to be opened, kept, or used by any other person for the purpose aforesaid, and any person having the care or management of or in any manner assisting in conducting the business of any house, room, or place opened, kept, or used for the purpose aforesaid, and any person who shall advance or furnish money for the purpose of gaming with persons frequenting such house, room, or place"—*Penalty*, on conviction before two justices, not exceeding £500, and costs, or imprisonment, with or without hard labour, not exceeding twelve months (*Gaming House Act*, 1854, 17 & 18 Vict. c. 38, s. 4).

What is  
unlawful  
gaming.

Unlawful gaming comprises:—(1) all gaming in a common gaming house (*Jenks v. Turpin*, (1884) 13 Q.B.D. 505, at p. 513); (2) every game of cards which is not a game of mere skill; (3) probably, any other game of mere chance, and (4) certain games expressly declared unlawful by statute (*ib.*, p. 524).<sup>1</sup>

The question whether a particular game is unlawful or not is a question for the judge and not for the jury (*R. v. Davies*, (1897) 2 Q.B. 199), but, it is submitted, this does not apply where a game, lawful in itself, is alleged to be unlawful by reason of being played in a common gaming house, for whether a house is a common gaming house or not is a question of fact for the jury. The use of a penny-in-the-slot machine, by means of which the person using the machine gambles for a prize, the chances being in favour of the machine, constitutes unlawful gaming (*Fielding v. Turner*, (1903) 1 K.B., 867). In *Roberts v. Harris*, (1909) 25 T.L.R. 700, the appellant kept in his shop an automatic machine with a slot in it. A person desirous of working the machine put a halfpenny in the slot, then pulled a lever which caused a ball to be thrown to the top of the machine. If the ball came back into one cup, the halfpenny was returned to the player; if it went into another, the ball was returned to the player to be played again; and if it went into a third cup, the halfpenny became the property of the appellant. It was sought to distinguish the case from *Fielding v. Turner*, on the ground that no prize was to be won. *Held*, that the appellant was rightly convicted of using his shop for the purpose of unlawful gaming, on the ground (Lord Alverstone, C.J., and Jelf, J.) that the game was not equally favourable to all

<sup>1</sup> Ace of hearts, pharaoh, basset, hazard, passage, roulette, every game of dice except backgammon are unlawful in England, by virtue of 33 Hen. 8, c. 9. Games of chance at cards or dice and lotteries were made illegal by the Irish statute 13 Geo. 2, c. 8, s. 17.

the players, including the owner of the machine, and also on the ground (Darling, J.) that the amusement provided was money's worth (*cf.* on this point, *Lockwood v. Cooper*, (1903) 2 K.B., 428, noted under INTOXICATING LIQUORS). **Keeping premises for unlawful gaming.**

Mere players are not, but the committee of a club, as having the management of the premises, are, within the statute (*Jenks v. Turpin*, (1884) 13 Q.B.D., 505, at p. 526). **Mere players.**

It is not necessary, to support a conviction, to prove that any person found playing was playing for money (*Gaming Act*, 1845, s. 5).<sup>1</sup> Discovery of instruments of gaming is presumptive evidence that the house is a common gaming-house (s. 8); obstruction of officers duly authorized to enter is evidence to the like effect (*Gaming Houses Act*, 1854, s. 2); persons concerned in unlawful gaming who give true evidence can obtain a certificate of exemption from prosecution (*Gaming Act*, 1845, s. 9). Persons arrested in a gaming-house may be required to give evidence and compelled to answer incriminating questions (*Gaming Houses Act*, 1854, s. 5). As to effect of evidence of newspapers found on premises containing announcements of races, see *Bannon v. Breen*, p. 499, *infra*. **Evidence.**

The Gaming Act, 1845, by s. 3, provides that, "in every case except within the metropolitan police district," in which the justices of peace in every shire, and mayors, sheriffs, bailiffs, and other head officers<sup>2</sup> within every city, town, and borough, within this realm, now have by law authority to enter into any house, room, or place, where unlawful games shall be suspected to be holden," any justice may issue a warrant to search a suspected gaming-house.<sup>3</sup> Either of the commissioners of police in Dublin may, by order in writing, authorize a superintendent (ss. 6, 7, 24) to enter and search houses suspected of being common gaming-houses, and arrest and bring before a justice persons found therein (*ib.*). **Search warrant. Who may grant.**

"Any person who shall wilfully prevent any constable or officer authorized under the provisions of the said Act of the eighth and ninth years of Her Majesty to enter any house, room, or place from entering the same or any part thereof, or who shall obstruct or delay any such constable or officer in so entering, and any person who, by any bolt, bar, chain, or other contrivance, shall secure any external or internal door of, or means of access to, any house, room, or place so authorized to be entered, or shall use any means or contrivance whatsoever for the purpose of preventing, obstructing, or delaying the entry of any constable or officer authorized as aforesaid into any such house, room, or place, or any part thereof"—*Penalty*, on summary conviction before two justices, not exceeding £100, with such costs as to the justices shall appear reasonable; "and on the non-payment of such penalty and costs, or in the first instance, if to the said justices it shall seem fit, may be committed to the common gaol or house of correction, with or without hard labour, for any period not exceeding six calendar months" (*Gaming Houses Act*, 1854, s. 1). **Obstructing entry.**

Person apprehended refusing to give name and address or giving false name and address—*Penalty*, not exceeding £50 and costs, or one month's imprisonment, with or without hard labour (s. 3). **Person arrested to give name and address.**

<sup>1</sup> This, however, merely means that the justices are at liberty to infer that gaming was being carried on, though there is no direct evidence that the game was played for money, just as under s. 62 of the Licensing Act, 1872, proof of money having passed is not necessary in a charge of unlawfully selling intoxicating liquor. Of course, there can be no gaming unless money or money's worth is staked.

<sup>2</sup> Meaning the Dublin metropolitan police district, see s. 24.

<sup>3</sup> *Sic.*

<sup>4</sup> Apparently no such authority as that referred to in the section seems to have existed; and, therefore, it may be questioned whether, outside the D.M.P. district, such search warrant can be issued. As to power of justices to issue warrant to search houses suspected of being betting houses, see p. 502.



When persons are so arrested and brought before a justice, and charged with an offence, a summons should be issued in the ordinary way charging the offence (*Blake v. Beech*, (1876) 1 Ex. D. 320).

Appeal.

Any person summarily convicted may appeal, giving notice of his intention to do so "at the time of the conviction,"<sup>1</sup> and then, or within forty-eight hours, entering into recognizances with two sureties (s. 20).

Cheating at play.

A person cheating at play is deemed guilty of obtaining money by false pretences (*Gaming Act*, 1845, s. 7). See INDICTABLE OFFENCES, under FALSE PRETENCES.

See also LOTTERIES, *infra*.

Betting-houses.

"No house, office, room, or other place shall be opened, kept, or used for the purpose of the owner, occupier, or keeper thereof, or any person using the same, or any person procured or employed by or acting for or on behalf of such owner, occupier, or keeper, or person using the same, or of any person having the care or management or in any manner conducting the business thereof betting with persons resorting thereto; or for the purpose of any money or valuable thing being received by or on behalf of such owner, occupier, keeper, or person as aforesaid as or for the consideration for any assurance, undertaking, promise or agreement, express or implied, to pay or give thereafter any money or valuable thing on any event or contingency of or relating to any horse race, or other race, fight, game, sport, or exercise, or as or for the consideration for securing the paying or giving by some other person of any money or valuable thing on any such event or contingency as aforesaid; and every house, office, room, or other place opened, kept, or used for the purposes aforesaid, or any of them, is hereby declared to be a common nuisance and contrary to law" (*Betting Houses Act*, 1853, 16 & 17 Vict. c. 119, s. 1).

Declared to be a nuisance.

This section creates two separate and distinct offences, namely, keeping the places referred to (1) for the purpose of betting with persons resorting thereto, (2) for the purpose of receiving deposits on bets for ready-money betting (see *Bond v. Plumb*, (1894) 1 Q.B. 169). "Persons resorting thereto" means physical resorting, and using a place for the purpose of receiving betting telegrams, &c., will not sustain a conviction for using for the purpose of betting with persons resorting thereto, but may sustain a conviction for using for the purpose of receiving deposits (*R. v. Brown*, (1895) 1 Q.B. 119; see also *Wright v. Clarke*, (1870) 34 J.P. 661). A "commission agent" is liable, though he does not "stand" the bets himself (*Wright v. Clarke*, *supra*). The appellant was a bookmaker, and a letter was sent to his premises stating that the writer wished to open a deposit account with the appellant, and on hearing from him would forward £5; the writer added that none of his commissions would exceed that amount without a further remittance. The appellant replied, enclosing a book of rules, and saying that "on receipt of yours, as suggested, I will place you on my list of clients." The money was thereafter sent to the appellant in the form of postal orders. Bets were made by the appellant on behalf of the writer of the letter, and a day or two later the appellant's premises were raided, when books of account showing betting transactions, and about 100 betting slips, were found. The appellant was convicted upon an indictment under the Betting Act, 1853, for using the premises for the purpose of receiving deposits on bets. *Held*, that there was evidence upon which the jury could convict the appellant: *Semble*, the receipt of a document which can be turned into money is the receipt of money within s. 1 of the Betting Act 1853 (*R. v. Mortimer*, (1910) 27 T.L.R. 17). In this case, the contention that there was evidence of only one act of user for ready-money betting, and that all the other transactions were on credit, was rejected.

<sup>1</sup> As to which see p. 140.

On a charge of using premises for betting purposes, a newspaper found therein is evidence of a public announcement that a certain race mentioned in the newspaper is to be run, and that certain horses are to take part in it, and no evidence that the race was run is necessary (*Bannon v. Breen*, 17th November, 1910, K.B.D. (Ir.), unreported).<sup>1</sup>

Betting-houses.

"Every house, room, office, or place opened, kept, or used for the purposes aforesaid, or any of them, shall be taken and deemed to be a common gaming-house within the meaning of" the Gaming Act, 1845 (*Betting Houses Act*, 1853, s. 2).

Betting-houses to be deemed gaming-houses.

"Any person who being the owner or occupier of any house, office, room, or other place, or a person using the same, shall open, keep, or use the same for the purposes herein-before mentioned, or either of them; and any person who being the owner or occupier of any house, room, office, or other place shall knowingly and wilfully permit the same to be opened, kept, or used by any other person for the purposes aforesaid, or either of them; and any person having the care or management of or in any manner assisting in conducting the business of any house, office, room, or place opened, kept, or used for the purposes aforesaid, or either of them"—Penalty, on summary conviction before two justices, not exceeding £100, and such costs as the justices may deem reasonable, or imprisonment with or without hard labour, not exceeding six months (*Betting Houses Act*, 1853, s. 3).

Penalty on owner or occupier.

A person who permits his house to be used for the sale of tickets and the receipt of purchase money for such tickets in an ordinary sweep-stake on a horse race, does not commit an offence against the statute (*R. v. Hobbs*, (1898) 2 Q.B. 647), but would probably be guilty of keeping a lottery (*ib.*, per Lord Russell of Killowen, C.J., p. 655). The defendant was the occupier of an office and the proprietor of a newspaper published weekly at that office. Each number of the paper contained a notice of what was called a "coupon competition"—that is to say, of a promise by the defendant to pay a certain specified sum of money to such persons as should correctly guess the result of a certain horse race then shortly to be run, and should write their guesses upon certain forms called "coupons," which were issued with each number of the newspaper, and should return the coupons so filled up to the defendant's office, together with the sum of one penny in respect of each guess made. A large number of persons every week sent in to the defendant's office coupons filled up as aforesaid, accompanied by remittances of money. Held, that a conviction of the defendant for keeping the office for the purpose of money being received by her as the consideration for undertakings to pay thereafter money on events relating to horse races was right (*R. v. Stoddart*, (1901) 1 Q.B. 177; cf. *Caminada v. Hulton*, (1906) 60 L.J.M.C. 116).

"Betting-house."

The section is confined to cases where the defendant is in control and occupation of a place, and Tattersall's Ring is not a place within the Act (*Powell v. Kempton Park Racecourse Co.*, (1899) A.C. 143, overruling *Hawke v. Dunn*, (1897) 1 Q.B. 579). The cases of *M'Innay v. Hildreth*, (1897) 1 Q.B. 600 (a pit heap where a bookmaker constantly went to make bets), *R. v. Humphrey*, (1898) 1 Q.B. 875 (a case of an archway, portion of a private thoroughfare over which the defendant had no control); *Eastwood v. Miller*, (1874) L.R. 9 Q.B. 440, and *Haigh v. Town Council of Sheffield*, (1875) L.R. 10 Q.B. 102 (betting in an enclosed field to which admission was obtained by payment), *Gallaway v. Maries*, (1881) 8 Q.B.D. 275 (bookmaker standing on a box), are probably not good law, in view of the decision in *Powell v. Kempton Park Racecourse Co.*, *supra* (see references of Lord Esher, M.R., and Lord Davey, to *Gallaway v. Maries* and *Eastwood v. Miller* in *Powell v. Kempton Park Racecourse Co.*, at (1897) 2 Q.B. 259 and (1899) A.C. 183 respectively). But where defendant

"Place."

<sup>1</sup> At time of going to press. See INDEX OF CASES.



Betting  
houses.  
"Place."

erected a cane structure about five feet high with four legs or supports, and having on the top a board with his name, and defendant stood on a box near the structure and invited people to bet with him, he was held to be rightly convicted (*Brown v. Patch*, (1899) 1 Q.B. 892; see also *Shaw v. Morley*, (1868) L.R. 3 Ex. 137). In *Brown v. Patch*, decided after *Powell v. Kempton Park Racecourse Co.*, the convictions in *Bows v. Fenwick*, (1874) L.R. 9 C.P. 339 (where a bookmaker stood on a stool under an umbrella), and *Liddell v. Lofthouse*, (1896) 1 Q.B. 295 (where he stood in a bay formed by a hoarding and wooden supports thereof), were approved (see also judgment of Lord James of Hereford in *Powell v. Kempton Park Racecourse Company*, (1899) A.C. 197, but see judgments of Lord Esher and Lord Davey referred to *supra*).

"Using."

To sustain a charge of "using" a house for betting purposes contrary to the Betting Act, 1853, it is necessary, if there is a place which is not in law or fact in possession for the time being of the person charged, but which is a common place to which persons have access for other purposes, to prove that the person who owns the place permitted the prohibited business to be carried on (*R. v. Deaville*, (1903) 1 K.B. 468, 475). In such a case, a mere physical user of the place is not enough to justify a conviction; there must be a user with the sanction of the owner (*R. v. Moss*, (1910) 26 T.L.R. 323). Where a bookmaker upon several days went to the vaults or an adjacent public room of an inn, and had betting transactions there, but no evidence was given that the occupier or his servants saw or knew what was going on, it was held that the bookmaker could not be convicted of using the house for the purpose of betting (*R. v. Deaville*, *supra*). But if portion of the premises is used by a bookmaker by permission of the owner, even though the bookmaker has no interest in the premises, the offence is committed (*Belton v. Busby*, (1899) 2 Q.B. 380; *Tromans v. Hodgkinson*, (1903) 1 K.B. 30), and permission given by a person assisting in the management of the premises is sufficient (*Burton v. Scott*, (1909) 25 T.L.R. 239). A person acting as a mere conduit-pipe for making bets between a bookmaker and his customers, though he has no pecuniary interest in the transactions, may be guilty of using the premises (*R. v. Wyton*, (1910) 5 Cr. App. 287).

To constitute a user, the place must be habitually used for the purpose of betting; and mere evidence that a bet was made by the occupier on one occasion (*M'Connell v. Brennan*, (1908) 2 I.R. 411; *Jayes v. Harris*, (1908) 21 Cox. 639; *R. v. Davies*, (1897) 2 Q.B. 199) is not sufficient. A single betting transaction, coupled with other evidence, may be sufficient (*R. v. Mortimer*, (1910) 27 T.L.R. 17, noted p. 498; *Quinn v. Maguire*, (Feb., 1911) K.B.D. (Ir.)). Evidence of previous betting transactions is admissible to prove user (*R. v. Mean*, (1904) 21 T.L.R. 172).

The use by a bookmaker of premises for the mere purpose of paying over bets does not constitute an offence (*Bradford v. Dawson*, (1897) 1 Q.B. 307). But where an essential part of the operation of making bets habitually takes place in the premises, it is no defence to show that the money is not received therein (*Stoddart v. Hawke*, (1902) 1 K.B. 353; *Mackenzie v. Hawke*, (1902) 2 K.B. 216). The facts that racing men and others are seen entering the premises, and papers and accounts relating to horse racing and betting are found therein, will sustain a conviction, though there is no direct proof of betting (*Reynolds v. Agar*, (1906) 70 J.P.N. 568). See *Bannon v. Breen*, noted, p. 499, *ante*.

Club.

A *bona fide* club, in which members are in the habit of betting with each other in the club rooms, is not within section 1 of the Betting Act, 1853 (*Downes v. Johnson*, (1895) 2 Q.B. 203); but this does not apply where the club is a mere blind, as, for instance, where the members were divided into two classes: bookmakers, who occupied a particular portion of



the club rooms, and other members who went to the club to bet with them **Betting-houses.**  
(*R. v. Corrie & Watson*, (1904) 20 T.L.R. 365).

"Any person, being the owner or occupier of any house, office, room, or place opened, kept, or used for the purposes aforesaid, or either of them, or any person acting for or on behalf of any such owner or occupier, or any person having the care or management, or in any manner assisting in conducting the business thereof, who shall receive, directly or indirectly, any money or valuable thing as a deposit on any bet on condition of paying any sum of money or other valuable thing on the happening of any event or contingency of or relating to a horse-race, or any other race, or any fight, game, sport, or exercise, or as or for the consideration for any assurance, undertaking, promise, or agreement, express or implied, to pay or give thereafter any money or valuable thing on any such event or contingency, and any person giving any acknowledgment, note, security, or draft on the receipt of any money or valuable thing so paid or given as aforesaid, purporting or intended to entitle the bearer or any other person to receive any money or valuable thing on the happening of any such event or contingency as aforesaid"—*Penalty*, on conviction before two justices, not exceeding £50, and such costs as the said justices shall deem reasonable; or imprisonment with or without hard labour, not exceeding three months (*Betting Houses Act*, 1853, s. 4). **Receiving deposits for bets.**

"Provided always, that nothing in this Act contained shall extend to any person receiving or holding any money or valuable thing by way of stakes or deposit to be paid to the winner of any race, or lawful sport, game, or exercise, or to the owner of any horse engaged in any race" (*Betting Houses Act*, 1853, s. 6). **Stake-holder in horse-race.**

"Any person exhibiting or publishing, or causing to be exhibited or published, any placard, handbill, card, writing, sign, or advertisement whereby it shall be made to appear that any house, office, room, or place is opened, kept, or used for the purpose of making bets or wagers, in manner aforesaid, or for the purpose of exhibiting lists for betting, or with intent to induce any person to resort to such house, office, room, or place for the purpose of making bets or wagers in manner aforesaid, or any person who, on behalf of the owner or occupier of any such house, office, room, or place, or person using the same, shall invite other persons to resort thereto for the purpose of making bets or wagers, in manner aforesaid"—*Penalty*, on conviction before two justices of the peace, not exceeding £30, and such costs as to the said justices shall seem reasonable, or imprisonment, with or without hard labour, not exceeding two calendar months (*Betting Houses Act*, 1853, s. 7). **Advertising betting-houses.**

"Where any letter, circular, telegram, placard, handbill, card, or advertisement is sent, exhibited, or published (1) whereby it is made to appear that any person, either in the United Kingdom or elsewhere, will on application give information or advice for the purpose of, or with respect to, any such bet or wager, or any such event or contingency as is mentioned in the principal Act,<sup>1</sup> or will make on behalf of any other person any such bet or wager as is mentioned in the principal Act,<sup>1</sup> or (2) with intent to induce any person to apply to any house, office, room, or place, or to any person with the view of obtaining information or advice for the purpose of any such bet or wager, or with respect to any such event or contingency, as mentioned in the principal Act;<sup>1</sup> or (3) inviting any person to make or take any share in or in connection with any such bet or wager. Every person sending, exhibiting, or publishing or causing the same to be sent, exhibited, or published, shall be subject to the penalties provided in" section 7 of the Betting Act, 1853 (*Betting Act*, 1874, 37 Vict. c. 15, s. 3). **Other advertisements as to betting.**

<sup>1</sup> The Betting Act, 1853.

**Betting-houses.**

The Betting Act, 1874, which (s. 1) is to be construed as one with the Act of 1853, is confined to such bets as are mentioned in the Betting Act, 1853, that is to bets made in any house, office, or place kept for betting, and the Act does not apply to advertisements offering information for the purpose of bets not to be made in any house, office, or place kept for that purpose (*Cox v. Andrews*, (1883) 12 Q.B.D. 126).

**Search and seizure.**

A warrant may be granted, on information on oath, by a justice to a police officer to enter and search a house suspected of being used as a betting house or office, and arrest all persons and seize all documents relating to betting or racing found therein (s. 11). The commissioners of police in Dublin may, by order in writing, authorize a superintendent of police to so enter, search, arrest, and seize (ss. 12, 18).

A person may be "found" on premises within the meaning of s. 11, although he only comes thereon after the police have entered the premises. But the power of arrest given to the police by that section is limited to the arrest of persons found on the premises for the purpose of betting (*Davis v. Sly*, (1910) 26 T.L.R. 460).

The plaintiff, a bookmaker, placed £107 6s. 8d., the proceeds of street betting, in a house occupied by a person who assisted him in his betting transactions. The house in question having been searched by the police under a warrant issued under s. 11 of the Betting Act, 1853, the £107 6s. 8d. and a number of betting slips were seized and retained by the police for the purposes of certain proceedings taken against the plaintiff and others. In those proceedings the plaintiff was acquitted, and he sued the police for detaining the £107 6s. 8d. and claimed the return thereof. *Held*, that the plaintiff was entitled to recover (*Gordon v. Chief Commissioner of Metropolitan Police*, (1910) 2 K.B. 1080).

**Abandonment of prosecution by complainant. Appeal.**

If complainant neglect to prosecute summons, the justices may authorize some other person to proceed (s. 10).

An appeal is given to "any person who shall be summarily convicted under this Act" (*Betting Houses Act*, 1853, s. 13), which seems to give a right to any person convicted, irrespective of amount of penalty. Notice of intention to appeal shall be given "at the time of the conviction,"<sup>1</sup> and at the time of the conviction or within forty-eight hours, recognizances with two sureties conditioned to try the appeal and abide the judgment of the Court of Appeal and pay costs must be entered into (*ib.*).

**Lotteries.**

Lotteries are public nuisances (6 Anne, c. 17 (Ir.), s. 1; 11 Anne, c. 6 (Ir.)), and therefore the keeping thereof is an indictable misdemeanour.

**Statutory provisions.**

By various statutes of the Irish Parliament, penalties were enacted for keeping lotteries (see 6 Anne, c. 17 (Ir.); 11 Anne, c. 6 (Ir.); 13 Geo. 2, c. 8 (Ir.)), such penalties being recoverable either by action or, in some instances, on conviction before justices, e.g., 13 Geo. 2, c. 8 (Ir.), s. 1. But by 46 Geo. 3, c. 148, s. 59, it was enacted that all penalties under that Act or other Acts against lotteries were to be sued for in the High Court by the Attorney-General.<sup>2</sup> (See *R. v. Tuddenham*, (1841) 9 D.P.C. 937).

No person shall publicly or privately keep any office or place to exercise, keep open, show, or expose to be played, drawn, or thrown at or in, either by dice, lots, cards, balls, or by numbers or figures, or by any other way, contrivance, or device whatsoever, any game or lottery called a "Little Goe," or any other lottery whatsoever, not authorized by Parliament, or shall knowingly suffer to be exercised, kept open, shown, or exposed to be

<sup>1</sup> As to which see p. 140.

<sup>2</sup> A number of English statutes enacting penalties in respect of lotteries were applied to Ireland by the Lotteries (Ir.) Act, 1780 (21 Geo. 3, c. 14, s. 60); but as all these statutes are subject to the provisions of the 46 Geo. 3, c. 148, s. 59, further reference to them is deemed unnecessary.



played, drawn, or thrown at or in, either by dice, lots, cards, balls, or by numbers or figures, or by any other way, contrivance, or device whatsoever, any such game or lottery, in his or her house, room, or place, upon pain of forfeiting for every such offence £500, to be recovered at the suit of His Majesty's Attorney-General, and every person so offending is to be deemed a rogue and vagabond<sup>1</sup> (*Gaming Act*, 1802, 42 Geo. 3, c. 119, s. 2).

If any person shall sell any ticket or tickets, chance or chances, share or shares of any ticket, &c., in any lottery or lotteries authorized by any foreign potentate or state, or to be drawn in any foreign country, or in any lottery or lotteries except such as are or shall be authorized by this or some other Act of Parliament to be sold, or shall publish any proposal or scheme for the sale of any ticket or tickets, chance or chances, except such lottery or lotteries as shall be authorized as aforesaid, he shall for every offence forfeit and pay £50, to be recovered at the suit of His Majesty's Attorney-General, and is to be deemed a rogue and vagabond<sup>1</sup> (*Lotteries Act*, 1823, 4 Geo. 4, c. 60, s. 41).

"In Webster's Dictionary a lottery is defined to be a distribution of prizes by lot or chance, and a similar definition is given in Johnson. Such definitions are, in our opinion, correct, and in such sense we think the word is used" in s. 2, 42 Geo. 3, c. 119 (*Taylor v. Smetten*, (1883) 11 Q.B.D. 207). The appellant sold packets of tea containing one pound each at 2s. 6d. a packet. In each packet was a coupon entitling the purchaser to a prize, and this was publicly stated by the appellant before the sale, but the purchasers did not know until after the sale what prize they were entitled to, and the prizes varied in character and value. The tea was good and worth the money paid for it. *Held*, that what the appellant did constituted a lottery (*ib.*); see also *Hunt v. Williams*, (1888) 52 J.P. 821; *Barrett v. Burden*, (1893) 57 J.P. 772.

What is a lottery.

Holding a sweepstake is a lottery (*Allport v. Nutt*, (1845) 1 C.B. 974; *Mearns v. Hellings*, (1845) 14 M. & W. 711; *R. v. Hobbs*, (1898) 2 Q.B. 647; *Hardwick v. Lane*, (1904) 1 K.B. 204). As regards newspaper and other so-called "competitions," the test is—does the result depend entirely upon chance, or, to some extent, at all events, upon the exercise of skill, knowledge, and judgment (*Hall v. Cox*, (1899) 1 Q.B. 198; *Stoddart v. Sagar*, (1895) 2 Q.B. 474). The following have been held to be lotteries:—a missing word competition (*Barclay v. Pearson*, (1893) 2 Ch. 154); a "Limerick" competition (*Blyth v. Hulton*, (1908) 24 T.L.R. 719; *Smith's Advertising Agency v. Leeds Laboratory Company*, (1910) 26 T.L.R. 335); a weather forecast competition (*R. v. Pearson*, (1893—Bow-street), 37 S.J. 749); a competition in which purchasers of a newspaper were given prizes for making out certain portions of the paper marked with spots (*Hall v. McWilliam*, (1901) 20 Cox 33). The following were held not to be lotteries:—offering prizes for selecting winning horses (*Caminada v. Hulton*, (1891) 60 L.J.M.C. 116; *Stoddart v. Sagar*, (1895) 2 Q.B. 474); for predicting the number of births and deaths during a stated period in a particular locality (*Hall v. Cox*, (1899) 1 Q.B. 198).

The proprietors of a weekly newspaper caused medals to be distributed gratuitously among members of the public; each medal bore a distinctive number and the words, "Keep this, it may be worth £100. See the *Weekly Telegraph* to-day;" the winning numbers, which were arbitrarily selected by the newspaper proprietors, and were unknown to the distributors, were published weekly in the newspaper. There were no coupons, and it was not necessary that the holder of a medal should purchase a copy of the paper as a condition of receiving a prize; information as to the winning numbers could be obtained without charge at the office of the newspaper.

<sup>1</sup> There is no enactment in force in Ireland under which "a rogue and vagabond" is punishable as such.



**Lotteries.**

The object of the scheme was to induce persons to inspect or buy the paper, and the circulation in fact increased considerably during the progress of the scheme. *Held* that, although it was possible for an individual holder of a medal to obtain a prize without paying anything for his chance, the medal-holders as a body collectively contributed sums of money to the fund out of which the money came for the prizes, and that the scheme was a lottery within s. 2 of the Gaming Act, 1802 (*Willis v. Young*, (1907) 1 K.B. 448). The defendant exposed on the counter of his shop a machine called an Automatic Tivoli Cigar machine, intended to be and actually used by his customers. The machine was put in operation by putting a penny in the slot and by pressing a spring. The amount of the pressure applied to the spring determined the course taken by the penny inside the machine, and this in turn determined whether the person who had put in the penny got it back, lost it to the defendant, or won from him a cigar valued at twopence. A certain amount of skill might be acquired in giving the requisite pressure to the spring, but it was not shown that the defendant's customers had any opportunity or ever attempted to acquire such skill. *Held*, that the machine as worked and used was a lottery within the meaning of section 22 of the Glasgow Police (Further Powers) Act, 1892, which provides that "no person shall keep or be concerned in the keeping, management, or conduct of any place, or exercise, keep open, show, or expose to be played, drawn, or thrown at, or in, either by dice, lots, cards, balls, or by numbers or figures, or by any other way, contrivance, or device whatsoever, any lottery" (*Santgoneli v. Neilson*, (1903) F. (Just. Cas.) 10).

**"Keeping" a lottery.**

A person who on one occasion only holds a lottery in a place does not thereby keep such place for the purpose of a lottery, as using a place once for the purpose of a lottery is not "keeping" it for that purpose (*Martin v. Benjamin*, (1907) 1 K.B. 64).

**Street betting.**

"Any person frequenting or loitering in streets or public places, on behalf either of himself or of any other person, for the purpose of book-making, or betting, or wagering, or agreeing to bet or wager, or paying or receiving or settling bets"—*Penalty*, first offence, not exceeding £10 second offence, not exceeding £20; subsequent offence (or in any case where offender had betting transactions with a person under sixteen), not exceeding £50, or six months' imprisonment, if tried by indictment; and £30, or three months' imprisonment, if tried summarily. Books, cards, papers, and other articles relating to betting found in offender's possession may be forfeited (*Street Betting Act*, 1906, 6 Ed. 7, c. 43, s. 1 (1)).

A person who appears to be under sixteen shall be deemed to be under that age until the contrary is proved, or unless the person charged shall satisfy the court that he had reasonable ground for believing otherwise (s. 1 (3)). A constable may arrest an offender without warrant, and may seize and detain any article liable to forfeiture (s. 1 (2)).

"The word 'street' shall include any highway, and any public bridge, road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not; and the words "public place" shall include any public park, garden, or sea beach, and any unenclosed ground to which the public, for the time being, have unrestricted access, and shall also include every enclosed place (not being a public park or garden) to which the public have a restricted right of access, whether on payment or otherwise, if at or near every public entrance there is conspicuously exhibited by the owners or persons having the control of the place a notice prohibiting betting therein" (s. 1 (4)).

Nothing in the Act shall apply to any ground used for the purpose of a racecourse for racing with horses or adjacent thereto on the days on which races take place (s. 2).

An appeal lies against *any* order of imprisonment without the option of a fine (s. 4). Street betting.

On June 29th, 1908, the appellant attended at an athletic ground to which the public had access on payment of an entrance fee, and made bets there. The justices having convicted him of frequenting a public place for the purpose of betting (within a bye-law). *Held*, that the conviction was right (*Airton v. Scott*, (1909) 25 T.L.R. 250). In that case Lord Alverstone, C.J., said that "it was plain that being long enough on premises to effect the particular object aimed at was 'frequenting.' They could not distinguish this case from the unreported case to which they had been referred, and in which the man who remained long enough in the street to effect a bet was held to have frequented the street for that purpose." In a Scotch case (*Lang v. Walker*, (1902) 40 Sc.L.R. 284), it was held that a man who on one day loitered about a street and the adjoining streets for about forty minutes, making or endeavouring to make bets, "frequented and used" the street for the purpose of betting within a local Act. Lord Adams said, "I do not see why frequenting may not consist in staying in the street long enough at a time. If, for example, a man went to a street at 10 a.m. and stayed there till 6 p.m., though he never left the street, that would be, in my opinion, frequenting the street"; but Lord Kinnear said that "to frequent a street means not to be found there on a single occasion, but to visit the place often, to be much there, to resort to it often," but thought that frequenting was shown by the man going from the street to the adjoining streets and back again. See also *R. v. Clarke*, (1884) 14 Q.B.D. 92, at pp. 98, 102.

Where a bookmaker standing on private ground separated by a fence from the street put his arm over the fence and received a betting slip and money from a person standing in the street, it was held that the betting transaction took place in the street, and that the bookmaker was rightly convicted (*Queen v. Wilson*, (1910) S.C. (J.) 62).

The appellant was a bookmaker, and was betting in a field which was being used on the occasion in question for the purpose of certain athletic sports and horse races. The programme of events at the sports consisted of a number of footraces and athletic competitions, and two horse races. The field was not permanently laid out or used as a racecourse for horse racing, but was adapted for use as such for the occasion. *Held*, that the field was not "used for the purpose of a racecourse" within s. 2 (*Stead v. Aykroyd*, (1910) 74 J.P. 482).

J. C., being charged under s. 1 (1) of the Street Betting Act, 1906, with loitering and frequenting X street for the purpose of betting contrary to said Act, admitted that he was there for the purpose of paying bets made on the race course at B. The magistrate amended the charge and convicted the defendant of loitering, etc., for the purpose of "paying bets": *Held*, that the magistrate was right in point of law in so convicting (*Keenan v. Collie*, (1907) 41 I.L.T.R. 226). A conviction that defendant loitered in a certain street "for the purpose of bookmaking or betting or wagering, or agreeing to bet or wager, or paying or receiving or settling bets" contrary to the Street Betting Act, 1906, is good (*Stenhouse v. Dykes*, (1908) S.C. (J.) 61).

By the Towns Improvement (Ir.) Act, 17 & 18 Vict. c. 103, s. 76, all thimblers, loaded dice players, and other swindlers who shall be found in the possession of implements for practising games of hazard, or who shall induce any person to play, &c., or who shall attempt to cozen or cheat, on conviction before one justice, may be imprisoned for a term not exceeding thirty days, and be ordered to restore money won, and in default of so doing may be imprisoned for an additional term not exceeding thirty days. Thimblers and swindlers.

As to inciting infant to bet, see CHILDREN, p. 404. Inciting infant to bet.

## GAS.

	PAGE		PAGE
Statutes, . . . . .	506	Recovery of gas rents, etc., . . . . .	507
Offences by company, . . . . .	506	Alliance & Dublin Consumers' Gas Co. . . . .	507
Offences by consumer, . . . . .	506	Larceny of gas, . . . . .	508
Procedure, . . . . .	507		

**Statutes :** The general statutes applicable to gas undertakings are the Gas Works Clauses Act, 1847 (10 & 11 Vict. c. 15), and the Gas Works Clauses Act, 1871 (34 & 35 Vict. c. 41), which Acts are to be construed as one Act (*Act of 1871*, s. 1). The Act of 1871 applies to any undertaking authorized by any special Act passed after 1871, unless expressly excluded (*Act of 1871*, s. 3). The Act of 1847 is generally incorporated by the private Act. Besides the offences created by these statutes, reference should be made in all cases to the private Act.

**Offences by company.** Failure of the undertakers to supply gas to owner or occupier of premises of the prescribed pressure—*Penalty*, not exceeding 40s. per day (*Act of 1871*, s. 36). Failure to supply gas to public lamps as required by the Act—*Penalty*, not exceeding 40s. for each default (*ib.*). If the gas supplied is of less pressure or less illuminating power, or less purity than prescribed, the undertakers shall be liable to a penalty of £20, recoverable before two justices, payable to the local authorities or other persons making application for testing the gas (*ib.*). Streets not to be broken up by company except under the superintendence of persons having control, &c., and according to such plan as they shall approve of; in case of difference, to be settled by two justices (*Act of 1847*, s. 9). Failure to fulfil their obligations in reference to roads, &c., broken up by them—*Penalty*, payable to the persons having control of such road, &c., £5 and £5 a day (*Act of 1847*, s. 11). Fouling streams or reservoirs—*Penalty*, £200 (s. 21), recoverable by action (s. 22). Allowing escape of gas from pipe after twenty-four hours' notice—*Penalty*, £5 a day (s. 24). Fouling water—*Penalty*, payable to person whose water is fouled, not exceeding £20 and £10 a day (s. 25). Refusing to produce books as required—*Penalty*, £100 and £10 a day, recoverable by action (s. 37). Failing to keep copies of special Act at their office, or to deposit copies with clerk of peace—*Penalty*, £20 and £5 a day (*Act of 1847*, s. 46). Where the local authority do not themselves supply gas, they may appoint an examiner to test the gas of the undertakers between certain specified hours (*Act of 1871*, s. 29), and where no gas examiner is appointed under s. 29, or where the testing of gas is imperfectly attended to by the local authority, two justices, upon the application of not less than five consumers, may appoint a competent and impartial person to be gas examiner; such examiner may enter the premises of the undertakers during the same hours to test the gas (s. 30)—*Penalty*, on undertakers failing to give facilities for such tests, not exceeding £5, payable to local authority or the persons applying under s. 30 (s. 34).

**Offences by consumer.** Connecting pipe with any pipe belonging to undertakers without their consent, or fraudulently injuring meter, &c., or improperly using or burning gas, or supplying other persons with the gas—*Penalty*, payable to the undertakers, £5 and 40s. a day (*Act of 1847*, s. 18). Connecting meter with any pipe, or disconnecting meter from pipe without giving twenty-four hours' previous notice—*Penalty*, not exceeding 40s. (*Act of 1871*, s. 15).

<sup>1</sup> See also ss. 77, 78 of the Public Health (Ir.) Act, 1878, noted under PUBLIC HEALTH.



Obstructing officers—*Penalty*, payable to the undertakers, not exceeding £5 (s. 21). Injuring or tampering with meters, or preventing meter from fully registering, or fraudulently abstracting or consuming gas—*Penalty*, payable to the undertakers, £5, in addition to damages (s. 38). Wilfully damaging pipes, &c.—*Penalty*, payable to the undertakers, £5, in addition to amount of damage (*Act of 1847*, s. 9). Damage by accident may be recovered (s. 20), as set out in CIVIL JURISDICTION, *ante*, p. 164.

The clauses of the Railways Clauses Consolidation Act, 1845, in respect to the recovery of damages not specially provided for, and of penalties, and the determination of any other matters referred to justices are incorporated (*Act of 1847*, s. 40), the effect of which is that two justices are required in any proceedings under the Act of 1845, except where one justice is expressly empowered to act. As to procedure generally under the incorporated Act, see ss. 140–145, 148–150, and 152–154 thereof, noted under CIVIL JURISDICTION, *ante*, p. 184. Penalties under Act of 1871 to be recoverable in like manner (*Act of 1871*, s. 44). In none of the sections above set forth is a single justice empowered to act.

Provisions as to the sale of gas by meter by the cubic foot, and rules for testing meter, penalties for altering meter or obstructing inspector, are contained in the Sale of Gas Act, 1859 (22 & 23 Vict. c. 66), penalties under which are recoverable before two or more justices in petty sessions (*Sale of Gas Act Amendment Act*, 1860, 23 & 24 Vict. c. 146), with appeal to quarter sessions (*Act of 1859*, s. 22). The Act of 1859 is not to come into operation until the grand jury of the county (now the county council) shall have resolved to bring the county under the operation of the Act (*Act of 1860*, s. 2).

The registering by the gas-meter is merely *prima facie* evidence of the quantity consumed (*Gas Light and Coke Co. v. Creswell*, (Clerkenwell Police Ct., 1897) 61 J.P. 699; *Cork Gas Co. v. Bible*, (Co. Ct., 1897) 31 I. L. T. 477).

Justices have jurisdiction to civilly determine disputes as to gas rents, &c. See CIVIL JURISDICTION, *ante*, p. 164.

The following is a *précis* of sections of the private Acts of the ALLIANCE and DUBLIN CONSUMERS' GAS COMPANY, giving justices jurisdiction:—

Company shall not discontinue supply unless and until consumer, who has been called upon to give security, has failed to give security for seven days after the amount thereof has been agreed on or determined—*Penalty*, not exceeding £5 (*Alliance and Dublin Gas Act*, 1866, 29 & 30 Vict. c. ccv, ss. 51, 49). Failure by the Company to give supply—*Penalty*, on summary conviction, not exceeding £5 a day (*ib.*, s. 51). Any person fraudulently injuring meters—*Penalty*, not exceeding £5 (s. 59). The corporation or local authority for lighting street with gas, or, where there is no such local authority, any two justices may appoint gas examiner, whose tests the company are to facilitate (s. 63). *Penalty*, if gas not of proper lighting power, or for not affording facilities for testing, £20 (s. 64), with costs of examination and proceedings (s. 65). Penalties on Company for one and same offence under this Act and other Acts not cumulative (s. 73). *Penalty* not exceeding £5, and not exceeding £2 for every day for failure by Company to keep, &c., map of mains (*Alliance and Dublin Gas Act*, 1874, 37 & 38 Vict. c. cxxxv, s. 22). Company not maintaining tram rails and road (built by the Company on Sir John Rogerson's Quay, Dublin, pursuant to the Act) in good condition—or not complying with requirements of sect. 28 of Tramways Act, 1870—*Penalty*, £5 and £5 a day (*Alliance and Dublin Gas Act*, 1879, c. clxxxiii, s. 9). Jurisdiction is given to one divisional justice in Dublin (*Alliance and Dublin Gas Act*, 1883, 46 & 47 Vict. c. cix, s. 43). No penalty for neglect or refusal to give a supply, or for insufficiency of pressure or

Recovery of gas rents, &c.

Provisions of Alliance and Dublin Consumers Gas Co.'s Acts.

defect in illuminating power, when occasioned by unavoidable cause or accident (*Alliance and Dublin Gas Act, 1909, 9 Ed. 7, c. lxii, s. 36*). Not liable to penalty or forfeiture for sulphur compounds (*ib.*, s. 42).

As to breaches of contract by persons employed in supply of gas or water, see MASTER AND SERVANT.

Larceny of gas.

As to larceny of gas, see SUMMARY OF INDICTABLE OFFENCES, under the title LARCENY.

### GENERAL DEALERS.

	PAGE		PAGE
Definition, . . . . .	508	Duty as to stolen property, . . . . .	511
Licences, . . . . .	508	Not to alter or deface property, . . . . .	511
Description of premises, . . . . .	510	Not to do business with persons . . . . .	511
Books to be kept, . . . . .	510	under fourteen, . . . . .	511
Retention of articles for seven days, . . . . .	510	Not to do business within certain . . . . .	511
Entry of names of purchasers, . . . . .	510	hours, . . . . .	511
Production of articles and books to . . . . .	510	Name over door, . . . . .	511
police, . . . . .	510	See also MARINE STORE DEALERS.	

Definition of  
"general  
dealer."

"In this Act, unless the context otherwise requires, the expression 'general dealer' means any person buying, otherwise than at a public auction held by a licensed auctioneer, or selling old metal, scrap metal, broken metal, or partly manufactured metal goods in quantities at each particular purchase or sale, of less, in the case of iron, than ten hundred-weight, or in the case of copper, of less than fifty-six pounds weight, or in the cases of lead, zinc, spelter, machinery, or tools, respectively, of less than one hundred and twelve pounds weight, or buying or selling in any quantities bottles, syphons, tools, bags, sacks, packing cases, boxes, articles of pottery or glass, whether such person deals in those articles only or together with second-hand goods or marine stores, but the said expression does not include a pawnbroker or a licensed dealer in plate" (*General Dealers (Ir.) Act, 1903, 3 Ed. 7, c. 44, s. 12*).

A "general dealer" must not be confounded with a "marine store dealer," that is, any "person dealing in, buying, or selling any of the articles following, that is to say, anchors, cables, sails, old junk, or old iron, or other marine stores of any kind" (*Merchant Shipping Act, 1894, s. 538*; see MARINE STORE DEALERS, *post*); or with a "dealer in old metals," meaning "any person dealing in, buying, and selling old metal, scrap metal, broken metal, or partly manufactured metal goods, or defaced or old metal goods, whether such person deals in such articles only or together with second-hand goods or marine stores" (*Prevention of Crime Act, 1871, s. 13*; see MARINE STORE DEALERS, *post*).

A "dealer in old metals" is forbidden to purchase certain articles in less than certain quantities, namely, lead 112 lb., copper, brass, tin, pewter, German silver, 56 lb. (*Prevention of Crime Act, 1871, s. 13, sch.*). This prohibition is not affected, so far as brass is concerned, by the General Dealers (Ir.) Act, 1903, so that a licensed "general dealer" commits an offence by purchasing brass in quantities less than 56 lb. (*Campbell v. Finn, (1907) 2 I.R. 502*; *R. (Rogers) v. Duthie, Large, & Co., (1908) 42 I.L.T.R. 148*). The same remark would apply to tin, pewter, and German silver; but *quære* the case of copper, as s. 12 of the General Dealers (Ir.) Act, 1903, specially mentions the sale of copper in less than 56 lb. weight.

Licence to  
general  
dealer.

"(1) No person shall carry on the business of a general dealer without having in force a licence under this Act. . . . (6). If a person acts as a general dealer, without having in force a licence under this



Act, or contravenes the terms of his licence, he shall be liable on summary conviction to a fine not exceeding £5" (s. 1). Licence to general dealer.

A person licensed under the Act to carry on the business of a general dealer within the Dublin metropolitan police district, went about from house to house outside that district buying articles specified in section 12. *Held*, that he had not contravened the terms of his licence, because his acts did not amount to the using, in the course of his business, premises other than those specified in his licence. Could a licence be so framed under the Act as to confine the licensee's dealings to a district in which he is licensed, *quaere* (*Hall v. O'Brien*, (1906) 2 I. R. 6)?

A licence under the Act or renewal thereof may be granted or refused at the discretion of the licensing authority (s. 1 (2)), which means, in Dublin, any divisional justice, and elsewhere, two or more justices in petty sessions (s. 12). The licence may be revoked or suspended by a court of summary jurisdiction on conviction before such court of any violation of the terms of the licence, or of any of the provisions of the Act (s. 1 (3)). The licence shall be in the prescribed form, dated the day of issue, and ending on the first of January (s. 1 (5)). The applicant must pay for a licence or renewal to the clerk to the licensing authority two shillings and sixpence (s. 1 (4)), and shall at the time of his application furnish a description of the premises to be used by him in his business (s. 2 (1)); the application to be made for the licence or renewal in the prescribed manner and at the prescribed time (s. 1 (2)). Power is given to the Lord Chancellor to make rules for prescribing anything which may under the Act be prescribed (s. 11). Under this power statutory rules dated the 21st day of April, 1904, have been made whereby it is provided, *inter alia*, (a) that the applicant for a licence or renewal shall give fourteen days' notice in writing of the application to the clerk to the licensing authority and to the police, that is, in Dublin, the superintendent of the division in which the premises are situated, elsewhere the district inspector of the Royal Irish Constabulary (Rule 1); the police may oppose the application, provided that seven days' notice of the intention to oppose, stating the ground of opposition, shall be given to the applicant (Rule 3); on the hearing of the application the licensing authority shall take such evidence for and against the application as shall seem to them just (Rule 4); applications shall be made for police divisions A, B, and E in the Dublin metropolitan police district on the second Wednesday in the month of December, and for the police divisions C and D on the second Thursday in the month of December, and as to police division F at Kingstown on the second Thursday of the month of December; elsewhere at the petty sessions for the district held next before the 15th of December; provided that an application for a licence by a person intending to open a new business, or for a licence by a person already licensed in respect of premises not already licensed, or for a licence in respect of premises already licensed to some person other than the applicant, may be made on any day on which the licensing authority is sitting, due notice having first been given in accordance with Rule 1; and also provided that upon the hearing of a complaint against any person for acting as a general dealer without being duly licensed under the Act, if it shall appear to the Court hearing the complaint that the failure of the said person seeking a licence was due to some cause over which he had no control or some other cause that shall appear to the court reasonable, the court may, without regard to any order for fine or imprisonment, forthwith proceed to entertain and hear an application for a licence (Rule 5); the particulars to be recorded by the clerk to the licensing authority relating to any such application shall be the date of the application, the name of the applicant, the description of the premises, Grant of licence, &c.



and whether the application was granted or refused (Rule 6). Forms are provided by the rules.

**Description of premises.** “(1) Every person applying for a licence under this Act or a renewal thereof shall, at the time of his application, furnish to the clerk to the licensing authority a description in writing of his premises, including all cellars, closets, and other places proposed to be used by him in the course of his business. (2) Every general dealer shall enter in a book to be kept by him on his premises the particulars of each transaction in his business, including—(a) a proper and distinctive description of each article purchased or received by him; (b) the name and place of abode of the person from whom he purchased or received the article; (c) the date and hour of the day of each transaction; and (d) the price paid or agreed to be paid for the article; provided that, where articles of the same kind, value, and description are on any particular occasion bought or sold in a lot or parcel, it shall be sufficient to describe such lot or parcel without describing each of the several articles comprising same. (3) If any general dealer fails to comply with any requirement of this section, he shall for each offence be liable on summary conviction to a fine not exceeding £5” (s. 2).

**Books to be kept.**

Section 12 of the Act is exclusive and exhaustive in the enumeration of the articles required to be entered, and any article not mentioned in the section, *e.g.*, horse-hair, does not require to be entered (*Kelly v. Rice*, (1906) 2 I. R. 1). A general dealer is bound to enter the *true* name and place of abode of the person from whom he purchases an article, otherwise he is guilty of an offence (s. 2 (2)); and it is no answer that he entered the name and place of abode given by the seller, and had no reason to believe they were not the true name and abode (*Toppin v. Marcus*, (1908) 2 I. R. 423; *cf. Attenborough v. London*, (1853) 8 Ex. 661, noted under PAWNBROKERS.

**Retention of articles for seven days.**

“(1) Every article purchased or received by a general dealer shall be kept by him in his shop, or other place where his ordinary business is carried on, for seven days from the date on which it was so purchased or received, unless in the meantime he shall, on giving twenty-four hours' previous notice to the licensing authority, have received from that authority permission to dispose of such article. (2) Every general dealer shall attach to each article a ticket or label with the date of purchase or receipt written thereon. (3) Every general dealer shall, when required so to do by a police constable, produce to him any such article before the expiration of the said period of seven days. (4) If any general dealer fails to comply with any requirement of this section, he shall be liable for each offence on summary conviction to a fine not exceeding £5” (s. 3).

**General entry of names of purchasers, &c.**

“(1) Every general dealer shall enter in his book the name and address of the person to whom any article, lot, or parcel is sold or delivered by him, and also the date of the sale. (2) If any general dealer fails to comply with the requirement of this section, he shall be liable for each offence on summary conviction to a fine not exceeding 20s.” (s. 4).

**Production of articles and books to police.**

“(1) Every general dealer shall at all reasonable times produce on demand to any police constable, having the general or special authority of a justice of the peace to, make the demand, all articles in his possession, and also the book in which the description of any article is or ought to have been entered. (2) Any police constable obtaining the production of any such book shall on each occasion subscribe his name immediately after the last entry therein. (3) Whenever any articles which have been stolen, embezzled, or fraudulently obtained are found in the possession of any general dealer, he shall, on being informed by a police constable authorized as aforesaid that such articles were stolen, embezzled, or fraudulently obtained, deposit the same with the constable. (4) If any general dealer fails to comply with any requirement of this section, he

shall be liable for each offence, on summary conviction, to a fine not exceeding £5, without prejudice to his being also proceeded against according to law as a receiver of stolen goods" (s. 5).

"(1) If any articles with respect to which information in writing is given by any police constable to a general dealer that they have been stolen, embezzled, or fraudulently obtained, are then in or subsequently come into the possession of the dealer, he shall, as soon as may be, give information to a police constable that articles answering to the description of the said articles are in his possession, and shall also state the name and address given by the person from whom the articles were received. (2) If any general dealer contravenes the provisions of this section, he shall be liable for each offence, on summary conviction, to a fine not exceeding £5: Provided that, in the case of articles which it may be difficult to trace out and identify, no fine shall be imposed under this section unless it appears to the Court that the articles were knowingly concealed by the dealer" (s. 6).

"If any general dealer, after receiving information of the theft, embezzlement, or fraudulent obtaining of any metals or other articles, melts, alters, defaces, or puts away any metals or articles answering to the description of the aforesaid metals or articles, or causes the same to be melted, altered, defaced, or put away, without having been authorized in writing by a justice of the peace so to do, and if it is found that the said metals or articles were stolen, embezzled, or fraudulently obtained by the person from whom the general dealer received the same, or by any other person, then in such case it shall be held that the general dealer knew that the said metals or articles were stolen, embezzled, or fraudulently obtained, and he shall be proceeded against according to law as a receiver of stolen goods, and no evidence of his guilt shall be necessary other than the evidence of such melting, altering, defacing, or putting away after receiving such information as aforesaid" (s. 7).

"(1) A general dealer shall not sell to or purchase from any person apparently under the age of fourteen years, whether such person is acting on his own behalf or on behalf of any other person. (2) If any general dealer contravenes the provisions of this section, either by himself or any agent or servant, he shall be liable for each offence, on summary conviction, to a fine not exceeding £5" (s. 8).<sup>1</sup>

"(1) A general dealer shall not sell to or purchase from, or have any business transactions whatsoever with, any person between ten o'clock on Saturday night and nine o'clock in the morning of the following Monday, or between ten o'clock on any other night and eight o'clock on the following morning: Provided that it shall be permissible to make delivery within the said hours of goods previously sold. (2) If any general dealer contravenes the provisions of this section, either by himself or any agent or servant, he shall be liable for each offence, on summary conviction, to a fine not exceeding £5" (s. 9).

"(1) Every person licensed as a general dealer under this Act shall have his name, with the words 'licensed general dealer,' painted over the door or principal entrance of his premises in large characters, either black upon a white ground or white upon a black ground, and shall replace the same if removed, obliterated, or defaced. (2) If any person fails to comply with the requirements of this section, he shall be liable for each offence, on summary conviction, to a fine not exceeding 20s." (s. 10).

<sup>1</sup> See s. 116 of the Children Act, 1908, as to dealers in old metals and marine store dealers.

## GOLD AND SILVER PLATE.

	PAGE		PAGE
Licence: assay, . . . . .	512	Foreign plate, . . . . .	513
Selling plate not assayed, &c., . . . . .	512	Assay, . . . . .	513
Standards, . . . . .	512	Marks, . . . . .	513
Excise duties, . . . . .	512	False statements, . . . . .	513
Dealing without licence, . . . . .	512	Exemptions, . . . . .	513

Licence:  
Assay.  
30 & 31 Vict.

Every person who shall sell or make any gold or silver plate in Ireland is obliged to take out a licence (*Revenue Act*, 1867, 30 & 31 Vict. c. 90, s. 1); gold and silver plate wrought in Ireland to be assayed (*Plate Assay (Ir.) Act*, 47 Geo. 3, sess. 2, c. 15, s. 3); if conforming to standard, to be marked.

Workers or dealers in gold and silver to register their names, marks, and places of abode at assay office, and have their wares assayed and marked at such office (*Gold and Silver Wares Act*, 1854, 17 & 18 Vict. c. 96, s. 2).

Gold wedding-rings to be assayed and marked (*Wedding Rings Act*, 1855, 18 & 19 Vict. c. 60, s. 1).

No licence is required for selling or taking in, or delivering out of pawn gold or silver lace, or gold or silver wire, thread, or fringe (s. 4), or for sale of watch-cases made by seller (*Customs and Inland Revenue Act*, 1870, 33 & 34 Vict. c. 32, s. 4).

Selling plate  
not assayed,  
&c.

Goldsmiths selling plate not assayed and marked—*Penalty*, £100, and forfeiture of plate (s. 14). Penalties to be recovered as Excise penalties (s. 17); see *Excise*.

The buying of plate, &c., not assayed, &c., subjects the buyer to liability to forfeiture of value to be sued for and recovered by person discovering such sale (s. 18).

Assay masters, &c., guilty of neglect—*Penalty*, £100. Penalty recovered as Excise penalty;<sup>2</sup> (s. 13).

Lower  
standards.

Orders in Council may be made fixing standards (*Gold and Silver Wares Act*, 1854, s. 1).<sup>3</sup>

Marking lower standards with mark of higher standard—*Penalty*, £20 (s. 5).

Excise  
duties.

The rates of duty are prescribed by the *Revenue Act*, 1867 (30 & 31 Vict. c. 90), s. 1.

Every licence to deal in plate shall be dated the day of grant, and expire on 5th July following (*ib.*, s. 6).

Dealing with-  
out a licence.

“Every person who shall do any act or carry on any trade or business for which a licence to deal in plate is required by this Act, without having in force a proper licence authorizing him so to do”—*Penalty*, for every offence, £50. In any prosecution it shall be sufficient to allege that the defendant did deal in plate without a licence (*Revenue Act*, 1867, s. 3).

A person, not a general trader, selling a piece of plate in a particular instance for a price above the value of old silver is not a vendor of plate within 31 Geo. 2, c. 32, s. 6, which enacts that persons using the trade of

<sup>1</sup> The standards in the Act are—*Gold*, not less than 22, 20, or 18 carats fine gold in 1 lb. troy: *Silver*, 10 oz. 2 dwt. fine silver in 1 lb. troy (s. 3). As to lower standards, see 17 & 18 Vict. c. 96, *infra*, and as to wedding-rings, 18 & 19 Vict. c. 60, *supra*.

<sup>2</sup> See SUMMARY CASES NOT WITHIN PETTY SESSIONS ACT, p. 76.

<sup>3</sup> Standards declared under Gold and Silver Wares Act, 1854:—

(1) 15 carats fine gold in 1 lb. troy: *mark*, figures 15; decimal mark, .625.

(2) 12 carats fine gold in 1 lb. troy: *mark*, figures 12; decimal mark, .5.

(3) 9 carats fine gold in 1 lb. troy: *mark*, figures 9; decimal mark, .375.

(Order, 11th December, 1854 (S. R. & O.) (revised), vol. v. 161.)



selling plate shall be deemed traders, and to require a licence (*R. v. Buckle*, (1883) 4 East 346). Grocers gave tickets with packets of tea sold by them, and advertised that they would present gold watches in return for a certain number of such tickets. A conviction for dealing in plate without licence was upheld (*Scott & Co. v. Solomon*, (1905) 1 K.B. 577).

Foreign gold and silver plate to be assayed and marked—*Penalty* Foreign plate for selling such plate without being assayed and marked, same as for Assay. selling without being assayed and marked plate made in the United Kingdom (*Customs Act*, 1842, 5 & 6 Vict. c. 47, s. 59; see also s. 60.—*Revenue Act*, 1883, 46 & 47 Vict. s. 55, s. 10; *Finance Act*, 1907, 7 Ed. 7, c. 13, s. 5).

Foreign plate to be marked so to distinguish it from plate manufactured Marks. in the United Kingdom; marks to be prescribed by Order in Council (*Hall Marking of Foreign Plate Act*, 1904, 4 Ed. 7, c. 6, s. 1 (1)).<sup>1</sup>

Any person bringing plate to be assayed at an assay office to state in writing whether the plate, &c., was wrought in England, Ireland, False statements. Scotland, or in foreign parts. No statement required where plate brought for assay as foreign plate under *Revenue Act*, 1883 (s. 1 (2)): where person unable to state place where wrought, written statement to that effect to be made (s. 1 (3)): knowingly making a false statement—*Penalty*, not exceeding £5 on summary conviction under Summary Jurisdiction Acts (s. 1 (4)). Orders under the Act may be revoked or altered by Order in Council (s. 1 (6)).

Foreign plate properly describable as hand-chased, inlaid, bronzed, or filagree work of oriental pattern exempted from assay in the United Kingdom (*Revenue Act*, 1884 (47 & 48 Vict. c. 62, s. 4)). Exemptions.

Watch-cases imported from foreign parts before 1st June, 1907, exempted from assay (*Assay of Imported Watch-Cases, Existing Stocks Exemption Act*, 1907, 7 Ed. 7, c. 8, s. 1 (1)). Exempted watch-cases exported and re-imported to be assayed, unless identified as prescribed by Regulations of Commissioners of Customs (s. 1 (2)).<sup>2</sup>

Gold and silver watch-cases forming parts of finished watch-cases imported are gold and silver plate within *Customs Act*, 1842 (*Goldsmiths Co. v. Wyatt*, (1907) 1 K.B. 95).

As to the indictable offence of removing crests, &c. from plate, see CATALOGUE OF INDICTABLE OFFENCES.

## GUN.

As to licence to use gun, see GAME LAWS As to discharging fire-arm in highway, see HIGHWAY.

<sup>1</sup> Marks for foreign plate have been fixed by Order in Council dated 11th May, 1906 (S. O., 1906, p. 516), made pursuant to this Act. The mark to be used in Dublin assaying office is a Boujet, which is a heraldic device representing an arrangement of water buckets.

<sup>2</sup> Regulations of Commissioners will be found in S. R. O., 1907, p. 868; 1908, p. 713.

## HABITUAL DRUNKARDS.

	PAGE		PAGE
Statutes, . . . . .	514	Offences—	
Scheme of statutes, . . . . .	514	(3) certified inebriate reforma-	
Definition of habitual drunkard, . . . . .	514	tories, . . . . .	520
Private retreats for habitual drunkards, . . . . .	514	Expenses of detention, . . . . .	520
Inebriate reformatories, . . . . .	514	Protection of property—	
Voluntary detention in a retreat, . . . . .	515	Married men habitual drunkards, . . . . .	520
Compulsory detention—		Married women habitual drunk-	
Habitual drunkard <i>guilty of crime</i> , . . . . .	515	ards, . . . . .	521
Habitual drunkard <i>four times</i>		Power to rescind or vary orders, . . . . .	521
<i>convicted of drunkenness</i> , . . . . .	516	Penalty for illegal seizure or	
Habitual drunkard convicted of		pawning, . . . . .	521
cruelty to child, etc., . . . . .	519	Appeal, . . . . .	521
Offences—		Liability to guardians, . . . . .	521
(1) retreats, . . . . .	519	Evidence, . . . . .	521
(2) State inebriate reformatories, . . . . .	520		

Statutes :  
42 & 43 Vict.  
c. 19.  
51 & 52 Vict.  
c. 19.  
61 & 62 Vict.  
c. 60.  
62 & 63 Vict.  
c. 35.  
Scheme of  
statutes.

Definition of  
"habitual  
drunkard."

Private  
retreats for  
habitual  
drunkards.

Inebriate  
reformatories.

The statutes dealing with habitual drunkards are the Inebriates Acts 1879 to 1899, being the Habitual Drunkards Act, 1879, the Inebriates Act, 1888, the Inebriates Act, 1898, which three Acts are to be construed as one (*Act of 1898*, s. 30), and the Inebriates Act, 1899,<sup>1</sup> which amends the Act of 1898. The four Acts are by s. 3 of the Act of 1899, entitled the Inebriates Acts, 1879 to 1899.

These statutes provide for (1) the establishment of private retreats, and of state and certified inebriate reformatories; (2) the voluntary detention in *private retreats*<sup>2</sup> of habitual drunkards; (3) the compulsory detention in *state or certified inebriate reformatories*<sup>3</sup> of certain habitual drunkards; and (4) the protection of property from a married man or a married woman who is a habitual drunkard.

" 'Habitual drunkard' means a person who, not being amenable to any jurisdiction in lunacy, is notwithstanding, by reason of habitual intemperate drinking of intoxicating liquor, at times dangerous to himself or herself, or to others, or incapable of managing himself or herself, or his or her affairs " (*Habitual Drunkards Act*, 1879, s. 3). The expression "habitual drunkard" applies to a person who habitually drinks to excess, and who is, when drunk, dangerous or incapable of managing himself or his affairs, even though when sober he is capable of managing himself and his affairs (*Eaton v. Best*, (1909) 1 K.B. 632).

The Act of 1879 provides for the licensing by the local authority of private retreats for habitual drunkards (s. 6), subject to inspection by "Inspectors of Retreats" (ss. 13-16), to be appointed by the Lord Lieutenant (s. 13; *Act of 1898*, ss. 26 (c), 30). The local authority now is the council of a county borough, or the county council, who may delegate their powers to a committee (*Act of 1898*, ss. 13, 26 (e)), who may contribute to retreats (*ib.*, s. 14). The licence shall be for a period not exceeding two years (*ib.*, s. 15).

The Act of 1898 gives power to the Lord Lieutenant to establish State inebriate reformatories,<sup>4</sup> and, with the approval of the Treasury, to authorize

<sup>1</sup> See also amendments contained in the Summary Jurisdiction (Ir.) Act, 1908, 8 Ed. 7, c. 24, s. 9, p. 517, *post*, and ss. 1 and 2, noted p. 521, *post*; and the Children Act, 1908, 8 Ed. 7, c. 27, s. 26, p. 519, *post*.

<sup>2</sup> The provisions as to *voluntary* detention do not apply to either State or certified inebriate reformatories.

<sup>3</sup> Save under the Children Act, 1908, s. 26, noted *post*, p. 519, the provisions as to *compulsory* detention do not apply to *certified retreats*.

<sup>4</sup> The only State inebriate reformatory in Ireland is at Ennis.

the Prisons Board to erect or acquire the buildings and land for same (s. 26 (b)); or the Lord Lieutenant, on the application of the council of a county borough, or of a county, or of any persons desirous of establishing an inebriate reformatory, may, if satisfied as to the fitness of the reformatory or of the persons proposing to maintain it, certify it as an inebriate reformatory, and thereupon, while the certificate is in force, the reformatory shall be a certified inebriate reformatory within the Act (ss. 5 (1), 26 (c)).<sup>1</sup>

Inebriate  
reformatories.

The Lord Lieutenant may make regulations as to State inebriate reformatories, or as to certified inebriate reformatories (ss. 4, 6, 26 (c)), and may appoint inspectors (ss. 7, 26 (c)). The county councils may contribute towards such reformatories (s. 9).

A habitual drunkard desirous of being admitted into a private retreat may make application to the licensee of the retreat for admission, in the Form No. 3 in the second schedule to the Act of 1879, the application to state the time during which the applicant undertakes to remain in the retreat, and to be accompanied by a statutory declaration of two persons to the effect that the applicant is a habitual drunkard within the meaning of the Inebriate Acts (*Act of 1879*, s. 10). The signature must be attested by one justice, who shall have satisfied himself that the applicant is a habitual drunkard, and have explained to the applicant the effect of his admission; the justice must state in writing as part of such attestation that the applicant understood the effect of his application for admission and of his reception into the retreat (*Act of 1879*, s. 10; *Act of 1898*, s. 16). The justice need not be a justice of the county where the matter arises (*Act of 1888*, s. 4).

Voluntary  
detention in  
private  
retreat.

After admission the applicant, unless discharged or authorized by licence, cannot leave till the expiration of the term mentioned in his application, and he may be detained till the expiration of such term, provided such term shall not exceed two years (*Act of 1879*, s. 10; *Act of 1898*, s. 16). An applicant may be discharged by order of a justice, upon the request in writing of the licensee of the retreat, if it shall appear to such justice to be reasonable and proper (*Act of 1879*, s. 12). A justice of the peace, at the request of the licensee of a retreat, may, by licence under his hand, permit such habitual drunkard to live with any trustworthy and respectable person named in the licence willing to receive and take charge of him for a definite time for the benefit of his health, the licence to be in force for not more than two months, subject to renewal (*Act of 1879*, s. 19), the absence to be reckoned in time of detention (s. 20); the licence is forfeited upon misconduct by the habitual drunkard (s. 21), and is subject to revocation by the Secretary of State (s. 22).

(1) "Where a person is convicted on indictment of an offence punishable with imprisonment or penal servitude, if the court is satisfied from the evidence that the offence was committed under the influence of drink, or that drunkenness was a contributing cause of the offence, and the offender admits that he is, or is found by the jury to be, a habitual drunkard, the court may, in addition to or in substitution for any other sentence, order that he be detained for a term not exceeding three years in any State inebriate reformatory, or in any certified inebriate reformatory the managers of which are willing to receive him. (2) In any indictment under this section it shall be sufficient, after charging the offence, to state that the offender is a habitual drunkard. In the proceedings on the indictment the offender shall, in the first instance, be arraigned on so much only of the indictment as charges the said offence, and, if on arraignment he pleads guilty, or is found guilty by the jury, the jury

Compulsory  
detention.

(1) Habitual  
drunkard  
guilty of crime.

<sup>1</sup> There are at least two such certified reformatories in Ireland, one at Waterford for Roman Catholic males, and one at Wexford for Roman Catholic females,



**Compulsory  
detention.**

shall, unless the offender admits that he is a habitual drunkard, be charged to inquire whether he is a habitual drunkard, and in that case it shall not be necessary to swear the jury again. Provided that, unless evidence that the offender is a habitual drunkard has been given before he is committed for trial, not less than seven days' notice shall be given to the proper officer of the court by which the offender is to be tried, and to the offender, that it is intended to charge habitual drunkenness in the indictment" (*Inebriates Act*, 1898, s. 1).

The section is not confined to cases where the offender is convicted by a jury, but also extends to a case where he pleads guilty to an offence mentioned in the section (*R. v. Meehan*, (1905) 2 I.R. 577). In such case the evidence necessary to satisfy the court that the offence charged was committed under the influence of drink may consist of the depositions taken before the justices when the accused was returned for trial (*ib.*).

A defendant was returned for trial on a charge of grievous assault. At the preliminary investigation before the justices a police sergeant swore: "I arrested the accused. He was drunk in bed. He has been eleven times convicted for drunkenness within the past twelve months, and is a perfect nuisance to people in the town owing to his drunken habits." Notice was served under the above section of the intention to charge habitual drunkenness, but was served late. *Held*, that the sergeant's deposition was "evidence that the offender is a habitual drunkard given before he is committed for trial" within the section, and that, therefore, the lateness of the service of the notice was immaterial (*R. v. Doherty*, Ulster Winter Assizes, 1903, Palles, C.B., unreported). As to what amounts to habitual drunkenness, see *Robson v. Robson*, (1904) 68 J.P. 416. See further, as to seven-day notice, CATALOGUE OF INDICTABLE OFFENCES, "HABITUAL CRIMINAL."

(2) Habitual  
drunkard four  
times convicted  
of drunkenness.

"(1) Any person who commits any of the offences mentioned in the first schedule to this Act, and who within the twelve months preceding the date of the commission of the offence has been convicted summarily at least three times of any offences so mentioned, and who is a habitual drunkard, shall be liable upon conviction on indictment, or if he consents to be dealt with summarily on summary conviction, to be detained for a term not exceeding three years in any certified inebriate reformatory the managers of which are willing to receive him. (2) The Summary Jurisdiction Act, 1879, shall apply to proceedings under this section as if the offence charged were specified in the second column of the first schedule to the said Act" (*Act of 1898*, s. 2).

By s. 26, references to the Summary Jurisdiction Act, 1879, and the offences specified in the second column of the First Schedule to that Act shall be construed as references to the Criminal Justice Act, 1855, and the offences specified in section 1 of that Act.<sup>1</sup>

<sup>1</sup> Section 1 of the Criminal Justice Act, 1855, gives power to "justices" (which expression it is, in view of s. 16, submitted means "two justices") at petty sessions, with the consent of the accused, to try summarily persons charged with larceny, where the value of the property, in the opinion of the justices, does not exceed 5s., or with attempt to commit larceny from the person, or with attempt to commit simple larceny. By section 2 of the same statute, where the justices propose to deal summarily with the case, one of the justices, after the examinations of all the witnesses for the prosecution have been completed, and before calling upon the person charged for any statement which he may wish to make, shall state to such person the substance of the charge, and shall then say to him these words or words to the like effect, "Do you consent that the charge against you shall be tried by us, or do you desire that it shall be sent for trial by a jury at the sessions or assizes?" (as the case may be); and if the person charged shall consent to the charge being tried summarily, then the justices shall reduce the charge into writing, and read the same to such person, and shall then ask him whether he is guilty or not of such charge, and if he pleads guilty, shall pass sentence, but if he pleads not guilty, the justices shall inquire whether he has any defence to make, and if he shall state that he has, the justices shall hear the defence, and dispose of the

The expenses of any prosecution on indictment under sections shall be payable as in cases of indictment for felony, and where any case under that section is dealt with summarily, such expenses shall be payable in manner provided by s. 14 of the Criminal Justice Act, 1855, 18 & 19 Vict. c. 126 (*Inebriates Act*, 1899, s. 1).

The offences mentioned in the first schedule to the Act of 1898, so far as applicable to Ireland, are as follows:—being found drunk in highway or other public place, whether a building or not, or on licensed premises; being guilty while drunk of riotous or disorderly behaviour in a highway or other public place, whether a building or not; being drunk while in charge, on any highway or other public place, of any carriage, horse, cattle, or steam-engine; being drunk when in possession of any loaded firearms (*Licensing Act*, 1872, 35 & 36 Vict. c. 64, s. 12); refusing or failing, when drunk, to quit licensed premises upon request (s. 18); being drunk and persisting, after being refused admission on that account, in attempting to enter a passenger steamer; being drunk on board a passenger steamer, and refusing to leave such steamer when requested (*Merchant Shipping Act*, 1894, 57 & 58 Vict. c. 60, s. 287); refusing or neglecting when drunk to quit any premises or place licensed under the Refreshment Houses (Ir.) Act, 1860, when requested (*Refreshment Houses (Ir.) Act*, 1860, 23 & 24 Vict. c. 107, s. 42); being drunk in any street or public thoroughfare within the Dublin police district, or being guilty, while drunk, of any riotous or indecent behaviour (*Dublin Police Act*, 1842, 5 & 6 Vict. c. 24, s. 15); being found drunk in any street, square, lane, roadway, or other public thoroughfare or place (*Licensing (Ir.) Act*, 1836, 6 & 7 Wm. 4, c. 38, s. 12); all similar offences in local Acts. The offence of being found drunk in any place, whether a building or not, to which the public have access, whether on payment or not, or on any licensed premises in charge of a child apparently under seven, is added by the Summary Jurisdiction (Ir.) Act, 1908, 9 Ed. 7, c. 24, s. 9.

Section 2 creates a new offence (if it can be so called), which is triable, at the option of the accused,<sup>1</sup> either summarily or on indictment, and which, if established, subjects the accused to detention for any term not exceeding three years in a certified inebriate reformatory. It is a compound offence, to constitute which three things are necessary:—(1) That the accused committed one of the offences mentioned in the first schedule to the Act, as amended by the Summary Jurisdiction (Ir.) Act, 1908, noted *supra*; (2) that the accused has, within the twelve months preceding the date of the commission of such offence, been three times summarily convicted of any of such offences; and (3) that the accused is a habitual drunkard (see judgment of Lord Alverstone, L.C.J., in *R. v. Briggs*, (1909) 1 K.B. 381, at p. 386). The following is a suggested form of summons under the section:—

A. B., Complainant.

C. D., Defendant.

Petty Sessions District of

, County of

Form of  
summons.

Whereas a complaint has been made to me that you were on the      day of  
at      , found drunk on the public highway at  
within the county and district aforesaid, and that within twelve months preceding the  
said      day of      , you were three times summarily convicted of offences, to which

case summarily. S. 7 provides that where justices try the accused, the conviction, or the duplicate of a certificate of dismissal, the written charge, the depositions of the witnesses, and the statement of the accused are to be returned to quarter sessions; and s. 14 provides that where they convict they may give to the prosecutor or any witness for the prosecution a certificate of the amount (to be paid by the treasurer of the county council) of compensation which the justices think reasonable for "his expenses, trouble, and loss of time."

<sup>1</sup> To be exercised as provided for; see p. 516 n., *ante*.

**Compulsory detention.**

(2) Habitual drunkard  
four times  
convicted of  
drunkenness.

section 2 of the Inebriates Act, 1898, applies, and the particulars of which convictions are set forth in the schedule hereto, and that you are a habitual drunkard. This is to command you to appear as a defendant on the hearing of the said complaint at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock, before such justices as shall be there, to show cause why an order should not be made against you under the said section 2 of the Inebriates Act, 1898.

**SCHEDULE.**

(1) Conviction at \_\_\_\_\_ Petty Sessions, on the \_\_\_\_\_ day of \_\_\_\_\_, of being drunk on the \_\_\_\_\_ day of \_\_\_\_\_, on the highway, at \_\_\_\_\_, while in charge of a horse; (2) conviction at \_\_\_\_\_ Petty Sessions, on the \_\_\_\_\_ day of \_\_\_\_\_, of being drunk on the day of \_\_\_\_\_, on board a passenger steamer, and refusing to leave such steamer as requested; (3) conviction at \_\_\_\_\_ Petty Sessions, on the \_\_\_\_\_ day of \_\_\_\_\_, of being drunk on the \_\_\_\_\_ day of \_\_\_\_\_, when in possession of loaded firearms.

Signed X. Y., justice of the said county . This \_\_\_\_\_ day of \_\_\_\_\_, 1911.

To \_\_\_\_\_, of \_\_\_\_\_.

**Procedure.**

It is submitted that it is immaterial where the offences were committed, provided the defendant is within the jurisdiction of the justices. In respect of the three previous offences, it should be noted that the twelve months seem to run, not from the dates of commission, but from the dates of the convictions. Where a person is charged under the section, the only order that can be made is an order of detention; an order in addition of imprisonment in respect of the last particular offence is void (*R. v. Briggs*, (1909) 1 K.B. 381). A prosecutor under section 2 should come prepared with the name and situation of a certified inebriate reformatory, the managers of which are willing to receive the accused; failing that, the course can be adopted of postponing judgment till such facts be ascertained, but as to whether the accused can, meanwhile, be detained in custody, *quære* (see judgment of Lord Alverstone, C.J., in *R. v. Briggs*, *supra*, at p. 387).

The following summary of the procedure will be found useful<sup>1</sup> :—

(1.) Obtain consent of manager of certified inebriate reformatory to receive defendant if committed (sect. 2 (1)); (2.) Obtain certificates of order in cases of three or more convictions for drunkenness against defendant within previous twelve months (sect. 2 (1)); (3.) Complainant, constable or sergeant R.I.C., to make an information verifying these certificates, identifying defendant as the person convicted by them, and averring the offence of drunkenness, and informant's belief from his knowledge of defendant and his habits for \_\_\_\_\_ years that he is a habitual drunkard within meaning of the Inebriates Acts, 1879 to 1898; (4.) Issue summons for offence, and further allege in it the three or more previous convictions for drunkenness within past twelve months, and that defendant is a habitual drunkard; (5.) Evidence at petty sessions to be taken by depositions as in indictable offence cases (sects. 2 (2) and 26 (a)); (6.) After depositions completed read charge to defendant and ask him, "Do you consent that the charge against you shall be tried summarily by this court, or do you desire that it shall be sent on for trial by a jury at the next quarter sessions" (or assizes)? If defendant consents to be tried summarily, ask him if he is guilty or not guilty of the said charge. If he pleads guilty, following order may be made :—"Defendant having consented to be tried summarily is convicted by us of said charge and ordered to be detained in the certified inebriate reformatory at \_\_\_\_\_, called \_\_\_\_\_, for a period of \_\_\_\_\_ [not to exceed three years]. If defendant pleads not guilty, he should be asked for his defence, and after hearing same (if any) court may convict and make same order as above. If defendant does not consent to be tried summarily, he may be returned for trial to next quarter sessions or assizes (sects. 2 and 26 (a)); (7.) At least *two* justices should hear charge and sign warrant of committal (sects. 2 (2) and 26 (a)); (8.) If case dealt with summarily, warrant to commit should recite consent of defendant to have the charge tried summarily. Ordinary form of warrant of execution (E a) may be used; (9.) The amending Act of 1899 (62 & 63 Vict. c. 35) provides that in any case dealt with summarily under sect. 2 of Act of 1898, the expenses of the prosecution shall, in Ireland, be recoverable under sect. 14 of the Criminal Justice Act, 1855.

<sup>1</sup> This summary was prepared by Mr. Michael Kavanagh, C.P.S., Wexford, for use in Wexford district, and kindly lent by him.



As to what is evidence of being a "habitual drunkard," see **Compulsory detention.** p. 516, *ante*. Proper evidence, of course, must be given of the previous convictions, and of the identity of the accused with the person previously convicted (see EVIDENCE, pp. 281 and 290). It was held in England that the minutes made at a London police court as prescribed by section 22 of the Summary Jurisdiction (E.) Act, 1879, are admissible in evidence before the same court for the purpose of proving the previous convictions (*Commissioner of Police v. Donovan*, (1903) 1 K.B. 895). There is no corresponding provision as to entries in the Dublin metropolitan police courts;<sup>1</sup> but apart from statutory provision there seems to be authority that, at common law, a court can look at and act upon entries in its own books of previous orders, where in practice such orders are not formally drawn up (see Taylor, 10th ed., p. 1128; *R. v. Haines*, (1695) Comb. 337; *Houlston v. Smyth*, (1825) 2 C. & P. 24; *London School Board v. Harvey*, (1879) 4 Q.B.D. 451).

(2) Habitual drunkard four times convicted of drunkenness.

No question of the kind, however, can arise in petty sessions districts, for the signed entry in the order book is the order (*Petty Sessions Act*, 1851, s. 21 (1), and see p. 63, *ante*).

"Where it appears to the court by or before which any person is convicted of an offence of cruelty, or of any of the offences mentioned in the first schedule to this Act,<sup>2</sup> that that person is a parent of the child or young person in respect of whom the offence was committed, or is living with the parent of the child or young person, and is a habitual drunkard within the meaning of the Inebriates Acts, 1879 to 1900,<sup>3</sup> the court, in lieu of sentencing that person to imprisonment, may, if it thinks fit, make an order for his detention in a retreat under the said Acts, the licensee of which is willing to receive him, for any period named in the order, not exceeding two years, and the order shall have the like effect, and copies thereof shall be sent to the local authority and secretary of state in like manner, as if it were an application duly made by that person and duly attested by a justice under the said Acts; and the court may order an officer of the court or constable to remove that person to the retreat, and on his reception the said Acts shall have effect as if he had been admitted in pursuance of an application so made and attested as aforesaid: provided that—(a) An order for the detention of a person in a retreat shall not be made under this section unless that person, having had such notice as the court deems sufficient of the intention to allege habitual drunkenness, consents to the order being made; and (b) if the wife or husband of such person, being present at the hearing of the charge, objects to the order being made, the court shall, before making the order, take into consideration any representation made to it by the wife or husband; and (c) before making the order, the court shall, to such extent as it may deem reasonably sufficient, be satisfied that provision will be made for defraying the expenses of such person during detention in a retreat; and (d) nothing in this section shall affect any power of the court to order the person convicted to be detained in a certified inebriate reformatory"<sup>4</sup> (*Children Act*, 1908, s. 26).

(3) Habitual drunkard convicted of cruelty to child, &c.

Licensee of retreat contravening provisions of the Act, or neglecting habitual drunkard—*Penalty*, not exceeding £20 or three months' imprisonment with or without hard labour (*Act of 1879*, ss. 23, 28). Any person ill-treating, etc., habitual drunkard, or, if an officer, wilfully neglecting patient, inducing or aiding him to escape, or unlawfully

Offences in connection with private retreats.

<sup>1</sup> Under s. 70 of the Dublin Police Act, 1842, 5 & 6 Vict. c. 24, a note or memorandum in writing must be kept of the summonses issued.

<sup>2</sup> For which see APPENDIX OF STATUTES.

<sup>3</sup> Thus including the Scotch Act of 1900.

<sup>4</sup> As to which power see pp. 515, 516, *ante*.

Offences in connection with private retreats.

supplying him with intoxicants, sedatives, or stimulants—*Like penalty (Act of 1879, ss. 24–28).* Any habitual drunkard wilfully neglecting or refusing to comply with the rules—*Penalty, not exceeding £5 or imprisonment for seven days, period of imprisonment being excluded in computation for time of detention (Act of 1879, s. 25).* The Summary Jurisdiction Acts are made applicable (s. 29). Two justices are necessary (s. 3). Appeals are regulated in Dublin by the Dublin Police Acts, and elsewhere by the Petty Sessions Act, 1851 (s. 36). A habitual drunkard escaping from a retreat may be apprehended on warrant issued by a justice upon the sworn information of the licensee of the retreat, and may be remitted to the retreat (s. 26). If a habitual drunkard escapes from a retreat, the time between his escape and his return to the retreat shall not be treated as part of his term of detention (*Act of 1898, s. 18*).

Offences in connection with State inebriate reformatories.

The Lord Lieutenant may make regulations as to State inebriate reformatories, and for the classification, treatment, employment, and control of inmates, and for their absence under licence; and, subject to any adaptations, alterations, and exceptions made by such regulations, the Prisons Acts, 1865 to 1898 (*including the penal provisions thereof*<sup>1</sup>), shall apply to every such reformatory as if it were a prison, but no corporal punishment can be inflicted in such reformatory (*Act of 1898, ss. 4, 26 (b)*). In exercise of this power the Lord Lieutenant has made regulations, dated 16 March, 1899, under which an inmate can be discharged, upon licence, to remain under the charge of a responsible person willing to take charge of him; and, in further exercise of the same power, the Lord Lieutenant has made other regulations, dated 10 Feb., 1904, providing that the time during which an inmate is absent upon licence, shall, except when the licence is forfeited or revoked, be deemed part of his period of detention, but that, when the licence is forfeited or revoked, the period of absence upon licence shall not be computed as part of the period of detention, unless a revocation is ordered for reasons unconnected with the inmate's conduct, or unless the Lord Lieutenant otherwise directs.

Offences in connection with certified inebriate reformatories.

The Lord Lieutenant may make regulations for, *inter alia*, the control of persons sentenced to detention in a certified inebriate reformatory, and may thereby impose a penalty not exceeding £20, or imprisonment not exceeding three months, for the breach of any such regulation (*Act of 1898, ss. 6, 26 (b)*). The breach of any such regulation, if made punishable with fine or imprisonment, is an offence punishable summarily (*Act of 1899, s. 2*); and the provisions in the Act of 1879 as to procedure and appeal (for which see *supra*) are applicable (see *Act of 1898, s. 30*). In case of escape of person ordered to be detained in a certified inebriate reformatory, he may be apprehended without warrant and brought back (s. 11 (2)).

Expenses of detention in state or certified inebriate reformatory.

A county court judge has jurisdiction to make an order for the payment of expenses incurred in relation to the detention of a person in either a state or certified inebriate reformatory, when he has real or personal property more than sufficient to maintain his family (*Act of 1898, s. 12*).

Protection of property:  
(1) Married men being habitual drunkards.

(1) "Where a court of summary jurisdiction is satisfied by evidence produced before it that a married man is a habitual drunkard, as defined by section three of the Habitual Drunkards Act, 1879, the court may, on the application of any person specified in this section, make an order under this Act protecting—(a) the earnings or separate property of the wife of the drunkard; (b) anything purchased by her with such earnings or property; (c) the wearing apparel, school requirements, and earnings of her children or step-children; (d) any tools, instruments, appliances, or materials entrusted to her independently of her husband; (e) any

<sup>1</sup> As to which see CATALOGUE OF SUMMARY OFFENCES under "PRISONS."

furniture, bedding, or other articles in use as household necessities in her residence; (f) any tools, instruments, appliances, or other articles used in connection with any work, business, or calling engaged in by the wife or her children or step-children independently of her husband. (2) The persons who may make an application to the court under this section are the wife of the habitual drunkard or his or her parent, child, brother, or sister, or anyone holding the commission of the peace of the borough or county in which the alleged habitual drunkard resides, or the relieving officer of the district in which the alleged habitual drunkard resides" (*Summary Jurisdiction (Ir.) Act, 1908, 8 Ed. 7, c. 24, s. 1*).

Protection of property:

"(1) Where a court of summary jurisdiction is satisfied by evidence produced before it that a married woman is a habitual drunkard, as defined by section three of the Habitual Drunkards Act, 1879, the court may, on the application of any person specified in this section, make an order under this Act, protecting—(a) any furniture, bedding, or other articles in use as household necessities in the residence of the husband of the drunkard; (b) the wearing apparel, school requirements, and earnings of his children or step-children; (c) any tools, instruments, appliances, or other articles belonging to him, or entrusted to him independently of his wife. (2) The persons who may make an application to the court under this section are the husband of the habitual drunkard, or his or her parent, child, brother, or sister, or anyone holding the commission of the peace of the borough or county in which the alleged habitual drunkard resides, or the relieving officer of the district in which the alleged habitual drunkard resides" (s. 2).

(2) Married women being habitual drunkards.

"The court may at any time rescind or vary an order under this Act" (s. 3).

Power to rescind or vary orders.

"While an order under this Act is in force it shall not be lawful to seize or sell any article specified therein for the satisfaction or discharge of any debt or liability of the habitual drunkard, or knowingly to buy from him, or receive from him, or on his behalf, any such article in pledge or pawn, or for him to sell or give in pledge or pawn any such article; and any person knowingly acting in contravention of this enactment shall be liable, on summary conviction, to a fine not exceeding 40s., or to imprisonment, with or without hard labour, for any period not exceeding one month" (s. 4).

Penalty for illegal seizure or pawning.

"Any order made under sections 1, 2, 4, or 10<sup>1</sup> of this Act shall be subject to appeal as if it were an order imposing a fine of more than 20s., or inflicting imprisonment of more than one month's duration" (s. 5).

Appeal.

"An order under this Act shall not affect any liability to a board of guardians in respect of relief given to a wife or children" (s. 6).

Liability to guardians.

"In all proceedings under this Act a husband or wife shall be a competent witness" (s. 12).

Evidence.

## HARBOURS.

	PAGE		PAGE
Throwing rubbish into harbours, . . .	521	Taking material to injury of beach, . . .	522
Provisions as to unloading ballast, . . .	522	Bye-laws as to seashore, . . .	522
Order prohibiting removal of shingle, . . .	522	Miscellaneous offences as to harbours, . . .	522
Procedure under 54 Geo. 3, c. 159, . . .	522		

Persons throwing, etc., or causing or procuring to be thrown, etc., ballast, rubbish, etc., into port, harbour, haven or navigable river, or into any place where liable to be washed into sea, port, harbour, haven, or navigable river, penalty not to exceed £10, with expenses (*Harbours Act, 1814, 54 Geo. 3, c. 159, s. 11*).

Throwing rubbish into harbours.

<sup>1</sup> As to s. 10, see INTOXICATING LIQUORS.



Unlading  
ballast.  
Order pro-  
hibiting  
taking  
shingle.

Provisions as to unlading ballast, at high water, etc. (ss. 12, 13).

"No person or persons shall take any ballast or shingle from the shores or banks, or any portion of the shores or banks of any port, harbour, or haven of this kingdom, from which the Commissioners for executing the office of Lord High Admiral of the United Kingdom for the time being<sup>1</sup> shall find it necessary for the protection of such port, harbour, or haven, or the works thereof, by order under their hands, or the hands of any three of them, or the hands of his or their secretary, and published in *The London Gazette*, shall prohibit the taking or removing of such shingle or ballast, upon pain of forfeiting for every such offence the sum of £10" (*Harbours Act*, 1814, s. 14).

"A port is a place for the lading and unlading of ships, or vessels, erected by charter of the King or a lawful prescription" (*per* Lord Chelmsford, *Foreman v. Free Fishers of Whitstable*, (1869) L.R. 4 H.L. 266). "A harbour, in its ordinary sense, is a place to shelter ships from the violence of the sea, and where ships are brought for commercial purposes to load and unload goods. The quays are a necessary part of a harbour" (*per* Lord Esher, M.R., in *R. v. Hannam*, (1886) 2 T.L.R. 234). "A haven is a place of a large receipt and safe riding of ships, so situate and secured by the land circumjacent that the vessels thereby ride and anchor safely, and are protected by the adjacent land from dangerous and violent winds; as Milford Haven, Plymouth Haven, and the like" (Hale, *De Portibus Maris*, c. 2).

Section 28 provides that nothing in the Act shall take away any right of property or possession of any person in a harbour or the shores thereof, etc. Where a respondent made a *bona fide* claim of right to take shingle as owner of the foreshore, and the justices, without considering whether the fact of such ownership afforded any defence to proceedings under section 14, dismissed the information on the ground that a question of title was raised, it was held that the justices were right, and that for the purpose of testing the validity of an order made under the section, the Board of Trade should take proceedings in the Superior Courts (*Burton v. Hudson*, (1909) 2 K.B. 564).

Procedure  
under 54 Geo.  
3, c. 159.

Taking  
material to  
injury of  
beach.

Bye-laws as to  
seashore.

Miscellaneous  
offences as to  
harbours, etc.

Penalties can be recovered in a summary manner. An appeal is provided against any conviction<sup>2</sup> (*Harbours Act*, 1814, s. 26).

County surveyor, road contractor, or other person, taking materials from beach or sea-shore, whereby a public road or bulwark or defence to any bridge or like building, or any land within the fences of any such road, may be injured—*Penalty*, not to exceed 5s. a load (*Summary Jurisdiction (Ir.) Act*, 1851, 14 & 15 Vict. c. 92, s. 9 (5)<sup>3</sup>).

The local authority, with the sanction of the Board of Trade, may make bye-laws for the prevention of danger, obstruction, or annoyance to persons using the sea-shore, under the Public Health Acts Amendment Act, 1907, 7 Ed. 7, c. 53, s. 82, in places where that Act applies (see PUBLIC HEALTH).

The Harbours, Docks, and Piers Clauses Act, 1847, 10 & 11 Vict. c. 27, which applies to such harbours, docks, and piers as shall be authorized by any Act of Parliament thereafter to be passed which shall declare that the Act of 1847 shall be incorporated therewith (s. 1), provides penalties on a master of a vessel liable to rates failing to report his arrival within twenty-four hours to the harbour-master (s. 35); on the master of a registered vessel refusing or neglecting to produce the certificate of registration of his vessel (s. 36); on ship-master

<sup>1</sup> Now the Board of Trade (*Harbour Transfer Act*, 1862, 25 & 26 Vict. c. 69, s. 16).

<sup>2</sup> Probably this right would be held to be impliedly repealed by s. 24 of the Petty Sessions Act. The procedure as to appeal will be regulated by the Petty Sessions Act.

<sup>3</sup> Verbatim, APPENDIX OF STATUTES.

not complying with the directions of the harbour-master (s. 53) ; penalties on the harbour-master for misbehaviour (s. 54) ; on persons offering bribes to officers, and on officers taking bribes (s. 55) ; combustible matter on quays to be removed within two hours after notice (s. 69) ; to be guarded during night (s. 70) ; boiling or heating pitch, save as prescribed, having fires or lighted candles, &c., in any vessel within the harbour or dock, except with the permission of the harbour-master, bringing loaded guns on the quays, &c., or having any gunpowder on the quays (s. 71) ; obstructing harbour-master entering ship to search for and extinguish fires or lights (s. 72) ; throwing ballast into the harbour or dock (s. 73) ; the undertakers may make bye-laws (ss. 83 to 90). The procedure sections of Railways Clauses Consolidation Act, 1845 (as to which see RAILWAYS, *post*), are incorporated and make two justices necessary (s. 92). Wilful false swearing in proceedings is punishable as perjury (s. 96).

Miscellaneous  
offences as to  
harbours, etc.

Where commissioners were empowered by their special Act to make bye-laws for regulating and fixing the conduct and hire or fare of all boats or ferry-boats plying in the harbour, and for regulating the conduct of boatmen, ferrymen, and others plying in the harbour, it was held that a bye-law requiring the owners of boats carrying passengers within the port to take out an annual licence from the commissioners under a penalty was *ultra vires* (*Londonderry Port and Harbour Commissioners v. Londonderry Bridge Commissioners*, (1894) 2 I.R. 384). Where the special Act requires a certain number of the commissioners to be present at the time the bye-laws were made, a bye-law made when a less number are present is invalid, even though the bye-law bears the common seal of the commissioners (*Cork Harbour Commissioners v. City of Cork Steam Packet Company*, (1897) 31 I.L.T. & S.J. 439).

The owner of every vessel or float of timber is liable for any damage done by the same or by any person employed about the same to a harbour, dock, or pier, &c., as also is the master or person having charge thereof through whose wilful negligence such damage is done (s. 74) ; and the damage not exceeding £50 is recoverable before two justices, who may cause, &c., vessel to be distrained and kept if damage and costs not paid within seven days (s. 75).

### HAWKERS.

See Hawkers Act, 1888, 51 & 52 Vict. c. 33, APPENDIX OF STATUTES ; see also MARINE DEALERS and GENERAL DEALERS ; PEDLARS.

## HIGHWAY.

	PAGE		PAGE
Obstructing highway—		Hackney cars—	
What is the highway, . . . .	524	Offences, . . . . .	528
Limited dedication of highway, .	525	Bye-laws as to, . . . .	529
What is an obstruction, . . . .	525	Procedure in proceedings relating	
When obstruction not unlawful, .	525	to, . . . . .	529
Miscellaneous offences as to roads—		Regulations as to street traffic, .	529
Injuries to roads, . . . . .	526	Lights on Vehicles, see LIGHTS ON	
Nuisances on roads, . . . . .	526	VEHICLES.	
Public stage carriages, . . . . .	527	Locomotives on highways, see Loco-	
Cars and carts, . . . . .	527	MOTIVES ON HIGHWAYS.	
Begging, . . . . .	527	Motor cars, see MOTOR CARS.	

Obstructing  
highway.

Wilfully or by negligence or misbehaviour obstructing the thoroughfare—*Penalty*, not exceeding 20s. (*Summary Jurisdiction (Ir.) Act*, 1851, s. 13 (3)).<sup>1</sup> Obstructing streets or market-places in city, borough, or market town, or within quarter of a mile thereof, by causing car, &c., to stand longer than reasonable or necessary for loading or unloading, or taking up or setting down passengers—*Penalty* not exceeding 20s. (s. 17 (4)).<sup>2</sup> The word “road” shall include highway or other public thoroughfare; and “street” shall include any lane or passage in any town (s. 25).

What is the  
highway.

The highway is *prima facie* the space between the fences, and not merely the metalled part of the road, and includes the footpath (*M’Kee v. M’Grath*, (1892) 30 L.R.I. 41; *Collen v. Ellis*, (1893) 32 L.R.I. 491; *A.-G. v. Co. Council of Mayo*, (1902) 1 I.R. 13; *Mayor of Burslem v. Staffordshire C.C.*, (1896) 1 Q.B. 24; *Derby Co. Council v. Matlock Bath U.D.C.*, (1896) A.C. 315; cf. *Neeld v. Hendon U.D.C.*, (1899) 16 T.L.R. 50; *Belmore v. Kent Co. Council*, (1901) 1 Ch. 873). A trackway or towing path along a river is not a public road, though s. 119 of the *Grand Jury (Ir.) Act*, 1836, expressly recognizes the existence of these towing paths, and enables presentments to be made for them (*London v. Duff*, (1897), 2 I.R. 143).

Where the defendant exposed goods for sale outside his shop in a street in Dublin, but the place where they were so exposed was portion of the premises of the defendant, over which the public had no right to pass: *Held*, that the defendant was not guilty of an offence under the *Dublin Police Act*, 1842, s. 17 (7)<sup>3</sup> (*Dowling v. Byrne*, (1876) I.R. 10 C.L. 135; *Byrne v. Ring*, (1876) I.R. 10 C.L. 192; *Kavanagh v. Grant*, (1876) 11 I.L.T.R. 34). But where the area in question, though forming part of the defendant’s premises, was incorporated with the street, the defendant was held rightly convicted under the same section (*Kavanagh v. Dolan*, (1876) 10 I.L.T.R. 80); and if a person alters a fence so as to be an obstruction to the highway, the fact that the fence is his own property is immaterial (*Collen v. Ellis*, (1893) 32 L.R.I. 491). Where, on a summons under the *Towns Improvement (Ir.) Act*, 1854, against the owner of adjoining lands for the obstruction of a public road by the placing of stones, &c., on a grass strip by the roadside, the magistrates refused to hear the case, and dismissed the same on the ground that a previous

<sup>1</sup> Carts, &c., lawfully standing on place customarily used for that purpose in a market-place, and hackney carriages standing at any place fixed as a stand, are excepted (*ib.*).

<sup>2</sup> Printed *verbatim*, APPENDIX OF STATUTES.

<sup>3</sup> Enacting that “every person who shall expose anything for sale upon, or so as to hang over, any carriageway or footway, or on the outside of any house or shop,” &c.



summons between the same parties had been dismissed on a question of title. *Held*, that the justices were wrong, and that they should have gone into the case and received evidence before deciding that there was a question of title which ousted their jurisdiction (*R. (Punch) v. Cork JJ.*, (1898) 32 I.L.T.R. 179).

The practice of exposing or hanging goods on the highway outside business premises may be supported, if it be clearly shown by evidence of a cogent character that the practice prevailed before the dedication of the highway in question; for there may be a dedication limited by and subject to such a practice or right (*R. (Christie) v. Londonderry JJ.*, (1902) 2 I.R. 266; *Spice v. Peacock*, (1875) 39 J.P. 581; cf. *Whittaker v. Rhodes*, (1881) 46 J.P. 182; *R. v. Young*, (1883) 52 L.J.M.C. 55; and *Leicester Urban Authority v. Holland*, (1888) 57 L.J.M.C. 75). Where W.'s shop, on being rebuilt, was set back to suit the line of building, and the space thus added to the pavement had been open to the street for two years, and he used this space to expose his goods: *Held* no offence, as he had a right to use the space as he did (*Hitchman v. Watt*, (1894) 58 J.P. 720).

The placing of things on a public road, street, or crossing in a manner calculated to create an obstruction to free passage, is an offence under s. 13 of the Summary Jurisdiction (Ir.) Act, 1851, though no person or carriage is proved to have been actually obstructed thereby (*R. (Collins) v. Fermanagh JJ.*, (1883) 14 L.R.I. 50); and the fact that the obstruction is on a part of the road that forms a recess and is off the ordinary track of passengers is immaterial (*Boyle v. Edwards*, (1901) 1 N.I.J.R. 79). The exposure of goods for sale on a stand projecting some feet over the footway is an offence (*Brewster v. Wallace*, (1897) 31 I.L.T.R. 153). An obstruction upon a highway can be looked on as inappreciable only when the obstruction is temporary in character, or where it is so small in extent that it could not under any circumstances impede traffic (*A.-G. v. Mayo Co. Council*, (1901) 1 I.R. 13; cf. *R. v. Bartholomew*, (1908) 1 K.B. 554). An unlawful obstruction will not be rendered lawful by the consent of the public authority to its erection (*A.-G. v. Mayo County Council*, (1902) 2 I.R. 13). See also cases under TOWNS IMPROVEMENT.

A person who collects a crowd, and thereby blocks the thoroughfare, may be guilty of an offence. Thus, where the defendant marched at the head of a band into a public square, and there addressed the crowd, he was held rightly convicted (*Homer v. Cadman*, (1886) 16 Cox, 51). In the case of public processions the test seems to be, was the user of the street by those taking part in the processions reasonable? (*Loudens v. Keaveny*, (1903) 2 I.R. 82). An unreasonable user may consist in persisting in playing a drum at which horses drawing vehicles on the highway had taken fright (*Filson v. Morrell*, (1888) 22 I.L.T.R. 7). A public meeting held on the highway is not necessarily unlawful (*Burden v. Rigler*, (1911) 1 K.B. 337). Whether such a meeting causes an obstruction depends upon the facts (*ib.*).

Every obstruction is not unlawful. The fact that in stopping a vehicle you temporarily reduce the width of the roadway does not make the act unlawful, and does not make your obstruction unlawful (*per* Vaughan Williams, L.J., in *A.-G. v. Brighton and Hove Supply Association*, (1900) 1 Ch. 276, at p. 283). "Vehicles have a reasonable right of stopping. . . . What is a reasonable right of stopping? That must depend upon circumstances" (Jessel, M.R., in *Original Hartlepool Collieries Co. v. Gibb*, (1877) 5 C.D. 713, at p. 721). "A cart or waggon may be unloaded at a gateway, but this must be done with promptness" (Lord Ellenborough, in *R. v. Jones*, (1812) 3 Camp. 230). A motor omnibus belonging to an omnibus company broke down in a street in the city of London about 10.30 a.m., and, being unable to proceed by its own mechanism, it was pushed out of the traffic into a side street. Two hours later the appellant,

Limited  
dedication.

What is an  
obstruction.

When  
obstruction  
not unlawful.

**Obstructing  
highway.**

a fitter in the service of the omnibus company, arrived and repaired the omnibus while it was in the side street, the repair taking about twenty-five minutes. Evidence was given that annoyance was caused by the omnibus being repaired as aforesaid. On a summons under s. 35 of the City Police Act, 1839, for having repaired a vehicle to the annoyance of the inhabitants, the magistrate found that the omnibus might have been removed by other means than its own mechanism, and that its repair on the street was not necessary within the section, and convicted the appellant. *Held*, that the conviction was right (*Chapman v. Rawlings*, (1910) 26 T.L.R. 15).

**Miscellaneous  
offences as to  
roads.**

Sections 9, 10, and 11 of the Summary Jurisdiction (Ir.) Act, 1851, printed *verbatim* in Appendix of Statutes, contain a number of provisions as to offences in relation to public roads. Section 14 makes special provisions as to procedure in road offences. Reference should be made to the statute and index, as the following is a very short summary.

**Injuries, &c.,  
to roads.**

Omitting to scour ditches, or to have drains under passages in and out of roads, after notice—*Penalty*, not exceeding 20s. Building houses within thirty feet of centre of road<sup>1</sup> (except in the streets of corporate and market towns)—*Penalty*, not exceeding £10, and 10s. a week till house pulled down. Deepening ditches, altering fences, or building wall, making ditches, &c., within thirty feet of centre<sup>2</sup> of road, without consent of county surveyor, &c.—*Penalty*, not exceeding 20s. Scraping or cutting turf at side of road without consent of county surveyor, &c.; drawing timber, &c., so as to injure road, or riding on footpaths—*Penalty*, not exceeding 20s. Taking materials from the side of any public road, or from any beach or seashore to the injury of any bulwark or defence to any bridge or like building—*Penalty*, not exceeding 5s. per load. Destroying toll-gate, &c., or forcibly rescuing or attempting to rescue any person lawfully in custody for such offences—*Penalty*, not exceeding 40s., or imprisonment not exceeding two months. Obstructing or assaulting engineers, surveyors, or contractors on public roads, or wilfully injuring instruments, milestones, direction posts, bridges, railings, or fences, &c.—*Penalty*, not exceeding £10, or imprisonment not exceeding three months. Wilful disobedience to the order of justices forbidding user of new road—*Penalty*, not exceeding 20s. (s. 9), and the justices have power to order obstructions to be removed, or injury to be made good (*Summary Jurisdiction (Ir.) Act*, 1851, s. 1).

**Nuisances,  
&c., on roads**

Turning horses, cattle, &c., loose, or urging dog or other animal to attack or worry, or negligence or ill usage in driving, cattle, &c.—*Penalty*, not exceeding 10s. Flying kites, or making slides, or playing at any game,<sup>3</sup> throwing fireworks, &c., or discharging firearms on road or within sixty feet of the centre thereof—*Penalty*, not exceeding 10s. Leaving ploughs, harrows, carts or carriages, &c., on public road—*Penalty*, not exceeding 10s. Slaughtering beasts, or leaving dead beasts, or permitting to be skinned any beast on public road or within thirty feet thereof (save in a house or enclosed yard)—*Penalty*, not exceeding 10s. Laying stones, timber, &c., on road or street or within thirty feet of centre thereof so as to cause danger or mischief—*Penalty*, not exceeding 10s., and fine of 2s. 6d. for every day that materials are left on road after notice to remove the same. Scalding casks, beating flax, or winnowing corn, &c., on public road or within

<sup>1</sup> The defendant proceeded to build a new house on the site of an old house which had fallen. The site was less than thirty feet from the centre of the road, but was separated from the road by an old wall. *Held*, that there had been a breach of the statute (*Adair v. Martin*, (1897) 3 I.W.L.R. 76).

<sup>2</sup> The centre of the road for the purposes of the Act is the centre of the part of the road made with gravel or stones, s. 9 (3).

<sup>3</sup> This will include bowls, which is not expressly provided for.



thirty feet of the centre thereof (save within a house or enclosed yard) —*Penalty*, not exceeding 10s. Keeping or suffering to be at large within fifty yards of public road any unmuzzled and unlogged dog—*Penalty*, not exceeding 10s., and justices may order dangerous dog to be killed. Drying flax, burning bricks, lime, or weeds, or making bonfires, on public road, or within sixty feet of centre thereof (save within house or enclosed yard)—*Penalty*, 10s. Carrying timber so as to project more than two feet beyond wheels or sides of vehicle—*Penalty*, not exceeding 10s. Exposing horses, &c., on road for show, sale, or hire, except in fair or market—*Penalty*, not exceeding 40s. Allowing beasts &c., to wander on roads—*Penalty*, not exceeding 2s., and beasts, &c., may be impounded (*Summary Jurisdiction (Ir.) Act*, 1851, s. 10).

Miscellaneous offences as to roads. Nuisances, &c., on roads.

Discharging firearms, setting fire to fireworks, throwing or discharging stone or missile in streets of a town under the Towns Improvement (Ir.) Act, 1854<sup>1</sup>—*Penalty*, not exceeding 10s. (*Towns Improvement (Ir.) Act*, 1854, s. 72).

Throwing fireworks in thoroughfare or public place—*Penalty*, not exceeding £5 (*Explosive Substances Act*, 1875, s. 80). Hawking, selling, or exposing gunpowder in thoroughfare or public place—*Penalty*, not exceeding 40s., with forfeiture of gunpowder (s. 30).

Driver, owner, or guard of public stage carriage, carrying more than a certain number, or carrying luggage exceeding a certain height; a person keeping any such public stage carriage omitting to paint thereon the number of passengers to be conveyed and names of proprietors; misconduct by driver or guard of public stage carriage; driver of public stage carriage leaving his horses, or allowing others to drive—*Penalty*, not exceeding 40s. (*Summary Jurisdiction (Ir.) Act*, 1851, s. 11).

Public stage carriages.

The following are offences under the Summary Jurisdiction Act, 1851, 14 & 15 Vict. c. 92<sup>2</sup>:—

Name and residence of owner not painted on carts as prescribed;<sup>3</sup> one driver taking charge of more than one cart, &c., except in certain cases; driver being at such distance, &c., as to be unable to have the direction of his horses;<sup>4</sup> leaving carts, &c., so as to be an obstruction; driver of cart, not having owner's name thereon, refusing to discover owner's name—*Penalty*, in each case, not exceeding 10s. (s. 12).

Cars and carts.

Keeping on wrong side of road—*Penalty*, not exceeding 10s. (s. 13).<sup>5</sup> Led horse to be kept on far side of ridden horse—*Penalty*, not exceeding 10s. Wilfully, or by negligence or misbehaviour, obstructing passage or crossings—*Penalty*, not exceeding 10s. Furious or negligent driving—*Penalty*, not exceeding 20s. No cart, dray, waggon, or other such carriage, and no car or carriage let on hire, to be driven by a person under thirteen years—*Penalty*, not exceeding 10s. to be paid by owner (s. 13).

Begging in street, or causing, or procuring, or encouraging child so to do—imprisonment not exceeding one month (*Vagrancy (Ir.) Act*, 1847, s. 3). See also Vagrancy Act, 1824, s. 4, noted under VAGRANTS.

Begging.

Causing or procuring child or young person to be in street, &c., for purpose of begging—*Penalty*, not exceeding £25, or alternatively or in

<sup>1</sup> See TOWNS IMPROVEMENT.

<sup>2</sup> Printed verbatim in APPENDIX OF STATUTES, to which reference should be made. Section 14 makes special provision for making the offender amenable.

<sup>3</sup> The name and residence must be in English characters (*McBride v. McGovern*, (1906) 2 I.R. 181; *Buckley v. Finnegan*, (1906) 40 I.L.T.R. 76).

<sup>4</sup> An offence is committed even though the vehicle is stationary upon the highway (see *Phythian v. Baxendale*, (1895) 1 Q.B. 768).

<sup>5</sup> A tramcar running on tramway rails on a highway is a carriage, and vehicles meeting or passing it must observe the rules of the road (*Burton v. Nicholson*, (1909) 1 K.B. 397). The rule of the road is, however, subordinate to considerations of safety (*Finnegan v. L.N.W.R. Co.*, (1889) 53 J.P. 663).



default of payment of fine, or in addition thereto, imprisonment, with or without hard labour, not exceeding three months (*Children Act*, 1908, 8 Ed. 7, c. 67, s. 14; *verbatim*, APPENDIX OF STATUTES).

**Hackney  
carriages.  
Offences.  
Stands.**

Stands for cars plying for hire may be appointed by (1) notice in writing of Town Commissioners under the Lighting of Towns (Ir.) Act, 1828, and of Commissioners acting under any local or special Acts giving them like powers in their respective towns, not being market towns; (2) justices at petty sessions in other market towns not being corporate towns—*Penalty*, for standing elsewhere, not exceeding 20s. (*Summary Jurisdiction Act (Ir.)*, 1851, s. 17).

**Licence.**

Town<sup>1</sup> Commissioners may license hackney carriages (*Towns Improvement (Ir.) Act*, 1854, ss. 79, 80). Proprietors permitting hackney carriages to ply for hire<sup>2</sup> within prescribed distance<sup>3</sup> without licence—*Penalty*, not exceeding 40s. (s. 80). Proprietors of hackney carriages to notify change of abode—*Penalty*, not exceeding 40s. (s. 81). Driver not to act without being licensed, or to lend licence; proprietor not to employ unlicensed person—*Penalty* in each case not exceeding 20s. (s. 82.)<sup>4</sup> Licence to remain in full force till revoked, except during the time when it is suspended under the Act. Commissioners may, on second conviction, suspend or revoke licence (*ib.*). Number of persons to be carried to be painted on hackney carriage (see *Buckley v. Finnegan*, (1906) 40 I.L.T.R. 77); driver refusing to carry said number or a less number; driver refusing to drive<sup>5</sup>—*Penalty*, in each case, not exceeding 40s. (s. 83). Driver demanding more than agreed or legal fare—*Penalty*, 40s. Agreement to pay more than legal fare void, excess may be recovered before a justice on complaint, and driver is liable to penalty of 40s., and on default of payment of penalty to

**Number to be  
carried.**

**Fare.**

<sup>1</sup> As to overlapping area to D.M.P. district and outlying district see *Dunne v. Owens*, (1903) 3 N.I.J.R. 45, noted p. 314 n.

<sup>2</sup> The words "used in standing or plying for hire" in the Act are not confined to the actual time of so using, standing, or plying (*Hawkins v. Edwards*, (1901) 2 K.B. 169). The essential conditions necessary to bring carriages within the definition of hackney carriages within the similar provisions of the Towns Police Clauses Act, 1847, are thus summed up in 48 J.P., p. 452—(1) A carriage is not a hackney carriage unless it is both plying for hire, and in a public street; (2) plying for hire consists simply in the keeping of a carriage for the use of any of the public who may desire to use it; (3) plying for hire does not necessarily imply being in a public street or place; (4) a railway station, and any place over which the public have no rights of passage, is not a public "street" or place; (5) a public "street" (under the Act) must apparently be a public thoroughfare. See *Curtis v. Embery*, (1872) L.R. 7 E. 369; *Case v. Storey*, (1869) L.R. 4 E. 319; *Skinner v. Usher*, (1872) L.R. 7 Q.B. 423; *Marks v. Ford*, (1881) 45 J.P. 157; *Jones v. Short*, (1900) 19 Cox 472; *Cavill v. Amos*, (1900) 16 T.L.R. 156. An omnibus taking regular trips, the passengers paying no fares, but giving voluntary contributions, may be a hackney carriage (*Cocks v. Mayner*, (1894) 17 Cox 745); see also *Hickman v. Birch*, (1899) 24 Q.B.D. 172; *Cousins v. Stockbridge*, (1866) 30 J.P. 166; *R. v. Fletcher*, (1908) 72 J.P. 249. A carriage which, by arrangement with a railway company, awaits the arrival of trains for the conveyance of any passenger who chooses to hire it, is "plying for hire" (*Clark v. Stanford*, (1871) L.R. 6 Q.B. 357; *Allen v. Tunbridge*, (1871) L.R. 6 C.P. 481). Where a livery-stable keeper rented an office at a station, and also ground within the station on which he kept superior carriages, ready for use but hireable only at the office, it was held that this was "plying for hire" (*Foinett v. Clarke*, (1877) 41 J.P. 359). But where the appellants, who were large carters in Belfast, hired out carts to anyone requiring same applying at their offices or to their foreman, but the carts did not occupy the public stands: *Held*, that they did not "ply for hire," (*Wordie & Co. v. Belfast Corporation*, (1902) 36 I.L.T.R. 168).

<sup>3</sup> The prescribed distance under the Act is within four miles from the post office of the town (s. 78). An omnibus making regular journeys to and from a place outside the district of the local authority, but stopping to take up and let down passengers at places within such district, is "plying for hire within the prescribed distance" (*Dewhurst v. Eddles*, (1893) 9 T.L.R. 494).

<sup>4</sup> Personal application for licence may be required (*Banton v. Davies*, (1892) 56 J.P. 17 Cox 469).

<sup>5</sup> Refusing to drive inside a station where cabs usually set down passengers. *Held*, an offence under similar provisions of London Hackney Carriage Act, 1853, s. 17 (*Ex parte Kippins*, (1897) 1 Q.B. 1).

imprisonment not exceeding one month unless fine and excess sooner paid (s. 84).<sup>1</sup> Driver driving while intoxicated, or by wanton and furious driving or other wilful misconduct causing injury or danger—*Penalty*, not exceeding £5, and, on default of payment, imprisonment not exceeding two months. Driver causing obstruction, &c.—*Penalty*, not exceeding 20s., and where hurt or damage has been caused, justice may award a sum not exceeding £5 as compensation to be paid by proprietor<sup>2</sup> (s. 85). Leaving hackney car unattended—*Penalty*, not exceeding 20s.; carriage may be impounded by constable (s. 86). Payment of fare and costs may be enforced as a penalty.<sup>3</sup> Wilful injury to carriage—*Penalty*, not exceeding £5, with compensation to be ascertained by the justice before whom the conviction takes place (s. 87).

**Hackney carriages.**

*Misconduct of driver.*

*Causing injury.*

*Car unattended.*

*Injury to carriage.*

Commissioners may make bye-laws for regulating hackney carriages (s. 88),<sup>4</sup> and may also make order prescribing routes, and for preventing obstructions in times of public processions, &c.—*Penalty* for disobedience, not exceeding 40s. (s. 70).

*Bye-laws.*

The procedure is regulated by sections 90–92, which give jurisdiction, in claims for damages, and in complaints, to one or more justices to hear the case, and to award such costs as they may think proper. See full note as to procedure under “TOWNS IMPROVEMENT.”

*Procedure.*

Where the Public Health Acts Amendment Act, 1907, is applied, the “local authority” have power to make regulations as to street traffic. See “PUBLIC HEALTH.”

**Regulations as to street traffic.**

As to locomotives on highways, see “LOCOMOTIVES ON HIGHWAYS.”

See also “TOWNS IMPROVEMENT,” “DUBLIN METROPOLITAN POLICE DISTRICT,” “MOTOR CARS,” &c.

## HORSEFLESH.

The sale of horseflesh for human food is regulated by the Horseflesh Regulation, &c., Act, 1889, 52 & 53 Vict. c. 11. “Horseflesh” includes the flesh of asses and mules (s. 7). Horseflesh is not to be sold for human food except in a shop, &c., over which is displayed a notice, in letters at least four inches long, that horseflesh is sold there (s. 1); and any person selling it except in such shop, &c., without anything to show that it was not intended for human food, shall be deemed to have so intended it, unless he proves the contrary (s. 6). Any meat intended for human food reasonably suspected to be horseflesh, and kept elsewhere than in such shop, &c., may be seized by any officer of a local authority,<sup>5</sup> acting either with or without a warrant which a justice is under the Act empowered to grant; and if it appear to any justice that the meat so seized was intended for human food, he may order it to be disposed of as

**Sale of horseflesh.**

**Seizure of horseflesh.**

**Disposal of seizure.**

<sup>1</sup> Overcharge by proprietor or driver under any byelaw—*Penalty*, not exceeding 40s., recoverable before a justice. Overcharge to be included in conviction and returned to the aggrieved party (s. 80).

<sup>2</sup> Where the jurisdiction under this section to award compensation is exercised, with the consent, express or implied, of the party injured, the order will be a bar to further proceedings, even though the injured person did not lay the information, or, in the first instance, request the magistrate to award compensation (*Wright v. London General Omnibus Co.*, (1877) 2 Q.B.D. 271). As to responsibility of the proprietor for the acts of the driver, see *Keen v. Henry*, (1894) 1 Q.B. 292.

<sup>3</sup> It has been held in England (on the construction of ss. 6 and 35 of the English Summary Jurisdiction Act, 1849, and s. 66 of the Towns Police Clauses Act, 1847), that the fare is a civil debt not enforceable by imprisonment in default (*R. v. Kerswill*, (1895) 1 Q.B. 1; and see *R. v. Master*, (1869) L.R. 4 Q.B. 285).

<sup>4</sup> See *Blackpool Local Board v. Bennett*, (1859) 38 L.J.M.C. 293.

<sup>5</sup> That is of the urban or rural sanitary authority under the Public Health (Ir.) Act, 1878 (s. 9).

Offences  
against the  
Act.

Penalty.

he thinks fit, and the person in whose possession or on whose premises it was shall be deemed guilty of an offence against the Act, unless he proves that it was not intended for human food contrary to the provisions of the Act (ss. 3, 4, 5). Any person obstructing any officer of a local authority making such seizure shall be guilty of an offence against the Act (s. 4). Any person offending against any of the provisions of the Act—*Penalty*, on summary conviction, not exceeding £20 (s. 6).

## HUSBAND AND WIFE.

	PAGE		PAGE
Criminal liability of husband and wife		Maintenance of deserted wife—	
as to each other's goods, . . .	530	Where proceedings to be taken, . . .	535
Liability of husband to support wife, . . .	531	Amount of order, . . .	535
Maintenance of deserted wife—		Liability of wife to support husband, . . .	535
49 & 50 Vict. c. 52, . . .	531	Protection of property of deserted wife, . . .	535
Order by justices, . . .	531	Protection of property where husband	
Procedure, . . .	532	or wife is habitual drunkard, . . .	536
"Deserted," meaning of, . . .	533		

Criminal  
liability of  
husband and  
wife as to  
each other's  
goods.

Husband and wife being one person in law, a wife could not be convicted of stealing her husband's goods, even though she had committed adultery (*R. v. Kenny*, (1877) 2 Q.B.D. 307), and *vice versa*. It followed from this that a third person could not be convicted of unlawfully receiving the goods, knowing them to be stolen (*ib.*). This anomaly, however, has been removed by the Married Women's Property Act, 1882, sections 12 and 16 of which are as follows:—

Goods of wife.

"Every woman, whether married before or after this Act, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, and also (subject as regards her husband to the proviso hereinafter contained) the same remedies and redress by way of criminal proceedings for the protection and security of her own separate property, as if such property belonged to her as a *feme sole*, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort. In any indictment or other proceeding under this section it shall be sufficient to allege such property to be her property; and in any proceeding under this section a husband or wife shall be competent to give evidence against each other, any statute or rule of law to the contrary notwithstanding: Provided always, that no criminal proceeding shall be taken by any wife against her husband by virtue of this Act while they are living together, as to or concerning any property claimed by her, nor while they are living apart, as to or concerning any act done by the husband while they were living together, concerning property claimed by the wife, unless such property shall have been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife" (*Married Women's Property Act*, 1882, 45 & 46 Vict. c. 57, s. 12).

Goods of  
husband.

"A wife doing any act with respect to any property of her husband, which, if done by the husband with respect to property of the wife, would make the husband liable to criminal proceedings by the wife under this Act, shall in like manner be liable to criminal proceedings by her husband" (*Married Women's Property Act*, 1882, s. 16).

Evidence.

"In any such criminal proceeding against a husband or wife as is authorized by the Married Women's Property Act, 1882, the husband and wife respectively shall be competent and admissible witnesses, and, except where defendant, compellable to give evidence" (*Married Women's Property Act*, 1884, 47 & 48 Vict. c. 14, s. 1).

Receiving.

The offence of stealing under sections 12 and 16 of the Married Women's Property Act, 1882, is not a felony, but a misdemeanour only (*R. v. Payne*, (1906) 1 K.B. 97); and, therefore, a count will not lie for



*feloniously* receiving goods stolen by a wife from her husband (*R. v. Streeter*, (1900) 1 K.B. 601).

“For the purposes of this Act every husband shall be liable to maintain his wife, and every child under the age of fifteen, whether legitimate or illegitimate, which she may have had at the time of her marriage with such husband; and every father shall be liable to maintain his child, and every widow to maintain her child, and the mother of every bastard child to maintain such bastard child, until every such child respectively shall attain the age of fifteen years: Provided always, that nothing herein contained shall be taken to remove or lessen the obligations to which any husband or parent is by law liable in regard to the maintenance of his wife and children, legitimate or illegitimate, respectively, independently of this Act” (*Poor Relief (Ir.) Act*, 1838, 1 & 2 Vict. c. 56, s. 53).

**Liability of husband to maintain his wife and her children, and of parents to maintain their children.**

It has been held, that a husband is liable for the support of his wife in a union, though the wife has left her husband, and he is able and willing to maintain her (*M'Evoy v. Guardians of Kilkenny Union*, (1896) 30 I.L.T.R. 156).

“Every person who shall desert or wilfully neglect to maintain his wife or any child whom he may be liable to maintain, so that such wife or child shall become destitute and be relieved in or out of the workhouse of any union in Ireland, shall, on conviction thereof before any justice of the peace, be committed to the common gaol or house of correction, there to be kept to hard labour for any time not exceeding three calendar months” (*Vagrancy (Ir.) Act*, 1847, s. 2).<sup>1</sup>

In a prosecution under the section, a board of guardians are parties aggrieved, and not merely common informers (*R. (Ferris) v. Londonderry J.J.*, (1903) 2 I.R. 747). The adultery of the wife, if proved, is a good defence to a charge under this section (*Phillips v. Guardians of South Dublin Union*, (1902) 2 I.R. 112; 34 I.L.T.R. 171; 1 N.I.J.R. 31). The word “wilfully” implies ability on the part of the defendant to contribute to the support (*ib.*); and the burthen of proving such ability rests upon the complainant (*Guardians of Drogheda v. M'Cann*, (1905) 39 I.L.T.R. 210; 5 N.I.J.R. 216).

As to the support of children see “CHILDREN,” p. 403. As will be seen by reference at p. 403 to s. 53 of the Poor Relief (Ir.) Act, 1838, 1 & 2 Vict. c. 56, a widow is liable to maintain her child, and the mother of an illegitimate child is liable to maintain such child, up to the age of fifteen. The question does not seem to have been decided whether the word “person” in s. 2 of the Vagrancy (Ir.) Act, 1847, refers merely to a male parent; but it is arguable that it includes a female parent, and that, therefore, a widow, or the mother of an illegitimate child, is within this section (see the repealed ss. 59 and 124 of the Act of 1838, and s. 8 of the Act of 1847).

“(1) It shall be lawful for any married woman, who shall have been deserted by her husband, to summon her husband before any two justices in petty sessions or any stipendiary magistrate, and thereupon such justices or magistrate, if satisfied that the husband, being able, wholly or in part, to maintain his wife, or his wife and family, has wilfully refused or neglected so to do, and has deserted his wife, may order—(1) That the husband shall pay to his wife such weekly sum, not exceeding £2, as the justices or magistrate may consider to be in accordance with his means and with any means the wife may have for her support and the support of her family, and the payment of any sum so ordered shall be enforceable and enforced against the husband in the same manner as the payment of money is enforced under an order of affiliation; and the said justices or magistrate by whom any such order for payment shall be made, or other

**Maintenance in case of desertion.**  
(Order by justices against husband.)

<sup>1</sup> See also Vagrancy Act, 1824, s. 4, under “VAGRANTS.”

Maintenance  
in case of  
desertion.

justices or magistrate sitting in their or his stead, shall have power from time to time to vary the same. on the application of either the husband or wife, upon proof that the means of the husband or wife have been altered in amount since the original order, or any subsequent order varying it, shall have been made : (2) Provided always, that no order for payment of any such sum by the husband shall be made in favour of a wife who shall be proved to have committed adultery, unless such adultery has been condoned, and that any order for payment of any such sum may be discharged by the justices or magistrate by whom such order was made, or other justices or magistrate sitting in their or his stead, upon proof that the wife has since the making thereof been guilty of adultery" (*Married Women (Maintenance in Case of Desertion) Act, 1886, 49 & 50 Vict. c. 52, s. 1*).

Procedure.

" A summons under this Act shall be applied for and granted and served in the same manner as summonses are now applied for, granted, and served in cases of assault, or in such other manner as the said justices or magistrate shall direct : Provided always, that in such case the said justices or magistrate, or other justices or magistrate sitting in his or their stead, may rehear any such summons at the instance of the husband at any time, and confirm, discharge, or vary any previous order thereon as they or he may think just " (s. 2).

The expression " stipendiary magistrate " in section 1 includes a divisional justice of the Dublin metropolitan police district (*R. (Redding) v. Swift*, (1909) 2 I.R. 302).

Costs under the Petty Sessions Act may be awarded (*R. (Fleming) v. Armagh JJ.*, December, 1910, unreported).<sup>1</sup>

There is no such thing as an affiliation order in Ireland, the only liability being to pay for the support of an illegitimate child in a union under 26 & 27 Vict. c. 20, enforceable by civil bill. Accordingly, it has been held that the words " shall be enforced in the same manner as the payment of money is enforced under an order of affiliation " must be construed with reference to the procedure in England (*R. (Fleming) v. Armagh JJ.*, *supra*). That procedure is as follows :—After one calendar month from making the order, a single justice, on oath or affirmation that the sum ordered has not been paid, may, by warrant,<sup>2</sup> cause the father to be brought before two justices, and in case such father neglect or refuse to make payment of the sums due under the order, such justices may by warrant direct the amount, with such costs, to be recovered by distress and sale, and order the father to be detained in custody until return be made to the warrant of distress, unless he give security by way of recognizance or otherwise to the satisfaction of the justices for his appearance before two justices on the day appointed for the return of the warrant, not being more than seven days from the time of taking security ; but if upon the return, or by the father's admission, it appears that no sufficient distress within their jurisdiction can be had, then any such two justices may commit the father for a period not exceeding three calendar months, unless the money, with costs of commitment and conveyance to prison, and of the persons employed to convey him thither, be sooner paid (*Bastardy Laws Amendment Act, 1872, 35 & 36 Vict. c. 65, s. 4*).

The justices ought to have evidence before them, at the time of making the order for payment, of the defendant's means ; but if he fails to comply with that order while it stands unvaried and undischarged, they have jurisdiction to commit him for such non-compliance, notwithstanding that they have no evidence of his means at the date when the payment accrued

<sup>1</sup> At time of going to press, but see INDEX OF CASES.

<sup>2</sup> No previous summons or notice is necessary (see *R. (Fleming) v. Armagh JJ.*, *supra*).

due (*R. v. Richardson*, (1909) 2 K.B. 851; *R. (Fleming) v. Armagh JJ.*, *Maintenance in case of desertion.* *supra*); and apparently, when the defendant has been brought before the justices for committal under the procedure in the last-mentioned section, they are not bound, on his request, to re-open the matter with a view to having the order varied (*R. (Fleming) v. Armagh JJ.*, *supra*).

The proceedings are civil in character, and the defendant can be examined in his own behalf (*R. (Redding) v. Swift*, (1909) 2 I.R. 302, *per* Lord O'Brien, L.C.J., p. 315, *per* Wright, J., p. 317, *per* Dodd, J., p. 328; see also *In re Gamble*, (1899) 1 Q.B. 305).

There are numerous decisions upon the meaning of the term "Deserted." "desertion" in the Summary Jurisdiction (Married Women) Act, 1895 (E.). That Act repealed, for England, the Act of 1886, and provided for a quasi-decree of judicial separation with an order for maintenance, to be made by a court of summary jurisdiction, on the application of a wife "whose husband shall have" (*inter alia*) "deserted her." It is submitted that the expression "who shall have been deserted by her husband" in the Act of 1886 would be construed in the same way as the corresponding expression in the Act of 1895, and that, consequently, the following decisions are applicable:—

Desertion under the Act of 1895 means the same thing as desertion "without reasonable cause" in the Matrimonial Causes Act (E.), 1857 (*Frowd v. Frowd*, (1904) P. 177). If a wife by her conduct<sup>1</sup> renders her husband's position intolerable, so that he leaves her or turns her out, this is not desertion (*Frowd v. Frowd*, *supra*, *per* Sir Francis Jeune, at p. 178). What is desertion without reasonable cause is, within limits, a question of fact for the justices, having regard to the legal meaning of the term (*R. v. Birwistle*, (1889) 58 L.J.M.C. 158; *R. v. Davidson*, (1889) 5 T.L.R. 199; *In re Duckworth*, (1889) 58 L.J.M.C. 158). Reasonable cause may consist either in (a) violence of conduct, or even of language (see, for instance, *Russell v. Russell*, (1895) P. 315), persisted in so as to make the man's life a burthen<sup>2</sup>; (b) loose conduct, as, for instance, the wife staying out all night, after the husband had discovered her improper relations with another man (*Frowd v. Frowd*, *supra*); or (c) persistent refusal to allow marital intercourse (*Synge v. Synge*, (1900) P. 180, (1901) P. 317). *Husband leaving wife.*

If, on the other hand, a husband by his cruelty obliges his wife to leave him, and she does leave him, that will be desertion by the husband of the wife.<sup>3</sup> There may be cruelty without actual violence; thus, the unreasonable denial of usual necessities or comfort so as to affect health is cruelty, entitling the wife to leave her husband (*Dysart v. Dysart*, (1848) 3 N.C. 340). *Wife leaving husband.*

Apart from any question of actual ill-treatment on one side or the other, what is desertion? "A husband deserts his wife if he wilfully absents himself from the society of his wife in spite of her wish. Desertion may be inferred from certain acts in one case which in another would not *What absence amounts to desertion.*

<sup>1</sup> Not being adultery, which is specifically named as a defence under s. 1 (2) of the Act of 1886, and under s. 7 of the English Act of 1895.

<sup>2</sup> Mere frailty of temper, unless shown in some marked and intolerable excesses, is not a reasonable cause (*Yeatman v. Yeatman*, (1868) L.R. 1 P. and D. 489, *per* Lord Penzance, at p. 493; see also *Charter v. Charter*, (1901) 84 L.T. 272).

<sup>3</sup> In *Sickert v. Sickert*, (1899) P. 278, it was laid down (p. 284) that a wife with any self-respect has no alternative except to withdraw from cohabitation upon her husband's refusal to abandon adulterous intercourse, whether carried on under her own roof or elsewhere; and if, upon such refusal, the wife leaves her husband, he is guilty of desertion; and in *Graves v. Graves*, (1864) 10 L.T. 273, *Dickinson v. Dickinson*, (1893) 62 L.T. 330; and *Koch v. Koch*, (1899) P. 221, the decisions were to the same effect. As to causing mental distress sufficient to injure health, and threats causing reasonable fear of physical restraint, see *MacKenzie v. MacKenzie*, (1895) A.C. 384.



Maintenance  
in case of  
desertion.

justify the same inference. There must be a deliberate purpose of abandoning the conjugal society. Such abandonment need not be for a specified period. If a husband had quite recently left his wife, stating that he did not intend to return, and was found living with another woman, this would be abundant evidence of desertion upon which the justices could act" (*per Lopes, L.J.*, in *R. v. Leresche*, (1891) 2 Q.B. 418, at p. 420).

Absence by  
arrangement.

If the parties are living apart by mutual consent, there is no desertion. Disputes arose between a husband and wife, and an agreement for separation was come to whereby they agreed to live apart, and he undertook to pay her a weekly sum so long as she should live chastely. After they had separated, the husband alleged that the wife had been guilty of adultery, and he refused to continue the payments. *Held*, that as the parties had been living apart under an agreement to separate, there was no desertion (*Pape v. Pape*, (1887) 20 Q.B.D. 76). A husband and wife were living apart under a separation deed, by which the husband covenanted to pay 7s. a week to a trustee for the wife. The husband having ceased to make the payments required by the deed, the wife offered to resume cohabitation, but the husband refused to do so. *Held*, that, in order to constitute desertion within the Act, the parties must be living together as man and wife when the desertion took place; that the husband's refusal of the wife's offer to resume cohabitation did not constitute desertion (see also *Piper v. Piper*, (1902) P. 198; and compare *Bradshaw v. Bradshaw*, *infra*). But if a deed is merely a fraudulent transaction on the part of one of the parties; "if a man, determining to abandon his wife, were to set about fraudulently, by the show of an agreement which he intended never to fulfil, to induce or extort her consent to their mutual separation, covering his true purpose under delusive covenants, and seeking a shield for his designs in a consent brought about by treachery, the court might well be asked to reject the false face of the transaction, and to regard the real object that lay underneath" (*Crabb v. Crabb*, (1868) L.R. 1 P. & D. 601, at p. 604; see *Piper v. Piper*, (1902) P. 198, at p. 200; *Bradshaw v. Bradshaw*, (1897) P. 24). A married female domestic servant, who never lived with her husband under the same roof, was visited from time to time by him at the house of her mistress, and a child (which subsequently died) was born of the marriage in a lying-in hospital. The husband refused to receive his wife in the house where he lodged, and to give her any help towards her maintenance. *Held*, that the cohabitation was sufficient to give jurisdiction to the justices to make an order under s. 4 of the Summary Jurisdiction (Married Woman) Act (E.), 1895. "There is a very common misunderstanding of the effect of those two decisions.<sup>1</sup> It is true that there cannot be a desertion of a wife unless the cohabitation is broken by some act of desertion. But cohabitation does not necessarily imply that a husband and wife are living together physically under the same roof. If that were so, there would be large classes of persons to whom the term could have no application; married domestic servants, for example, who cannot live day and night under the same roof, but yet may cohabit together in the wider sense of the term. The two cases cited have one common feature: in each of them there were two persons living separate from each other by mutual consent, and not cohabiting together, and in such a case there clearly could not be desertion unless there was a resumption of cohabitation" (*Bradshaw v. Bradshaw*, (1897) P. 24, *per Sir Francis Jeune, P.*, at p. 26).

A separation deed was, on September 18th, 1902, drawn up between a husband and wife, under which the husband covenanted to pay the

<sup>1</sup> *Fitzgerald v. Fitzgerald*, (1869) L.R. 1 P. & D. 694, and *R. v. Leresche*, (1891) 2 Q.B. 418.

wife 30s. per week. They ceased to cohabit from that date, and were still living apart when, on December 6th, 1902, only one payment of 30s. having been made by the husband, the wife applied to the divisional magistrate and obtained an order upon the husband for maintenance under the Act. Upon an application to quash the order: *Held*, that there was no desertion by the husband within the meaning of the Act, and that the conviction must be quashed (*R. (Waldron) v. Dublin J.J.*, (1903) 3 N.I.J.R. 366).

**Maintenance in case of desertion.**

It has been held in England that a married woman whose husband has deserted and refused to maintain her, may obtain an order under the Married Women (Maintenance in Case of Desertion) Act, 1886, against him for her support from any justices within whose jurisdiction she resides at the time of such refusal or desertion, whichever act is the latest (*R. v. Leresche*, (1887) 56 L.J.M.C. 135; see remarks of Dodd, J., in *R. (Redding) v. Swifte*, (1909) 2 I.R. 302, at p. 329).

**Where proceedings may be taken.**

Where an order did not contain the name of the place where the refusal to maintain took place, the court refused to make absolute a rule for a certiorari to bring up and quash the same, it being admitted that the wife's residence was within the jurisdiction (*R. v. Leresche*, (1887) 56 L.J.M.C. 135).

In *Cobb v. Cobb*, (1900) P. 294, it was held by Sir Francis Jeune, P., that, in the absence of any statutory provision in the Summary Jurisdiction (Married Women) Act, 1895 (E.), as to the proportion of the husband's income that justices should direct under that Act to be paid to a wife in whose favour they make a maintenance order, justices should be guided by the practice of the matrimonial courts as to alimony, that practice being, as a general rule, to order payment to the wife, if there are no children, or no children that she has to support, of the marriage, of such sum as approximately represents one third of the husband's net income, or, if the wife is in receipt of any income apart from her husband's, of the net combined incomes. This decision, it is submitted, may be taken as a guide for magistrates making an order in Ireland under the Act of 1886.

**Amount of maintenance order.**

"Where in Ireland relief is given under the provisions of the Acts relating to the relief of the destitute poor to the husband of any woman having separate property, the cost price of such relief is hereby declared to be a loan from the guardians of the union in which the same shall be given, and shall be recoverable from such woman as if she were a *feme sole* by the same actions and proceedings as money lent" (*Married Women's Property Act*, 1882, s. 20).

**Liability of wife to support husband.**

"A wife deserted by her husband in Ireland, may at any time after such desertion, if resident within the police district of Dublin, apply to a police magistrate, or, if resident in the country, to justices in petty sessions, or in either case to a judge of the Court of Common Pleas sitting in chambers, for an order to protect any money or property she may acquire by her own lawful industry, and property which she may become possessed of after such desertion, against her husband or his creditors, or any person claiming under him; and such magistrate or justices or judge, if satisfied of the fact of such desertion, and that the same was without reasonable cause, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and property acquired since the commencement of such desertion from her husband, and all creditors and persons claiming under him; and such earnings and property shall belong to the wife as if she were a *feme sole*: Provided always that a copy of every such order, if made by a police magistrate or justices at petty sessions, shall, within ten days from the making thereof, be lodged with the clerk of the peace of the county within which the wife is resident; and that it

**Property of deserted wife.**

Property of  
deserted wife.

shall be lawful for the husband, and any creditor or other person claiming under him, to apply to the same judge or any other judge of the court, or to the magistrate or justices by whom such order was made or for the time being acting instead of or as successors to the same, for the discharge thereof: Provided also that if the husband or any creditor or other person claiming under the husband shall seize or continue to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife, which she is hereby empowered to bring, to restore the specific property, and also for a sum equal to double the value of the property so seized or held after such notice as aforesaid. If any such order of protection be made, the wife shall, during the continuance thereof, be and be deemed to have been, during such desertion of her, in the like position in all respects with regard to property and courtesy (*sic*)<sup>1</sup> and suing and being sued as she would be under this Act if she obtained a decree of divorce *a mensa et thoro*" (*Married Women's Property (Ir.) Act, 1865, 28 & 29 Vict. c. 43, s. 1*).

Protection of  
property  
where hus-  
band or wife  
is habitual  
drunkard.

As to orders for protection of property where either husband or wife is habitual drunkard, see **HABITUAL DRUNKARD**, *ante*, p. 520.

### INDECENCY.

Any person who in a town within the Towns Improvement (Ir.) Act, 1854, wilfully and indecently exposes his person, or who commits any act contrary to public decency—*Penalty*, not exceeding 40s. (*Towns Improvement (Ir.) Act*,<sup>2</sup> 1854, 17 & 18 Vict. c. 103, s. 72).

"Any person who within the limits of the police district of Dublin metropolis, in any thoroughfare or public place shall wilfully and indecently expose his person, or commit any act contrary to public decency"—*Penalty*, not exceeding £5, or two months' imprisonment (*Summary Jurisdiction (Ir.) Amendment Act, 1871, 34 & 35 Vict. c. 76, s. 5*).

A bye-law forbidding the use of profane, obscene, or indecent language in any street or public place to the annoyance of passengers cannot be held to apply to language alleged to be indecent used in a publichouse, and only heard by persons present therein (*Russon v. Dutton, (1911) 27 T.L.R. 197*).

The Vagrancy Act, 1824, 5 Geo. 3, c. 83, s. 4, noted under "**VAGRANTS**," also gives summary jurisdiction to deal with the offence, which is, further, a misdemeanour, punishable on indictment; see **INDICTABLE OFFENCES**. And it is submitted that persons guilty of any indecency might be required to find sureties to be of good behaviour. See p. 33, *ante*.

### INDECENT ADVERTISEMENTS.

See **ADVERTISEMENTS**, p. 352, *ante*.

### INDUSTRIAL SCHOOLS.

As to sending children to reformatories or industrial schools, see the Children Act, 1908, ss. 57-70, **APPENDIX OF STATUTES**.

<sup>1</sup> The corresponding English section 20 & 21 Vict. c. 85 s. 2, has "contracts."

<sup>2</sup> As to which, see "**TOWNS IMPROVEMENT**."



INTIMIDATION.

The offence of intimidation and criminal conspiracy in a proclaimed district is punishable summarily by imprisonment, with or without hard labour, not exceeding six months, under the Criminal Law & Procedure (Ir.) Act, 1887, 50 & 51 Vict. c. 20, ss. 2 (3), 11. The offence, however, is only punishable before a court of summary jurisdiction constituted under the Act, and the procedure is now rarely availed of. See statute, APPENDIX OF STATUTES.

INTOXICATING LIQUORS.

	PAGE		PAGE	Index to offences.
Admittance of police, . . . . .	537	Making or manufacturing liquor with-		
Admittance of excise officer, . . . . .	539	out licence, . . . . .	550	
Adulteration, . . . . .	539	Measure, . . . . .	551	
Bribing constable, . . . . .	539	Name over door, . . . . .	551	
Brothel, permitting licensed premises		Occasional licence, . . . . .	552	
to be used as, . . . . .	540	"Off" licence, . . . . .	552	
Children, offences as to, . . . . .	540	Passenger vessel licence, . . . . .	553	
Clubs, . . . . .	543	Permitting drunkenness or selling to		
Contravening terms of licence, . . . . .	543	drunken person, . . . . .	553	
Dead body, refusing to receive, . . . . .	543	Permitting prostitutes, . . . . .	555	
Distillation, . . . . .	543	Procuring drink for drunken person, . . . . .	555	
Drunkenness, . . . . .	545	Production of licence, . . . . .	556	
Emblems, . . . . .	545	Prohibited hours, . . . . .	556	
Entry of licensed premises with excise, . . . . .	546	Railway car licence, . . . . .	555	
Entry of licensed premises with clerk		Refusing to leave licensed premises, . . . . .	565	
of the peace, . . . . .	546	Riot, closing in case of, or apprehen-		
Exemption order, offence as to, . . . . .	546	sion of, . . . . .	565	
Flags, . . . . .	546	Sale without licence, . . . . .	566	
Gaming, suffering, . . . . .	546	Soliciting orders, . . . . .	574	
Grogging spirit casks, . . . . .	547	Spirit grocers, . . . . .	575	
Harbouring constable, . . . . .	548	Spirits, . . . . .	575	
Harbouring thieves, . . . . .	548	Spirits in transit, . . . . .	576	
Illegal assemblies, . . . . .	548	Storing liquor, . . . . .	576	
Internal communication, . . . . .	549	Theatre licence, . . . . .	576	
Justice acting while disqualified, . . . . .	550	Valuation, licensee to render . . . . .	576	
Procedure under Licensing Acts, . . . . .	577	Index to Procedure, . . . . .	577	Procedure.

Any justice or any chief constable (now district-inspector), or any constable authorized by any justice, or chief constable, may enter premises licensed for the sale of spirits, wine, or beer by retail, in which any illegal assembly is suspected to be held (see ILLEGAL ASSEMBLIES, p. 548), or from which emblems, &c., are displayed (see EMBLEMS, p. 545), to remove and destroy such emblems, &c., and remove persons illegally assembled, and seize books of such illegal assembly. Persons refusing to leave, or resisting, or refusing to give correct name and address—*Penalty, 5s. to 20s. (Licensing (Ir.) Act, 1836, 6 & 7 Wm. 4, c. 38, s. 9).*

"Any constable may, for the purpose of preventing or detecting the violation of any of the provisions of the principal Act,<sup>1</sup> or this Act which it is his duty to enforce, at all times enter on any licensed premises, and on any premises kept by a spirit grocer, and on any premises in respect of which an occasional licence is in force. Every person who, by himself, or by any person in his employ, or acting by his direction,

<sup>1</sup> That is (see preamble) the Licensing Act, 1872.

Admittance  
of police.

or with his consent, refuses, or fails to admit any constable in the execution of his duty, demanding to enter in pursuance of this section " *Penalty*—not exceeding, first offence, £5; subsequent offence, £10 (*Licensing (Ir.) Act*, 1874, 37 & 38 Vict. c. 69, s. 23<sup>1</sup>). This offence is recordable (s. 21).

A spirit dealer<sup>2</sup> is not obliged under this section to admit the police, as the section applies only to premises having a licence for which a justice's certificate is required (*Harrison v. MacL'Veel*, (1880) 50 L.T. 210), and a spirit, or a wine, dealer does not require such certificate (*Licensing Act*, 1872, s. 73).

It seems to have been laid down in *Duncan v. Dowding*, (1897) 1 Q.B. 575, that in order to justify a constable's demand to enter under the section, some reasonable ground *must exist* for suspecting a violation of the Licensing Acts; but it is submitted that the true test to determine whether the right of entry exists or not is whether the constable has a *bona fide* intention of detecting or preventing the violation of the Licensing Acts, which seems to have been the test applied in the earlier decision of *R. v. Dobbins*, (1883) 48 J.P. 182.

Where the licence was to sell "in the dwelling-house of the said T., and in the premises thereunto belonging," it was held that a refusal to admit a constable into an outhouse forming portion of the premises was an offence against 4 & 5 Wm. 4, c. 85, s. 7 (*R. v. Tott*, (1861) 4 L.T. 306). The words "house or place" in any Act relating to the sale of intoxicating liquor shall extend to "every room, closet, cellar, yard, stable, outhouse, shed, or any other place whatsoever, of, belonging, or in any manner appertaining to such house or place" (*Spirits (Ir.) Act*, 1854, 17 & 18 Vict. c. 89, s. 12).<sup>3</sup>

Where a publican's wife, who had no general authority to manage the premises, at a time when her husband was in charge, but without his knowledge, refused to admit a constable. *Held*, that under the circumstances the husband was not liable for the acts of his wife

<sup>1</sup> Other statutes providing penalties for opposing, refusing, or delaying to admit justice or constable seeking to enter licensed premises are:—3 & 4 Wm. 4, c. 68, ss. 15, 17, 18 (search for tipplers, gamblers, &c., during prohibited hours); 6 & 7 Wm. 4, c. 38, ss. 10 & 11 (search for illegal assemblies, secret societies, &c.); 8 & 9 Vict. c. 64, s. 2 (spirit grocer's premises during hours of sale); 23 & 24 Vict. c. 107, s. 20 (person licensed as refreshment-house keeper, or servant, or other person in his employ, or by his direction, refusing to admit, or not admitting police officer seeking to enter premises between 9 p.m. and 7 a.m.)—*Penalty*, on information made within seven days, first offence, not exceeding £5 and costs; on second conviction licence may be forfeited, and defendant disqualified for two years, or shorter period: 17 & 18 Vict. c. 89, s. 5 (premises which are not licensed may be entered by justice, or by constable under authority of justice's warrant, see p. 572, *post*).—*Penalty* for delaying or refusing to admit, not exceeding £2, or less than 10s., or imprisonment not less than one week, or more than a fortnight). A warrant may also be granted under the Licensing (Ir.) Act, 1874, s. 24, to search unlicensed premises for intoxicating liquors kept or sold contrary to law. A justice or constable can enter the premises of spirit grocers during prohibited hours, for the purpose of removing persons unlawfully there (*Licensing Act*, 1872, s. 87). A justice or constable can enter the premises of a spirit grocer at any time whilst open for sale; excise penalty on spirit grocer for opposing, obstructing, or delaying entrance, £2 (*Spirits (Ir.) Act*, 1845, s. 2; *Spirits (Ir.) Act*, 1854, s. 2).

<sup>2</sup> A dealer's licence authorizes the sale at any one time to one person of liquor in the following quantities:—(a) in the case of spirits, wine, or sweets, in any quantity not less than two gallons, or not less than one dozen reputed quart bottles; and (b) in the case of beer or cider in any quantity not less than four and a half gallons, or not less than two dozen reputed quart bottles (*Finance (1909-10) Act*, 1910, 10 Ed. 7, c. 8, First Schedule). As to the grant of licences to spirit grocers, see p. 121, *ante*, and to publicans, see p. 110, *ante*.

<sup>3</sup> Probably this definition applies only for the purpose of extending the right to enter licensed premises to out-houses, &c., see judgment of Wright, J., in *Murnane v. Adams*, (1910) 2 I.R. 175, at p. 186; and of Holmes, L.J., in *R. (Blackburn) v. Down JJ.*, (1905) 2 I.R. 74, at p. 99.

(*Caswell v. Hundred JJ.*, (1890) 54 J.P. 87; see also *Brownrigg v. Mulligan*, K.B.D. (Ir.), 9 Oct., 1910, unreported,<sup>1</sup> noted p. 571, *post*.)

An officer of excise and his assistants may, by night or day (if between 11 p.m. and 5 a.m., after request, and in the presence of a constable or peace officer, except in such cases as are otherwise specially provided for by any Excise Act), enter into and remain as long as such officer shall think fit, in any building or place belonging to or used by any person for the purpose of carrying on a trade subject to the excise laws, or belonging to or used by any person required to make entry of such building or place according to such laws, for the purpose of inspection, or taking account and charging excise duty (*Excise Management Act*, 1826, 7 & 8 Geo. 4, c. 53, s. 22)—*Excise penalty* on hindering officers, etc., in the execution of their duty, £100 (*Inland Revenue Regulation Act*, 1890, 53 & 54 Vict. c. 21, s. 11).

**Admittance  
of excise  
officer.**

"If any person so licensed as aforesaid" (i.e., licensed under the Act to sell wine by retail) "shall mix, or cause to be mixed, any spirits or any drugs or other pernicious ingredients, with any wine sold in his house or premises, or shall fraudulently dilute, or in any ways adulterate any such wine, or shall sell or offer for sale any wine which, to the knowledge of such person, has been so mixed, diluted or adulterated"—*Penalty*, first offence, not less than £10 nor more than £20; second offence, disqualification for selling wine by retail for 5 years, or *penalty* not less than £20 nor more than £60 (*Refreshment Houses (Ir.) Act*, 1860, 23 & 24 Vict. c. 107, s. 31); third offence, *penalty*, £50 and costs of conviction (s. 32).

**Adulteration.**

"(1) A brewer of beer for sale shall not adulterate beer, or add any matter or thing thereto (except finings for the purpose of clarification, or other matter or thing sanctioned by the Commissioners of Inland Revenue) before the same is delivered for consumption; and any beer found to be adulterated or mixed with any other matter or thing (except as aforesaid) in the possession of a brewer of beer for sale shall be forfeited, and the brewer shall incur a fine<sup>2</sup> of £50. (2) A dealer in or retailer of beer shall not adulterate or dilute beer, or add any matter or thing thereto (except finings for the purpose of clarification); and any beer found to be adulterated, or diluted, or mixed with any other matter or thing (except finings) in the possession of a dealer in or retailer of beer shall be forfeited, and he shall incur a fine<sup>2</sup> of £50" (*Customs and Inland Revenue Act*, 1885, 48 & 49 Vict. c. 51, s. 8).

Mixing strong and weak beer, except in small quantities, in the presence and at the request of the purchaser, is a dilution of the stronger beer within the section (*Crofts v. Taylor*, (1887) 19 Q.B.D. 524).

"Where a licensed person or a spirit grocer is convicted of any offence against the provisions of any Act for the time being in force relating to the adulteration of drink, such conviction shall be entered in the proper register of licences, and may be directed to be recorded on the licence or excise licence of the offender, in the same manner as if the conviction were for an offence against the principal Act,<sup>3</sup> and when so recorded shall have effect as if it had been a conviction for an offence against the principal Act" (*Licensing (Ir.) Act*, 1874, s. 22). As to the effect of such conviction, see also p. 581.

"If any licensed person bribes, or attempts to bribe, any constable"—*Bribing* *Penalty*, not exceeding, first offence £10; subsequent offence, £20 constable. (*Licensing Act*, 1872, s. 16). Conviction is recordable (see p. 580).

<sup>1</sup> At time of going to press, but see INDEX OF CASES.

<sup>2</sup> Excise penalty.

<sup>3</sup> That is the Licensing Act, 1872.



Brothel,  
permitting  
licensed  
premises to  
be used as.

"If any licensed person is convicted of permitting his premises to be a brothel, he shall be liable to a penalty not exceeding £20, and shall forfeit his licence, and he shall be disqualified for ever from holding any licence for the sale of intoxicating liquors" (*Licensing Act, 1872, s. 15*).

As to what amounts to keeping a brothel, see BROTHEL, p. 390, *ante*.

#### CHILDREN, OFFENCES AS TO.

	PAGE		PAGE
Children. offences as to.	Children, offences as to—	Children, offences as to—	
	Sale of spirits to child under sixteen for "on" consumption, . . . . .	Exclusion of children from bars of licensed premises, . . . . .	541
	Sale of liquor to child under fourteen, . . . . .	Drunkenness in charge of a child under 7, . . . . .	542
	Sending child under fourteen for liquor, . . . . .	Offences are not recordable, . . . . .	543

Sale of spirits  
to person  
under sixteen.

"Every holder of a licence who sells, or allows any person to sell, to be consumed on the premises, any description of spirits to any person apparently under the age of sixteen years"—*Penalty, not exceeding, first offence, 20s.; subsequent offence, 40s. (Licensing Act, 1872, s. 7).*

Sale of  
intoxicating  
liquor to  
child under  
fourteen.

"Every holder of a licence who knowingly sells or delivers, or allows any person to sell or deliver, save at the residence or working place of the purchaser, any description of intoxicating liquor to any person under the age of fourteen years, for consumption by any person on or off the premises, excepting such intoxicating liquors as are sold or delivered in corked and sealed vessels in quantities not less than one reputed pint<sup>1</sup> for consumption off the premises only"—*Penalty, not exceeding, first offence, 40s.; subsequent offence, £5 (Intoxicating Liquors (Sale to Children) Act, 1901, 1 Ed. 7, c. 27, s. 2).*

Sending child  
to licensed  
premises for  
intoxicating  
liquor.

"Every person who knowingly sends any person under the age of fourteen years to any place where intoxicating liquors are sold or delivered or distributed, for the purpose of obtaining any description of intoxicating liquor, excepting as aforesaid, for consumption by any person on or off the premises, shall be liable to like penalties" (*Intoxicating Liquors (Sale to Children) Act, 1901, s. 2*).

"Nothing in this Act shall prevent the employment by a licensed person of a member of his family or his servant or apprentice as a messenger to deliver intoxicating liquors" (*s. 3*).

"Corked."

"The term 'corked' means closed with a plug or stopper, whether it is made of cork or wood or glass or some other material. The expression 'sealed' means secured with any substance without the destruction of which the cork, plug, or stopper cannot be withdrawn" (*s. 5*).

"Sealed."

The true test as to whether the stopper complies with the Act is:—Is it so secure that the child cannot get at the liquor without the abstraction of the liquor being detected? (*Mitchell v. Craushaw, (1903) 1 K.B. 701; see also Macey v. McKenzie, (1903) 88 L.T. 631*).

No offence is committed if the liquor is sold in a vessel corked and sealed, even though the liquor is not of a kind commonly sold in a corked and sealed vessel (*Jones v. Shervington, (1908) 2 K.B. 539, in which case the child was sent with an empty bottle, which was filled, corked, and sealed, and returned to the child, and it was held that no offence was committed*).

"Knowingly."

A licensed person cannot be convicted under the Act of 1901 if he sells liquor to a child under fourteen, honestly believing that he has

<sup>1</sup> Reputed pint is not defined in this or any statute. It is about the twelfth part of a gallon. (See article in 66 J.P., p. 507.)

attained that age (*Groom v. Grimes*, (1903) 89 L.T. 129). The word "knowingly" in s. 2 of the Act of 1901 does not apply to the words "sold and delivered in corked and sealed vessels," and a defendant is therefore liable to be convicted notwithstanding that he honestly believed (contrary to the fact) that he had secured the stopper in conformity with the Act (*Brooks v. Mason*, (1902) 2 K.B. 743).

Children,  
offences as to.

A child was sent by the defendant with an empty bottle for half a pint of beer. The publican gave the child the beer in the bottle, which was corked, but not sealed. *Held*, that the defendant was guilty of an offence under s. 2, for the mere fact that the vessel with which a child is sent to fetch liquor is capable of being corked and sealed by the vendor after being filled is not enough to bring the sender within the exception (*Farndale v. Dillon*, (1907) 2 K.B. 513). *Seem*, the sending of a child for less than a reputed pint is, under any circumstances, an offence (*ib.*).

Sending child  
with bottle.

No offence is committed if a child is sent merely to order and pay for liquor, delivery being made by the publican's own messenger (*McIlroy v. Kenny*, (1906) 40 I.L.T.R. 138, Recorder of Dublin). But as to permitting child to be in the bar of a licensed premises, see s. 120 of Children Act, 1908, noted *infra*.

Child mere  
verbal  
messenger.

A licensed person is not responsible under the Act of 1901 for the unauthorized acts of his servant unless the servant is in charge of the licensed premises (*Emary v. Nolloth*, (1903) 2 K.B. 264; *Conlan v. Muldowney*, (1904) 2 I.R. 498). If a licensed person or his manager is on the premises, and in control of the business, though not actually in the bar or shop, such licensed person or manager is to be deemed the person in charge (*Allchorn v. Hopkins*, (1905) 69 J.P. 355; *McKenna v. Harding*, (1905) 69 J.P. 354). Where the premises are left in charge of a manager, the licensed person will be responsible for the sale by the manager; but he will not be responsible for an unauthorized sale by another servant, without the knowledge or connivance of the manager, at a time when the manager was in charge (*Allchorn v. Hopkins*, *supra*; *R. (Steadman) v. Lowe*, (1908) 42 I.L.T.R. 149). In the above cases the assistants were forbidden to supply liquor to children save in conformity with the Act; and it has been held in Scotland, under the identical Scotch section (3 Ed. 7, c. 25, s. 59), that the publican is responsible for the acts of any servant to whom he has not given definite instructions not to supply children under fourteen years of age (*Greig v. Macleod*, (1908) S.C. (J.) 14).

Acts of  
publican's  
servant.

"(1) The holder of the licence of any licensed premises shall not allow a child<sup>1</sup> to be at any time in the bar of the licensed premises, except during the hours of closing. (2) If the holder of a licence acts in contravention of this section, or if any person causes or procures, or attempts to cause or procure, any child to go to or be in the bar of any licensed premises except during the hours of closing, he shall be liable, on summary conviction, to a fine not exceeding, in respect of the first offence, 40s., and in respect of any subsequent offence, £5. (3) If a child is found in the bar of any licensed premises, except during the hours of closing, the holder of the licence shall be deemed to have committed an offence under this section, unless he shows that he has used due diligence to prevent the child being admitted to the bar, or that the child was apparently a person over the age of fourteen. (4) Nothing in this section shall apply in the case of any child of the licence-holder, or in the case of a child who is resident, but not employed, in the licensed premises, or who is in the bar of licensed premises solely for the purpose of passing through in order to obtain access to or egress from some other part of the premises, not being a bar, where there is no other convenient means of access to or

Exclusion  
from bars.

<sup>1</sup> Meaning a person under the age of fourteen years (s. 131). Where a child appears to be under the age of fourteen, he shall be presumed to be under that age till the contrary is proved (s. 123 (2)).



Children.  
offences as to.

Exclusion  
from bars.

“Bar.”

Mixed  
business.

egress from that part of the premises, or in the case of railway refreshment rooms or other premises constructed, fitted, and intended to be used in good faith for any purpose to which the holding of a licence is merely auxiliary. (5) In this section the bar of licensed premises means any open drinking bar or any part of the premises exclusively or mainly used for the sale and consumption of intoxicating liquor; and the expressions ‘licence’ and ‘licensed premises’ have the same meaning as in the Licensing Acts, [1828 to 1906]” (*Children Act*, 1908, 8 Edw. 7, c. 67, s. 120).

“The provisions of section one hundred and twenty of this Act (relative to the exclusion of children from bars of licensed premises) shall not apply in the case of any child going to or being upon licensed premises, if a substantial part of the business carried on upon the premises is a drapery, grocery, hardware, or other business wholly unconnected with the sale of intoxicating liquor, and the child, or the person (if any) in whose custody the child is, goes to or is upon the premises for the purpose of purchasing goods other than intoxicating liquor for consumption on the premises; and the reference in the said section to the Licensing Acts, 1828 to 1906, shall be construed as a reference to the Licensing (Ireland) Acts, 1833 to 1905” (*Children Act*, 1908, s. 133 (29)).

The word “allow” in s. 120, on the analogy of the cases noted under GAMING, p. 546, *post*, would seem to imply knowledge on the part of the licence-holder or his servant in charge.

A girl of ten had gone to the licensed premises of the appellant in the evening with an elder sister to see the appellant’s wife, who was a dress-maker and carried on business in a room on the upper floor of the premises, about a dress she was making for the elder girl. When the two girls entered the licensed premises the appellant’s wife saw them and, without the appellant’s knowledge, invited them to wait in the bar parlour while she went to her work-room to bring down the dress, so as to avoid the necessity of lighting up the work-room, which was almost in darkness. The girls went into the bar parlour and waited there for the dress to be brought. While they were so waiting, there were no customers in the bar parlour, nor was any intoxicating liquor sold there during that time. The appellant did not see the two girls enter, nor did he know they were in the bar parlour until his attention was called to their presence by police officers who had entered. There was no finding that there was any negligence in fact on the part of the appellant, or that the wife conducted or took any part in the management of the publichouse. The justices convicted the appellant, being of opinion that he was responsible for the action of his wife, and so was guilty of an offence under the Act in allowing the younger of the two girls to be on the licensed premises, while those premises were open. *Held*, that the conviction must be quashed, as in the circumstances the appellant was not responsible for the action of his wife (*Russon v. Dutton*, (1911) 27 T.L.R. 198). *Quære*, is a bar parlour part of the bar (*ib.*).

Defendant not  
competent  
witness.

In a charge under s. 120, there seems to be no power to examine the defendant, or the husband or wife of the defendant, as the provisions of s. 133 (28) make a defendant, or the husband or wife of the defendant, competent witnesses only in charges under Part II of the Act, and the provisions of the Licensing Acts (see p. 579) are not made applicable.

Performance  
by children.

Drunkenness  
in charge of  
child.

As to performance by children in licensed premises, see *Prevention of Cruelty to Children Act*, 1904, s. 2 (b) noted p. 400, *supra*.

“Any person found drunk . . . on any licensed premises while in charge of a child apparently under the age of seven years may be apprehended, and shall, if the child is under that age, be guilty of an offence”<sup>1</sup>

<sup>1</sup> A justice interested in licensed premises can act in proceedings under this section. See p. 550.



—*Penalty*, not exceeding 40s. or imprisonment, with or without hard labour, not exceeding one month (*Summary Jurisdiction (Ir.) Act*, 1908, s. 9 (1)). "If the child appears to the Court to be under the age of seven, the child shall, for the purpose of this section, be deemed to be under that age unless the contrary is proved" (s. 9 (2)).

Children,  
offences as to.

None of the above offences by licensed persons as to children are recordable (see *R. (Haslett) v. Fermanagh J.J.*, (1903) 37 I.L.T.R. 120).

Offences are  
not recordable.

A sale of liquor in a club is merely a manner of distributing the joint property of the members, and no licence is required therefor (*Graff v. Evans*, (1882) Q.B.D. 373). The club, however, must be a *bona fide* club (*Lynam v. O'Reilly*, (1898) 2 I.R. 48), and registered under the Registration of Clubs (Ir.) Act, 1904; and moreover the "sale" must be to a member either for consumption by himself or by a visitor (*Stevens v. Wood*, (1890) 54 J.P. 742); and if for "off" consumption, must take place between 8 a.m. and 10 p.m. (Registration of Clubs (Ir.) Act, 1904, ss. 8, 4 (h)). As to penalty for supplying, &c., liquor in unregistered club, and other offences, see the statute of 1904, APPENDIX OF STATUTES; and as to necessity to furnish statement to Inland Revenue of purchases of intoxicating liquors, see p. 128, *ante*.

Clubs.

"If any person holding any of the licences specified in the First Schedule to this Act contravenes the terms of the licence, or sells otherwise than as he is authorized by the licence, or contravenes any of the provisions applicable to the licence under that Schedule, he shall be liable in respect of each offence, if the offence is not an offence for which any specific penalty is imposed by any Act relating to excise duties or licences, to an excise penalty of £50" (*Finance (1909-10) Act*, 1910, s. 50 (4)).

Contravening  
terms of  
licence.

The licences mentioned in the First Schedule are:—(a) Manufacturers' licences, spirits, beer, and sweets; (b) wholesale dealers' licences, spirits, beer, wine, and sweets; (c) retailers' "on" and "off" licences, spirits, beer, cider, wine, sweets; (d) passenger vessel licences; (e) railway restaurant car licences; (f) occasional licences.

Any owner or occupier of a tavern, publichouse, or house licensed for the sale of spirits, refusing to receive therein a dead body, upon order of a coroner, until an inquest is held, may be fined by such coroner not more than 40s. (*Coroners (Ir.) Act*, 1846, 9 & 10 Vict. c. 37, s. 36).

Dead body.  
refusing to  
receive.

Distilling or making low wines or spirits without a licence—*Excise penalty*, £500 (*Excise Licences Act*, 1825, 6 Geo. 4, c. 81, s. 26).

Distillation.

"No person may, without being licensed to do so, or on any premises to which his licence does not extend, (a) have or use a still for distilling, rectifying, or compounding spirits; or (b) brew or make wort or wash, or distil low wines,<sup>1</sup> feints,<sup>2</sup> or spirits; or (c) rectify or compound spirits"—*Penalty*, £500, with forfeiture of spirits and utensils and materials (*Spirits Act*, 1880, 43 & 44 Vict. c. 24, s. 5). *Penalty* recoverable and forfeiture obtained as in excise cases (s. 156), as to which see p. 76.

Generally.

The Spirits Act, 1880, creates a large number of highly technical offences by licensed distillers, which cannot be here enumerated.

Each of the penalties mentioned hereinafter under the Illicit Distillation (Ir.) Act, 1831, 1 & 2 Wm. 4, c. 55, is subject to mitigation under ss. 39, 40 thereof, as to which see *post*, p. 545.

Illicit  
Distillation  
Act, 1831.

Chemist using still of more than 50 gallons capacity, unless specially authorized—*Penalty*, £50 (*Illicit Distillation (Ir.) Act*, 1831, s. 10).

Chemists.

Still-maker to admit Excise officers and comply with specified Excise requirements—*Penalty*, £60 (s. 11). Persons importing into Ireland stills under 200 gallons to give notice to Excise authority—*Penalty*, £60 (s. 12). Possession of stills under 200 gallons not marked by Excise—*Penalty*, £60,

Miscellaneous.

<sup>1</sup> That is, spirits of the first extraction conveyed into a low wines receiver (s. 7).

<sup>2</sup> Spirits conveyed into a low wine receiver (s. 3).

**Distillation.**  
Act of 1831.  
*Distilling or  
having in  
possession.*

and still to be forfeited (s. 13). Sending still, still-head, or worm without permit—*Penalty*, £100, and forfeiture of article so sent (s. 14).

“Every person, other than a licensed distiller, brewer, or maker of vinegar, who shall brew or make or shall have in his possession any worts, wash, or pot-ale (except for the purpose of being made into beer for the private use of such person, the proof whereof shall lie on such person); and every person, other than a licensed distiller, who shall distil or have in his possession any low wines or singlings; and every person not being duly licensed to keep or use a still, who shall have or keep any still, still-head, or worm of a still; and every person who shall, without being lawfully authorized thereto, have in his possession, or in any dwelling-house, or in any out-building, place, or premises occupied by him, any worts, wash, or pot-ale (except as aforesaid), or any low wines or singlings, or any still, still-head, or worm of a still, whether such wort, wash, or pot-ale, or low wines or singlings, or still-head, or worm, shall or shall not be the property of such person, shall forfeit £100 . . . and all such worts, wash, or pot-ale, low wines, and singlings, stills, still-heads, and worms shall be forfeited, and may be seized by any officer of Excise” (s. 16).

A conviction that the defendant had a still, still-head, or worm of a still, without specifying which, is bad (*R. (Moore) v. Wexford JJ.*, (1903) 37 I.L.T.R. 643; 3 N.I.J.R. 129).

To constitute an offence under this section the house or place where illicit spirits are found must be one in which illicit distillation was intended to be, was being, or had been carried on (*Doherty v. McClelland*, (1890) 28 L.R.I. 168).

*Justice's  
warrant.  
Still found.*

A justice's warrant to break open and search suspected premises, and to seize stills, &c., may be granted upon oath of an officer of Excise (s. 17).<sup>1</sup> Proprietor and occupier of house in which stills, &c., found—*Penalty*, £100 (*ib.*). Persons obstructing officers—*Penalty*, £100 (*ib.*).

*Search without  
warrant.*

Officer of Excise may without warrant, search for and seize private stills, &c., and proprietors and persons obstructing shall be subject to the same penalty as if the officers had a special warrant; finding of illicit articles to be a justification of forcible entry (s. 18).

*Place for illicit  
distillation.*

Persons found in any room or place<sup>2</sup> where illegal distillation or malting is in process shall forfeit £100, and may be arrested and taken before a justice (s. 19).

*Seizure, &c.*

Officers may spill and destroy all spirits, materials, and utensils found at unlawful distillery (s. 20).

*Harbouring,  
&c.*

Justice of the peace, landlord, or his bailiff may seize stills, &c. (s. 21).

“Every person who shall harbour, keep, or conceal, or shall knowingly permit to be harboured, kept, or concealed, or shall give aid, or assistance, or reward, to any person to harbour, keep, or conceal, any spirits unlawfully made or distilled, or the full duties whereon have not been paid”—*Penalty*, £100 (s. 22).

*Possession of  
spirits.*

“Every person who shall have in his custody or possession any spirits, in any quantity whatsoever, the full duties whereon shall not have been fully paid, or any spirits in any quantity exceeding one gallon, which shall not have been duly and legally permitted and attended with a proper permit to him”—*Penalty*, £100 (s. 23). “Upon the trial or hearing of any proceedings for the recovery of such penalty the defendant shall be convicted, unless due proof shall be made by such defendant, that the full duties on such spirits had been duly paid, or that such spirits

<sup>1</sup> The powers conferred on an officer of Excise are extended to police constables (*Illicit Distillation (Ir.) Act*, 1857, 20 & 21 Vict. c. 40, s. 5), and to officers of Customs (*Inland Revenue Act*, 1861, 24 & 25 Vict. c. 91, s. 22).

<sup>2</sup> In *R. (Wall) v. Gallagher*, (1896) 31 I.L.T.R. 156, it was held in the county court that an open bog was not a place within the section; see cases under “Gaming,” p. 499, as to meaning of “place” within the Gaming Acts.



were bought by or for such defendant, and received from a licensed distiller, or some person licensed to sell spirits, or that the same were attended with a proper permit to such defendant" (s. 23). **Distillation.**  
Act of 1831.

Selling or delivering spirits illicitly distilled, or on which the full duties have not been paid—*Penalty*, £100 (s. 24). *Selling.*

Persons removing or carrying stills or spirits may be stopped by officer, and if they have no permit, or if spirits are illicitly distilled; shall forfeit £100, together with stills and spirits, and may be arrested and taken before a justice (s. 25). *Removing stills or spirits.*

Owners, part owners, &c., of illicit stills, spirits, &c., to forfeit £100 (s. 27). *Owners of stills.*

Persons permitting private maltings, or distilling in their house, land, or premises—*Penalty*, £60 (s. 28). *Permitting.*

Forcibly opposing officers of excise, or being found armed to assist in removing contraband articles, felony (s. 29). *Opposing officers.*

Making signals, or giving notice to persons engaged in illicit distilling of approach of excise officers—*Penalty*, £10 (s. 30). *Signalling.*

Penalties may be mitigated to not less than £6 (s. 39), in case of a second conviction not to be mitigated to less than double the former penalty (s. 40). *Mitigation of penalties.*

The procedure in respect of offences against 1 & 2 Wm. 4, c. 55, may be either under the Petty Sessions Act<sup>1</sup> (*Illicit Distillation (Ir.) Act*, 1857, 20 & 21 Vict. c. 40, s. 6), or as provided for by section 31 of the 1 and 2 Wm. 4, c. 55 (*Inland Revenue Act*, 1861, 24 & 25 Vict. c. 91, s. 18). By said section 31, all penalties may be sued for, prosecuted, and recovered by an action of debt or information in the Superior Courts in the name of the Attorney-General or of some officer of Excise, or on complaint before justices in manner set forth in sections 32, *et seq.* Whichever procedure is adopted, apparently two justices are necessary (*Inland Revenue Act*, 1861, s. 18); and the provisions of section 22 of the Petty Sessions Act, 1851, under which justices have power to give time for the payment of the penalty do not apply (*Inland Revenue Act*, 1867, 30 & 31 Vict. c. 90, s. 14), but as to mitigation, see *supra*. Whichever proceeding be adopted, a complainant or defendant may appeal; the appeal is to the next quarter sessions after the expiration of twenty days from the judgment appealed from (7 & 8 Geo. 4, c. 53, 4 & 5 Wm. 4, c. 51, 4 Vict. c. 20, 24 & 25 Vict. c. 91, s. 19), according to the procedure noted, APPEALS TO QUARTER SESSIONS, p. 139. An appeal lies from a dismissal without prejudice (*R. (M'Alister) v. Tyrone JJ.*, (1897) 31 I.L.T.R. 81).

Police officers (*Illicit Distillation (Ir.) Act*, 1857, s. 5), and officers of Customs (*Inland Revenue Act*, 1861, s. 22) have the same power as an excise officer under 1 & 2 Wm. 4, c. 55. *Powers of police.*

As to the offence of DRUNKENNESS, see p. 425.

"No person licensed to sell spirits by retail to be consumed on the premises or otherwise . . . shall, on any occasion or pretence whatsoever, hang out or display, or suffer to be hung out or displayed, on, from, or out of such house or other place of sale any sign, flag, symbol, colour, decoration, or emblem whatsoever, except the known and usual and accustomed sign of such house or other place of sale usually fixed thereto in the way of business"—*Penalty*, £2.<sup>2</sup> Licence not to be renewed without certificate at quarter sessions that the justices consider such licensed person, notwithstanding such conviction, a fit person to be licensed, on condition of his not again committing a like offence; on second conviction, licence is absolutely forfeited and offender disqualified **Drunkenness.**  
**Emblems.**

<sup>1</sup> But it is submitted that s. 6 of the Act of 1857 gives no right to award costs. The Act of 1831 itself gives no right to award costs.

<sup>2</sup> See p. 578 n. as to power of mitigating this penalty.



**Emblems.**

for ever (*Licensing (Ir.) Act, 1836, 6 & 7 Wm. 4, c. 38, s. 8*). The provisions of the Petty Sessions Act are applicable (*Petty Sessions (Ir.) Amendment Act, 1863*).

An offence under this section is *prima facie* an offence of a serious nature, and cannot be treated as an offence of a trivial nature within the meaning of the Probation of Offenders Act, 1907, unless circumstances be proved before the justices which justify them in so treating it (*Glasgow v. O'Connor, (1911) 45 I.L.T.R. 5*).

**Entry of licensed premises with excise.**

Various Acts of Parliament have rendered necessary the entry at the office of excise, by persons carrying on business for which an excise licence is required, of the premises in which the business is carried on, e.g., wine retailers, under the Refreshment Houses (Ir.) Act, 1860. It may be taken that an entry is required of all premises used either for the manufacture or the sale of spirits.

The entry must be in the name of the real owner, who has attained twenty-one years of age (*Excise Management Act, 1827, 7 & 8 Geo. 4, c. 53, s. 20*). Persons employed in unentered excise manufactories liable to fine and imprisonment—*Excise penalty*, first offence, £30; second offence, £60 (s. 33). Any person carrying on any trade or business under or subject to any excise laws, and required to make entry of any house, building, place, vessel, or utensil, neglecting to make entry—*Excise penalty*, £200 (*Excise Management Act, 1834, 4 & 5 Wm. 4, c. 51, s. 6*). An entry may be made by a corporation carrying on business (see the *Revenue Act, 1898, 61 & 62 Vict. c. 46, s. 15 (2)*). The person signing the entry to be responsible (s. 15 (3)). Entry may be made by a married woman whose husband has become insane or incapable of transacting affairs, or who may be separated from her and out of the kingdom (*Excise Management Act, 1841, 4 & 5 Vict. c. 20, s. 7*). On the transfer of any licence, the transferee must make a fresh entry in his own name (*Excise Licences Act, 1825, 6 Geo. 4, c. 81, s. 21*). Dealer in or retailer of wine to enter his premises—*Excise penalty*, £50 and forfeiture of liquor (*Excise Act, 1835, 5 & 6 Wm. 4, c. 39, s. 4*).

**Entry with clerk of peace.**

Licensed person must enter his premises with clerk of the peace, and pay him a fee of two shillings and sixpence<sup>1</sup>—*Penalty* for non-compliance, £10 (*Licensing (Ir.) Act, 1833, 3 & 4 Wm. 4, c. 68, s. 10; Licensing (Ir.) Act, 1874, 37 & 38 Vict. c. 69, s. 15; Revenue Act, 1898, 61 & 62 Vict. c. 46, s. 16*). In Dublin an entry must also be made with the divisional justices, and a fee of ten shillings paid—*Excise penalty*, £2 (*Licensing (Ir.) Act, 1833, s. 12*).

**Exemption order.**

Holder of exemption order making default in affixing or keeping affixed to his premises notice of the order as prescribed—*Penalty*, not exceeding £5 (*Licensing (Ir.) Act, 1874, s. 11*). Non-holder of such order affixing such notice—*Penalty*, not exceeding £10 (*ib.*). Neglecting to produce exemption order on demand by justice of the peace, constable, or peace officer—*Penalty*, not exceeding £10 (*Licensing Act, 1872, s. 64*).

As to grant of exemption order, see p. 125, *ante*.

**Flags.**

As to displaying flags, see EMBLEMS, *supra*.<sup>2</sup>

**Gaming. suffering.**

"If any licensed person (1) suffers any gaming or any unlawful game to be carried on on his premises; or (2) opens, keeps, or uses, or suffers his house to be opened, kept, or used in contravention of the Betting Act, 1853"—*Penalty*, not exceeding, first offence, £10; subsequent offence, £20 (*Licensing Act, 1872, s. 17*). Conviction is recordable; see p. 580.

As to what are unlawful games, see p. 496.

The playing of any game, whether a game of skill or not, for any stakes, however small, is gaming within the section (*R. v. Ashton, (1852)*

<sup>1</sup> This applies also to a renewal (*Hawkins v. M'Loughlin, (1851) 14 I.C.L.R. App. 1*).

<sup>2</sup> For other penalties on licensed persons and persons gaming during prohibited hours, see 3 & 4 Wm. 4, c. 68, ss. 15, 19; 6 & 7 Wm. 4, c. 38, ss. 6, 12.

1 E. & B. 286; *Patten v. Rhymer*, (1860) 3 E. & E. 1; *Danford v. Taylor*, Gaming, (1869) 20 L.T. 483; *Luff v. Leaper*, (1872) 36 J.P. 773; *Dyson v. Mason*, suffering. (1889) 22 Q.B.D. 351; *Craig v. Boyan*, (1901) 2 I.R. 429). To constitute gaming, however, the game played must be one which involves the element of wagering; each player must have a chance of losing as well as of winning; therefore a whist drive, played for prizes presented by non-players, is not gaming (*Lockwood v. Cooper*, (1903) 2 K.B. 428). Betting on horse races is not gaming within the first part of the section; and a licensed person who merely allows bets on horses to be made on his premises does not "suffer gaming" to be carried on thereon within the meaning of the section (*Keep v. Stephens*, (1909) 100 L.T. 491).

To sustain a conviction for suffering gaming or any unlawful game to be carried on, the prosecution must prove either actual knowledge or connivance on the part of the licensed person, or actual knowledge or connivance on the part of the servant who is in charge of the licensed premises, or of that portion of the licensed premises in which the gaming is carried on (*Avards v. Dance*, (1862) 26 J.P. 437; *Bosley v. Davies*, (1875) 1 Q.B.D. 84; *Redgate v. Haynes*, (1876) 1 Q.B.D. 89; *Crabtree v. Hole*, (1879) 43 J.P. 799; *Somerset v. Hart*, (1884) 12 Q.B.D. 360; *Bond v. Evans*, (1888) 21 Q.B.D. 249: see also MASTER AND SERVANT, p. 293, *et seq.*).

The offence is committed if a lodger is allowed to carry on gaming (*Redgate v. Haynes*, (1875) 1 Q.B.D. 49); or if gaming is carried on, either in portion of the premises retained by the licensed person for his own use (*Patten v. Rhymer*, (1860) 3 E. & E. 1), or in any part of the premises (*Hare v. Osborne*, (1876) 34 L.T. 294; *R. (M'Nally) v. Murphy*, (1908) 42 I.L.T.R. 88), by the private friends of the publican, *bona fide* entertained by him at his own expense. And it follows from these decisions as to private friends that gaming carried on by the servants or the family of the licensed person, even during closing hours and in their private apartments, is, in strict law, an offence under the section.

A licensed person cannot be convicted in respect of the same transaction both under this section and section 3 of the Betting Act, 1853 (*Sims v. Pay*, (1889) 60 L.T. 602).

As to using premises as a betting-house, see GAMING, p. 495, *ante*.

"A person shall not (a) subject any cask to any process for the purpose of abstracting any spirits absorbed in the wood thereof; or (b) have on his premises any cask which is being subjected to any such process, or any spirits extracted from the wood of any cask"—*Excise penalty*, £50; spirits to be deemed to be unlawfully kept or deposited within the Spirits Act, 1880, casks to be forfeited (*Finance Act*, 1898, 61 & 62 Vict. c. 10, s. 4). Grogging spirit casks.

In order to convict of the offence of having on the premises spirits extracted from the wood of a cask, the spirits must have been extracted either by an active process intentionally applied to the cask for that purpose, or by allowing the cask to remain in a position where it would be affected by the external temperature, with the knowledge that the temperature would cause the spirits to exude from the wood and collect in the bottom of the cask; the innocent possession of spirits which have, owing to the operation of natural causes and without any intent on the part either of the owners or their servants, exuded from the wood and collected at the bottom of the cask does not amount to the possession of "spirits extracted" from the wood of the cask within the section (*Robinson v. Dixon*, (1903) 2 K.B. 701). Apparently an offence is committed in respect of each cask unlawfully treated (*Lord Advocate v. Stewart*, (1899) 63 J.P. 311). An allegation that water was put into the cask for the purpose of keeping the wood sweet is no defence (*Lord Advocate v. Carse*, (1899) 63 J.P. 472). The Scotch Courts have held that there is power to



mitigate the penalties (*Lord Advocate v. Stewart, supra*; *Lord Advocate v. Carse, supra*). The owners of a cask may be liable for the acts of their servants, though committed without their knowledge or approval (*Robinson v. Dixon, supra*).

Harbouring  
constable.

"If any licensed person (1) knowingly harbours or knowingly suffers to remain on his premises any constable during any part of the time appointed for such constable being on duty, unless for the purpose of keeping or restoring order or in execution of his duty; or (2) supplies any liquor or refreshment, whether by way of gift or sale, to any constable on duty, unless by authority of some superior officer of such constable"—*Penalty*, not exceeding, first offence, £10; subsequent offence, £20 (*Licensing Act, 1872, s. 16*).<sup>1</sup> Conviction is recordable (see p. 580).

Knowledge is of the essence of the offence under either sub-section; and therefore, if the licensed person *bona fide* believes that the police constable is off duty, he is not liable to a conviction for supplying him with liquor (*Sherras v. De Rutzen, (1895) 1 Q.B. 918*). The omission of the word "knowingly" in sub-section 2 merely shifts the burthen of proof of want of knowledge to the defendant (*ib., per Day, J.*).

A licensed person who supplied liquor to a constable, and allowed him to remain on the premises, was held rightly convicted of both offences—(1) supplying liquor, and (2) harbouring (*R. (M'Manus) v. Meath JJ., (1898) 27 I.L.T.R. 127*). The publican is responsible under the section for the acts of his servants (*Mullins v. Collins, (1874) L.R. 9 Q.B. 292*).

Harbouring  
thieves.

Licensed person harbouring thieves, or knowingly allowing deposit of goods stolen—*Penalty*, not exceeding £10. Licence may on first offence, and must on second offence, be forfeited; second offence entails personal disqualification for two years; and where two convictions take place within three years with respect to the same premises, whether the person convicted is or is not the same, the court must direct that for a period of one year from the last conviction no licence shall be issued to anyone in respect of the premises, and if, thereupon, a licence be issued it is void. (*Prevention of Crime Act, 1871, 34 & 35 Vict. c. 112, s. 10*).<sup>2</sup>

Illegal  
assembly on  
licensed  
premises.

"No person licensed to sell spirits by retail to be consumed on the premises or otherwise shall knowingly permit any body, union, society, or assembly of persons declared to be illegal, or prohibited by any law in force at the time of the passing of this Act; or any body, union, society, or assembly of persons who shall require from persons about to be admitted or being admitted thereto, or into the said body, union, society, or assembly any oath, test, solemn declaration, or affirmation not expressly allowed and required by law; or who shall observe on the admission of members or on any other proceeding any religious or other solemn mystery, rite, or ceremony, or seeming or pretended religious or other solemn mystery, rite, or ceremony not sanctioned by law; or who shall wear, bear, or display, on occasions of their meeting or assembling together, any arms, flags, colours, symbols, decorations, or emblems whatsoever, to meet or assemble, or hold a meeting or assembly on any occasion or pretence whatsoever, in the house or other place of sale of such person so licensed"—*Penalty*, £2<sup>3</sup>; "and the licence of such person convicted of such offence shall not be renewed by the proper officer of excise without the certificate of the justices at quarter sessions assembled,

<sup>1</sup> Other provisions as to harbouring constables are:—"On" licensee in a town within the Towns Improvement Act, 1854, harbouring or entertaining in his licensed premises constable while on duty, unless for the purpose of quelling disturbance or restoring order—*Penalty*, not exceeding 20s. (*Towns Improvement (Ir.) Act, 1854, 17 & 18 Vict. c. 103, s. 74*). Like offence by such licensee anywhere—*Penalty*, not exceeding 20s. (*Refreshment Houses (Ir.) Act, 1860, 23 & 24 Vict. c. 107, s. 41*).

<sup>2</sup> As to procedure under this section, see PREVENTION OF CRIME.

<sup>3</sup> As to power of mitigation, see p. 578 n., *post*.



and of the assistant barrister attending said quarter sessions, that they consider such person to be, notwithstanding such conviction, a fit person to be licensed, on condition of his not again committing a like offence; and if any such person so convicted, and obtaining a renewal of his licence on said certificate, shall be again convicted of a like offence, such licence shall immediately on such second conviction become null and void to all intents and purposes whatsoever, and such person shall not be capable, at any time thereafter, of obtaining such licence: Provided, however, that nothing herein contained shall extend to any meeting of persons consisting exclusively of Freemasons, or members of the society called the Friendly Brothers" (*Licensing (Ir.) Act, 1836, s. 8*).

Illegal  
assembly on  
licensed  
premises.

"Every person who makes or uses, or allows to be made or used, any internal communication between any licensed premises and any unlicensed premises which are used for public entertainment or resort, or as a refreshment house"—*Penalty*, not exceeding £10 per day; and if offender is holder of a licence, forfeiture of licence (*Licensing Act, 1872, s. 9*). Like provision as to premises of a spirit grocer (*s. 85*).

Internal com-  
munication.

There is no definition, statutory or otherwise, of what are "premises used for public entertainment or resort" within this section. A private house and garden where a sale by public auction takes place is for the time being a "place of public resort" within the Vagrancy Act, 1824, 5 Geo. 4, c. 83, s. 4 (*Sewell v. Taylor*, (1859) 7 C.B.N.S. 160). A railway platform is also within the same section (*Ex parte Davis*, (1857) 26 L.J.M.C. 178). A booth used by strolling players is not a "place of public resort" within section 2 of the Theatres Act, 1843, 6 & 7 Vict. c. 68, which forbids the performance of stage plays without a licence, the decision apparently going upon the fact that the section was aimed at a place of a permanent character (*Darys v. Douglas*, (1859) 4 H. & N. 180). A "place of public resort" within section 36 of the Public Health Acts Amendment Act, 1890, 53 & 54 Vict. c. 59,<sup>1</sup> is defined by that section to mean "a building, &c., used, or constructed or adapted to be used, either ordinarily or occasionally, as a church, chapel, or other place of public worship (not being merely a dwellinghouse so used), or as a theatre, public hall, public concert-room, public ball-room, public lecture-room, or public exhibition-room, or as a public place of assembly for persons admitted thereto by tickets or by payment; or used, or constructed, or adapted to be used, either ordinarily or occasionally, for any other public purpose; but shall not include a private dwellinghouse used occasionally or exceptionally for any of these purposes." For other cases, see *Cole v. Coulton*, (1860) 2 E. & E. 695; *Turnbull v. Appleton*, (1881) 45 J.P. 469; *Langrish v. Archer*, (1882) 10 Q.B.D. 44; *O'Connor v. Symmott*, (1902) 36 I.L.T.R. 239, 3 N.I.J.R. 35; *Kitson v. Ashe*, (1899) 1 Q.B. 425. "Entertainment" for the purposes of the Refreshment Houses (E.) Act, 23 & 24 Vict. c. 27, s. 6 (dealing with places of "public refreshment, resort, and entertainment"), means, having regard to the context, entertainment in the nature of refreshment; but, with reference to other Acts of Parliament, Pollock, C.B., said he should be strongly disposed to think the word meant amusement and gratification of some sort other than food, meat, and drink (*Taylor v. Oram*, (1862) 1 H. & C. 370; see also *Terry v. Brighton Aquarium Co.*, (1875) L.R. 10 Q.B. 306; *Warner v. Brighton Aq. Co.*, (1875) L.R. 10 Ex. 291; *Reid v. Wilson*, (1895) 1 Q.B. 315; *Barter v. Langley*, (1868) L.R. 4 C.P. 21). A refreshment house is a place of public resort (*Taylor v. Oram, supra*).

For the purpose of construing section 9 of the Act of 1872, the words, "place of public entertainment or resort," would probably receive a meaning cognate to the statutory definition contained in section 36 of the Public Health Act, 1890; and it is submitted that an ordinary

<sup>1</sup> Prescribing means of ingress to and egress from places of public resort.

draper's shop, for instance, would not be a place of public entertainment or resort within the section. A billiard-room has been held not to be a "place of public entertainment" within the Intoxicating Liquors (Ir.) Act, 1906, for the terms of which, see p. 564, *post* (*Mercer v. O'Shaughnessy*, 8 Dec., 1910, K.B.D. (Ir.), unreported<sup>1</sup>).

Justice  
acting while  
disqualified.

"No justice shall act for any purpose under this Act, or under any of the Intoxicating Liquor Licensing Acts,<sup>2</sup> except in cases where the offence charged is that of being found drunk in any highway or other public place, whether a building or not, or on any licensed premises, or of being guilty while drunk of riotous or disorderly conduct, or of being drunk while in charge, on any highway or other public place, of any carriage, horse, cattle, or steam engine, or of being drunk when in possession of loaded fire-arms, who is or is in partnership with, or holds any share in any company which is a common brewer, distiller, maker of malt for sale, or retailer of malt, or of any intoxicating liquor in the licensing district, or in the district or districts adjoining to that in which such justice usually acts; and no justice shall act for any purpose under this Act, or under any of the Intoxicating Liquor Acts, in respect of any premises in the profits to<sup>3</sup> which such justice is interested, or of which he is wholly, or partly the owner, lessee, or occupier, or for the owner, lessee, or occupier of which he is manager or agent. Any justice hereby declared not to be qualified to act under this Act, who knowingly acts as a justice for any of the purposes of this Act, shall, for every such offence, be liable to a penalty not exceeding £100, to be recovered by action in one of Her Majesty's Superior Courts at [Dublin]<sup>4</sup>: Provided that (1) no justice shall be disqualified under this section to act in respect of any premises, by reason of his having vested in him a legal interest only, and not a beneficial interest in such premises or the profits thereof; (2) no justice shall be liable to a penalty for more than one offence committed by him under this section before the institution of any proceedings for the recovery of such penalty; (3) no act done by any justice disqualified by this section shall by reason only of such disqualification be invalid" (*Licensing Act, 1872*, s. 60).

An offence under section 9 of the Summary Jurisdiction (Ir.) Act, 1908, 8 Ed. 7, c. 24, which enacts penalties on persons found drunk in charge of children, shall be deemed to be included in the list of offences mentioned in the above section (*Summary Jurisdiction (Ir.) Act, 1908*, 8 Edw. 7, c. 24, s. 9).

Acting "knowingly" means acting deliberately (*per* Lord Russell of Killowen, C.J., in *A.-G. v. Willet*, (1896) 12 T.L.R. 494), and a justice who so acts is liable to the penalty, even if he acts in forgetfulness of the fact that he holds shares in a brewery in the district (*A.-G. v. Ball*, (1902) 66 J.P. 553). If no actual bias is attributable to the justice, his acts will not be invalid (*R. v. Tempest*, (1902) 18 T.L.R. 433; *R. (Murphy) v. Kilkenny JJ.*, (1908) 42 I.L.T.R. 135). See also p. 215, *et seq. ante*.

Making or  
manufactur-  
ing without  
licence.

"If any person makes or manufactures any intoxicating liquor, for the making or manufacture of which he is required to take out a licence under this Act, without taking out such a licence, he shall be liable in respect of each offence to an excise penalty of £500"<sup>5</sup> (*Finance (1909-10) Act, 1910*, 10 Ed. 7, c. 8, s. 50). The manufacturers' licences set forth in the schedule thereof are: distiller of spirits, rectifier, or compounder of

<sup>1</sup> But see INDEX OF CASES.

<sup>2</sup> Meaning the Acts authorizing the grant of a licence or of an Excise (i.e., spirit grocer's) licence (*Licensing Act, 1872*, s. 77).

<sup>3</sup> *Sic*.

<sup>4</sup> See s. 77.

<sup>5</sup> Recoverable as an Excise penalty, see p. 79.

spirits; brewer of beer for sale; brewer of beer not for sale; maker of sweets<sup>1</sup> for sale.

“Every person shall sell all intoxicating liquor which is sold by retail **Measure.** and not in cask or bottle, and is not sold in a quantity less than half a pint, in measures marked according to the imperial standards. Every person who acts, or suffers any person under his control or in his employment to act, in contravention of this section”—*Penalty*, not exceeding, first offence, £10, and subsequent offence, £20; with forfeiture of illegal measure on any conviction (*Licensing Act, 1872, s. 8*).

Where the liquor was poured into a standard and stamped measure, but not in the sight of the customer, and was afterwards poured into a jug which was handed to the customer, it was held that an offence had been committed, as the liquor should have reached the customer in the standard measure or been poured into same in his presence (*Addy v. Blake*, (1887) 19 Q.B.D. 478); but where the liquor is filled into a properly marked standard measure in the presence of the customer, no offence is committed, even though additional liquor be added to give what is known as the “long pull” (*Pennington v. Pincock*, (1908) 2 K.B. 244). Where the liquor sold exceeds half a pint, an offence is committed if sold in an illegal measure, even though such illegal measure contains a specific quantity, known by a local denomination which is asked for by the customer (*Payne v. Thomas*, (1890) 63 L.T. 456; *Riddell v. Nelson*, (1904) F. (J.C.) 57); but if the quantity sold be less than half a pint, no offence is committed under the section by reason of the sale of a quantity other than a known legal measure of capacity (*Craig v. McPhee*, (1884) 48 J.P. 115).

Wine retailer, if required, to sell wine (except wine in bottle and quantities less than half a pint) in standard measure—*Penalty*, not exceeding 40s. and forfeiture of illegal measure, complaint to be made within seven days (*Refreshment Houses (Ir.) Act, 1860, 23 & 24 Vict. c. 107, s. 28*).

See also WEIGHTS AND MEASURES.

“Every licensed person shall cause to be painted or fixed, and shall **Name over door.** keep painted or fixed, on the premises in respect of which his licence is granted, in a conspicuous place, and in such form and manner as the *Commissioners of Inland Revenue*” (now “the licensing justices”—*Licensing (Ir.) Act, 1874, s. 26*) “may from time to time direct, his name, with the addition after the name of the word ‘licensed,’ and of words sufficient, in the opinion of said *Commissioners*” (now “licensing justices”—*Licensing (Ir.) Act, 1874, s. 26*), “to express the business for which his licence has been granted, and in particular of words expressing whether the licence authorizes the sale of intoxicating liquor to be consumed on or off the premises only, as the case may be; and no person shall have any words or letters on his premises importing that he is authorized as a licensed person to sell any intoxicating liquor which he is not in fact duly authorized to sell”—*Penalty*, not exceeding, first offence, £10; subsequent offence, £20” (*Licensing Act, 1872, s. 11*).

In the case of a six-day licence, the notice must indicate that the licence is a six-day licence (*Licensing Act, 1872, s. 49*), and in the case of an early-closing licence that the licence is an early-closing licence (*Licensing (Ir.) Act, 1874, s. 2*).

The holder of an exemption order must put a notice of same in a conspicuous place outside the premises—*Penalty*, not exceeding £5 (*Licensing (Ir.) Act, 1874, s. 11*).

<sup>1</sup> “Sweets” mean any liquor, made from fruit and sugar, which in the process of manufacture has been fermented (*Revenue Act, 1889, s. 28*).



Name over  
door.

Every person required by the Excise Laws<sup>1</sup> to make entry of premises with Excise must cause his name to be painted in letters at least one inch long, with the word "licensed" and the nature of the business over the principal door or gate, and not more than three feet from the top—*Excise penalty* on breach, £20: unlicensed person putting up such name or sign—*Penalty*, £20 (*Excise Licences Act*, 1825, 6 Geo. 4, c. 81, s. 25).

It follows from *McBride v. McGovern*, (1906) 2. I.R. 181, that the affixing of the name in Irish will not be a compliance with any of the above enactments.

Occasional  
licence.

"For the purpose of so much of the principal Act<sup>2</sup> as relates to offences against public order, that is to say, sections 12 to 18, both inclusive, and the sections for giving effect to the same, a person taking out an occasional licence shall be deemed to be a licensed person within the meaning of the said sections, and the place in which any intoxicating liquors are sold in pursuance of the occasional licence shall be deemed to be licensed premises, and to be the premises of the person taking out such licence" (*Licensing (Ir.) Act*, 1874, s. 6).

An occasional licence may now be granted for the sale of beer only (*Finance (1909-10) Act*, 1910, 10 Ed. 7, c. 8, Schedule 1 (F)).

"off"  
licence,  
evasion of.

"If any purchaser of any intoxicating liquor from a person who is not licensed to sell the same to be drunk on the premises drinks such liquor on the premises where the same is sold, or on any highway adjoining, or near such premises, the seller of such liquor shall, if it shall appear that such drinking was with his privity or consent, be subject to the following penalties": not exceeding, first offence, £10; subsequent offence, £20. "For the purposes of this section the expression 'premises where the same is sold' shall include any premises adjoining or near the premises where the liquor is sold, if belonging to the seller of the liquor or under his control, or used by his permission" (*Licensing Act*, 1872, s. 5). This offence is recordable (see p. 580).

"If any person having a licence to sell intoxicating liquors not to be drunk on the premises, himself takes or carries, or employs or suffers any other person to take or carry, any intoxicating liquor out of or from the premises of such licensed person for the purpose of being sold on his account, or for his benefit or profit, and of being drunk or consumed in any other house, or in any tent, shed, or other building of any kind whatever, belonging to such licensed person, or hired, used, or occupied by him, or on or in any place, whether enclosed or not, and whether or not a public thoroughfare, such intoxicating liquor shall be deemed to have been consumed by the purchasers thereof on the premises of such licensed person, with his privity and consent, and such licensed person shall be punished accordingly in manner provided by this Act. In any proceeding under this section, it shall not be necessary to prove that the premises or place or places to which such liquor is taken to be drunk belonged to, or were hired, used, or occupied by the seller, if proof be given to the satisfaction of the court hearing the case that such liquor was taken to be consumed thereon or therein with intent to evade the conditions of his licence" (*Licensing Act*, 1872, s. 6). This offence is recordable (see p. 580).

The foregoing sections, which are contained in that portion of the Act of 1872 common to England and Ireland, are wide enough to embrace the case of a spirit grocer; but two other sections (ss. 83, 84) were passed in respect of spirit grocers, and are identical respectively with sections 5 and 6, *ante*, substituting the words "spirit grocer" for "the seller," &c.

<sup>1</sup> See *ante*, ENTRY OF LICENSED PREMISES WITH EXCISE.

<sup>2</sup> That is, the Licensing Act, 1872.

To sustain a conviction under section 5, the evidence must clearly show that the licensed person connived at the drinking on the premises or on the highway near the premises (*Bath v. White*, (1878) 3 C.P.D. 175).

Section 5 does not apply to the case of a person who has no licence at all, but to a person having an "off" licence who illegally sells for "on" consumption<sup>1</sup> (*Dowling v. O'Loughlin*, (1877) I.R. 11 C.L. 488, at p. 493). The section must be read as follows:—"If any person licensed to sell any intoxicating liquor to be consumed off his premises shall sell *such liquor*"; and therefore a spirit grocer cannot be convicted *under this section* for selling porter to be consumed on the premises (*ib.*).

Section 6 is aimed at sending out liquor to be hawked for sale off the premises.

Spirit grocer selling liquor for consumption in any house, outhouse, or building, hut, tent, or place occupied by him—*Excise penalty*, £10 (*Licensed Grocers (Ir.) Act*, 1818, 58 Geo. 3, c. 57, s. 2).

Spirit grocer opposing or obstructing entrance of police whilst his premises are open for sale, or selling spirits for consumption on the premises, or harbouring tipplers—*Excise penalty*, £2, and forfeiture of licence (*Spirit Grocers (Ir.) Act*, 1845, 8 & 9 Vict. c. 64, s. 2).

Selling beer (or porter—34 & 35 Vict. c. 111, s. 3)<sup>2</sup> for "on" consumption, without being licensed in that behalf—*Penalty*, first offence, 5s. to £2, or imprisonment, one week to one month; subsequent offence, 20s. to £5, or imprisonment, one month to three months (*Beerhouses (Ir.) Act*, 1864, 27 & 28 Vict. c. 35, s. 7). Persons found drinking or tippling, or having the appearance of having been recently drinking or tippling on premises licensed for "off" consumption—*Penalty*, first offence, not exceeding 5s.; subsequent offence, 5s. to 10s. (*ib.*, s. 8).

The hours for closing spirit grocers' premises are the same as in the case of publicans' premises (*Licensing Act*, 1872, s. 86). Justices and constables have the right to enter the premises of spirit grocer during prohibited hours, and to remove persons unlawfully there. Persons refusing to obey may be apprehended and fined—*Penalty*, 5s. to 20s. (s. 87).

A passenger-vessel licence granted in respect of any vessel authorizes the sale by retail, while the vessel is engaged in carrying passengers, of any intoxicating liquor to the passengers for consumption on the vessel (*Finance Act*, (1909-10), *Act* 1910, Schedule I. (D)), and is granted without a justices' certificate to the master or other person nominated by the owner, and costs per annum, £10; per day, £2 (*ib.*). Contravening the terms of a licence—*Excise Penalty*, £50 (*ib.* s. 50 (4)).

Passenger  
vessel licence.

"If any licensed person permits drunkenness or any violent, quarrelsome, or riotous conduct to take place on his premises, or sells any intoxicating liquor to any drunken person"—*Penalty*, not exceeding, first offence, £10; subsequent offence, £20 (*Licensing Act*, 1872, s. 13.)<sup>3</sup> Conviction may be recorded (see p. 580).

Permitting  
drunkenness  
selling to  
drunken  
person.

A licensed person found drunk on his own licensed premises cannot be convicted under s. 13 (*Warden v. Tye*, (1877) 2 C.P.D. 74), nor can he be convicted of supplying drink to himself whilst drunk (*ib.*). A licensed person selling drink to a drunken man may be convicted either of so selling or of permitting drunkenness (*Edmunds v. James*, (1892) 1 Q.B. 18.) In order to support a charge of permitting drunkenness, it must be

<sup>1</sup> The section would be clearer if it read "who is licensed to sell the same, but not to be drunk on the premises."

<sup>2</sup> For the purposes of the Finance (1909-10) Act, 1910, beer includes porter (see s. 52 of that Act). See also 566 n.

<sup>3</sup> Retailer of wine permitting any person to be guilty of drunkenness or other disorderly conduct, or himself guilty of any such disorderly conduct on his premises—*Penalty*, first offence, 40s. to £5; second offence, £5 to £10; third offence, £20 to £50 (*Refreshment Houses (Ir.) Act*, 1860, 23 and 24 Vict. c. 107, s. 31).

Permitting  
drunkenness;  
selling to  
drunken  
person.

shown the publican knew of the drunkenness (*Somerset v. Wade*, (1894) 2 Q.B. 574). In *Hope v. Warburton*, (1892) 2 Q.B. 134, a police inspector visited defendant's premises, and found two brothers there, each drinking out of a pint pot; one of them was drunk, but said he had not been served there. There was no one serving behind the bar at the time the inspector entered; but the inspector, on passing in to the house, found the defendant's son, who was apparently in charge, and who admitted that he knew the man was drunk, but said he did not serve him. The defendant having been charged with permitting drunkenness, it was contended on his behalf that, though the man was drunk when he went upon the defendant's premises, and was found drinking there, yet, as no evidence had been given that he was actually supplied with drink there, the defendant was not guilty of the offence, and the justices yielded to this contention and dismissed the summons. The inspector appealed, and the appeal was allowed, as it was evident that the decision of the justice proceeded on the ground that an actual sale was necessary, and it was held that it was perfectly clear that serving the man with drink was not material to the offence at all.

It is frequently assumed that merely allowing a man already drunk to come and remain on licensed premises necessarily constitutes the offence of "permitting drunkenness to take place"; but this matter is still open to question, as will be seen by the following Scotch case. Section 98 of the Licensing (S.) Act, 1903, 3 Edw. 7, c. 25,<sup>1</sup> enacts:—"Where a licensed person is charged with permitting drunkenness on the premises, and it is proved that any person was drunk on his premises, it shall lie on the licensed person to prove that he and the persons employed by him took all reasonable steps for preventing drunkenness on the premises." This section, which is identical with section 4 of the English Licensing Act, 1902, was clearly not intended in ease of the publican; but to meet the case where the publican and his servants were not aware of the drunkenness (which, but for the section, would have been a defence), but should have been aware of it, if they had exercised due diligence. The following case was decided under this section. A drunken man was assisted into the bar of a public house by two friends, who, themselves sober, were to be treated by him. The keeper of the public house refused to supply the drunken man with alcoholic liquor, and advised him to go home, and supplied him with a bottle of non-alcoholic liquor, and supplied the two friends with a glass of whiskey, on their undertaking to see the drunken man home. The three men consumed these liquors seated in the bar, and had been there about ten minutes, when a constable looked in and drew attention to the drunken man's condition. Three minutes later they left, the two friends assisting the drunken man. The publican having been charged with contravention of his certificate by knowingly permitting drunkenness on his premises, it was held on appeal that no contravention had been established, he having discharged the onus on him under the Licensing (S.) Act, 1903, of proving that he "took all reasonable steps for preventing drunkenness on the premises" (*Soutar v. McAuchinachie*, (1909) 46 S.L.R. Ct. of Just. 243).

It has been held in England that where a guest arrived at a hotel after the closing hour and engaged a bedroom, and was drunk to the knowledge of the hotel manager, the fact that he was allowed into the hotel constituted the offence of permitting drunkenness (*Thompson v. Mackenzie*, (1908) 1 K.B. 905). The point raised on behalf of the defendant—and the sole

<sup>1</sup> In Scotland, the licence itself contains regulations as to the conduct of licensed premises, one of which forbids the licensed person "to permit drunkenness" on his premises.



point, apparently, argued at the hearing—was, that as the licensed premises were closed to the general public at the time the drunken man came to the premises, no conviction of permitting drunkenness on the premises was sustainable. The point does not seem to have been made that merely giving shelter to a drunken man does not amount to “permitting drunkenness to take place”; and it is submitted, therefore, that the decision does not in any way impeach the validity of the Scotch decision referred to above.

Permitting drunkenness ; selling to drunken person.

It is immaterial whether the offence takes place during closing hours (*R. v. Pelly*, (1897) 2 Q.B. 33; *Thompson v. Mackenzie*, *supra*), or that the persons drunk were private guests of the publican (*Lawson v. Edminson*, (1908) 2 K.B. 952).

It was proved (1) that a person had been drinking in the defendant's licensed house; (2) that this was the last publichouse he visited, and that he got two or more glasses of whiskey there; and (3) that three quarters of an hour later he was found drunk in a ditch a hundred yards from the licensed house. *Held*, that this was some evidence to support a conviction for permitting drunkenness (*Ex parte Ethelstane*, (1875) 33 L.T. 339).

On a charge of selling drink to a drunken person it is immaterial whether the publican knew that the customer was drunk or not (*Cundy v. LeCocq*, (1884) 13 Q.B.D. 207). It is an offence to supply drink to a sober customer for the use of himself and a drunken companion (*Scatchard v. Johnson*, (1888) 57 L.J.M.C. 41); but it is submitted that this case should be taken subject to the qualification that the publican will not be guilty if he does not know that the liquor is intended for the drunken customer. It is now an offence for a sober person to procure or attempt to procure drink for a drunken person, see **PROCURING DRINK FOR DRUNKEN PERSON**, *infra*.

A licensed person is liable for the acts of his servant in charge, even though such acts be contrary to express general instructions (*Commissioners of Police v. Cartman*, (1896) 1 Q.B. 655; *Worth v. Brown*, (1898) 62 J.P. 658). For other cases on the liability of a licensed person for the acts of his servants, see **MASTER AND SERVANT**, p. 292, *et seq.*

It is not necessary to state in the summons the name of the person who, whilst drunk, is supplied with drink or permitted to be on the premises (*Wray v. Toke*, (1848) 12 Q.B. 492).

“If any licensed person knowingly permits his premises to be the habitual resort of, or place of meeting of, reputed prostitutes, whether the object of their so resorting or meeting is or is not prostitution, he shall, if he allow them to remain thereon longer than is necessary for the purpose of obtaining reasonable refreshment, be liable to a penalty not exceeding, for the first offence, £10; and not exceeding for the second and any subsequent offence, £20” (*Licensing Act*, 1872, s. 14). The conviction is recordable (see p. 580).

Permitting prostitutes.

A prostitute was seen on licensed premises by a constable, and left, on being spoken to by the publican, on the constable's entrance. *Held*, no evidence to warrant a conviction (*Miller v. Dudley JJ.*, (1898) 46 W.R. 606). It is not necessary to state in the summons the names of the prostitutes, or to aver that the names are unknown (see *Wray v. Toke*, (1848) 12 Q.B. 492, decided on section 13 of 1 Wm. 4, c. 64, forbidding the permitting of disorderly persons). See also **TOWNS IMPROVEMENT**.

“Any person who, being on any premises licensed for the sale of intoxicating liquors, whether for consumption on or off such premises, shall procure or attempt to procure any intoxicating liquor for consumption by any drunken person, or who shall aid and abet any drunken person in obtaining or consuming any intoxicating liquor on or in the immediate vicinity of any premises so licensed as aforesaid”—*Penalty*, not exceeding 40s., or imprisonment not exceeding one month, with or without hard

Procuring drink for drunken person.

labour: "Provided always, that no person shall be liable to be convicted unless the court is satisfied that he knew, or ought to have known, the condition of the person in connection with whom the charge is brought."—(*Summary Jurisdiction (Ir.) Act, 1908, s. 10*).

**Production of licence.**

"Every holder of a licence, or of an order of exemption made [by a local authority]<sup>1</sup> in pursuance of this Act, shall, by himself, his agent or servant, produce such licence or order within a reasonable time after the production thereof is demanded by a justice of the peace, constable, or officer of inland revenue, and deliver the same to be read and examined by him"—*Penalty, not exceeding £10 (Licensing Act, 1872, s. 64)*.

"Every holder of a licence, excise licence, wholesale beer dealer's licence, or order of exemption made under this Act, who, on being required by any recorder or court of quarter sessions on the hearing of any appeal, or by a divisional justice or justice of the peace on the hearing of any summons or complaint, shall not produce and deliver such licence, excise licence, wholesale beer dealer's licence, or order to be read and examined by such recorder, court, or justice respectively, shall be subject to a penalty not exceeding £10, whether it shall or shall not be stated in any summons that such production will be required" (*Licensing (Ir.) Act, 1874, s. 33*).<sup>2</sup>

**PROHIBITED HOURS, SALE, &c., DURING.**

	PAGE.		PAGE
List of opening hours, . . .	556	Exemptions:—	
History of legislation, . . .	557	(4) railway stations, . . .	563
Sale, &c. during prohibited hours, . . .	557	(5) canteens, . . .	563
Extent of licensed premises, . . .	558	Form of summons and conviction, . . .	563
What is a "sale," . . .	558	Penalties on persons on licensed pre-	
What is an "opening," . . .	558	mises during prohibited hours, . . .	563
Exemptions:—	559-563	Provision as to mixed business, . . .	563
(1) <i>bonâ fide</i> travellers, . . .	560	Spirit grocers, . . .	564
(2) lodgers, . . .	562	Licences not requiring justices' certi-	
(3) private friends, . . .	562	ficate, . . .	564

**Prohibited hours, sale, &c., during. List of opening hours.**

The following is a list of the hours during which, pursuant to the Refreshment Houses (Ir.) Act, 1860, s. 43; the Beer Houses (Ir.) Act, 1864, s. 6; the Licensing Act, 1872, ss. 78, 86; the Sale of Liquors on Sunday (Ir.) Act, 1878, s. 1; the Licensing (Ir.) Act, 1905; the Intoxicating Liquors (Ir.) Act, 1906, ss. 1 & 2, a person licensed for the sale of intoxicating liquor can keep his premises open for such sale.<sup>3</sup>

	Dublin, Belfast, Cork, Limerick, and Waterford.	Other towns with population <sup>4</sup> over 5000.	All other places.
Saturday, . . .	7 A.M. to 10 P.M.	7 A.M. to 10 P.M.	7 A.M. to 9 P.M.
Sunday, . . .	2 P.M. to 5 P.M.	None.	None.
Christmas Day, . . .	None.	None.	None.
Good Friday and days of public fast and thanksgiving, . . .	2 P.M. to 9 P.M.	2 P.M. to 9 P.M.	2 P.M. to 7 P.M.
Other days, . . .	7 A.M. to 11 P.M.	7 A.M. to 11 P.M.	7 A.M. to 10 P.M.

<sup>1</sup> The words in brackets are impliedly repealed by s. 11 of the Licensing (Ir.) Act, 1874.

<sup>2</sup> Other provisions: Licence must be produced to Excise officer on demand—*Excise penalty, £20 (Excise Licences Act, 1825, 6 Geo. 4, c. 81, s. 28)*. Beer licence to be produced if required on hearing of complaint—*Penalty, not exceeding £5 (Beerhouse (Ir.) Act, 1864, 27 & 28 Vict. c. 35, s. 9)*.

<sup>3</sup> The exceptions will be found noted, *infra*.

<sup>4</sup> The population of any area for the purposes of this Act shall be ascertained according to the last published census for the time being (*Licensing Act, 1872, s. 65*). As to evidence of population, see p. 280, *ante*.

The beforementioned times mean Dublin time (*Statutes (Definition of Time) Act, 1880*).

Early-closing licences must close one hour earlier than the hours above mentioned (*Licensing Act (Ir.)*, 1874, s. 2), including the hours above mentioned as applicable to Saturday (see *Rowan v. Downing*, (1909) 2 I.R. 626).

A six-day licensee must close the entire of Sunday, and cannot supply liquor, even to a *bona fide* traveller or lodger on that day (*Licensing Act*, 1872, s. 49). The holder of a six-day licence is not bound to close his licensed premises during the whole of Good Friday, but is only bound to close on that day during the hours of closing applicable to licensed premises generally (*Davies v. Harrison*, (1909) 2 K.B. 104).

Notwithstanding the provisions of the 63 & 64 Vict. c. cclxiv., extending the area of the city of Dublin, a licensed person within the "added area" in Dublin, e.g., Clontarf, is not within the city of Dublin for licensing purposes, and cannot therefore open on Sunday (*Doyle v. Lambe*, (1901) 2 N.I.J.R. 107, 3 N.I.J.R. 186; *R. (Powell) v. Mahony*, unreported, K.B.D., May, 1908).<sup>1</sup>

The following is a summary of the statutory provisions fixing the closing hours. The opening hours for premises licensed for the sale by retail of beer, cider, spirits, or wine, under the Refreshment Houses (Ir.) Act, 1860, 23 & 24 Vict. c. 107, s. 43, were 7 a.m. to 11 p.m., except Sunday, Good Friday, Christmas Day, or day of public fast or thanksgiving, on which the hours were between 2 p.m. and 11 p.m. By the Beer Houses (Ir.) Act, 1864, 27 & 28 Vict. c. 35, s. 6, those hours were applied to the premises of beer retailers. The Licensing Act, 1872, s. 78, forbade opening on Sunday, Christmas Day, Good Friday, or any day appointed for a public fast or thanksgiving, after 9 p.m., in a town exceeding 5,000, elsewhere 10 p.m., for the sale of intoxicating liquors, and included (s. 86) the premises of spirit grocers.

The Sale of Liquor on Sunday (Ir.) Act, 1878, 41 & 42 Vict. c. 72, s. 1, prohibited the opening of premises for which opening hours had been fixed by the Acts of 1860, 1864, 1872, on Sundays, save in Dublin, Belfast, Cork, Limerick, and Waterford, and limited the hours there to 2 to 7. The Licensing (Ir.) Act, 1905, 5 Edw. 7, c. 3, forbade the opening of such premises anywhere in Ireland at any hour on Christmas Day; and the Intoxicating Liquor (Ir.) Act, 1906, 6 Edw. 7, c. 39, changed the opening hours on Sundays for Dublin, Belfast, Cork, Limerick, and Waterford, to between 2 p.m. and 5 p.m., and made the closing hour on Saturday nights 10 p.m. in towns with population over 5,000, according to the last census, and elsewhere 9 p.m., and made provisions for cases where mixed business is carried on; see p. 563, *post*.

The provisions as to closing hours do not apply to the sale of intoxicating liquor by wholesale (see *R. v. Jenkins*, (1891) 65 L.T. 857), which sale, as well as that of spruce or black beer, sales in theatres (but see *Gallagher v. Rudd*, (1898) 1 Q.B. 114, noted p. 118, *ante*), packet boats, or canteens under statutory authorization, sales on special occasions under statutory authority, sales of medicated or methylated spirits, and sales of spirits made up in medicine by medical practitioners, or chemists and druggists, are by s. 72 of the Act of 1872 expressly exempted. As to premises not requiring a justice's certificate, see p. 564, *post*.

"Any person who sells or exposes for sale,<sup>2</sup> or opens or keeps open any premises for the sale of, intoxicating liquors at any other times than those limited for such purpose by section 43 of the Refreshment Houses (Ireland)

Prohibited hours, sale, &c., during. Early-closing licence.

Six-day licence.

Dublin.

History of legislation.

Sale, &c., during prohibited hours.

<sup>1</sup> At the time of going to press a Bill is before Parliament as to D.M.P. district; see APPENDIX OF STATUTES, where the statute will be found, if passed before publication.

<sup>2</sup> Can a defendant be convicted, on the same facts, of selling and exposing, *quære* (*R. v. South Shields JJ.*, (1911) 27 T.L.R. 330)?



Prohibited  
hours, sale,  
&c., during.

Act, 1860, as the same is amended by this section, or during such times as aforesaid allows any intoxicating liquors to be consumed on such premises"—*Penalty*, not exceeding, first offence, £10; subsequent offence, £20. "None of the provisions contained in this section shall preclude a person licensed to sell any intoxicating liquor to be consumed on the premises from selling such liquor to *bona fide* travellers<sup>1</sup> or to persons lodging in his house. Nothing in this section contained shall preclude the sale at any time at a railway station of intoxicating liquors to persons arriving at or departing from such station by railroad" (*Licensing Act*, 1872, s. 78).

Extent of  
licensed  
premises.

A conviction under the section is recordable (see p. 580).

The defendant was charged with allowing intoxicating liquor to be consumed on his licensed premises during prohibited hours. The justices found that the place where the liquor was allowed to be consumed was a yard which originally did not form portion of the licensed premises, and had been purchased by the defendant about five years before the date of the offence. This yard was separated by a fence from the yard at the rear of the defendant's public-house; but there was a large gap in the fence, and it had been used for several years past by the defendant in common with his public-house, but for agricultural, and not for licensed trade, purposes, and it was held under a separate valuation from the public-house premises. On these facts it was held that the yard in question formed portion of the licensed premises (*R. (Beirne) v. Liston*, (1910) 44 I.L.T.R. 82; but the case seems inconsistent with *Murnane v. Adams*, (1910) 2 I.R. 175, a decision of Lord O'Brien, C.J., Madden and Wright, JJ., noted p. 569, *post*<sup>2</sup>).

What is a  
sale.

"In proving the sale or consumption of intoxicating liquor for the purpose of any proceeding relative to any offence under this Act, it shall not be necessary to show that any money actually passed, or any intoxicating liquor was actually consumed, if the court hearing the case be satisfied that a transaction in the nature of a sale actually took place, or that any consumption of intoxicating liquor was about to take place; and proof of consumption or intended consumption of intoxicating liquor on premises to which a licence under this Act is attached, by some person other than the occupier of, or a servant in, such premises, shall be evidence that such liquor was sold to the person consuming or being about to consume or carrying away the same by or on behalf of the holder of such licence" (*Licensing Act*, 1872, s. 62).

What is  
"opening."

In order to constitute an offence of opening or keeping open, there must be (1) a physical opening or keeping open during prohibited hours, and (2) such opening or keeping open must be for the purpose of sale (*Jeffrey v. Weaver*, (1899) 2 Q.B. 449; *Lloyd v. Barnett*, (1900) 19 Cox, 540; *Commissioner of Police v. Roberts*, (1904) 1 K.B. 369; see also *Tennant v. Cumberland*, (1859) 1 E. & E. 401; *Cates v. South*, (1859) 1 L.T. 365; *Jefferson v. Richardson*, (1871) 35 J.P. 470; cf. *Finch v. Blundell*, (1862) 5 L.T. 672; *Smith v. Vaux*, (1862) 6 L.T. 46; *Thompson v. Greig*, (1870) 34 J.P. 214; *Brewer v. Shepherd*, (1872) 37 J.P. 102; *Pearse v. Gill*, (1877) 41 J.P. 742). "In order to constitute the offence of 'keeping open,' there must be a keeping open of the premises in the sense that people can get in from the outside to have intoxicating liquor, or that they can get it supplied to them when outside" (*per* Lord Alverstone, C.J., in *Commissioner of Police v. Roberts*, *supra*, in which case it was held

<sup>1</sup> For definition of *bona fide* traveller, see *Licensing Act*, 1874, s. 28, *post*, p. 560.

<sup>2</sup> But the defendant in *R. (Beirne) v. Liston*, *supra*, could have been rightly convicted either (a), of selling on his licensed premises during prohibited hours, if the appropriation of the liquor and, therefore, the sale took place in the licensed house, or (b) in the alternative, of selling without a licence or at a place not authorized by his licence contrary to s. 3 of the *Act* of 1872.

that, when the outer doors were closed at closing time, the fact that customers remained on the premises, and that the licensee intended to supply them, did not amount to a keeping open within the section).

**Prohibited hours, sale, &c., during.**

Where a bargain is made, during opening hours, for the sale of goods then and there paid for and appropriated to the customer, but one of the terms is that delivery is to take place during prohibited hours, the opening during prohibited hours for the purpose of delivery in pursuance of the contract is an offence under s. 78 (*Noblett v. Hopkinson*, (1905) 2 K.B. 214; *Saunders v. Thorney*, (1898) 14 T.L.R. 346; cf. *Goldstein v. Vaughan*, (1897) 1 Q.B. 549); but when the goods were paid for and appropriated during opening hours, and the arrangement was that they should be called for subsequently during opening hours, but, through an oversight, they were not called for till after closing hours, this was held not to constitute an offence (*Mackenzie v. Spear*, (1902) unreported, referred to in *Noblett v. Hopkinson*, *supra*).

*Delivery after closing hours.*

An opening, *per se*, of licensed premises during prohibited hours constitutes no offence; the gist of the offence being an opening for sale (*Brigden v. Heighes*, (1876) 1 Q.B.D. 330; *Tassel v. Orenden*, (1877) 2 Q.B.D. 383; *Lloyd v. Barnett*, (1900) 19 Cox 540; cf. *R. (Williams) v. Doherty*, (1899) 33 I.L.T.R. 170; *Hyland v. Hamilton*, (1902) 36 I.L.T.R. 193; *R. (Lock) v. Ryan*, (1909) 43 I.L.T.R. 110).<sup>2</sup> The fact that a man is on licensed premises during prohibited hours for the purpose of playing billiards and not of drinking constitutes no offence (*Gallagher v. Flower*, (1896) 2 I.W.L.R. 171). The opening of licensed premises for the purpose of admitting fresh air, and as a means of egress and ingress for the licensed person and his family, does not constitute an offence (*Walsh v. Galvin*, 30 June, 1910, unreported, in which the Crown did not press for a decision, and the acquittal by the justices was allowed to stand; see p. 245 n.).

*"For the sale of" intoxicating liquor.*

The question whether premises are open for the illicit sale of liquor is entirely one of fact for the justices (*R. (Lock) v. Ryan*, *supra*).

A master will, generally speaking, be liable for the acts of his servant (see p. 292). The holder of a six-day licence was charged with a sale on Sunday. The justices accepted the defendant's story, which was that he was in bed at the time, that the sale was made by his wife without his knowledge, and contrary to express general instructions, and dismissed the case. The King's Bench Division, without approving of the finding of the justices, declined to reverse same, the question being one of fact (*Brownrigg v. Mulligan*, 9 Oct., 1910, K.B.D.Ir., unreported, noted fully, p. 571).

*Master's liability for acts of servant.*

Section 78 of the Licensing Act, 1872, *ante*, exempted sales to *bona fide* travellers.

**Statutory exemptions.**

"If in the course of any proceedings which may be taken against any person licensed to sell any intoxicating liquor to be consumed on the premises for infringing the provisions of the principal Act relating to the closing of premises, such person (in this section referred to as the defendant) fails to prove that the person to whom the intoxicating liquor was sold (in this section referred to as the purchaser) is a *bona fide* traveller, but the justices are satisfied that the defendant truly believed that the purchaser was a *bona fide* traveller; and further, that the defendant took all reasonable precautions to ascertain whether or not the purchaser was such a traveller, the justices shall dismiss the case as against the defendant, and if they think that the purchaser falsely represented himself to be a *bona fide* traveller, it shall be lawful for the justices to direct proceedings

<sup>1</sup> But as to licensed premises in which a mixed business is carried on, see p. 564, *post*.

<sup>2</sup> See p. 564 n. 2 as to effect of these cases.



Prohibited  
hours, sale,  
&c., during.  
Exemptions.

to be instituted against such purchaser under the next preceding section of this Act. A person for the purposes of this Act and the principal Act shall not be deemed to be a *bona fide* traveller unless the place where he lodged during the preceding night is at least three<sup>1</sup> miles distant from the place where he demands to be supplied with liquor, such distance to be calculated by the nearest public thoroughfare" (*Licensing (Ir.) Act, 1874, s. 28*).

"Nothing in this Act shall be construed to apply to sales of intoxicating liquor to lodgers, or to the sale of intoxicating liquor in packet boats,<sup>2</sup> or in canteens, in pursuance of any Act regulating the same, or shall preclude the sale at any time at a railway station of intoxicating liquors on arrival or departure of trains, or to *bona fide* travellers as described in the Licensing Act of 1874" (*Sale of Liquors on Sunday (Ir.) Act, 1878, s. 3*).

"For the purposes of this Act and the other Acts relating to the sale of intoxicating liquors, a person residing or lodging within the metropolitan police district of Dublin<sup>3</sup> or any of the cities of Waterford, Cork, Limerick, and Belfast shall not be deemed to be a *bona fide* traveller, unless the place where he lodged during the preceding night is at least five miles distant from the place where he demands to be supplied with liquor, such distance to be calculated by the nearest public thoroughfare" (*Intoxicating Liquors (Ir.) Act, 1906, s. 3*).

(1) *Bona fide*  
travellers.

Whether business or pleasure is the traveller's object is immaterial. *Atkinson v. Sellers*, (1858) 5 C.B.N.S. 442; *Taylor v. Humphries*, (1861) 10 C.B.N.S. 429; *Taylor v. Humphries*, (1864) 17 C.B.N.S. 539; but if a person travels merely for the purpose of obtaining liquor, he is not a *bona fide* traveller (*Penn v. Alexander*, (1893) 1 Q.B. 522). Where, however, the customer's going abroad is *bona fide* for a purpose other than to get drink, and he prolongs or extends his journey for the purpose of getting drink, he will be a *bona fide* traveller (*Cowap v. Atherton*, (1893) 1 Q.B. 49; *Dames v. Bond*, (1891) 55 J.P. 503; *Oldham v. Sheasby*, (1891) 60 L.J.M.C. 81). In a Scotch case, *Johnston v. Laing*, (1876) 3 C. 250, Lord Young said that "he thought that in order to be a traveller, it was not necessary that a man should be travelling upon business or otherwise than on foot. It was sufficient that he was from home fairly and honestly, not out for drink, but for exercise or legitimate amusement such as the law allowed, and at some distance from home. Upon the question of distance, he thought that being four miles from home was abundantly sufficient to afford a reasonable excuse for having a glass of beer at a hotel, and unless there was some strong reason for acting otherwise, it was scarcely fair to deal so hardly with the man. However, the matter was left to the discretion and judgment of the magistrates." "To suppose that the legislature," in enacting an exception in favour of *bona fide* travellers, "had in view the stream of wanderers from the great centres of population who walk three or five miles for the sole purpose of getting refreshments is an utter absurdity" (*per* Madden, J., in *R. (Lock) v. Ryan*, 43 I.L.T.R. 110).

The three or five mile limit is measured by the nearest public thoroughfare, which expression will include a navigable arm of the sea, whether there is a public thoroughfare or not (*Coulbert v. Troke*, (1875) 1 Q.B.D. 1; *Parker v. Walsh*, (1896) 2 I.R. 404). It has been held that the distance must be measured from the traveller's "place," and not from his home, and therefore must be taken between the outskirts of

<sup>1</sup> For *three* read *five*, in the cases of Dublin, Limerick, Cork, Waterford, and Belfast (6 Edw. 7, c. 39, s. 3, *infra*).

<sup>2</sup> As to which, see PASSENGER VESSEL LICENCES, p. 553, *ante*.

<sup>3</sup> A section of a Bill before Parliament is apparently aimed at removing any doubts that might arise as to the applicability of the above section to the added area in D.M.P. district. See APPENDIX OF STATUTES, where the Act, if it becomes law before publication, will be found.



his farm and the public-house, and the length of the avenue leading to the house must be disregarded (*Langhorn v. Massy*, (1900) 34 I.L.T.R. 161, 1 N.I.J.R. 4; *Nagle v. Devane*, (1901) 2 N.I.J. 17). In *Nagle v. Devane*, which was decided upon the authority of *Langhorn v. Massy*, Gibson, J., without actually dissenting, expressed doubts as to the correctness of the decision.

Prohibited  
hours, sale,  
&c., during  
Exemptions.  
(1) *Bona fide*  
travellers.

If a person is a *bona fide* traveller in a certain place, he does not cease to be so by reason of the fact that he has already been supplied in that place with refreshment (*Oldham v. Sheasby*, (1891) 60 L.J.M.C. 81).

Whether the fact, that the place of arrival is the ultimate destination of the traveller, makes any difference, has not been the subject of decision in the Irish or English courts, but the following Scotch cases have been decided in reference to the point. A resident of the town of Lerwick, who had been absent for some months, arrived there by steamer early on a Sunday morning, and went home and slept there. At noon of the same day he went to a hotel, where he was supplied with intoxicating liquor. Held, that he was not a traveller at the time he was so supplied (*Galloway v. Wiber*, (1889) 16 R. (J.) 46). A person, resident in Port-William, left home on Sunday morning on a visit to Glenluce, ten miles distant. On his return in the evening, he was supplied with liquor at a hotel in Port-William, a quarter of a mile distant from his house. Held, that he was not a *bona fide* traveller (*Cairns v. Todd*, (1910) S.C. (J.) 17). On the facts of the last case no question could have arisen in Ireland, as the three-mile condition (not necessary in Scotland) had not been performed; but the case is valuable as indicating what a traveller is. "Upon the question whether McNeillie was a traveller, I cannot hold that he was *in itinere*, when in point of fact he was at home" (*ib.*, per Lord Mackenzie). The test, in each case, would seem to be—had the alleged traveller finished his travel? The fact that he had not actually set foot on his own threshold would not be conclusive in his favour, although, as in the Lerwick case, the fact that he had been in his residence would be conclusive against him. On the other hand, the fact that, at the time of the alleged offence, he was physically within the city or town where his residence was, would not be conclusive against him, though such fact would be a material element in determining the question, was his journey at an end.

The onus of proving that persons on licensed premises during prohibited hours are *bona fide* travellers, or lawfully on the licensed premises, lies upon the defendant (*Roberts v. Humphreys*, (1873) L.R. 8 Q.B. 483; *Gallimore v. Goodall*, (1874) 38 J.P. 597; *Watt v. Glenister*, (1875) 32 L.T. 856; *Harbottle v. Gill*, (1877) 41 J.P. 742; as to proof where, on the arrival of a large number of persons by train, the publican unwittingly serves persons who have not so arrived, and who are not *bona fide* travellers, see *Peache v. Colman*, (1866) L.R. 1 C.P. 324).

In England it has been held, in *Mountfield v. Ward*, (1897) 1 Q.B. 326, decided upon the construction of s. 10 of the English Licensing Act, 1874, 37 & 38 Vict. c. 49, that a licensed person commits an offence under that section if he sells liquor to a *bona fide* traveller for consumption elsewhere than upon the premises. That section enacts that nothing in the Act of 1872, or in the English Act of 1874, "shall preclude a person licensed to sell any intoxicating liquor to be consumed on the premises from selling such liquor at any time to *bona fide* travellers; and the decision in *Mountfield v. Ward*, therefore, which turned upon the fact that the section contained the words "*such liquor*" (which words are also used in s. 78 of the Act of 1872), seems to be equally applicable to Ireland.

Prohibited  
hours, sale,  
&c., during.  
Exemptions.

It is still an open question whether a *bona fide* traveller can, under any circumstances, order and pay for intoxicating liquor during prohibited hours for another person who is not a *bona fide* traveller; but where the justices found that the defendant accompanied a *bona fide* traveller to an inn during prohibited hours, for the sole purpose of getting something to drink under colour of the *bona fide* traveller's right, it was held that an offence was committed by the defendant under s. 25 of the Licensing Act, 1872,<sup>1</sup> though the drink was to be, and was, ordered and paid for by the *bona fide* traveller; but the court refrained from expressing any opinion on the question, whether under any circumstances a *bona fide* traveller could, during prohibited hours, entertain upon the licensed premises a person who was not a *bona fide* traveller (*Jones v. Jones*, (1910) 2 K.B. 262). In Scotland it has been held that no offence is committed by a sale to a *bona fide* traveller of liquor for the consumption of himself and his friend, even though the licensed person knew that part of the liquor was for the use of the friend. "H was there in the exercise of his rights as a *bona fide* traveller, and as such was entitled to order what refreshment he desired, which the hotel-keeper, as keeper of a public place of entertainment, was bound to supply him; but when the hotel-keeper had sold to H what H was entitled to order, I regard the hotel-keeper's interest in and connection with the sale as at an end, and he had no responsibility for the manner in which the traveller, who had lawfully bought refreshment, disposed of it" (*Oliver v. Louden*, (1896) 33 S.L.R. 274, per Lord Trayner).<sup>2</sup>

(2) *Lodgers.*

Section 78 of the Licensing Act, 1872, p. 558, *ante*, exempts sales "to persons lodging in his house." It is clear that the exemption is not confined to a paying lodger, but includes any inmate of the house.

A lodger can entertain his friends on the licensed premises, and supply them with liquor *bona fide* purchased by the lodger after prohibited hours (*Pine v. Barnes*, (1887) 20 Q.B.D. 221). As to whether this applies to *bona fide* travellers, see *supra*.

(3) *Private  
friends.*

"No person keeping a house licensed for the sale of any intoxicating liquor, to be consumed on the premises, shall be liable to any penalty for supplying intoxicating liquors after the hours of closing to private friends *bona fide* entertained by him at his own expense" (*Licensing (Ir.) Act*, 1874, s. 29).

In *O'Connor v. O'Reilly*, (20 June, 1910, K.B.D. (Ir.) unreported), two men visited the licensed premises of the defendant, a short time before closing hour, and had a drink or two in the bar before closing hour, for which they paid. When coming up to closing hour, the defendant proceeded to clear the house, and while doing so, as these men were about to leave, he invited them to remain and have a drink with him. They did so and went into the kitchen, where the defendant treated them to drink. The justices believed the defendant's story, and dismissed the charge. *Held*, that having regard to their findings of fact, the decision of the justices was correct. But justices should be slow to accept explanations of this kind (see *Corbet v. Haigh*, (1879) 5 C.P.D. 50.)<sup>3</sup> Where justices found, as a matter of fact, that the son of the licence-holder, acting as manager of his father's business, and in his father's absence, *bona fide* entertained his friends after closing hours, it was held that a charge under s. 78 was rightly dismissed (*Armstrong v. Donovan*, (1902) 3 N.I.J.R. 15).

<sup>1</sup> Corresponding to s. 27 of the Licensing (Ir.) Act, 1874, p. 563, *infra*.

<sup>2</sup> A later Scotch case to the contrary (*Cairns v. Todd*, (1910) S.C. (J.), 17) was decided on s. 60 of the Licensing Act (S.) 1903, 3 Ed. 7, c. 25, forbidding the sale to a traveller "except for the personal use of, and to be drunk by such traveller within such inn," &c.

<sup>3</sup> *Corbet v. Haigh* is frequently cited in support of the proposition, that a publican, at closing hour, cannot "convert a customer into a private friend"; but it is no authority for any such general proposition, which is opposed to *O'Connor v. O'Reilly*, *supra*.



Section 78 of the Licensing Act, 1872, and section 3 of the Sale of Liquor on Sunday (Ir.) Act, 1878, both *verbatim*, ante, pp. 558 and 560, respectively contain provisions exempting sales at a railway station.

It has been held that in the case of a sale at a railway station, the fact that the object of the traveller is merely to obtain liquor is immaterial (*Williams v. McDonald*, (1899) 2 Q.B. 308). It has been held—and, it is submitted, rightly held—in the Dublin metropolitan police courts (E. G. Swifte, divisional justice), that the right to supply liquor on the arrival or departure of trains does not extend to all comers, but is confined to persons arriving at or departing from the station by railroad (*Reilly v. Keogh*, (1903) 37 I.L.T.R. 179). A person who has *bona fide* taken a ticket at a railway station, intending to depart by train, was, under the 2 & 3 Vict. c. 47, s. 42 (prohibiting sales in London within certain hours except to “travellers”), held to be a traveller, though he had not started on his journey (*Fisher v. Howard*, (1864) 34 L.J.M.C. 42).

The sale of spirits in canteens is specially exempted from the provisions of the Licensing Act of 1872, by s. 72 of that Act; and section 3 of the Sale of Liquor on Sunday (Ir.) Act, 1878, contains an exemption as to canteens, *q.v.*, p. 560, ante.

It has been held in England that a person who holds a canteen licence can sell to a civilian (*Dickeson v. Mayes*, (1910) 1 K.B. 452).

The summons or conviction need not aver that the purchaser was not a *bona fide* traveller or lodger (*R. (Mooney) v. Dublin JJ.*, (1881) 8 L.R.I. 274; see also *Roberts v. Humphreys*, (1873) L.R. 8 Q.B. 483). A person cannot be convicted both of opening and selling where the selling and opening are part of the same transaction (*Dorrian v. McHugh*, (1907) 2 I.R. 564). Each of several sales on the same day constitutes a separate offence on a charge of selling (*McHugh v. Cartin*, (1903) 3 N.I.J.R. 250).

“If during any period during which any premises are required under the provisions of the principal Act<sup>1</sup> to be closed any person is found on such premises, he shall, unless he satisfies the court that he was an inmate, servant, or a lodger on such premises, or a *bona fide* traveller, or that otherwise his presence on such premises was not in contravention of the provisions of the principal Act with respect to the closing of licensed premises and premises kept by a spirit grocer, be liable to a *penalty* not exceeding 40s. Any constable may demand the name and address of any person found on any premises during the period during which they are required by the provisions of the principal Act to be closed; and if he has reasonable ground to suppose that the name or address given is false, may require evidence of the correctness of such name and address, and may, if such person fail upon such demand to give his name or address, or such evidence, apprehend him without warrant, and carry him as soon as practicable before a justice of the peace. Any person required by a constable under this section to give his name and address who fails to give the same, or gives a false name or address, or gives false evidence with respect to such name and address, shall be liable to a *penalty* not exceeding £5. Every person who, by falsely representing himself to be a traveller or a lodger, buys or obtains, or attempts to buy or obtain, at any premises, any intoxicating liquor during the period during which such premises are closed in pursuance of the principal Act, shall be liable to a *penalty* not exceeding £5” (*Licensing (Ir.) Act*, 1874, s. 27).

“Found” on the premises is equivalent to proved, or ascertained, to have been on the premises (*Thomas v. Powell*, (1893) 57 J.P. 329).

“Where any business, other than the sale of intoxicating liquor, is carried on in the licensed premises, the whole of such premises shall be

**Prohibited hours, sale, &c., during. Exemptions.**  
(4) *Railway station.*

(5) *Canteens.*

Form of summons and conviction.

Penalty on person found on premises during prohibited hours.

Mixed business.

<sup>1</sup> The Act of 1872.



Prohibited  
hours, sale,  
&c., during.  
Mixed  
business.

closed at the hours aforesaid, unless the portion of the same in which such sale of intoxicating liquors is carried on is structurally separated from the remainder of the building. Nothing in this Act shall in any way interfere with the rights of any licensed person who is the owner or lessee of a theatre, music-hall, or other place of public amusement; but all such persons shall have the same rights and privileges as they have now under the existing licensing law as if this Act had not been passed" (*Intoxicating Liquors (Ir.) Act, 1906, 6 Edw. 7, c. 39*).

The effect of this section is that the entire of the premises, including the portion used for business other than the sale of intoxicating liquor, must be closed for business purposes during the statutory period; and if the section be not complied with, the offender will be deemed to commit the offence of keeping open for the sale of liquor, and may be proceeded against accordingly (*Richardson v. Sweeney*, (1908) 42 I.L.T.R. 174). The "hours aforesaid" in the section are not restricted to Saturday nights, but mean prohibited hours generally (*Rowan v. Downing*, (1909) 2 I.R. 626; *R. (Turnbull) v. Glynn*, (1910) 44 I.L.T.R. 233). The structural separation must be a separation of a permanent character, and not of a kind which exists or not at the publican's volition; so that a locked door (*Richardson v. Sweeney, supra*) or a wire network frame, firmly secured by bolts, but removable in about fifteen minutes (*Toppin v. Coleman*, (1910) 2 I.R. 200, 44 I.L.T.R. 60), is not a structural separation within the section.

In *Mercer v. O'Shaughnessy* (9 Dec., 1910, K.B.D. Ir.),<sup>1</sup> portion of the licensed premises consisted of a billiard-room, carried on by the licensee for the purpose of profit. Certain parties having been found in the billiard-room during prohibited hours (but not for the purpose of drink), the publican was charged under the foregoing section. The justices held that a billiard-room was a "place of public entertainment" within the section, and dismissed the charge on that ground. On the hearing in the King's Bench Division, the defendant was not represented. *Held*, that the justices were wrong, and the case was remitted to them with a direction to convict. It was assumed throughout the case that keeping a billiard-room for profit was a business within the section.

Where the statute is not complied with, the proper charge is for opening or keeping open for the sale of intoxicating liquor during prohibited hours, though the premises, in fact, are not open for anything of the kind, but for another business altogether (see *Richardson v. Sweeney, supra*).<sup>2</sup>

Spirit  
grocers.

Licences not  
requiring  
justices'  
certificate.

The provisions as to closing hours apply to spirit grocers (*Licensing Act, 1872, s. 86*).

The provisions as to closing hours extend to licences granted without a justice's certificate (*Martin v. Barker*, (1881) 45 L.T. 214), with the exception of wholesale beer-dealers, specially exempt by section 72 of the Licensing Act of 1872 (*li. v. Jenkins*, (1891) 65 L.T. 857). As to theatre licences, see p. 118, *ante*.

<sup>1</sup> Unreported at time of going to press; but see INDEX OF CASES.

<sup>2</sup> Notwithstanding the dicta of Wright, J., in *Rowan v. Downing*, (1909) 2 I.R. 626, at p. 635, and of Madden, J., in *R. (Lock) v. Ryan*, (1909) 43 I.L.T.R. 110, it is submitted that, apart from the above section, no offence is committed by opening, during prohibited hours, the doors of a publican's premises for any purpose save that of the sale of intoxicating liquors. The cases of *Brigden v. Heighes*, (1876) 1 Q.B.D. 330, *Tassel v. Ovenden*, (1877) 2 Q.B.D. 383, *Lloyd v. Barnett*, (1900) 19 Cox 540, cited *ante*, p. 558, clearly establish this principle, and it is submitted that *R. (Williams) v. Doherty*, (1899), 33 I.L.T.R. 170, and *Hyland v. Hamilton*, (1902) 36 I.L.T.R. 193 (cases not deemed worthy of a place in the authorized reports), cannot be taken to have overruled the English decisions above referred to, as well as many Scotch cases to the same effect. Accordingly, the above section creates an absolutely novel offence.

A licence for a railway restaurant-car may be granted, without the production of a justice's certificate, in respect of a car in which passengers can be supplied with meals, and authorizes the sale by retail to passengers on the car of any intoxicating liquor for consumption on the car (*Finance* (1909-10) *Act*, 1910, Schedule 1 (E)). Contravening the terms of any licence under the Act—*Excise penalty*, £50 (s. 50 (4)).

Railway car  
licences.

"Any licensed person may refuse to admit to, and may turn out of, the premises in respect of which his licence is granted, any person who is drunken, violent, quarrelsome, or disorderly, and any person whose presence on his premises would subject him to a penalty under this Act. Any such person who, upon being requested, in pursuance of this section, by such licensed person, or his agent or servant, or any constable, to quit such premises, refuses or fails so to do, shall be liable to a *penalty* not exceeding £5; and all constables are required, on the demand of such licensed person, agent, or servant, to expel or assist in expelling every such person from such premises, and may use such force as may be required for that purpose. The court committing any person to prison for non-payment of any penalty under this section may order him to be imprisoned, with hard labour" (*Licensing Act*, 1872, s. 18). This section is, by s. 6 of the Act of 1874, extended to premises for which an occasional licence is held.

Refusal to  
leave licensed  
premises.

"The owner or manager of any premises may require any constable on duty to arrest and remove from such premises any person in his employment who is found drunk thereon" (*Summary Jurisdiction (Ir.) Act*, 1908, s. 8).

A person who has been drunken, violent, quarrelsome, or disorderly on former occasions cannot be convicted under the Licensing Act, 1872, s. 18, unless he has been drunk, violent, quarrelsome, &c., between his coming and his being asked to leave, or unless he is a person whose presence would subject the licensed person to a penalty (*Dallimore v. Sutton*, (1898) 78 L.T. 469). But a publican, who is not also an innkeeper, is under no obligation to admit any person to whose presence he for any reason objects; and if any such person refuses to leave, the publican, and anyone that he can get to assist him, have a right to remove such person, who may be convicted of assault if he does in fact assault anyone effecting his removal (*Sealy v. Tandy*, (1902) 1 K.B. 296). A publican, who is not also an innkeeper, is not obliged to serve any customer, whether a traveller or not (*ib.*; *R. v. Rymer*, (1877) 2 Q.B.D. 136); but a capricious refusal to serve customers under such circumstances as would warrant the belief that the publican was engaged in a boycotting conspiracy might be made a cause of objection to the renewal of the licence (*R. (Delaney) v. Queen's County JJ.*, (1887) 20 L.R.I. 167). An innkeeper is bound to supply travellers with reasonable refreshment (*R. v. Rymer*, (1877) 2 Q.B.D. 136); but he is not obliged to admit drunken travellers demanding lodging at his inn (*R. v. Ivens*, (1835) 7 C. & P. 213; see *Thompson v. McKenzie*, (1908) 1 K.B. 905, noted *supra*, p. 554); nor is he bound to permit a person who originally came to his inn as a traveller to remain after such person has lost, by lapse of time, the character of a traveller (*Lamond v. Richard*, (1897) 1 Q.B. 541).

"It shall be lawful for any one justice acting for any county, city, or place where any riot or tumult shall happen, or for any two or more justices where any riot or tumult shall be apprehended and expected to take place, to order or direct that every person selling spirits or beer by retail, and keeping any house or place for that purpose, situate within their respective jurisdictions, and in or near the place where such riot or tumult shall happen or be expected to take place, shall close his house or place at any time, and for such length of time, as such justice or justices shall

Riots:  
closing  
licensed  
premises.

Riots;  
closing  
licensed  
premises.

order or direct; and every person to whom such order shall be given, and who shall keep open such house or other place in violation of such order"—*Penalty, £2 (Licensing (Ir.) Act, 1833, 3 & 4 Wm. 4, c. 68, s. 21)*.

"It shall be lawful for any two justices acting for any county or place where any riot or tumult shall happen or be expected to take place to order or direct that every person licensed under the authority of this Act to sell wine by retail in any house within their respective jurisdictions, in or near the place where such riot or tumult shall happen or be expected to take place, shall close his house at any time which the said justices shall order or direct; and every such person who shall keep open his house at or after any hour at which such justices shall have so ordered or directed such house to be closed shall be taken and deemed to have not maintained good order and rule therein, and to be guilty of an offence against the tenor of the licence granted to him" (*Refreshment Houses (Ir.) Act, 1860, s. 30*). As to punishment, see p. 579.

#### SALE WITHOUT LICENCE, OR AT PLACE NOT AUTHORIZED BY LICENCE.

	PAGE		PAGE
Spirits (Ir.) Act, 1854, . . .	566	Effect of Petty Sessions "transfer," . . .	571
Licensing Act, 1872, . . .	567	"Licensed person," . . .	571
Other statutory provisions, . . .	568	Hotel licence, . . .	571
What is a sale, . . .	568	Licence to disqualified person, . . .	572
Area covered by licence, . . .	569	Second conviction, . . .	572
Delivery at place other than licensed premises, . . .	570	Search warrant, . . .	572
Power of sale restricted to licensee, . . .	570	Illegal "dealing in" intoxicating liquor, . . .	574
Sale by servant, . . .	571	Clubs, . . .	574

Sale without  
licence, or  
at place not  
authorized  
by licence.  
Spirits (Ir.)  
Act, 1854.

"Every person, not being duly licensed to sell wine, spirits, beer, ale, cider, or perry, who shall sell, or keep for sale, or expose for sale, any wine, spirits, beer, ale, cider, or perry, shall for every such offence be liable—for the first offence, to a fine not exceeding £2 nor less than 5s., or to be imprisoned, with or without hard labour, for any term not exceeding one month nor less than one week; and for the second and every subsequent offence, to a fine not exceeding £5 nor less than 20s., or to be imprisoned, with or without hard labour, for any term not exceeding three months nor less than one month; and for the purpose of any such conviction it shall be sufficient to prove that wine, spirits, beer, ale, cider, or perry was kept for sale or exposed for sale by such person or on his premises, or had been illegally consumed on such premises, at any time within two months preceding such alleged offence; and if any person be found drunk in such house, or having the appearance of having been recently drinking, it shall be deemed evidence of his having been drinking in such house, and of the unlawful consumption of wine, spirits, beer,<sup>1</sup> ale, cider, or perry, unless the contrary be proved" (*Spirits (Ir.) Act, 1854, 17 & 18 Vict. c. 89, s. 3*). The penalties under the Acts are recoverable under the Petty Sessions Act (s. 8).

This section does not apply where a person is duly licensed, but trades in excess of his licence—e.g., by breaking out into altogether new premises (*Molloy v. Cunningham*, (1865) 11 Ir. Jur. N.S. 37), or by selling for consumption on, when licensed to sell only for consumption off, the premises (*Quinn v. Murray*, (1862) 8 Ir. Jur. N.S. 392).

A person charged with an offence under this section (or the wife or husband of such person) is not a competent witness; but persons charged

<sup>1</sup> For the purposes of this section "porter" is included in the term "beer" (*Swanzy v. Drohan*, (1909) 43 I.L.T.R. 281). "Beer," for the purposes of the Beerhouses (Ir.) Acts, 1864 and 1871, is expressly declared to include porter (*Beerhouses (Ir.) Act, 1871, s. 3*; see also *Inland Revenue Act, 1880, s. 2*; *Finance (1909-10) Act, 1910, s. 52*); and it is submitted that, generally speaking, it will include porter, even in the absence of a statutory enactment to that effect.



separately under the Act for the same offence are competent witnesses for each other. The fact that drunken persons are found upon the unlicensed premises of a defendant is evidence that must be considered by the justices in determining whether an offence has been committed (*Swanzy v. Drohan*, (1909) 43 I.L.T.R. 281). Sale without licence, &c.

As to whether justices can, in their discretion, notwithstanding the wish of the complainant, try a case of selling without a licence, either under this section or under s. 3 of the Licensing Act, 1872 (*post*), see p. 100 n., *ante*.

“No person shall sell or expose for sale by retail any intoxicating liquor without being duly licensed to sell the same, or at any place where he is not authorized by his licence to sell the same. Any person selling or exposing for sale by retail any intoxicating liquor which he is not licensed to sell by retail, or selling or exposing for sale any intoxicating liquor at any place where he is not authorized by his licence to sell the same, shall be subject to the following penalties—that is to say: (1) For the first offence he shall be liable to a *penalty* not exceeding £50, or to imprisonment, with or without hard labour, for a term not exceeding one month; (2) for the second offence he shall be liable to a *penalty* not exceeding £100, or to imprisonment, with or without hard labour, for a term not exceeding three months, and he may, by order of the court by which he is tried, be disqualified, for any term not exceeding five years, from holding any licence for the sale of intoxicating liquors; (3) for the third and any subsequent offence he shall be liable to a *penalty* not exceeding £100, or to imprisonment, with or without hard labour, for any term not exceeding six months, and may, by order of the court by which he is tried, be disqualified for any term of years, or for ever, from holding any licence for the sale of intoxicating liquors. In addition to any other penalty imposed by this section, any person convicted of a second or any subsequent offence under this section shall, if he be the holder of a licence, forfeit such licence<sup>1</sup>; and in the case of a conviction for any offence under this section the court may, if it thinks expedient so to do, declare all intoxicating liquor found in the possession of any such person as last aforesaid, and the vessels containing such liquor, to be forfeited. No penalty shall be incurred under this section by the heirs, executors, administrators, or assigns of any licensed person who dies before the expiration of his licence, or by the trustee of any licensed person who is adjudged a bankrupt, or whose affairs are liquidated by arrangement before the expiration of his licence, in respect of the sale or exposure for sale of any intoxicating liquor, so that such sale or exposure for sale be made on the premises specified in such licence, and take place prior to the special session<sup>2</sup> then next ensuing, or (if such special session be holden within fourteen days next after the death of the said person, or the appointment of a trustee in the case of his bankruptcy, or the liquidation of his affairs by arrangement) take place prior to the special session<sup>2</sup> holden next after such special session<sup>2</sup> as last aforesaid” (*Licensing Act*, 1872, s. 3). Licensing Act, 1872.

“The occupier of any unlicensed premises on which any intoxicating liquor is sold, or if such premises are occupied by more than one person, every occupier thereof, shall, if it be proved that he was privy or consenting to the sale, be subject to the penalties imposed upon persons for the sale of intoxicating liquors without licence” (*Licensing Act*, 1872, s. 4).

See also as to “dealing” in intoxicating liquor without a licence (*Licensing (Ir.) Act*, 1874, s. 24, p. 573, *post*).

<sup>1</sup> On the same facts, a defendant was convicted of selling at a place not authorized by his licence and also of exposing for sale. *Held*, that there had been no “second offence” (*R. v. South Shields JJ.*, (1911) 27 T.L.R. 330. *Quære*, on the same facts, can a person be convicted both of selling and exposing (*ib.*)?

<sup>2</sup> Meaning petty sessions (s. 77).

Sale without  
licence, &c.  
Other  
statutory  
provisions.

The following are other provisions:—Selling beer by retail at a place other than the premises specified in the licence, deemed a sale without a licence—*Excise Penalty, £20 (Excise Act, 1860, 23 & 24 Vict. c. 113, s. 37).* Selling beer by retail without licence—*Excise Penalty, £20.* for which the police may prosecute (*Revenue Act, 1863, 26 & 27 Vict. c. 33, s. 3*).

“If any person sells by retail any intoxicating liquor, for the retail sale of which he is required to take out a licence under this Act, without taking out such a licence, he shall be liable in respect of each offence, at the election of the Commissioners, either to an Excise penalty of £50, or to an Excise penalty equal to treble the amount of the full duty” (*Finance (1909–10) Act, 1910, 10 Ed. 7, c. 8, s. 50 (3)*).

A retailer's licence authorizes sale, at any one time to one person, of liquor in the following quantities, namely:—(a) in the case of spirits, wine, or sweets,<sup>1</sup> in any quantity not exceeding two gallons, or not exceeding one dozen reputed quart bottles; and (b) in the case of beer or cider, in any quantity not exceeding four and a half gallons, or not exceeding two dozen reputed quart bottles, but not in any larger quantities (*ib.*; Schedule (1) C).

“If any person deals wholesale in any intoxicating liquor, for the wholesale dealing in which he is required to take out a licence under this Act, without taking out such a licence, he shall be liable in respect of each offence to an Excise penalty of £100” (*ib.*, s. 50).

The wholesale dealers' licences mentioned in the Schedule (B) are in respect of spirits, beer, wine, and sweets. A wholesale dealer's licence authorizes sale at any one time to one person of liquor in the following quantities, namely:—(a) in the case of spirits, wine, or sweets,<sup>2</sup> in any quantity not less than two gallons, or not less than one dozen reputed quart bottles; and (b) in the case of beer or cider<sup>3</sup> in any quantity not less than four and a half gallons, or not less than two dozen reputed quart bottles, but not in any less quantities (Schedule).

Various Excise penalties, varying from £50 to £100, are imposed by 6 Geo. 4, c. 81, s. 26, for dealing in or retailing spirits, beer, wine, &c., without a licence.

For procedure as to offences against the Excise Acts, see p. 79.

What is a  
sale.

The respondent was the holder of a wholesale beer-dealer's licence, empowering him to sell not less than four and a half gallons of beer at one time, to be consumed off the premises. On the 8th of April, 1910, he sold to one Bovington eighteen imperial quart bottles of beer on the terms that he, the respondent, should store the bottles on his premises and deliver them from time to time in such quantities as the purchaser might require. The respondent appropriated eighteen bottles to the contract of sale and put the purchaser's name upon them. He delivered the bottles in small quantities on different dates, the final delivery of two bottles being on the 28th of May. In respect of this last delivery he was summoned for selling beer by retail without a licence. It was contended by the appellant that the delivery of the beer was, under the circumstances, part of the transaction of sale, and that for the purposes of a sale under the wholesale dealer's licence there could lawfully be only one delivery. The justices dismissed the summons. *Held*, that the sale was complete on the 8th of April, and that there was consequently no sale of a less quantity than that which was authorized by the wholesale licence (*Hales v. Buckley*, (1911) W.N. 32).

<sup>1</sup> Liquors made in whole or in part of fruits and sugar which in manufacture have been fermented (*Revenue Act, 1889, s. 28*).

<sup>2</sup> For definition see p. 551 n.

<sup>3</sup> “Cider” includes perry (*Inland Revenue Act, 1880, s. 40*).

In proving a sale, it is not necessary to show that any money actually passed, if the court is satisfied that a transaction in the nature of a sale actually took place (see *Licensing Act*, (1872) s. 62, *verbatim*, p. 558, *ante*). See also as to evidence of sale (*Licensing (Ir.) Act*, 1874, s. 24, p. 573, *post*).

The defendant, an unlicensed person, supplied a bottle of porter daily to each of certain lodgers occupying her premises at a fixed weekly payment for board and lodgings, including the supply of porter. The complainant entered the premises on a warrant, and found thirty-five full bottles of porter there. The justices having found that the transaction was not a sale: *Held*, that the transaction was obviously a sale, and that the defendant should have been convicted (*Horgan v. Driscoll*, (1908) 42 I.L.T.R. 238).

A licence only enables the trade to be carried on in one separate and distinct set of premises (see *Excise Licences Act*, 1825, 6 Geo. 4, c. 81, s. 10).<sup>1</sup> Area covered by licence.

The question as to the area covered by the licence is one of some difficulty.<sup>2</sup> Where the licensed house has been enlarged, and a sale has taken place in the added portion, the test as to whether an offence is committed is one of fact for the justices, the test being, are the premises as enlarged substantially the same as the former premises? (*R. v. Raffles*, (1876) 1 Q.B.D. 207; see also *R. v. Smith*, (1866) 15 L.T. 178; *Stringer v. Huddersfield JJ.*, (1875) 33 L.T. 568; *R. v. Bradford JJ.*, (1896) 74 L.T. 28; *R. (Callaghan) v. Donegal JJ.*, (1898) 2 I.R. 652; *R. v. Hants JJ.*, (1880) 44 J.P. 72; *R. v. Sheffield JJ.*, (1899) 63 J.P. 595); but the court will, on a case stated, set aside a conviction if there is no evidence to support it (*Deer v. Bell*, (1894) 64 L.J.M.C. 85). In the last case the defendant rebuilt his premises, and advanced the front by taking in a strip of yard five feet wide on which part of a new bar stood. The defendant having been convicted, the conviction was quashed (see also *Deer v. Wirrell JJ.*, (1894) 11 T.L.R. 188). The right to sell, however, seems to be confined to the house mentioned in the licence. A, the owner of a house, with a yard and offices at the rear, the whole being enclosed by walls, held a licence authorizing him to sell spirits, &c., in "a house" situate at, &c. He opened a bar at the end of the yard, having an entrance from a street at the rear of the premises, and sold spirits there. *Held*, that the licence authorized a sale in the house alone, and that A was guilty of the offence of selling at a place not authorized

<sup>1</sup> This does not apply to auctioneers (*ib*).

<sup>2</sup> The following statutory provisions have a bearing on the question: "The words 'house or place' in this and the aforesaid Act, or any other Act or Acts relating to the sale of spirits, wine, beer, ale, cider, or perry in Ireland, shall be construed to mean and to extend to every room, closet, cellar, yard, stable, outhouse, shed, or any other place whatsoever of, belonging, or in any manner appertaining to such house or place; and whatever particular part of such house or place shall be entered in the said books of the said Inland Revenue Department as licensed under the said Act of the eighth and ninth years of Her Majesty, or any other Acts relating to the sale of spirits, wine, beer, ale, cider, or perry, as aforesaid, it shall be lawful for any such justice of the peace, chief or other constable, or overseer, or any officer of Excise with their assistants respectively, to enter every room, closet, cellar, yard, stable, outhouse, shed, or any other place whatsoever belonging to such house or place" (*Spirits (Ireland) Act*, 1854, 17 & 18 Vict. c. 89, s. 12). "On licences to be taken out by retailers of spirits in the United Kingdom there shall be charged and paid the duties following (that is to say)—if the annual value of the dwelling-house in which the retailer shall reside or retail spirits, together with the offices, courts, yards, and garden therewith occupied," &c. [here follows list of duties] (*Inland Revenue Act*, 1880, 43 & 44 Vict. c. 20, s. 43 (1)). The latter section is repealed by the Finance (1909-10) Act, 1910; but see s. 44 (1) of that Act, and s. 43 (7) of the Inland Revenue Act, 1880. By s. 77 of the Licensing Act, 1872, licensed premises are defined as meaning premises in respect of which a licence has been granted and is in force; "premises" shall include house or place as defined by the Spirits (Ir.) Act, 1854, s. 12.



Sale without  
licence, &c.

by his licence (*Murnane v. Adams*, (1910) 2 I.R. 175; but see *R. (Beirne) v. Liston*, (1910) 44 I.L.T.R. 82, noted, p. 558, *ante*).<sup>1</sup> But it appears that the *entire house* is licensed. "A licensed victualler carries on his trade upon the whole of the licensed premises. He resides, it is true, in one portion of the house, but his licence covers the whole of the house, and he may use any portion of it for the purpose of carrying on his trade" (*per Day, J.*, in *Curritt v. Godson*, (1899) 2 Q.B. 193, approved in *Dicksee v. Hoskins*, (1901) 2 K.B. 122, 660).

Delivery at  
place other  
than licensed  
premises.

Where goods are delivered at a place other than the licensed premises, the question arises, where does the sale take place, on the licensed premises or at the place of delivery? If the goods are appropriated in the licensed premises to the order of the customer, then the sale takes place in the licensed premises, otherwise at the place of delivery (*McLoughlin v. McCloy*, (1892) 26 I.L.T.R. 131; *Pletts v. Campbell*, (1895) 2 Q.B. 229; *Pletts v. Beatty*, (1896) 1 Q.B. 519; *Stephenson v. Rogers*, (1899) 80 L.T. 193; *Walker v. Walker*, (1903) 20 Cox, 594; *Hewitt v. Jervis*, (1903) 68 J.P. 54; *Strickland v. Whittaker*, (1904) 20 T.L.R. 224; *Trappe v. Egan*, (1900) 34 I.L.T.R. 21; *Pasquier v. Neale*, (1902) 2 K.B. 287; *Dowling v. Fahy*, (1903) 3 N.I.J.R. 343; *Stansfeld v. Andrews*, (1909) 25 T.L.R. 259). The defendant, a person having an "on" licence, employed a drayman to deliver beer to customers who had given previous orders for it, and the drayman had been expressly forbidden to sell or deliver beer to other persons. The drayman having sold and delivered some beer from his van to persons in a street who had not previously ordered it, it was held that the licensed person was not liable, as the sale was entirely outside the scope of the drayman's authority (*Boyle v. Smith*, (1906) 1 K.B. 432). See also cases noted, p. 574, under SOLICITING ORDERS.

Power of sale  
restricted to  
licensee.

The licence does not authorize any person, other than the licensee, his agent or servant, to sell under cover of the licence; and if any other person sells, in the licensed premises, intoxicating liquor which is his own property, under the cloak of the licence, he is guilty of selling without a licence (*Peckover v. Defries*, (1906) 21 Cox, 323). The licensee having left the premises, a person, with the authority of the licensee's wife and of the landlord, entered therein and sold for his own profit; and it was held that the sale was illegal, and that the landlord, who was a brewer, and had agreed to supply the liquors for sale, was under the circumstances rightly convicted of aiding and abetting in the illegal sale (*Owen v. Langford*, (1891) 55 J.P. 484). An assignee commits an offence by carrying on the trade before he gets a protection order;<sup>2</sup> and such trading without a licence is not an offence "of a trifling nature" (*Barnard v. Barton*, (1906) 1 K.B. 357). Where intoxicating liquor is sold by retail by an agent on behalf of the owner, the sale is a sale by the owner and not by the agent, and, if the owner is not duly licensed, the fact that the agent is so licensed affords the owner no defence (*Dunning v. Owen*, (1907) 2 K.B. 237). In the last case, the defendant, who was not a licensed person, had entered into a contract for the supply of refreshments at an exhibition, and arranged with X that X, who was a licensed person, should obtain an occasional licence for the purpose of sale at the exhibition. X attended at and managed a bar at the exhibition, but was not remunerated for his services. The intoxicating liquor sold was the property of the defendant, and the entire profits of the transaction went

<sup>1</sup> The definition of "house" or "place" in 17 & 18 Vict. c. 89, s. 12, quoted *ante*, p. 569 n., seems to apply only so far as affects the right of entry given to the constabulary. See judgments of Holmes, L.J., in *R. (Blackburn) v. Down J.J.*, (1905) 2 I.R. 74, at p. 99, and of Wright, J., in *Murnane v. Adams*, *supra*, at p. 186.

<sup>2</sup> But see special provisions as to death, bankruptcy, or arrangement, contained in s. 3 of the Licensing Act, 1872, p. 567, *ante*.

into the defendant's pocket. *Held*, that the defendant should have been convicted of selling without a licence. **Sale without licence, &c.**

Where a servant sells, the sale is by the master and not by the servant (*Williamson v. Norris*, (1899) 1 Q.B. 7); but if the servant who has no authority to sell, chooses to sell of his own initiative, the servant can be convicted of selling (*per* Lord Alverstone, C.J., in *Boyle v. Smith*, (1906) 1 K.B. 432, at p. 436), and if a servant sells by his master's order, he can be convicted of aiding and abetting (*R. (O'Hara) v. Conlan*, (1909) 43 I.L.T.R. 173). Where a married woman sells liquors without a licence and without the knowledge of her husband, the husband cannot be held liable (*Allen v. Lumb*, (1893) 57 J.P. 377); but slight evidence may warrant the justices in such a case in inferring that the offence was committed with the authority of the husband (*R. (Waters) v. Kerry JJ.*, (1901) 35 I.L.T.R. 10; 1 N.I.J.R. 32). In *Brownrigg v. Mulligan* (8 December, 1910, K.B.D. (Ir.), unreported), the defendant, a holder of a six-day licence, was summoned under section 3 of the Licensing Act, 1872, for selling intoxicating drink without a licence. It appeared that the liquor had been supplied by the defendant's wife at a time when he was in bed, that the defendant had no personal knowledge of the sale, and that he had previously warned his wife not to sell on Sunday, and that it was contrary to his express instructions and commands that she did so. It was admitted, however, that the wife attended to the shop regularly. The justices accepted the defendant's statement, and dismissed the charge. The Court, while intimating that they expressed no approval of the justices findings of fact, refused to disturb the order.

A, the holder of a licence, assigned his premises and licence to B, who took out a protection order under the Public House (Ir.) Act, 1855, and applied for a transfer at quarter sessions. This transfer was refused. B assigned the premises and licence to C, who subsequently let them to A. *Held*, that A was entitled to resume his trade without any transfer or protection order, and could not be convicted of selling without a licence (*Dunigan v. Walsh*, (1904) 2 I.R. 298; see also *Lawrance v. O'Hara*, (1903) 67 J.P. 369). A licensee who remained on in possession and carried on the trade after a protection order had been granted (under the English statute, 5 & 6 Vict. c. 44, s. 1) to another person in contemplation of the transfer of the licence and delivery of possession to him, was held not liable to a conviction for selling without a licence (*Andrews v. Denton*, (1897) 2 Q.B. 37). **Effect of petty sessions "transfer."**

It would appear that a licence may be in the names of several persons.<sup>1</sup> It is doubtful if a limited company can hold a licence in its own name (see *R. v. Lyon*, (1898) 14 T.L.R. 357: cf. *Revenue Act*, 1898, 61 & 62 Vict. c. 46, s. 15, noted *ante*, p. 546). **"Licensed person."**

The executor or a trustee of a licensed person carrying on the trade under the proviso to section 3 is a "licensed person" for the purposes of the Licensing Acts, and liable as such (*McDonald v. Hughes*, (1902) 1 K.B. 94). It has been held that a person under twenty-one years of age is not disqualified from carrying on the trade under the section (*Rose v. Frogley*, (1893) 17 Cox 685); but the attention of the court in this case was not called to section 20 of the Excise Management Act, 1827, 7 & 8 Geo. 4, c. 59, enacting that no entry of licensed premises can be made in the name of a person under twenty-one years of age. See p. 546, *ante*. **Hotel licence.**

The defendant was the holder of a licence granted for a hotel under the Licensing (Ir.) Act, 1902 (*verbatim*, APPENDIX OF STATUTES). Her trade in intoxicating liquors was practically carried on in three rooms.

<sup>1</sup> See form of clerk of peace's certificate under the Licensing (Ir.) Act, 1833, s. 5, "I certify that C D is (or C D and E F are) duly entitled to receive a licence," &c.

Sale without  
licence, &c.

Part of the middle room was cut off by a partition and glass screen, behind which intoxicating liquors were stored, and from which such liquors were handed out to an attendant to be given to the customer. The glass screen was provided with a moveable panel and door. The three rooms communicated with one another, and contained chairs, lounges and tables, at which the customers were served. All persons coming in were supplied. There were at least ten bedrooms upstairs. The magistrate held that it was not legal for the defendant under this class of licence to sell to anyone but travellers and guests at the hotel; that "public bar" did not refer exclusively to a physical structure in the nature of a counter; and that on the defendant's premises, as constructed and used, a public bar did exist. *Held*, that there was no prohibition against sales to the public under a licence granted under the Act of 1902, in respect of a hotel, and that the only restriction as to selling liquor in the case of such a licence was against having a public bar on the premises (*Quinn v. Bourke*, (1905) 39 I.L.T.R. 253). The court adopted the definition given in Murray's English Dictionary of a bar—"a barrier or counter over which drink (or food) is served out to customers in an inn, hotel, or tavern, and hence in a coffee-house at a railway station, &c., also the space behind this barrier, and sometimes the whole compartment containing it." The holder of such a hotel licence can be convicted of selling without a licence if he erects a public bar on his premises, and sells thereat (*Quinn v. Bourke*, (1906) 2 I.R. 94).<sup>1</sup> In this case the court upheld the finding of magistrates that the structure described in *Quinn v. Bourke* (31 I.L.T.R. 353), *supra*, was a "bar."

Licence to  
disqualify  
person.

Any person who has been convicted of felony or of selling spirits without a licence is disqualified for ever from obtaining a licence to sell wine by retail (*Refreshment Houses (Ir.) Act*, 1860, s. 24) unless he has obtained a free pardon (*Hay v. Tower JJ.*, (1890) 24 Q.B.D. 561), and a licence to sell wine by retail if granted to him is utterly void for all purposes (*R. v. Vine*, (1875) L.R. 10 Q.B. 195). In Ireland no other licensing disqualification arises from a conviction for felony. A licence which is forfeited on conviction for using licensed premises as a brothel is *ipso facto* void for all purposes (*R. v. West Riding JJ.*, (1888) 21 Q.B.D. 258), as also, it is submitted, is a licence which has been forfeited on any other statutory ground (*ib.*; *R. v. Vine, supra*) or a licence granted to a person or in respect of premises, disqualified on any statutory ground (*ib.*; *ib.*; and *Cowles v. Gale, infra*). A licence which is granted without any jurisdiction whatsoever is absolutely void, e.g., a licence to a dead man (*Cowles v. Gale*, (1871) L.R. 7 Ch. 12); or a licence granted by justices sitting in private instead of in public (*R. v. Downes*, (1790) 3 T.R. 560). But where the statute (*Revenue Act*, 1862, s. 13) authorizes only a justice of the petty sessional division to grant an occasional licence, but same was granted by a justice not of the proper division, it was held that the licence was a good answer to a charge of selling without a licence (*Stevens v. Emson*, (1876) 1 Ex. D. 100; see also *Thompson v. Harvey*, (1859) 4 H. & N. 254; *R. v. Minshall*, (1833) 1 N. & M. 277).

Second  
conviction

In order to justify the imposition of an increased penalty on a second conviction for selling without a licence under s. 3 of the Licensing Act, 1872, the first conviction must be for an offence of selling without a licence under the same section (*Re Authers*, (1889) 22 Q.B.D. 345). See also CONVICTIONS, p. 91.

Search  
warrant.

"Any justice of the peace, if satisfied by information on oath that there is reasonable ground to believe that any intoxicating liquor is sold by retail,

<sup>1</sup> But see *Quinn v. Murray*, (1863) 8 Ir. Jur. N. S. 392; *Molloy v. Cunningham*, (1866) 11 Ir. Jur. N. S. 371. In *Quinn v. Bourke*, (1906) 2 I.R. 94, the offender could clearly have been proceeded against under s. 24 of the Revenue Act, 1898 (now replaced by s. 50 of the Finance (1909-10) Act, 1910), for contravening the terms of her licence.



or exposed or kept for sale by retail at any place within his jurisdiction, whether a building or not, in which such liquor is not authorized to be sold by retail, may, in his discretion, grant a warrant under his hand, by virtue whereof it shall be lawful for any constable named in such warrant, at any time or times within one month from the date thereof, to enter, and, if need be, by force, the place named in the warrant, and every part thereof, and examine the same, and search for intoxicating liquor therein, and seize and remove any intoxicating liquor found therein, which there is reasonable ground to suppose is in such place for the purpose of unlawful sale at that or any other place, and the vessels containing such liquor; and in the event of the owner or occupier of such premises being convicted of selling by retail, or exposing or keeping for sale by retail any liquor which he is not authorized to sell by retail, the intoxicating liquor so seized, and the vessels containing such liquor, shall be forfeited. When a constable has entered any premises in pursuance of any such warrant as is mentioned in this section, and has seized and removed such liquor as aforesaid, any person found at the time on the premises shall, until the contrary is proved, be deemed to have been on such premises for the purpose of illegally dealing in intoxicating liquor, and be liable to a penalty not exceeding 40s. Any constable may demand the name and address of any person found on any premises on which he seizes, or from which he removes any such liquor as aforesaid; and if he has reasonable ground to suppose that the name and address given is false, may examine such person further as to the correctness of such name and address, and may, if such person fail upon such demand to give his name or address, or to answer satisfactorily the questions put to him by the constable, apprehend him without warrant, and carry him as soon as practicable before a justice of the peace. Any person required by a constable under this section to give his name and address, who fails to give the same, or gives a false name or address, or gives false information with respect to such name and address, shall be liable to a penalty not exceeding £5" (*Licensing (Ir.) Act, 1874, s. 24*).

Search without licence, &c.  
Search warrant.

"Illegal dealing" presumed.

Name and address to be given.

"It shall and may be lawful for any one or more justices of the peace, whether in or out of petty sessions, upon being satisfied by the personal examination on oath of a credible witness that there is reasonable ground for suspecting that spirits are sold, kept for sale, or exposed for sale in any house or place within the county, not licensed for the sale thereof, or by some person not having a licence to sell spirits in or at such house or place, or that illicit spirits are kept for sale in or at any house or place, to grant a warrant under his or their hand or hands, authorizing within the police district of Dublin metropolis any superintendent or inspector of police, or in any other part of Ireland any [sub-inspector, head or other constable]<sup>1</sup> of constabulary, with his assistants, respectively, to enter such house or place at all times, to search for spirits, and if any spirits shall be found in such house or place exceeding one gallon without a permit or other legal authority justifying the keeping thereof, or any spirits in any quantity whatsoever, the full duties whereon shall not have been duly paid, shall be found in such house or place, to seize such spirits, together with the vessel in which the same are contained; and such warrant shall continue in force for one month from the date thereof, and shall be sufficient authority to the superintendent, inspector, [sub-inspector, head or other constable]<sup>1</sup> therein named, and his assistants respectively, such assistants being members of the constabulary force, in his presence, to enter into such house or place, and seize all such spirits as aforesaid and the vessel containing the same; and the person on whose premises such spirits shall be found as aforesaid shall, on conviction, be liable, for the first offence, to a fine not exceeding £5, nor less than £2, or to

Illegal possession of spirits.

<sup>1</sup> For the words in brackets, now read "district inspector, head constable, sergeant, acting-sergeant, or constable."

Sale without  
licence, &c.

be imprisoned, with or without hard labour, for any term not exceeding three months, nor less than one month; and for the second and every subsequent offence, to a fine not exceeding £10, nor less than £5, or to be imprisoned, with or without hard labour, for any term not exceeding six months, nor less than three months, and all such spirits and the vessels containing the same, so seized as aforesaid, shall be forfeited" (*Spirits (Ir.) Act, 1854, 17 & 18 Vict. c. 89, s. 2*). The spirits are to be seized (*ib.*), and forfeited (*Spirits (Ir.) Act, 1855, 18 & 19 Vict. c. 103, s. 2*). Penalties under the Acts are recoverable under the Petty Sessions Act (*Spirits (Ir.) Act, 1854, s. 8*). The defendant is not a competent witness.

It is no defence to a charge under the *Spirits (Ir.) Act, 1854, s. 2*, that the search warrant (issued under that section) is defective (*Yates v. Molony, (1900) 6 I.W.L.R. 175*).

Illegally  
dealing.

A person purchasing liquor is guilty of an offence under s. 24 of the Licensing (*Ir.*) Act, 1874 (*supra*), as the words "illegally dealing" include the purchasing as well as the selling of intoxicating liquor upon unlicensed premises (*McKenzie v. Day, (1893) 1 Q.B. 289*). Before forfeiting the liquor, the owner of same should be given an opportunity of being heard, to show that the seizure was wrong (*Gill v. Bright, (1871) 25 L.T. 591*.) Liquor seized under this section may be sold under s. 51 of the Licensing Act, 1872, noted *post*, p. 579.

Clubs.

As to clubs, see p. 543.

Soliciting  
orders for  
spirits, wines,  
&c.

"If any person shall solicit, take, or receive any order for spirits, wine, or other article, for the dealing in, retailing, or selling whereof an Excise licence is by law required, without having in force a proper Excise licence authorizing him so to do, he shall forfeit the penalty imposed by law upon a person dealing in, retailing, or selling such article without having an Excise licence in force authorizing him so to do; and in any case in which the place of business or residence of the offender shall not be known to the officer of Excise who shall exhibit any information for the recovery of such penalty as aforesaid, or, if known, shall be out of the United Kingdom, it shall be sufficient service of the notice and summons required to be given to a defendant by any law of Excise if the same be left at the house or place where the offender shall have solicited, taken, or received any such order as aforesaid, addressed to such offender: Provided always that nothing herein contained shall be deemed to apply to the sale of any spirits or foreign wine while the same shall be and remain in the warehouse or warehouses in which the same shall have been deposited, lodged, or secured according to law, before payment of duty upon the importation thereof, where such spirits or foreign wine shall be sold in a quantity not less than one hundred gallons at one time, or to impose a penalty upon a *bona fide* traveller taking orders for goods which his employer is duly licensed to deal in or sell" (*Revenue Act, 1867, 30 & 31 Vict. c. 90, s. 17*). The penalty is an Excise penalty, as to the recovery of which, see p. 79, *ante*.

It may be noted that the above section is not confined to intoxicating liquors, but is applicable to all excisable articles.

The meaning of the section appears from the decision in *Elias v. Dunlop, (1906) 1 K.B. 266*. In that case the appellants carried on business as grocers at two sets of premises in Harrow. They held, among other licences, a retail beer licence in respect of one set of premises, but not in respect of the other. A customer called at the premises in respect of which they did not hold a retail beer licence, and inquired the price of beer, and gave an order in respect of a retail quantity. The shopman took the order, and said it would have to be dealt with at the other set of premises. The order was sent on to, and was supplied from, the other



set of premises. The appellants were charged under the section with having received an order for sale by retail at the premises where they had no retail licence, and were convicted. On their behalf it was argued that the section has nothing to do with place or locality, and only has to do with an unlicensed person who solicits or takes an order for an excisable article without any licence authorizing him to do so. *Held*, that the appellants were rightly convicted, for the licence referred to in the section is local only, and there will be a breach if a sale is effected at, or an order is received at, any other place.

Soliciting  
orders for  
spirits, wines,  
&c.

A London watchmaker was the proprietor of a "watch club" in a provincial town. The secretary of the club, a clerk in the town, collected subscriptions from the members, which he forwarded to the watchmaker. Ballots for watches (to be supplied from the watchmaker's stock) were held from time to time. *Held*, that the secretary was guilty of an offence within the section, and was not a *bona fide* traveller within the exemption (*Killick v. Graham*, (1896) 2 Q.B. 196). A traveller for a fully licensed firm of wine and spirit merchants at Bristol occupied an office and premises at Cowbridge, where he resided, and where, amongst other places, he solicited and obtained orders which he forwarded to his employers at Bristol, who delivered the goods so ordered direct to the purchaser. The firm neither rented nor occupied any premises at all at Cowbridge, nor did they store goods upon their traveller's premises. *Held*, that the traveller was a *bona fide* traveller within the exemption (*Stuchberry v. Spencer*, (1886) 55 L.J.M.C. 141).

A brewer held a retail licence for the sale of beer in Inverness, and a wholesale licence at Elgin. A retail order was accepted at Elgin, transmitted to Inverness, where the beer was sent to the station at Elgin, where the brewer's servant took charge of it, and conveyed it to the purchaser. *Held*, that the sale took place at Elgin (*Guild v. Freeman*, (1898) 36 Sc.L.R. 6). The appellants carried on business as wine and spirit merchants in Worcester, and held all the necessary licences for dealing in and retailing spirits there. They took a house at Cheltenham in the name of D., one of their travellers, for their own use, took out a beer dealers' licence there, and put up a board with their names, describing themselves as "Distillers, Wine Merchants, and Brewers, Worcester." D. took orders for spirits at the Cheltenham premises, and transmitted them to Worcester, where the appellants executed the orders by sending out the spirits from Worcester. No spirits were kept in the Cheltenham premises. *Held*, that the justices were right in convicting the appellants of selling spirits at Cheltenham without a licence (*Stallard v. Marks*, (1878) 3 Q.B.D. 412).

A spirit grocer must now sell in closed vessels only, in quantities not exceeding at any one time to one person two gallons, or one dozen reputed quart bottles (*Finance* (1909-10) *Act*, 1910 (First Schedule), s. 122). As to the recording of convictions on the licence of a spirit grocer, see p. 580; and as to repeated convictions, see p. 583.

Spirit grocer.

Spirit dealer must not sell in quantity less than two gallons;<sup>1</sup> retailer must not sell spirits<sup>2</sup> to a rectifier, dealer, or retailer, or buy spirits from another retailer—*Excise penalty*, £50 (*Spirits Act*, 1880, s. 102). Every distiller, rectifier, dealer and retailer, when required, must assist excise officer in taking account of stock—*Excise penalty* for refusal or neglect, £50 (s. 142). Hawking, selling, or exposing to sale spirits otherwise than in premises licensed for the sale of spirits—*Excise penalty*, £100, and forfeiture of spirits; the fine cannot be mitigated to less than £6, and in default of payment imprisonment for not less than two months, nor more than three months (s. 146). Knowingly selling or delivering spirits to be unlawfully retailed, or consumed, or carried into consumption—*Excise*

Spirits.

<sup>1</sup> See also *Finance* (1909-10) *Act*, 1910, p. 568.

<sup>2</sup> Any fermented liquor containing a greater proportion than 40 per cent. of proof spirit shall be deemed to be spirits (23 & 24 Vict. c. 107. s. 23).



**Spirits.**

*penalty, £100 (s. 146).* Receiving, buying, or procuring spirits from persons unauthorized to sell or deliver same—*Excise penalty, £100 (s. 148).* Knowingly buying, or receiving, or having spirits on which duty is not paid—*Excise penalty, forfeiture of spirits, and fine equal to treble the value thereof (s. 149).* As to permit, see ss. 105, 116.

Person licensed to retail wine under Refreshment Houses (Ireland) Act, 1860, receiving into or having in his possession spirits in any cellar, room, or place used for storing, keeping, or retailing wine—*Excise penalty, £50, licence to be forfeited (Refreshment Houses (Ir.) Act, 1860, s. 27).*

**Spirits in transit.**

Any county inspector, or member of the R.I.C. below that rank, may demand from any person having spirits exceeding one gallon in his possession a proper permit; and, if such permit be not produced, seize such spirits, and vessel containing, and the horse and vehicle conveying, the same, and arrest such person—*Penalty, first offence, 20s. to £5, or imprisonment, with or without hard labour, three months to one month; second offence, 40s. to £10, or imprisonment, with or without hard labour, six months to two months (Spirits (Ir.) Act, 1854, s. 6).* The Petty Sessions Act applies (s. 8).

**Storing of liquor.**

"If any licensed person has in his possession, on the premises in respect of which his licence is granted, any description of intoxicating liquor which he is not authorized to sell, unless he shall account for the possession of the same to the satisfaction of the court by which he is tried, he shall forfeit such liquor and the vessels containing the same, and shall be liable to a *penalty* not exceeding for the first offence £10, and not exceeding for any subsequent offence £20" (*Licensing Act, 1872, s. 10*). See also 17 & 18 Vict. c. 89, s. 2, noted *ante*, p. 573.

**Theatre licence.**

As to grant of a theatre licence, see p. 117.

"It shall not be lawful for any person under the authority of any licence granted under the authority of section 7 of the Excise Act, 1835, to sell or expose for sale by retail any intoxicating liquors elsewhere than within the part or parts of the theatre or other place of public entertainment which shall be specified in such licence; or to sell intoxicating liquors to persons other than those employed in or *bona fide* attending the performances in such theatre or other place of public entertainment; or to sell or expose intoxicating liquor at any time other than the time of such performances, or during thirty minutes immediately preceding the commencement or immediately succeeding the termination of such performances<sup>1</sup>, and any sale or exposure for sale in contravention of any of the provisions of this enactment shall be deemed to be a sale or exposing for sale by retail of intoxicating liquor by a person not duly licensed to sell the same within the meaning of the principal Act, and shall subject the person making the same to the penalties and forfeitures of that Act. Provided always, that no part of such theatre or other place of public entertainment which shall, during the performances in the same, be accessible to persons other than those employed or attending performances therein, shall be included in any such licence" (*Licensing (Ir.) Act, 1874, s. 7*).

It is doubtful whether a sale can take place during hours ordinarily prohibited, even if within the periods mentioned in this section (see *Gallagher v. Rudd*, (1898) 1 Q.B. 114).

**Valuation of licensed premises.**

The Finance (1909–10) Act, 1910, s. 44 (3), contains provisions under which the licence-holder and any person interested in licensed premises can be required (under a penalty not exceeding £20) to furnish particulars to the Commissioners of Inland Revenue for the purpose of valuation under that Act.

<sup>1</sup>To take advantage of the fixed duty of £20 under the Finance (1909–10) Act, 1910, it shall be a condition of the licence that intoxicating liquor is not sold "except while the premises are open and being used, and to persons *bona fide* using the premises," for the purposes of a theatre (Schedule, Scale 7).

PROCEDURE.

Procedure.

	PAGE
Excise offences generally, . . .	577
Offences under Illicit Distillation of Spirits (Ir.) Act, 1831, . . .	577
Offences under Refreshment Houses (Ir.) Act, 1860, . . .	577
Offences under Acts to which Petty Sessions Act applies, . . .	578

	PAGE
Offences under Licensing Act, 1862, and Acts to be read as one therewith : Procedure generally, p. 578 ; charge of drunkenness in towns, 579 ; local limits of jurisdiction, 579 ; certiorari taken away, 580 ; recording conviction, p. 580 ; defacing records, p. 582 ; proof of recorded conviction, p. 582 ; register of licences, p. 582 ; forfeiture of licence on repeated convictions, p. 582 ; disqualification of premises, p. 583 ; stale convictions, p. 584 ; appeals, p. 584.	

Reference should be made to p. 79 for the procedure as to the various offences (other than offences under the Illicit Distillation of Spirits (Ir.) Act, 1831) the penalties for which are stated in the preceding part of this article to be excise penalties. In any such proceeding, two justices are required (see p. 79).

For the alternative procedures as to offences under the Illicit Distillation of Spirits (Ir.) Act, 1831, see p. 545. Under either of those procedures two justices are required.

Offences under the Refreshment Houses (Ir.) Act, 1860, are of two classes :—(a) offences punishable by penalties declared by the Act to be excise penalties (*Refreshment Houses (Ir.) Act*, 1860, s. 45) ; and (b) offences punishable by penalties not declared to be excise penalties. As to class (a), the procedure is that indicated at p. 79, *ante*, as to excise offences generally. Penalties for such offences may be mitigated to not less than one-fourth (s. 35). See also s. 33 *infra*, which applies to all offences.

For any proceedings relating to such offences, two justices are required (see p. 79).

The procedure as to all offences under the Act which are not declared excise offences is subject to the Petty Sessions Act (s. 44), with the following modifications :—Only the police can prosecute (s. 32). Prosecutions to be commenced within three calendar months of the offence, or such shorter time as is fixed by the section creating it (*ib.*). Defendant to be fined either the sum fixed by the section under which he is convicted, or, where no penalty is fixed, then to be fined £5, unless proof be given that defendant, within the twelve calendar months preceding his conviction, has been once convicted of an offence under the Act, in which case he shall be fined either the sum fixed by the section under which he is convicted or £10 ; or unless proof be given that defendant, during the eighteen calendar months preceding his conviction, has been twice convicted of an offence under the Act, in which case he shall be fined either the sum fixed by the section under which he is convicted or £50 (s. 32) with in each case “the costs of the conviction,” such penalty to be applied in accordance with the Fines (Ir.) Act, 1851 (s. 44), and to be subject to any mitigation the justices think fit (s. 35). Any person so convicted of such second or third offence may, upon entering into the prescribed recognizances, appeal to the quarter sessions next held twelve days after such conviction : the prosecutor also to be bound over on recognizance to appear on the appeal. Upon such appeal the fine may be increased to not more than £100, together with the costs of the appeal, or the licence may be forfeited, or the premises may be disqualified for two years, or the fine may be increased as above stated *and* the licence

Procedure as to Excise offences generally.

Procedure under Illicit Distillation of Spirits (Ir.) Act, 1831.

Procedure under Refreshment Houses (Ir.) Act, 1860.

(a) Excise offences.

(b) Other offences.

Procedure  
under  
Refreshment  
Houses (Ir.)  
Act. 1860.

forfeited, in which latter case the defendant shall be disqualified for two years from holding any such licence (s. 36). If on such appeal the appeal be dismissed or abandoned, quarter sessions shall order the defendant to pay costs sufficient to cover the expenses incurred by the complainant on such appeal, and in default of payment to be imprisoned for not more than six calendar months; but if the order be reversed, the quarter sessions shall order the treasurer of the county to pay like costs to the defendant (s. 37). Person summoned as witness failing to attend and give evidence either before justices or quarter sessions—*Penalty*, not exceeding £10 (s. 40). See also s. 33 (next paragraph), as to all offences.

As to all  
offences.

If any person licensed under the Act for the sale by retail of wine be convicted of any offence under the Act, and if it be proved that, within two years preceding such conviction, two convictions under the Act either of that person or of any other person so licensed in respect of the same premises have taken place, the court may declare the licence forfeited, and order that, for three years from the date of their order, no such licence be issued in respect of the same premises (s. 33).

Offences  
under Acts  
to which  
P. S. Act  
applies.

By the Petty Sessions (Ir.) Amendment Act, 1863, 26 & 27 Vict. c. 96, s. 1, proceedings, outside Dublin, under the Licensing (Ir.) Act, 1833, and the Licensing (Ir.) Act, 1836, are governed by the Petty Sessions Act.<sup>1</sup> By s. 8 of the Spirits (Ir.) Act, 1854, the Petty Sessions Act applies to all proceedings under that Act. By the Beer Houses (Ir.) Act, 1864, s. 12, proceedings under that Act are governed by the Petty Sessions Act and the Dublin Police Acts. Under the above statutes the defendant or the wife of the defendant is not a competent witness. As there is no statutory provision to the contrary, the Petty Sessions Act and the Dublin Police Acts will also apply to proceedings under the Summary Jurisdiction (Ir.) Act, 1908, and to proceedings under the Children Act, 1908. A defendant and a husband and wife of defendant are competent witnesses under the Summary Jurisdiction (Ir.) Act, 1908 (s. 12). A defendant and husband and wife of the defendant are competent witnesses in charges under Part II of the Children Act, 1908 (see s. 133 (28)), but Part II does not include s. 120 (allowing children to be in the bars of licensed premises). As to procedure under the Petty Sessions Act, see p. 40, and as to the Dublin Police Acts, see p. 305.

Procedure  
under  
Licensing  
Act, 1872,  
and Acts read  
therewith.

The rest of this article deals with the procedure under the Licensing Act, 1872, and the Acts to be read as one therewith. Those Acts are the Licensing (Ir.) Act, 1874, which terms the Act of 1872 "the principal Act"; the Sale of Liquors on Sunday (Ir.) Act, 1878, which merely extends the Acts of 1872 and 1874 as well as other Acts; the Intoxicating Liquors (Sale to Children) Act, 1901, which (see s. 4) is to be read as one with the Acts already mentioned; the Licensing (Ir.) Act, 1905, and the Intoxicating Liquors (Ir.) Act, 1906 (see *Rowan v. Hamilton*, (1909) 2 I.R. 626).

Generally.  
Application of  
S. J. Acts.  
Constitution  
of Court.

Except as in this Act otherwise expressly provided, every offence under this Act may be prosecuted, and every penalty and forfeiture may be recovered and enforced, in manner provided by the Summary Jurisdiction Act, 1848<sup>2</sup> subject to the following provisions:—(1) The court of summary jurisdiction, when hearing and determining an information or complaint, other than in a case where the offence charged is that of being

<sup>1</sup> A power of mitigation of penalties under the Acts of 1833 and 1836 to one-fourth was given by s. 24 of the Act of 1833 and s. 23 of the Act of 1836. Section 24 of the Act of 1833 is, however, repealed by the Statute Law Revision Act, 1891, but, in view of the limited effect of such repeal (see p. 340), *ante*, it is not certain that such power of mitigation is taken away.

<sup>2</sup> Meaning in Ireland the Petty Sessions Act, or in Dublin the Dublin Police Acts (Licensing Act, 1872, s. 77). This section has been repealed by the Statute Law Revision Act, 1883, which, however, provided that such repeal should not affect any established jurisdiction, practice, or procedure.



found drunk in any highway or other public place, or on any licensed premises, shall be constituted either of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions, or of a stipendiary magistrate,<sup>1</sup> or some other officer for the time being empowered by law to do alone any act authorized to be done by more than one justice of the peace, and sitting alone or with others at some court or other place appointed for the administration of justice. (2) Where the court of summary jurisdiction orders that a distress shall be made in default of payment of any penal sum exceeding £5, including under that expression costs actually adjudged in respect of an offence, the court may order that in default of the said sum being paid as directed, the person liable to pay the same shall be imprisoned for any term not exceeding the period specified in the following scale:—for any sum exceeding £5 but not exceeding £10, three months; for any sum exceeding £10 but not exceeding £30, four months; for any sum exceeding £30 but not exceeding £50, six months; for any sum exceeding £50, one year. (3) The description of any offence under this Act in the words of such Act, or in similar words, shall be sufficient in law. (4) Any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information; and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant or complainant; and in all cases of summary proceedings under this Act, the defendant and his wife shall be competent to give evidence. (5) All forfeitures shall be sold or otherwise disposed of in such manner as the court may direct, and the proceeds of such sale or disposal (if any) shall be applied in the like manner as penalties, but the court may direct that such proceeds may be applied in the first instance in paying the expenses of and incidental to any search and seizure which resulted in such forfeiture. (6) Penalties and forfeitures under this Act shall not, for the purpose of any Act respecting the application of such penalties, or the costs, charges, and expenses attending proceedings for recovery of such penalties or of forfeitures, be deemed to be penalties or forfeitures under any Act relating to the Inland Revenue. Any officer appointed by the Commissioners of Inland Revenue may sue for any penalties under this Act, and when so sued for any penalties which may be recovered shall be applied in the manner in which Excise penalties are for the time being applicable by law.<sup>2</sup> Where under this Act any sum for costs (other than costs upon a conviction or order of dismissal of an information) or for compensation, or both, is ordered or awarded to be paid by any person, the amount thereof shall be recovered in manner directed by the Summary Jurisdiction Act, 1848,<sup>3</sup> for the recovery of costs awarded upon the dismissal of an information or complaint” (*Licensing Act, 1872, s. 51*).

Wherever the Towns Improvement (Ir.) Act, 1854, or any local Act incorporating the same, is in force in any town or place, a justice of the peace for such town or place may hear and determine charges for offences committed within the boundary of such town or place against s. 12 of the Act of 1872 (*Licensing (Ir.) Act, 1874, s. 30*). This does not apply to Dublin (*ib.*).

“For all the purposes of this Act, any pier, quay, jetty, mole, or work extending from any place within the jurisdiction of any licensing justices or court of summary jurisdiction into or over any part of the sea, or any

**Procedure under Licensing Act, 1872, and Acts read therewith.**

*Distress.*

*Description of offence.*

*Negativing exemptions.*

*Defendant and wife of defendant competent witnesses.*

*Disposal of forfeitures.*

*Penalties not Excise penalties.*

*Enforcement of order as to costs.*

*Charges of drunkenness, &c., in towns.*

*Local limits of jurisdiction, Seas, rivers, &c.*

<sup>1</sup> A resident magistrate is not a stipendiary magistrate within the section (*R. (Jackson) v. Tipperary J.J.*, (1894) 28 I.L.T.R. 107).

<sup>2</sup> As to application of Excise Penalties, see p. 79, *ante*.

<sup>3</sup> That is, the Dublin Police Acts, or Petty Sessions Acts, as the case may be.

Procedure under Licensing Act, 1872, and Acts read therewith.

Certiorari taken away.

Recording offences.  
(1) Under Act of 1872.

part of a river within the ebb and flow of the tide, shall be deemed to be within the jurisdiction of such justices and court. For the purpose of jurisdiction in any proceeding under this Act, any river or water which runs between or forms the boundary of two or more licensing districts, or of the jurisdiction of two or more courts of summary jurisdiction, shall be deemed to be wholly within each such licensing district and the jurisdiction of each of such courts" (*Licensing Act, 1872, s. 61*).

Conviction not to be quashed on certiorari (s. 54); but as to the effect of such a provision see p. 226.

Convictions for the following offences either were to be or might be recorded under the Licensing Act, 1872:—Sections 5 and 6—Holder of an "off" licence allowing drinking on or near the premises, or evading the law by sending out liquor for sale and consumption (ss. 5, 6); permitting drunkenness or disorderly conduct, or sale to drunken person (s. 13); permitting prostitutes to resort (s. 14); harbouring or supplying constable on duty, or bribing constable (s. 16); permitting gaming or unlawful games, or suffering premises to be used contrary to Betting Act, 1853 (s. 17); selling or exposing for sale, or opening or keeping open for sale, or allowing liquor to be consumed during prohibited times (s. 78); spirit grocer allowing liquor to be drunk in or near premises, or evading law by sending out liquor for sale and consumption (ss. 83, 84); spirit grocer selling during prohibited hours (s. 86).

(2) Under Act of 1874.

The Licensing (Ir.) Act, 1874, creates the following offences, namely:—Adulterating liquor (s. 22); refusing or failing to admit constable (s. 23); failing to produce licence on being required by court (s. 33); and it also enacts that, for the purposes of ss. 13, 14, 16, and 17 of the Act of 1872, a person taking out an occasional licence shall be deemed to be a licensed person within the meaning of those sections, and that the place in which any intoxicating liquors are sold, in pursuance of the occasional licence, shall be deemed to be licensed premises, and to be the premises of the person taking out such licence (s. 6).

"Where any licensed person or spirit grocer is convicted of any offence against the principal Act,<sup>1</sup> which by such Act was to have been, or might have been, endorsed upon the licence or excise licence, or of any offence against this Act, the court<sup>2</sup> before whom the offender is brought shall cause the register of licences in which the licence or excise licence of the offender is entered, or a copy of the entries therein relating to the licence or excise licence of the offender, certified in manner prescribed by this Act, to be produced to the court before passing sentence; and after inspecting the entries therein in relation to the licence or excise licence of the offender, or such copy thereof as aforesaid, the court shall declare, as part of its sentence, whether it will or will not cause the conviction for such offence to be recorded on the licence or excise licence of the offender; and if it decide that such record is to be made, the same shall be made accordingly. A declaration by the court that a record of an offence is to be made on a licence or excise licence shall be deemed to be part of the conviction or order of the court in reference to such offence, and shall be subject accordingly to the jurisdiction of the court of appeal. A direction by the court that a conviction for an offence is to be recorded on the licence or excise licence of the offender shall, for the purposes of the principal Act, be deemed equivalent to a direction or requirement by the Act that such conviction is to be recorded; and all the provisions of the principal Act importing that convictions are required or directed by the Act to be recorded on the licence or excise licence of an offender shall be construed accordingly" (*Licensing (Ir.) Act, 1874, s. 21*).

<sup>1</sup> That is the Licensing Act of 1872.

<sup>2</sup> The offences of bribery or treating by a licensed person on his licensed premises must also be entered (46 & 47 Vict. c. 51, s. 38 (8)).



"Where a licensed person or a spirit grocer is convicted of any offence against the provisions of any Act for the time being in force relating to the adulteration of drink,<sup>1</sup> such conviction shall be entered in the proper register of licences, and may be directed to be recorded on the licence or excise licence of the offender in the same manner as if the conviction were for an offence against the principal Act, and when so recorded shall have effect as if it had been a conviction for an offence against the principal Act" (*Licensing (Ir.) Act, 1874, s. 22*). But a conviction under the Food and Drugs Acts has not the effect of a conviction under the Licensing Act, 1874, or the Acts to be read as one therewith (as to which see p. 578), so as to work a forfeiture of the licence, unless it is directed to be recorded on the licence (*Millar v. M'Cabe, (1892, Co. Court) 26 I.L.T. & S.J. 348*).

**Procedure under Licensing Act, 1872, and Acts read therewith.**  
(3) *Adulteration of drink.*

A conviction of a licensed person for an offence against the Criminal Law and Procedure (Ir.) Act, 1887 (i.e., conspiracy, intimidation, assaulting or resisting police or sheriff in a proclaimed district, riot or unlawful assembly), is recordable, and, when recorded, has the same effect as if it were a conviction under the Licensing Acts (*Criminal Law and Procedure (Ir.) Act, 1887, 50 & 51 Vict. c. 20, s. 11 (2)*); but as to the effect of such a conviction if unrecorded, see *Millar v. M'Cabe, supra*.

(4) *Criminal Law and Procedure. (Ir.) Act, 1887.*

"With respect to the record of convictions of licensed persons for offences under this Act committed by them as such, the following provisions shall have effect in cases where this Act requires the conviction to be recorded on the licence:—(1) The court before whom any licensed person is accused shall require such person to produce and deliver to the clerk of the court the licence under which such person carries on business, and the summons shall state that such production will be required.<sup>2</sup> (2) If such person is convicted, the court shall cause the short particulars of such conviction, and the penalty imposed, to be endorsed on his licence before it is returned to the offender. (3) The clerk to the licensing justices shall enter the particulars respecting such conviction, or such of them as the case may require, in the register of licences, kept by him under this Act. (4) If the clerk to the court be not the clerk to the licensing justices, he shall send forthwith to the last-mentioned clerk notice of such conviction, and of the particulars thereof. (5) Where the conviction of any such person has the effect of forfeiting the licence, or of disqualifying any person or premises for the purposes of this Act, the licence shall be retained by the clerk of the court, and notice of such forfeiture and disqualification shall be sent to the licensing officer of the district, and if the clerk to the court is not the clerk to the licensing justices, to such last-mentioned clerk, together with the forfeited licence" (*Licensing Act, 1872, s. 55*).

*Entry of record, &c.*

"Where a licensed person is convicted of more offences than one committed on the same day, the convictions for which are by this Act directed to be recorded on his licence, the court by whom he is convicted may, in their discretion, order that one or some only of such convictions shall be so recorded" (*Licensing Act, 1872, s. 57*). See also s. 21 of the Act of 1874, which leaves the question of recording entirely in the discretion of justices.

*More than one offence in same day.*

A conviction under the Intoxicating Liquors (Sale to Children) Act, 1901, 1 Ed. 7, c. 27, is not recordable, and a conviction ordering a record will be quashed (*R. (Haslett) v. Fermanagh J.J., (1903) 37 I.L.T.R. 120, 3 N.I.J.R. 109*).

*Wrongfully recording convictions.*

It should be noted that the Court must declare as part of the sentence

*Omission to order record.*

<sup>1</sup> Consequently a conviction, if for the adulteration of drink, under the Food and Drugs Acts, is recordable.

<sup>2</sup> But see s. 33 of Act of 1874, p. 556.



Procedure under Licensing Act, 1872, and Acts read therewith.

Defacing record.

Proof of recorded conviction.

Register of licences.

Forfeiture of licence and personal disqualification.

whether it will or will not cause the conviction to be recorded<sup>1</sup> on the licence, so that if the order is silent in this respect the conviction will be bad, and will be set aside *R. (Sheran) v. Dublin J.J.*, (1906) 40 I.L.T.R. 22). See also *Shiel v. Mc'Carthy*, (1895) 29 I.L.T. and S.J. 577, 584.

"If any person defaces or obliterates, or attempts to deface or obliterate, any record of a conviction on his licence, he shall be liable to a penalty not exceeding £5" (*Licensing Act, 1872, s. 34*).

An entry of any conviction ordered to be recorded on a licence or an excise licence in the Register of Licences, or in the Petty Sessions or Police Court Order Book, or a copy of any such entry, purporting to be signed and certified as a true copy by the person having custody of such book, and also in the case of a Petty Sessions Order Book, by a justice pursuant to the Petty Sessions Act, is evidence of such conviction and order respectively, and is conclusive evidence that such conviction was duly recorded upon any licence or excise licence which is not produced to a recorder, court of quarter sessions, or court of summary jurisdiction requiring such production (*Licensing (Ir.) Act, 1874, s. 35*).

The Licensing (Ir.) Act, 1874, s. 16, provides for a register of licences, to be kept in each petty sessions district by the clerk of petty sessions.<sup>2</sup> Such register must contain (1) particulars of licences transmitted by the clerk of the peace, in pursuance of section 15; (2) the particulars of all licensing justices' certificates; (3) the premises in respect of which they are granted; (4) the names and addresses of the owners of the premises and the names of the holders, for the time being, of such certificates; (5) all forfeitures of licences; (6) all exemption orders; (7) all disqualifications of premises; (8) records of convictions; (9) other matters relating to the licences in the district. A person claiming to be the owner of premises may apply to a court of summary jurisdiction to have his name substituted in the register, which may be inspected by any ratepayer or any owner of licensed premises, and any holder of any licence within the district on payment of a fee of 1s.; by any police officer or excise officer without payment.

"If any licensed person on whose licence two convictions for offences committed by him against this Act have been recorded is convicted of any offence which is directed by this Act to be recorded on his licence, the following consequences shall ensue, that is to say:—(1) The licence of such licensed person shall be forfeited, and he shall be disqualified for a term of five years from the date of such third conviction from holding any licence; and (2) the premises in respect of which his licence was granted shall, unless the court having cognizance of the case, in its discretion, thinks fit otherwise to order, be disqualified from receiving any licence for a term of two years from the date of such third conviction: Provided that nothing in this section contained shall prevent the infliction by the court of any pecuniary penalty or any term of imprisonment to which such licensed person would otherwise be liable, or shall preclude the court from exercising any power given by any other section of this Act of disqualifying such licensed person or such premises for a longer period than the term mentioned in this section" (*Licensing Act, 1872, s. 30*).

<sup>1</sup> "Where a conviction for an offence is by this Act directed to be recorded on the licence of any person, the fact of no such record having been made shall not, if such conviction be otherwise proved to the satisfaction of the court having cognizance of any case under this Act, exempt such person, or the premises occupied by him, from any penalty to which such person or premises would have been subject if such record had been duly made. And on such proof being given, the omitted conviction may be recorded accordingly, and shall be deemed to have been duly recorded in accordance with this Act" (*Licensing Act, 1872, s. 33*); and it is submitted that, whilst this section was operative so long as the recording was obligatory, that is, until the passing of the Act of 1874, it is really obsolete and inoperative now.

<sup>2</sup> The Clerk of the Peace also keeps a register under s. 11 of the Licensing Act, 1833.

"The preceding provisions of this Act relating to repeated convictions, except so much thereof as relate to the disqualification of premises, shall apply to spirit grocers, and for the purpose of such application, the terms 'spirit grocer' and 'excise licence' shall respectively be therein substituted for the terms 'licensed person' and 'licence'" (*Licensing Act, 1872*, s. 80).

Procedure under Licensing Act, 1872, and Acts read therewith. *Spirit grocers.*

See also s. 3 (p. 567) as to liability to disqualification on second conviction of selling without licence.

Two recorded convictions followed by a third recordable conviction have the effect of forfeiting the licence, even though they do not take place within the same licensing year (*R. (O'Leary) v. Cork JJ.*, (1883) 12 L.R.I. 167, 17 I.L.T.R. 106; *R. (Hore) v. Wexford JJ.*, (1904) 2 I.R. 51, 3 N.I.J.R. 151).

"The following additional provisions shall be enacted with respect only to convictions of persons who may hereafter become licensed in respect of premises, and shall not apply to a conviction of any person licensed for any premises at the passing of this Act, so long as he is licensed in respect of the same premises, viz.:—(1) The second and every subsequent conviction recorded on the licence of any one such person shall also be recorded in the register of licences against the premises. (2) When four convictions (whether of the same or of different licensed persons) have within five years been so recorded against premises, those premises shall during one year be disqualified for the purposes of this Act. (3) If the licences of two such persons licensed in respect of the same premises are forfeited within any period of two years, the premises shall be disqualified for one year from the date of the last forfeiture: Provided that where any premises are disqualified under this section, notice of such disqualification shall be served upon the owner of the premises in like manner as an order of disqualification is required to be served under this Act, and the regulations for the protection of the owner of premises in case of an order of disqualification shall, so far as the same are applicable, extend to the case of disqualification under this section" (*Licensing Act, 1872*, s. 31).

Disqualification of premises.

When two recorded convictions have been followed by a third recordable conviction, the justices should consider the question of disqualification of the premises under section 30 (2), and should it appear that they have failed to do so, the disqualification will not attach (*R. (O'Hara) v. Wicklow JJ.*, (1902) 36 I.L.T.R. 72, 136; 2 N.I.J.R. 218); and apparently the disqualification will not attach if the clerk of petty sessions has neglected to serve the notices prescribed by section 56 (*ib.*).<sup>1</sup>

<sup>1</sup> Section 56 contains provisions as to the protection of owners of licensed premises, including a mortgagee in possession (see s. 77) as follows:—"Where any tenant of any licensed premises is convicted of an offence against this Act, and such offence is one the repetition of which may render the premises liable to be disqualified from receiving a licence for any period, it shall be the duty of the clerk of the licensing justices to serve, in manner provided by this Act, notice of every such conviction on the owner of the premises. Where any order of a court of summary jurisdiction declaring any licensed premises to be disqualified from receiving a licence for any period has been made, the court shall cause such order to be served on the owner of such premises where the owner is not the occupier, with the addition of a statement that the court will hold a petty sessions at a time and place therein specified, at which the owner may appear, and appeal against such order on all or any of the following grounds, but on no other grounds: (a) That notice as required by this Act has not been served on the owner of a prior offence, which on repetition, renders the premises liable to be disqualified from receiving a licence at any period; or (b) that the tenant by whom the offence was committed held under a contract made prior to the commencement of this Act, and that the owner could not legally have evicted the tenant in the interval between the commission of the offence, in respect of which the disqualifying order was made, and the receipt by him of the notice of the immediately preceding offence, which on repetition renders the premises liable to be disqualified from receiving a licence at any period; or (c) that the offence in respect of which the disqualifying order was made occurred so soon after the receipt of such last-mentioned notice, that the owner, notwithstanding he had legal power to evict the tenant, could not with reasonable diligence have exercised that power in the interval which



Procedure  
under  
Licensing  
Act, 1872,  
and Acts read  
therewith.  
Definitions.  
"Licence."  
"Licensed  
person."  
"Licensed  
premises."  
Stale  
conviction.  
Appeals.

A licence within the Licensing Act, 1872, and the Acts to be read therewith (see p. 578), means an Excise licence for the sale of intoxicating liquor, but not including a spirit grocer's licence or a wholesale beer dealer's licence (*Licensing (Ir.) Act, 1874, s. 37*). "Licensed person" means a person holding a licence (*Licensing Act, 1872, s. 77*). "Licensed premises" means premises in respect of which a licence has been granted and is in force.

"A conviction for any offence under this Act, shall not after five years from the date of such conviction be receivable in evidence against any person for the purpose of subjecting him to an increased penalty or to any forfeiture" (*Licensing Act, 1872, s. 32*).

"If any person feels aggrieved by any order or conviction made by a court of summary jurisdiction, the person so aggrieved may appeal therefrom, subject to the conditions and regulations following: (1) The appeal shall be made to the next court of quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days after the decision of the court from which the appeal is made. (2) The appellant shall, within seven days after the cause of appeal has arisen, give notice<sup>1</sup> to the other party, and to the court of summary jurisdiction of his intention to appeal, and of the ground thereof. (3) The appellant, immediately after such notice, shall enter into a recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or shall give such other security by deposit of money or otherwise as the justice may allow. (5) The court of appeal may adjourn the appeal, and upon the hearing thereof may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just" (*Licensing Act, 1872, s. 52*).

"When the appellant is in custody, and shall enter into such recognizances with sureties approved by the justice in manner by said Act provided, or shall give such other security as by said Act provided, the justice shall release him from custody" (*Licensing (Ir.) Act, 1874, s. 31*).

The appeal provided by the above sections is unaffected by the Petty Sessions Act (*R. (McGrath) v. Wicklow J.J., (1901) 2 I.R. 130*). Therefore, no notice of intention to prosecute the appeal is required (*ib.*). The procedure as to appeals laid down by the Licensing Acts, 1872 and 1874, will also apply to appeals in respect of offences against the Sale of Liquors on Sunday (*Ir.*) Act, 1878, the Intoxicating Liquors (Sale to

occurred between the said notice and the second offence. If the owner appear at the time and place specified, and at such sessions, or any adjournment thereof, satisfy the court that he is entitled to have the order cancelled on any of the grounds aforesaid, the court shall thereupon direct such order to be cancelled, and the same shall be void" (*Licensing Act, 1872, s. 56*).

<sup>1</sup> The following is a form of notice:—

County of . Petty Sessions District of  
Between A. B., Complainant; and C. D., Defendant.  
Take notice that I, C. D., of , the above-named defendant, being aggrieved by the order or conviction made by the court on the day of , do hereby give you notice of my intention to appeal from such order or conviction to the next court of Quarter Sessions for the County of , to be held at , on the day of , and the grounds of my said appeal are (1), that the said order or conviction was made without evidence, and was against evidence and the weight of evidence; (2) that the determination of said court was wrong in point of law, and was made without jurisdiction, and in excess of jurisdiction.

Dated



Children) Act, 1901 (see s. 4 of that statute), and, it is submitted, against the Intoxicating Liquors (Ir.) Act, 1905, and the Intoxicating Liquors (Ir.), Act, 1906; but it will not apply to offences against the Children Act, 1908, s. 120, as applied to Ireland by s. 133 (29) of the same statute, to which the Petty Sessions Act procedure will apply. A defendant who is convicted can appeal, no matter how small the penalty may be. A prosecutor cannot appeal, not being a party aggrieved (see *R. (Kane) v. Tyrone JJ.*, (1906) 40 I.L.T.R. 181; *R. v. London JJ.*, (1890) 25 Q.B.D. 357). Nor is an owner of licensed premises, whose tenant has been convicted, a person aggrieved, even though the conviction has been recorded (*R. v. Andorer JJ.*, (1886) 16 Q.B.D. 711. See also Appeals to Quarter Sessions, p. 130, *ante*).

Procedure under Licensing Act, 1872, and Acts read therewith.

## LARCENY AND EMBEZZLEMENT.

	PAGE		PAGE
Definition of larceny, . . . . .	585	Summary jurisdiction under Larceny Act, 1861—	
Summary jurisdiction under Criminal Justice Act, 1855—		Punishment of abettors, . . . . .	589
Simple larceny not exceeding 5s., or attempted simple larceny or attempted larceny from the person, . . . . .	585	Arrest, . . . . .	589
Simple larceny, &c., exceeding 5s., . . . . .	586	Search warrant, . . . . .	589
Procedure, . . . . .	586	Application of penalties, . . . . .	589
Embezzlement, . . . . .	586	First offences, . . . . .	589
Summary jurisdiction under Larceny Act, 1861—		Barring of further proceedings, . . . . .	589
Dogs, . . . . .	586	Application of Petty Sessions Act, . . . . .	590
Animals kept in confinement, . . . . .	587	Number of justices required, . . . . .	590
Pigeons, . . . . .	587	Summary jurisdiction under Summary Jurisdiction (Ir.) Amendment Act, 1862—	
Trees, &c., . . . . .	587	Number of justices required, . . . . .	590
Fences, . . . . .	587	Stealing shrubs, &c., not over value of £5, . . . . .	590
Unlawful possession of tree, &c., . . . . .	588	Stealing trees, plants, &c., not over value of 40s., . . . . .	590
Stealing fruit, &c., from garden, . . . . .	588	Unlawful possession of carcases of sheep, . . . . .	590
Stealing vegetable productions, &c., elsewhere, . . . . .	588	Workman making away with goods not over value of £5, . . . . .	591
Unlawful possession of shipwrecked goods, . . . . .	588	Application of Summary Jurisdiction (Ir.) Acts, . . . . .	591
Offering shipwrecked goods for sale, . . . . .	588	Summary jurisdiction as to children and young persons, . . . . .	591
Receivers of stolen property, . . . . .	588	Game (including deer) and fish (including oysters). See GAME; FISHERY LAWS.	

As to what constitutes the offence of larceny, see CATALOGUE OF INDICTABLE OFFENCES, "LARCENY." Except in cases hereinafter mentioned, the offence is triable only on indictment.<sup>1</sup>

Where any person is charged at petty sessions with the simple larceny of anything which in the opinion of the court does not exceed in all the value of 5s., or with attempting to commit either larceny from the person or simple larceny, the court may try the case summarily; but if by reason of a previous conviction of the accused the offence charged is punishable with penal servitude, or if the court, for any reason, thinks that the offence charged should not be tried summarily, then the accused may be sent for trial (*Criminal Justice Act, 1855*,<sup>2</sup> 18 & 19 Vict. c. 128, s. 1); if the accused be tried summarily, he may be imprisoned for not exceeding

Definition of larceny.

Criminal Justice Act, 1855. Simple larceny not exceeding 5s., or attempted simple larceny, or attempted larceny from the person.

<sup>1</sup> The offence of obtaining money, &c., by false pretences, is not punishable summarily.

<sup>2</sup> Printed *verbatim*, APPENDIX OF STATUTES.

**Criminal  
Justice Act,  
1855.**

three months, with or without hard labour, or, if the court thinks that "there are circumstances in the case which render it inexpedient to inflict any punishment," the charge, whether proved or not, may be dismissed (*ib.*).

Before disposing summarily of any of the foregoing offences, justices must carefully comply with s. 2 of the Act, for which see APPENDIX OF STATUTES. From the wording of s. 2 it would appear that, once the justices, pursuant to that section, after having asked the accused whether he consents to be tried by them, and have been informed by the accused that he consents to be so tried, the power of the justices to commit him for trial is gone. *R. v. Hertfordshire J.J.*, (1911) 1 K.B. 612, may at first sight seem an authority against this view, but the decision in that case turned largely upon s. 12 of the Summary Jurisdiction (E.) Act, 1879, 42 & 43 Vict. c. 49, which provides that if, in reply to the question of the justices, the accused consents to be tried by them, they "may deal summarily with the offence," whilst in the Criminal Justice Act, 1855, s. 2, the corresponding words are "shall . . . dispose of the case summarily."

Simple  
larceny, or  
larceny from  
the person, or  
as a clerk or  
servant ;  
involving  
more than  
5s.

Where any person is charged at petty sessions, the amount involved being over 5s., with simple larceny, or larceny from the person, or as a clerk or servant, and if the evidence for the prosecution is in the opinion of the court sufficient to put the accused on his trial, the court, if of opinion that the offence may be properly disposed of summarily, shall reduce the charge to writing, and after reading it to the accused, and after explaining to him that he is not obliged to plead or answer before them at all and will be sent for trial if he refuses to answer, shall ask him whether he is guilty or not. If he pleads guilty, *penalty*, not exceeding six months with hard labour (*ib.*, s. 3). If he does not plead guilty, there is no summary jurisdiction.

Procedure.

Convictions and other proceedings to be returned to quarter sessions (s. 7). Upon a summary conviction, an order for the restitution of stolen property may be made (s. 8). For the purposes of the Act, petty sessions are an open court (s. 9). A certificate of dismissal or conviction under the Act is a bar to all further criminal proceedings (s. 12). Justices may order payment of expenses of prosecution out of public funds (s. 14). In Dublin a divisional justice, and outside Dublin apparently not less than two justices, may adjudicate (s. 16).

Embezzle-  
ment.

By the Larceny Act, 1868, 31 & 32 Vict. c. 116, s. 2, all the provisions of the Criminal Justice Act, 1855, are extended to cases of embezzlement.

**Larceny Act,  
1861.**

The following are the cases in which justices have summary jurisdiction under the Larceny Act, 1861<sup>1</sup> :—

Dogs.

"Whosoever shall steal any dog"—*Penalty*, on summary conviction, imprisonment, with or without hard labour, not exceeding six months, or fine, over and above the value of the said dog, not exceeding £20; "and whosoever, having been convicted of any such offence, either against this or any former Act of Parliament, shall afterwards be guilty of such offence as in this section before mentioned"—*Misdemeanour*, punishable on indictment by imprisonment, not exceeding eighteen months, with or without hard labour (*Larceny Act, 1861, 24 & 25 Vict. c. 96, s. 18*).

"Whosoever shall unlawfully have in his possession or on his premises any stolen dog, or the skin of any stolen dog, knowing such dog to have been stolen, or such skin to be the skin of a stolen dog"—*Penalty*, on summary conviction, not exceeding £20; "and whosoever, having been convicted of any such offence, either against this or any former Act of

<sup>1</sup> All offences triable summarily under the Act are now triable before a single justice (25 & 26 Vict. c. 50, s. 2); see APPENDIX OF STATUTES.

Parliament, shall afterwards be guilty of any such offence as is in this section before mentioned"—*Misdemeanour*, punishable on indictment by imprisonment, not exceeding eighteen months, with or without hard labour (s. 19). Larceny Ac. 1861.

"Whosoever shall steal any bird, beast, or other animal ordinarily kept in a state of confinement or for any domestic purpose, not being the subject of larceny at common law, or shall wilfully kill any such bird, beast, or animal, with intent to steal the same or any part thereof"—*Penalty*, on summary conviction, imprisonment, with hard labour, not exceeding six months, or fine, over and above the value of the bird, beast, or other animal, not exceeding £20; "and whosoever, having been convicted of any such offence either against this or any former Act of Parliament, shall afterwards commit any such offence as is in this section before mentioned"—*Penalty*, on summary conviction, imprisonment, with hard labour, not exceeding twelve months (s. 21). Animals kept in confinement.

"If any such bird, or any of the plumage thereof, or any dog, or any such beast, or the skin thereof, or any such animal, or any part thereof, shall be found in the possession or on the premises of any person, any justice may restore the same respectively to the owner thereof; and any person in whose possession or on whose premises such bird or the plumage thereof, or such beast or the skin thereof, or such animal or any part thereof shall be so found, such person knowing that the bird, beast, or animal has been stolen, or that the plumage is the plumage of a stolen bird, or that the skin is the skin of a stolen beast, or that the part is a part of a stolen animal"—*Penalty*, on summary conviction, first offence,<sup>1</sup> not exceeding £20, over and above the value of the bird, beast, or other animal; subsequent offence,<sup>1</sup> imprisonment, with hard labour, not exceeding twelve months (s. 22).

"Whosoever shall unlawfully and wilfully kill, wound, or take any house dove or pigeon under such circumstances as shall not amount to larceny at common law"—*Penalty*, on summary conviction, not exceeding £2 (s. 23). A conviction under this section cannot be supported where a farmer, believing that he is exercising a legal right, kills a pigeon which is picking up seeds on his lands (*Taylor v. Newman*, (1863) 9 Cox, 314). Pigeons.

"Whosoever shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, the whole or any part of any tree, sapling, or shrub, or any underwood, wheresoever the same may be respectively growing, the stealing of such article or articles, or the injury done, being to the amount of 1s. at the least"—*Penalty*, on summary conviction, over and above the value of the articles stolen, or the amount of the injury done, not exceeding £5; "and whosoever, having been convicted of any such offence, either against this or any former Act of Parliament, shall afterwards commit any of the said offences in this section before mentioned"—*Penalty*, on summary conviction, imprisonment not exceeding twelve months with hard labour; and "whosoever having been twice convicted of any such offence shall afterwards commit any of the offences in this section before mentioned"—*Felony*, punishable on indictment as simple larceny<sup>2</sup> (s. 33). Trees over value of 1s.

"Whosoever shall steal, or shall cut, break, or throw down, with intent to steal, any part of any live or dead fence, or any wooden post, pale, wire, or rail, set up or used as a fence, or any stile or gate, or any part thereof respectively"—*Penalty*, on summary conviction, over and above the value Fences, &c.

<sup>1</sup> For a first offence, a defendant cannot be imprisoned (*R. v. Martin*, (1874) I.R. 8 C.L. 556). The punishment provided by the section for any offence subsequent to a first cannot be ordered unless the first offence has been under this section, as the words "under this or any former Act of Parliament," &c., do not occur in the section.

<sup>2</sup> As to which see CATALOGUE OF INDICTABLE OFFENCES.



**Larceny Act,  
1861.**

of the articles stolen, or the amount of the injury done, not exceeding £5; "and whosoever, having been convicted of any such offence, either against this or any former Act of Parliament, shall afterwards commit any of the offences in this section before mentioned"—*Penalty*, on summary conviction, imprisonment not exceeding twelve months with hard labour (s. 34).

**Unlawful  
possession of  
tree, &c.**

"If the whole or any part of any tree, sapling, or shrub, or any under-wood, or any part of any live or dead fence, or any post, pale, wire, rail, stile, or gate, or any part thereof, being of the value of 1s. at the least, shall be found in the possession of any person, or on the premises of any person, with his knowledge, and such person, being taken or summoned before a justice of the peace, shall not satisfy the justice that he came lawfully by the same"—*Penalty*, on summary conviction, over and above the value of the articles so found, not exceeding £2 (s. 35).

**Stealing, &c.,  
fruit, &c.,  
from  
gardens, &c.**

"Whosoever shall steal, or shall destroy or damage with intent to steal, any plant, root, fruit, or vegetable production growing in any garden, orchard, pleasure-ground, nursery-ground, hot-house, green-house, or conservatory"—*Penalty*, imprisonment, with or without hard labour, not exceeding six months, or fine over and above the value of the articles so stolen, or the amount of the injury done, exceeding £20; "and whosoever having been convicted of any such offence, either against this or any former Act of Parliament, shall afterwards commit any of the offences in this section before mentioned"—*Felony*, punishable on indictment as simple larceny<sup>1</sup> (s. 36).

**Stealing, &c.,  
vegetable  
productions  
not growing  
in gardens, &c.**

"Whosoever shall steal, or shall destroy or damage with intent to steal, any cultivated root or plant, used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land, open or inclosed, not being a garden, orchard, pleasure-ground, or nursery-ground"—*Penalty*, imprisonment, with or without hard labour, not exceeding one month, or fine, over and above the value of the articles so stolen, or the amount of the injury done, not exceeding 20s.; and "whosoever, having been convicted of any such offence, either against this or any former Act of Parliament, shall afterwards commit any of the said offences in this section before mentioned"—*Penalty*, on summary conviction, imprisonment with hard labour, not exceeding six months (s. 37). Clover is a cultivated plant (*R. v. Brumby*, (1851) 5 Cox, 315). Mushrooms, flower-roots, water-cress, and plants, if growing without cultivation, are not within the section (*Gardner v. Mansbridge*, (1887) 19 Q.B.D. 217), but it is otherwise where mushrooms, &c., are the subject of cultivation (see 61 J.P., p. 571).

**Possession of  
shipwrecked  
goods.**

Persons in possession of shipwrecked goods not giving a satisfactory account—*Penalty*, imprisonment, with or without hard labour, not exceeding six months, or fine, over and above the value of the goods, not exceeding £20 (s. 65).

**Offering  
shipwrecked  
goods for sale**

If any person offers shipwrecked goods for sale, the goods may be seized—*Penalty*, imprisonment, with or without hard labour, not exceeding six months, or fine, over and above the value of the goods, not exceeding £20 (s. 60).

**Receivers of  
stolen  
property.**

"Where the stealing or taking of any property whatsoever is by this Act punishable on summary conviction, either for every offence, or for the first and second offence only, or for the first offence only, any person who shall receive any such property, knowing the same to be unlawfully come by, shall, on conviction thereof before a justice of the peace, be liable, for every first, second, or subsequent offence of receiving, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent

<sup>1</sup> As to which see CATALOGUE OF INDICTABLE OFFENCES.

offence of stealing or taking such property is by this Act made liable" **Larceny Act, 1861.**  
(s. 97).

"Whosoever shall aid, abet, counsel, or procure the commission of any offence which is by this Act punishable on summary conviction, either for every time of its commission, or for the first and second time only, or for the first time only, shall, on conviction before a justice of the peace, be liable, for every first, second, or subsequent offence of aiding, abetting, counselling, or procuring, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence as a principal offender is by this Act made liable" (s. 99). **Punishment of abettors.**

"Any person found committing any offence punishable, either upon indictment, or upon summary conviction, by virtue of this Act, except only the offence of angling in the daytime, may be immediately apprehended without a warrant by any person, and forthwith taken, together with such property (if any) before some neighbouring justice of the peace, to be dealt with according to law; and if any credible witness shall prove upon oath before a justice of the peace, a reasonable cause to suspect that any person has in his possession or on his premises any property whatsoever on or with respect to which any offence, punishable either upon indictment or upon summary conviction by virtue of this Act, shall have been committed, the justice may grant a warrant to search for such property as in the case of stolen goods; and any person to whom any property shall be offered to be sold, pawned, or delivered, if he shall have reasonable cause to suspect that any such offence has been committed on or with respect to such property, is hereby authorized, and, if in his power, is required to apprehend and forthwith to take before a justice of the peace the party offering the same, together with such property, to be dealt with according to law" (s. 103). **Arrest without warrant.** **Search warrant.**

"Every sum of money which shall be forfeited on any summary conviction for the value of any property stolen or taken, or for the amount of any injury done (such value or amount to be assessed in each case by the convicting justice), shall be paid to the party aggrieved, except where he is unknown, and in that case such sum shall be applied in the same manner as a penalty; and every sum which shall be imposed as a penalty by any justice of the peace, whether in addition to such value or amount or otherwise, shall be paid and applied in the same manner as other penalties recoverable before justices of the peace are to be paid and applied in cases where the statute imposing the same contains no direction for the payment thereof to any person: Provided, that where several persons shall join in the commission of the same offence, and shall, upon conviction thereof, each be adjudged to forfeit a sum equivalent to the value of the property or to the amount of the injury, in every such case no further sum shall be paid to the party aggrieved than such value or amount; and the remaining sum or sums forfeited shall be applied in the same manner as any penalty imposed by a justice of the peace is hereinbefore directed to be applied" (s. 106). **Application of forfeitures and penalties.**

"Where any person shall be summarily convicted before a justice of the peace of any offence against this Act, and it shall be a first conviction, the justice may, if he shall so think fit, discharge the offender from his conviction, upon his making such satisfaction to the party aggrieved for damages and costs, or either of them, as shall be ascertained by the justice"<sup>1</sup> (s. 108). **First offences.**

"In case any person convicted of any offence punishable upon summary conviction by virtue of this Act shall have paid the sum adjudged to be paid, together with costs, under such conviction, or shall have received **Barring of further proceedings.**

<sup>1</sup> See now also the Probation of Offenders Act, 1907 (7 Edw. 7, c. 17).



**Larceny Act,  
1861.**

a remission thereof from the Crown, or from the Lord Lieutenant, or shall have suffered the imprisonment awarded for non-payment thereof, or the imprisonment adjudged in the first instance, or shall have been so discharged from his conviction by any justice as aforesaid, in every such case he shall be released from all further or other proceedings for the same cause" (s. 109).

**Application of  
Petty Sessions  
Act.**

Section 110 provides for appeal, s. 111 takes away certiorari, and s. 112 provides for the return to quarter sessions of all convictions under the Act, but these provisions do not, it is submitted, apply to Ireland, in view of s. 120, which, so far as it applies to Ireland, is as follows:—

"Every offence hereby made punishable on summary conviction . . . may be prosecuted in Ireland before two or more justices of the peace or one metropolitan or stipendiary magistrate in the manner directed by the 14 & 15 Vict. c. 93, or in such other manner as may be directed by any Act that may be passed for like purposes; and *all provisions contained in the said Acts<sup>1</sup> shall be applicable to such prosecution in the same manner as if they were incorporated in this Act*" (s. 120). The words in italics seem to make it quite clear that appeal is governed by the Petty Sessions Act, and that, as provided by the Petty Sessions Act, certiorari is taken away and convictions are not to be returned to quarter sessions.

**Summary  
Jurisdiction  
(Ir.) Act,  
1862.**

The Summary Jurisdiction (Ir.) Act, 1862, 25 & 26 Vict. c. 50. after reciting, amongst other Acts, the Larceny Act, 1861, and the Malicious Damage Act, 1861 (as to which see p. 601), enacts as follows:—"Every offence by this Act and the said recited Acts respectively made punishable on summary conviction in Ireland may be prosecuted before any justice or justices sitting in petty sessions in Ireland, or before any two justices sitting out of petty sessions (when the offender shall be unable to procure bail for his appearance at petty sessions, or before any divisional justice of the police district of Dublin metropolis); and no stipendiary magistrate in Ireland, not being a justice of the police district in Dublin metropolis, shall have any further or other jurisdiction than any other justice of the peace in respect of any such offence" (*Summary Jurisdiction (Ir.) Act*, 1862, s. 2).

**Number of  
justices.**

**Stealing trees,  
shrubs, &c.  
(under the  
value of £5),  
growing any-  
where.**

"Any person who shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, the whole or any part of any growing tree, sapling, shrub, or underwood, or any growing fruit or vegetable production, or any growing cultivated root or plant, shall (in case the value of the property stolen or the amount of the injury done shall not exceed £5) pay to the party aggrieved the value of the property stolen or the amount of the injury done, and shall also be liable to a fine not exceeding £5, or to be imprisoned for any period not exceeding three months" (s. 4).

**Stealing trees,  
plants, vege-  
tables, &c.,  
severed from  
the soil or turf  
not exceeding  
40s. in value.**

"Any person who shall steal, or damage with intent to steal, the whole or any part of any tree, sapling, shrub, or underwood, or any cultivated plant, root, fruit, or vegetable production severed from the soil, or any turf or peat manufactured or partly manufactured for fuel (in case the value of such article or articles stolen, or the amount of the injury done shall not exceed 40s.), shall pay to the party aggrieved the value of the property stolen, or the amount of the injury done, and shall also be liable to a fine not exceeding £5, or to be imprisoned for a term not exceeding three months" (s. 5).

**Unlawful  
possession of  
carcasses of  
sheep, &c.**

"Whenever any credible witness shall prove upon oath, before a justice of the peace, that there is reasonable cause to suspect that any of the articles of property following: that is to say, the carcase of any sheep or lamb, or the head, skin, or any part thereof, or the fleece of any sheep or lamb, has been stolen or unlawfully taken, and is to be found in any

<sup>1</sup> That is, the P. S. Act and the English Summary Jurisdiction Act.



house or other place, it shall be lawful for such justice to issue a warrant to search such house or place for such articles of property; and any person in whose possession or on whose premises any of the said articles of property shall be found by virtue of any such search warrant (or by any member of the constabulary or metropolitan police forces when executing any warrant or otherwise acting in the discharge of his duty), and who shall not satisfy the justice before whom he shall be brought that he came lawfully by the same, or that the same was on his premises without his knowledge or assent, may be committed by such justice to gaol until the next day for holding petty sessions for the district, unless he shall enter into a recognizance with one or more sureties to appear at such petty sessions; and if such person shall not account for the same in manner aforesaid, he shall, on summary conviction by such justice or justices as aforesaid, and at his or their discretion, either be committed pursuant to the provisions of the Petty Sessions (Ir.) Act, 1851, to be imprisoned for a term not exceeding three months, or be liable to a fine not exceeding £5" (s. 6).

**Summary Jurisdiction (Ir.) Act, 1862.**

Workman making away with goods (not exceeding £5 in value) committed to his care—*Penalty*, fine not exceeding 40s. or imprisonment not exceeding one month, and compensation may be ordered to be paid (s. 7).

Workman making away with goods.

"Any person who shall steal, or injure with intent to steal, any turkey, goose, or other poultry (where the value of such poultry so stolen or injured shall not exceed 5s.), shall be liable to a fine not exceeding 20s., or to be imprisoned for a period not exceeding two weeks" (s. 8). This section does not authorize the justices to make an order for the restitution of the stolen property (*R. (Hannon) v. Londonderry JJ.*, (1910) 44 I.L.T.R. 135).

Stealing poultry (not exceeding 5s. in value).

Proceedings under the Summary Jurisdiction (Ir.) Act, 1862, are subject to the provisions of the Summary Jurisdiction (Ir.) Acts,<sup>1</sup> "so far as the said provisions shall be consistent with any special provisions of this Act" (s. 3).

**Procedure.**

As to jurisdiction in the case of, amongst other things, larceny by children or young persons, see CHILDREN, p. 406.

Children and young persons.

## LAUNDRY.

Provisions as to laundries are contained in the Factory and Workshop Act, 1907, *verbatim*, APPENDIX OF STATUTES. See also FACTORIES AND WORKSHOPS.

## LIBEL.

	PAGE		PAGE
Summary jurisdiction to dismiss charge of libel, . . . .	591	Defendant and husband or wife competent witnesses, . . . .	592
When truth is a defence, . . . .	592	Summary punishment of trivial libel, . . . .	592

"A court of summary jurisdiction, upon the hearing of a charge against a proprietor, publisher, or editor, or any person responsible for the publication of a newspaper, for a libel published therein, may receive evidence as to the publication being for the public benefit, and as to the matters charged in the libel being true, and as to the report being fair and accurate, and published without malice, and as to any matter which under this or any other Act or otherwise, might be given in

**Summary jurisdiction to dismiss charge of libel**

<sup>1</sup> As to which see p. 335.

evidence by way of defence by the person charged on his trial on indictment; and the court, if of opinion after hearing such evidence that there is a strong or probable presumption that the jury on the trial would acquit the person charged, may dismiss the case" (*Newspaper Libel and Registration Act, 1881, 44 & 45 Vict. c. 60, s. 4*).

When truth is a defence.

Truth afforded no defence to a criminal charge of libel until the passing of the Libel Act, 1843, 6 & 7 Vict. c. 96.<sup>1</sup> By section 6 of that statute, the truth of the matters charged may be inquired into, but shall not amount to a defence unless it was for the public benefit that the said matters charged should be published.<sup>2</sup>

Defendant and husband or wife competent witnesses.

The defendant, and the husband or wife of the defendant, are competent, but not compellable, witnesses in any prosecution for libel (*Law of Libel Amendment Act, 1888, 51 & 52 Vict. c. 64, s. 9*).

Summary punishment of trivial libel.

"If a court of summary jurisdiction upon the hearing of a charge against a proprietor, publisher, editor, or any person responsible for the publication of a newspaper for a libel published therein, is of opinion that though the person charged is shown to have been guilty, the libel was of a trivial character, and that the offence may be adequately punished by virtue of the powers of this section, the court shall cause the charge to be reduced into writing and read to the person charged, and then address a question to him to the following effect: "Do you desire to be tried by a jury, or do you consent to the case being dealt with summarily?" and if such person assents to the case being dealt with summarily, the court may summarily convict him, and adjudge him to pay a fine not exceeding £50. Section 27 of the Summary Jurisdiction Act, 1879, shall, so far as is consistent with the tenor thereof, apply to every such proceeding as if it were herein enacted and extended to Ireland, and as if the Summary Jurisdiction Acts were therein referred to instead of the Summary Jurisdiction Act, 1848" (*Newspaper Libel and Registration Act, 1881, s. 5*).<sup>3</sup>

<sup>1</sup> Truth was always a perfect answer in a civil action.

<sup>2</sup> The section does not apply to seditious libels (*R. v. Duffy, (1846) 9 Ir. L.R. 329*; see *R. v. McHugh, (1901) 2 I.R. 569, ex parte O'Brien, (1883) 12 L.R.I. 29*).

<sup>3</sup> Section 27 of the English Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49, contains regulations as to indictable offences dealt with summarily, and is as follows:—

"Where an indictable offence is under the circumstances in this Act mentioned authorized to be dealt with summarily: (1) The procedure shall, until the court assumes the power to deal with such offence summarily, be the same in all respects as if the offence were to be dealt with throughout as an indictable offence, but when and so soon as the court assume the power to deal with such offence summarily, the procedure shall be the same from and after that period as if the offence were an offence punishable on summary conviction and not on indictment, and the provisions of the Acts relating to offences punishable on summary conviction shall apply accordingly; and (2) the evidence of any witness, taken before the court assumed the said power, need not be taken again, but every such witness shall, if the defendant so require it, be recalled for the purpose of cross-examination; and (3) the conviction for any such offence shall be of the same effect as a conviction for the offence on indictment, and the court may make the like order for the restitution of property as might have been made by the court before whom the person convicted would have been tried, if he had been tried on indictment: and (4) where the court have assumed the power to deal with the case summarily, and dismiss the information, they shall, if required, deliver to the person charged a copy certified under their hands of the order of such dismissal, and such dismissal shall be of the same effect as an acquittal on a trial on indictment for the offence; and (5) the conviction shall contain a statement either as to the plea of guilty of an adult, or in the case of a child as to the consent or otherwise of his parent or guardian, and in the case of any other person of the consent of such person, to be tried by a court of summary jurisdiction; and (6) the order of dismissal shall be transmitted to and filed by the clerk of the peace in like manner as the conviction is required by the Summary Jurisdiction Act, 1848, to be transmitted and filed, and together with the order of dismissal or the conviction, as the case may be, there shall be transmitted to and filed by such clerk in each case the written charge, the depositions of the witnesses, and the statement, if any, of the accused."

**LIBRARIES.**

“Any person who in any library or reading-room to which this Act applies, to the annoyance or disturbance of any person using the same (1) behaves in a disorderly manner; (2) uses violent, abusive, or obscene language; (3) bets or gambles; (4) or who, after proper warning, persists in remaining therein beyond the hours fixed for the closing of such library or reading-room”—*Penalty*, not exceeding 40s. (*Libraries Offences Act*, 1898, 61 & 62 Vict. c. 53, s. 2, as applied to any library established under the *Public Libraries (Ir.) Act*, 1855, 18 & 19 Vict. c. 40, by the *Public Libraries (Ir.) Act*, 1902, 2 Ed. 7, c. 20, s. 7).

The provision of the *Public Libraries Act*, 1901, 1 Ed. 7, c. 19, enabling the local authority to make bye-laws, is extended to Ireland, with certain modifications, by the *Public Libraries (Ir.) Act*, 1902, s. 8.

**LIGHTS ON VEHICLES.**

See *Lights on Vehicles Act*, 1907, 7 Ed. 7, c. 45, APPENDIX OF STATUTES.

**LINEN.**

The statutes, other than the *Factory Acts*, regulating the manufacture of linen in Ireland are the *Linen Manufactures (Ir.) Act*, 1835, and the *Linen Manufactures (Ir.) Act*, 1844. It is not thought necessary to do more than refer to these Acts, for they relate to a system of selling linen in fairs and markets which has now fallen into desuetude.

The prevention of frauds by weavers, sewers, and other persons engaged in the linen manufacture, as well as in other textile manufactures, and the better payment of the wages of such persons, is provided for by the *Textile Manufacturers (Ir.) Act*, 1840, the *Textile Manufacturers (Ir.) Act*, 1842, and the *Textile Manufactures (Ir.) Act*, 1867. These Acts also do not require any lengthy reference. They relate to the time at which the manufacture of linen was mainly carried on by handloom weavers in their own houses, which system has now been largely superseded by the system of manufacturing in mills. The offence committed by a weaver, &c., who fraudulently disposes of yarn entrusted to him, can generally be as effectually dealt with under the *Summary Jurisdiction (Ir.) Act*, 1862, s. 7, as under s. 2 of the *Act of 1842*; and the misdemeanours referred to in ss. 3 & 4 of the *Act of 1842* can generally be effectually dealt with under the *Larceny Act*, 1861.

As to obligation on sale of linen, &c., to mark Irish-woven, and as to sale of goods falsely bearing such mark, see *Irish Handloom Weavers Act*, 1909, 9 Ed. 7, c. 21, noted under *MERCHANDISE MARKS*, p. 623.

**LOBSTERS.**

See *CRABS AND LOBSTERS*, p. 414.



## LOCAL GOVERNMENT OFFENCES.

	PAGE		PAGE
Non-acceptance of office, . . .	594	Acting when disqualified, . . .	596
Declaration before acting, . . .	594	Who may prosecute, . . .	598
Disqualification by absence, . . .	594	Acting without qualification a criminal matter, . . .	598
Other statutory disqualifications, . . .	595		

**Non-acceptance of office.**

“(1) Every qualified person elected or chosen to a corporate office in a council or board, unless exempt under this article or otherwise by law, either shall accept the office by making and subscribing the declaration required by this order within ten days, or, in the case of a corporate office in a county council, within three months after notice of election,<sup>1</sup> or shall, in lieu thereof, be liable to pay to the council or board a fine of such amount not exceeding £50, and in case of a chairman or vice-chairman £100, as the council or board by bye-law, made in accordance with the enactments relating to the making of bye-laws by such council or board, or if there is no such enactment, made with the approval of the Local Government Board, determine.

“(2) If there is no bye-law determining fines, the fine in case of a councillor or guardian, shall be £25, and in case of a chairman or vice-chairman, £50.

“(3) The persons exempt under this section are—(a) any person disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body, and (b) any person who, being above the age of sixty-five years, or having within five years before the day of his election either served the office or paid the fine for non-acceptance thereof, claims exemption within five days after notice of his election.

“(4) A fine payable under this article shall be recoverable on conviction before a court of summary jurisdiction.

**Declaration before acting.**

“(5) A person elected or chosen to a corporate office in a council or board shall not, until he has made and subscribed before two members or the secretary or clerk of the council or board, or in the case of a corporate office in a county council, either in that manner or before any justice of the peace or commissioner to administer oaths in the Supreme Court, a declaration as hereinafter mentioned, act in the office except in administering that declaration. The said declaration is as follows:—

I, A. B., having been chosen chairman [or vice-chairman, or councillor, or guardian] for the of , hereby declare that I take the said office upon myself, and will duly and faithfully fulfil the duties thereof according to the best of my judgment and ability.

“(6) Nothing in this article shall render a person elected or chosen to a corporate office without his consent to his nomination being previously obtained, liable to pay a fine on non-acceptance of office”—(Art. 9 of Schedule to Application of Enactments Order, 1898, made pursuant to the Local Government (Ir.) Act, 1898).

**Disqualification by absence.**

“(8) . . . If a member of a council of a county or district or of a board of guardians or of any town commissioners is absent from meetings of the council board or commissioners for more, in the case of a county council, than twelve months, consecutively, and in the case of a district council board or commissioners than six months consecutively, except in

<sup>1</sup> That is to say, either by being actually present when the election takes place or by receiving, not casual information, but formal official notice of his election (*R. v. Preece*, (1843) 5 Q.B. 94).

case of illness or for some reason approved by the council, board, or commissioners, his office shall on the expiration of these months become vacant"—(Art. 12 (9) of *Schedule to Adaptation of Enactments Order*, 1898, made pursuant to the Local Government (Ir.) Act, 1898).

"Where a person becomes disqualified by absence for holding a corporate office in a council or board he shall be liable to the same fine as for non-acceptance of office, recoverable on conviction before a court of summary jurisdiction . . ."—(Art. 10 (3) of *Schedule to Adaptation of Enactments Order*, 1898, made pursuant to the Local Government (Ir.) Act, 1898.

The place of meeting of the body from whose meetings the defendant is charged with having absented himself is to be deemed the place at which the offence was committed (see *R. v. Milner*, (1846) 2 C. and K. 310).

"(4) A person shall be disqualified for being elected or chosen or being a member of a council of a county or of a district or of a board of guardians or of any town commissioners if he (a) is an infant or an alien; or (b) has within twelve months before his election, or since his election, received union relief; or (c) has, within five years before his election, or since his election, been convicted either on indictment or summarily of any crime,<sup>1</sup> and sentenced to imprisonment with hard labour without the option of a fine, or to any greater punishment, and has not received a free pardon, or has, within or during the time aforesaid, been adjudged bankrupt, or made a composition or arrangement with his creditors; or (d) holds any paid office or place of profit under or in the gift or disposal of the council, board, or commissioners, as the case may be, other than that of mayor or sheriff; or (e) is concerned by himself or his partner in any bargain or contract entered into with the council, board, or commissioners, or participates by himself or his partner in the profit of any such bargain or contract, or of any work done under the authority of the council, or board, or commissioners, and for the purpose of this provision, any bargain or contract with a county council in respect of any public work in a district shall be deemed to be also a bargain or contract with the council of that district.

**Disqualification by absence.**

**Other statutory disqualifications.**

*Infant.*  
*Alien.*  
*Poor law relief.*  
*Conviction.*  
*Bankruptcy or arrangement.*  
*Office of profit.*

*Bargain or contract.*

"(5) Provided that a person shall not be disqualified for being elected or chosen or being a member of any such council, board, or commissioners by reason of being, by himself or his partner, interested (a) in the sale or lease of any lands or in any loan of money to the council, board, or commissioners, or in any contract with the council for the supply from land, of which he is owner or occupier, of stone, gravel, or other materials for making or repairing highways or bridges, or in the transport of materials for the repair of roads or bridges in his own immediate neighbourhood; or (b) in any newspaper in which any advertisement relating to the affairs of the council, board, or commissioners is inserted; or (c) in any contract with the council, board, or commissioners as a shareholder in any joint-stock company.

**Exemptions.**

*Sale or lease of land, &c.*

*Newspapers.*  
*Shares in company.*

"(6) The foregoing provisions of this article shall apply as if any committee of a council, board, or commissioners, or any joint committee partly appointed by a council, board, or commissioners, were that council, board, or commissioners.

**Committees.**

"(7) Where a person is disqualified by being adjudged bankrupt or making a composition or arrangement with his creditors, the disqualification shall cease in case of bankruptcy, when the adjudication is annulled, or when he obtains his discharge with a certificate that his bankruptcy was caused by misfortune without any misconduct on his part, and, in case of composition or arrangement, on payment of his debts in full.

**Cesser of disqualification in bankruptcy or arrangement.**

<sup>1</sup> It is immaterial that the crime was committed in England, Scotland, or Wales (see *Conybeare v. London School Board*, (1891) 1 Q.B. 118).

Acting when  
disqualified.

"(8) A person disqualified for being a guardian shall also be disqualified for being a rural district councillor. . . . (11) If any person acts when disqualified or votes when prohibited under this Order, he shall for each offence be liable on summary conviction to a fine not exceeding twenty pounds, without prejudice to the disqualification enacted by subsection 3 of section 94 of the Act" (*Art. 12 of Schedule to Application of Enactments Order*, 1898, made pursuant to the Local Government (Ir.) Act, 1898).

"Composition  
or arrange-  
ment."

The words "composition or arrangement" are wide enough to cover every composition, howsoever made, which the debtor has made with his creditors (*Bradfield v. Cheltenham Guardians*, (1906) 2 Ch. 371, *per* Buckley, J., at p. 377), and therefore include an arrangement made outside court.

"Bargain or  
contract."

A number of difficult questions arise on clause 4 (2) of this article:— (1) What is a "bargain" or "contract"? (2) When is a person "concerned in" a bargain or contract? and (3) what is the nature and duration of the disqualification?

What is a "bargain" or "contract"? It appears clear that a petty cash transaction, involving immediate mutual performance, is not a "bargain" or "contract." "A case was put of the commissioners buying some trifling article at a shop kept by one commissioner, and paying for it over the counter. It seems to me that is not a contract within the statute; but I am by no means prepared to say that if articles were so supplied from time to time upon credit, there would not be a contract. The buying a pennyworth of nails may not be a contract, but that is different from supplying lime on credit. Here there was evidence for the jury of a continuous dealing and supplying on credit of an article which the commissioners must buy" (*per* Martin, B., in *Nicholson v. Fields*, (1862) 7 H. & N. 810; see also judgment of Lopes, L.J., in *Nutton v. Wilson*, (1889) 22 Q.B.D. 744, at p. 749; and of Bramwell, B., in *Lewis v. Carr*, (1876) 1 Ex. D. 484, at p. 486). In *Nicholson v. Fields*, *supra*, an invoice was produced in the handwriting of the defendant, charging the commissioners with lime supplied by him to them on several occasions during a period of some months. It was held that this was evidence from which the jury might properly find that he was concerned or participated in a contract within s. 9 of the Commissioners Clauses Act, 1847. If there is anything in the nature of a continuous dealing, the *quantum* of profit derivable from it seems immaterial. A person appointed chemist to the council was held disqualified even though his sales during the period in question amounted to only fourpence (*Nell v. Longbottom*, (1894) 1 Q.B. 767; see *R. v. Rowlands*, (1906) 2 K.B. 292). The acceptance of a tender for a twelve months' supply of goods was held to be a contract, and its subsequent rescission did not purge the disqualification existing at the date of its acceptance (*Ford v. Newth*, (1901) 1 K.B. 683). In *Local Government Board v. Eivers*, (1902) 2 I.R. 262, the defendant was summoned and convicted at petty sessions for acting as a district councillor while disqualified, the ground of disqualification alleged and proved being that at the time of so acting he was in occupation of a labourer's cottage and allotment, under the Labourers (Ir.) Acts, under a monthly agreement of letting from the district council. *Held*, that such letting was not a "bargain" or "contract" within the article; that, even if it was such a bargain or contract, still it came within the exception in clause 5 (a) of the same article as a lease of lands, and that the conviction was wrong. A poor law guardian, who, in common with the other occupiers under a certain valuation, receives seed potatoes from the guardians under a promise to pay for them a specified price, is, at least so long as the price remains unpaid, concerned in a contract with the guardians, within the article (*R. (Madden) v. Roscommon JJ.*, (1906) 2 I.R. 173). Whether the



office of a rate-collector is a "contract" or "bargain" within the article, *quaere* (*Kearse v. O'Mahony*, (1910) 44 I.L.T.R. 231). Acting when disqualified.

Assuming a bargain or contract, when is a person concerned therein? "Concerned in."  
 A retired partner who remains liable on a contract entered into with a public body is "concerned in" such contract (*Cox v. Ambrose*, (1891) 7 T.L.R. 59). A person who is employed by another person to do the work or portion of the work which such other person has entered into a contract with a public body to do, is "concerned in" such contract (*Nutton v. Wilson*, (1889) 22 Q.B.D. 744). In that case the contractor was a plumber who had entered into a contract with the local board for the putting up of certain warming apparatus at the board's offices. It being necessary for the performance of the work to take up some boards, and to trim and lay them down again, and to do some other joinery work on the premises, he ordered the work of the defendant, who was a joiner, through his foreman, and the work was done at a cost of between £2 and £3 by the defendant's men. *Held*, that the defendant, who was a member of the board, was concerned in the contract (see also *Tomkins v. Jolliffe*, noted 21 I.L.T. & S.J. 256). In *Barnacle v. Clark*, (1900) 1 Q.B. 279, the defendant, a member of a school board, sold sand and gravel to a builder who had entered into a contract with the board for the building of a school; at the time the defendant was aware that the sand and gravel were intended to be used, as they were in fact used, in the building of the school; and the sand and gravel were paid for at the time, apparently at the usual rate. *Held*, that the defendant had been "concerned in" work done under the authority of the board. But a member of a town council who, in the course of his trade, sold some iron to a party who had contracted to supply the council with iron railings, and who purchased the iron for the purpose of performing his contract, was held not to have an interest in the contract within the meaning of 5 & 6 Wm. 4, c. 76, s. 28 (*Le Feuvre v. Lankester*, (1854) 3 E. & B. 530). The only distinction between *Le Feuvre v. Lankester* and *Barnacle v. Clark* seems to be that in the former case the defendant did not know, while in the latter case he did know, the purpose for which the materials were required. A town surveyor who takes out quantities for a contract for which he is to be paid by the contractor is "interested in" the contract (*Whiteley v. Barley*, (1888) 21 Q.B.D. 154). An officer of a local authority who lets rooms to the board is "concerned in or interested in a bargain or contract" with the board (*Burgess v. Clark*, (1884) 14 Q.B.D. 735). A rate collector died unmarried intestate and a creditor of a district council, and administration of his estate, which was insolvent, was granted to his brother, his father being a member of the district council. *Held*, that the estate being insolvent, the father took no benefit or interest in the contract and was not disqualified (*Kearse v. O'Mahony*, (1910) 44 I.L.T.R. 231).

The respondent was an acting councillor for the urban district of Ballinasloe, County Galway, and, while such acting councillor, was a contractor to the board of guardians of the Ballinasloe Lunatic Asylum for the supply of delft and brushes. The district of the Asylum comprised two counties, Galway and Roscommon, and the board was a joint committee of the councils of both counties, with a representative from each council, pursuant to section 9 of the Act. *Held*, that the respondent's contract was not one in respect of any public work within the district, and that therefore he had not incurred a penalty under Article 12. *Held*, also, by Gibson, J., that the contract was not within the mischief (*viz.*, a conflict of interest and duty) prohibited (*Hastings v. Cogavin*, (1904) 2 I.R. 529). "Public work."

Assuming a disqualification under clause 4, what is its duration? <sup>1</sup> Duration of disqualification.

<sup>1</sup> As to bankruptcy or arrangement, see p. 595.

Acting when  
disqualified.

Does it merely continue as long as the contract is in existence and cease when the contract is performed on both sides? There is no absolutely binding authority on the point.<sup>1</sup>

In *O'Carroll v. Hastings*, (1905) 2 I.R. 590, at pp. 609, 610, Gibson, J., clearly expressed his opinion upon this point, which, however, was not necessary for the decision. "Disqualification should not be intermittent. Once it attaches, it cannot be got rid of by mere lapse of time without a new election. . . . The member must be taken to know his own disqualification, and, whether the council knows the disqualification and avoids the election or not, he incurs the penalty if he acts, notwithstanding that the original cause of disqualification has determined. Once the disqualification has destroyed his lawful status, it cannot be regained under article 12 without a new election." And he further says that the same observation applies even where the disqualification attaches *before* and at the time of the election. "A membership invalidated at its birth ought not to stand in a better position than a membership invalidated by matter subsequent."

Who may  
prosecute.

In *Kenealy v. O'Keeffe*, (1901) 2 I.R. 39, it was held that any person may prosecute a defendant for acting when disqualified, and the grounds for the decision in that case make it clear that any person may prosecute for any other of the offences mentioned in this Article.

Acting  
without  
qualification  
is a criminal  
matter.

Acting as a member of a public board without qualification is a criminal matter (*Martin v. Treacher*, (1886) 16 Q.B.D. 507).

## LOCOMOTIVES ON HIGHWAYS.

	PAGE		PAGE
Light Locomotives—See MOTOR CARS.		County surveyor to be conservator of	
Heavy Locomotive—		roads, . . . . .	600
To consume its own smoke, . . . .	598	Penalties, . . . . .	600
Regulations as to use, . . . .	599	Bye-laws by local authority, . . . .	600
Regulations as to speed, . . . .	599	Actions for nuisance or damage, . . . .	600
Miscellaneous provisions, . . . .	599		
Weight of locomotive and name and			
residence of owner to be affixed, . . . .	600		

Heavy loco-  
motives.  
Light loco-  
motives.

This article deals with Heavy Locomotives, that is, mechanically propelled vehicles not coming within the definition of Light Locomotives under the Motor Car Acts, 1896 and 1903, for which see MOTOR CARS, p. 628. The Acts dealing with Heavy Locomotives are the Locomotive Act, 1861, 24 & 25 Vict. c. 70, and the Locomotive Act, 1865,<sup>2</sup> 28 & 29 Vict. c. 83, which are to be construed as one Act (*Act of 1865*, s. 13).

Locomotive to  
consume its  
own smoke.

"Every locomotive propelled by steam or any other than animal power to be used on any turnpike road or public highway shall be constructed on the principle of consuming and so as to consume its own smoke; and any person using any locomotive not so consuming its own smoke"<sup>3</sup>—*Penalty*, on conviction before any two justices, not exceeding £5 for every day

<sup>1</sup> There are some English cases, of which *Todd v. Robinson*, (1884) 14 Q.B.D. 739, *R. v. Morton*, (1892) 1 Q.B. 39, *Lewis v. Carr*, (1876) 1 Ex. D. 484, may be mentioned, decided, however, on different statutes.

<sup>2</sup> The Act of 1865 was originally enacted for a year, but is kept in force by the Expiring Laws Continuance Acts.

<sup>3</sup> The case of the *Star Omnibus Co. v. Tagg*, (1907) 23 T.L.R. 288, was decided on the words "constructed on the principle of consuming or not consuming so far as practicable its own smoke," of the Highways and Locomotives (E.) Amendment Act, 1878, s. 30. The above section does not contain the words "so far as practicable."

during which such locomotive shall be used on any such turnpike road or public highway (*Locomotive Act, 1861, s. 8*).

“Every locomotive propelled by steam or any other than animal power on any turnpike road or public highway shall be worked according to the following rules and regulations, viz. :—Firstly—At least three persons shall be employed to drive or conduct such locomotive; and if more than two waggons or carriages be attached thereto, an additional person shall be employed, who shall take charge of such waggons or carriages. Secondly—One of such persons, while any locomotive is in motion, shall precede such locomotive on foot by not less than sixty yards, and shall carry a red flag constantly displayed, and shall warn the riders and drivers of horses of the approach of such locomotives, and shall signal the driver thereof when it shall be necessary to stop, and shall assist horses and carriages drawn by horses passing the same. Thirdly—The drivers of such locomotives shall give as much space as possible for the passing of other traffic. Fourthly—The whistle of such locomotives shall not be sounded for any purpose whatever; nor shall the cylinder taps be opened within sight of any person riding, driving, leading, or in charge of a horse upon the road; nor shall the steam be allowed to attain a pressure such as to exceed the limit fixed by the safety valve, so that no steam shall blow off when the locomotive is upon the road. Fifthly—Every such locomotive shall be instantly stopped on the person preceding the same, or any other person with a horse or carriage drawn by a horse, putting up his hand as a signal to require such locomotive to be stopped. Sixthly—Any person in charge of any such locomotive shall provide two efficient lights, to be affixed conspicuously, one at each side on the front of the same, between the hours of one hour after sunset and one hour before sunrise. In the event of non-compliance with any of the provisions of this section, the owner of the locomotive shall, on summary conviction thereof before two justices, be liable to a *penalty* not exceeding £10; but it shall be lawful for such owner, on proving that he has incurred such penalty by reason of the negligence or wilful default of any person in charge of or in attendance on such locomotive, to recover summarily from such person the whole or any part of the penalty he may have incurred as owner” (*Locomotive Act, 1865, s. 3*).

**Regulations as to use.**  
Persons in attendance.

Red flag.

Passing other traffic.

Use of whistle.

Duty to stop on request.

Lights.

“Subject and without prejudice to the regulations hereinafter authorized to be made by local authorities,<sup>1</sup> it shall not be lawful to drive any such locomotive along any turnpike road or public highway at a greater speed than four miles an hour, or through any city, town, or village at a greater speed than two miles an hour; and any person acting contrary thereto shall for every such offence, on summary conviction thereof, forfeit any sum not exceeding £10” (*Locomotive Act, 1865, s. 4*). The speed limit imposed by this section is not binding on the Crown (*Cooper v. Hawkins, (1904) 2 K. B. 164*).

**Speed.**

As to wheels, size, and weight of locomotives, see the *Locomotive Act, 1861, s. 3*, and the *Locomotive Act, 1865, s. 5*; and as to weight to be carried, see the *Locomotive Act, 1861, s. 4*. Locomotives are not to be driven over suspension bridges nor over any bridge on which a prohibitive notice is placed by authority of county surveyor or persons liable to repair of bridge, without consent of surveyor, bridgeworkmaster, or the persons liable to repair (*Act of 1861, s. 6*). Damage caused to bridges is to be made good by owner of locomotive<sup>2</sup> (*s. 7*). The provisions of general or local

**Miscellaneous provisions.**

<sup>1</sup> The words in italics refer to the provisions in *s. 8* which are not applicable to Ireland. The only power to make bye-laws in Ireland is under the Public Health (Ir.) Amendment Act, 1879, *s. 6*, noted *post*, p. 600.

<sup>2</sup> Section 7 applies only to private bridges (*R. v. Kitchener, (1873) L. R. 2 C. C. R. 88*).



Acts relating to turnpike roads or highways are to apply to locomotives (s. 12).

The restrictions contained in any Act as to the use of a steam-engine within twenty-five yards of a road<sup>1</sup> do not apply to locomotives used within that distance of a road for ploughing under the conditions specified in s. 6 of the Act of 1865 (*Locomotive Act*, 1865, s. 6).

Weight of locomotive and name and residence of owner to be marked.

The weight of every locomotive and the name or names of the owners are to be conspicuously and legibly affixed thereto—*Penalty* on owner for non-compliance, not exceeding £5, recoverable before two justices; *Penalty* on owner not exceeding £10 for fraudulently marking an incorrect weight (*Locomotive Act*, 1861, s. 12).

"The name and residence of the owner of every locomotive shall be affixed thereto in a conspicuous manner"—*Penalty* on owner for non-compliance not exceeding £2 (*Locomotive Act*, 1865, s. 7).

County surveyor to be conservator of roads.

"For the purposes of this Act the county surveyor of each county in Ireland shall be deemed to be the conservator of all the roads in the county of which he is surveyor, made or repaired by grand jury presentment<sup>2</sup>; and it shall not be lawful to use any locomotive, other than those specially authorized by this Act, on any such road in any county in Ireland, without the consent in writing of the county surveyor thereof, approved of by one or more justices sitting at petty sessions; and all compensation for any damage done by any locomotive to any bridge, gullet, or arch, or of the walls, buttresses, or supports thereof, on any such road in any county in Ireland, shall be recoverable in the name of the county surveyor thereof, for and on behalf of the county, from the party liable to pay the same, such compensation, if not exceeding £10, to be recovered in a summary way by summons at petty sessions, and if over £10 to be recovered by process in the civil bill court" (*Locomotive Act*, 1865, s. 9).

Penalties.

Penalties are recoverable according to the provisions of the Petty Sessions (Ir.) Act, 1851 (*Locomotive Act*, 1865, s. 10). There is no provision as to appeal.<sup>3</sup>

Bye-laws.

"In urban sanitary districts the urban sanitary authority, and in such parts of the counties as are outside the limits of any urban sanitary district the grand jury,<sup>4</sup> may respectively from time to time make bye-laws as to the hours during which locomotives propelled by steam or by other than animal power are not to pass over the roads or highways situate within the areas respectively above mentioned, the hours being in all cases consecutive hours, and not more than eight out of the twenty-four, and for regulating the use of such locomotives upon any highway, or preventing such use upon every bridge where such authority is satisfied that such use would be attended with danger to the public; and any person in charge of a locomotive acting contrary to such bye-laws shall be liable to a fine not exceeding £5, to be recovered in a summary manner" (*Public Health (Ir.) Amendment Act*, 1879, 42 & 43 Vict. c. 57, s. 6).

Actions for nuisance or damage.

Nothing in this Act contained shall authorize any person to use a locomotive which may be so constructed or used as to be a public nuisance at common law; and nothing herein contained shall affect the right of any person to recover damages in respect of any damages he may have sustained in consequence of the use of a locomotive (*Locomotive Act*, 1865, s. 12; see also s. 13 of the *Locomotive Act*, 1861).

<sup>1</sup> This seems to refer to the provisions of the Highway Act, 1835 (5 & 6 Wm. 4, c. 50, s. 70), which is an exclusively English Act.

<sup>2</sup> Now county council resolution.

<sup>3</sup> See, therefore, p. 132.

<sup>4</sup> Now the county council (Local Government (Ir.) Act, 1898, s. 4).

The use of a traction engine which, by reason of its excessive weight, does substantial and enormous damage to a public road, adequate for ordinary traffic, is a public nuisance, even though it be constructed in accordance with the provisions of the Locomotive Acts, 1861 and 1865. In such a case the duty cast upon a county council to repair such damage, and the liability of a district council to provide the funds for such repair, amount to special damage, so as to make the owner of the traction engine civilly liable at the suit of both bodies, suing jointly, for the cost of repairing the road. *Seemle*, such an action could be maintained by either body suing alone (*Cavan County Council v. Kane*, (1910) 2 Ir. 644).

Actions for  
nuisance or  
damage.

### LUNATIC.

"If any manager, officer, nurse, attendant, servant, or other person employed in an institution for lunatics, or any person having charge of a lunatic, whether by reason of any contract or of any tie of relationship, or marriage, or otherwise [or any person employed in the care of a single patient or of a lunatic in a workhouse],<sup>1</sup> strikes or otherwise ill-treats or wilfully neglects a patient, he shall be guilty of a misdemeanour, and, on conviction on indictment, shall be liable to a fine or imprisonment, or to both fine and imprisonment, at the discretion of the court, or be liable on summary conviction for every offence to a penalty not exceeding £20, nor less than £2" (*Lunacy Act*, 1890, 53 & 54 Vict. c. 5, s. 322).

Ill-treatment  
of lunatic.

See also CATALOGUE OF INDICTABLE OFFENCES.

### MALICIOUS INJURIES TO PROPERTY.

	PAGE		PAGE
Ouster of jurisdiction, . . . . .	601	Offences punishable summarily under	
Malice, . . . . .	601	the Malicious Damage Act, 1861—	
Offences punishable summarily under		Damage not previously provided	
the Malicious Damage Act, 1861—		for by Act, . . . . .	604
Trees to value of 1s., . . . . .	602	Compensation for damage, . . . . .	604
Plants, &c., . . . . .	603	Trees generally, . . . . .	605
Fences, &c., . . . . .	603	Arrest, . . . . .	605
Electric telegraphs, . . . . .	603	Abettors, . . . . .	605
Animals, . . . . .	604	Procedure, . . . . .	605

The law on the subject of malicious injury to property is consolidated by the Malicious Damage Act, 1861, 24 & 25 Vict. c. 97.

Ouster of  
jurisdiction.

The summary jurisdiction of justices under this Act is (under the rule of law dealt with at pp. 206–7) ousted wherever the act charged was done in the exercise of a *bona fide* claim of right. The special provision on this point contained in s. 52 relates only to offences against that section and against s. 53, and does not affect the jurisdiction of justices under other sections of the Act.

In ss. 52 and 53 the acts charged must be done wilfully or maliciously. In all other sections under which there is summary jurisdiction, the act charged must be done unlawfully and maliciously. In s. 58 it is provided

What is  
malice.

<sup>1</sup> The words in brackets are inserted by the Lunacy (Ir.) Act, 1901, 1 Ed. 7, c. 17, s. 2.

What is  
malice.

that malice against the owner of the property injured is not necessary in order to make the act malicious. That section is merely declaratory of the ordinary rule of law, as laid down by Bayley, J., in *Bromage v. Prosser*, (1825) 4 B. & C. 247, where he defined malice as a "wrongful act done intentionally without just cause or excuse," and by Walker, L.J., in *McDowell v. Corporation of Dublin*, (1903) 2 I.R. 549, where he defined a malicious act as one "which is intentional, illegal, and wrongful, though there is no actual ill-will or spite existing against the person who owns the property injured, and the act is not attributable to any such ill-will." "Malice," said Lord Campbell, "consists in the conscious violation of the law to the prejudice of another" (*Ferguson v. Earl of Kinnoul*, (1842) 9 Cl. & F. 251, 321). Where the accused was charged under s. 51 of the Act (as to which section see p. 208) with unlawfully and maliciously damaging a window, and where the jury found that he had broken it with a stone which he meant for a man with whom he had been fighting, but which he did not intend to put through the window, it was held that upon the finding of the jury he could not be convicted under s. 51 (*R. v. Pembrilton*, (1874) L.R. 2 C.C.R. 119). In this case Blackburn, J., said that the jury might have convicted the prisoner "if they had found that the prisoner was aware that the natural and probable consequence of his throwing the stone was that it might break the glass window. A person may be said to act maliciously where he wilfully does an act without lawful excuse." Where the accused broke a jeweller's plate-glass window, value for more than £5, in order to steal the jewellery inside it, he was held to have "unlawfully and maliciously" broken it within the meaning of this Act (*McDowell v. Corporation of Dublin*, *supra*). Where the servant of a milkman put water in his master's milk with the intention, not of injuring his master, but of increasing the quantity of fluid that he had to sell and of appropriating the increased receipts arising from such increased quantity, he was held to have "wilfully or maliciously" damaged the milk within the meaning of s. 52 (*Roper v. Knott*, (1898) 1 Q.B. 868). Where a person, in contravention of the Game Laws, fired the heather on his own lands for the purpose of improving the grazing thereon and, as a natural and probable consequence of his act, the fire damaged, to the extent of £20, a game covert adjoining his lands, but the act was not done with the intention that the covert should be damaged, it was held by the Court of Appeal that, though the act was done "unlawfully," it was not done "maliciously" within the meaning of s. 16 (as to which see p. 208) of the Act (*Woodley v. Cork County Council*, (1909) 44 I.L.T.R. 5).

Under the Malicious Damage Act, 1861, the following offences are punishable summarily:—

Summary  
offences under  
Malicious  
Damage Act,  
1861.

Trees to value  
of 1s.

"Whosoever shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, or shrub, or any underwood, wheresoever the same may be growing, the injury done being to the amount of one shilling at the least"<sup>1</sup>—*Penalty*, imprisonment not exceeding three months, with or without hard labour, or fine (over and above the amount of the injury done) not exceeding £5; "and whosoever, having been convicted of any such offence, either against this or any former Act of Parliament, shall afterwards commit any of the said offences in this section before mentioned"—

<sup>1</sup> This means the amount of the damage to the tree, &c., not the cost of making good the damage done (*R. v. Whiteman*, (1854) 6 Cox 370). There is injury within the meaning of the section to the amount of one shilling if several trees, &c., have at the same time, or as the result of the one transaction, been damaged, each to an amount less than a shilling, but collectively to an amount equalling or exceeding that sum (*R. v. Shepherd*, (1868) L.R. 1 C.C.R. 118).



*Penalty*, imprisonment not exceeding twelve months with hard labour<sup>1</sup> (*Malicious Damage Act*, 1861, 24 & 25 Vict. c. 97, s. 22).

Summary offences under Malicious Damage Act, 1861.

"Whosoever shall unlawfully and maliciously<sup>2</sup> destroy, or damage with intent to destroy, any plant, root, fruit or vegetable production growing in any garden, orchard, nursery-ground, hothouse, greenhouse, or conservatory"—*Penalty*, imprisonment not exceeding six months with or without hard labour<sup>3</sup> or fine (over and above the amount of the injury done) not exceeding £20 (s. 23).

Plants, &c.

"Whosoever shall unlawfully and maliciously destroy, or damage<sup>4</sup> with intent to destroy, any cultivated root or plant<sup>5</sup> used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture and growing in any land, open or enclosed, not being a garden, orchard or nursery-ground"—*Penalty*, imprisonment not exceeding one month with or without hard labour, or fine (over and above the amount of the injury done) not exceeding £1, and, in default of payment, imprisonment [according to the *Small Penalties (Ir.) Act*, 1873], "and whosoever, having been convicted of any such offence either against this or any former Act of Parliament, shall afterwards commit any of the said offences in this section before mentioned"—*Penalty* for such second offence imprisonment with hard labour, not exceeding six months (s. 24).

"Whosoever shall unlawfully and maliciously cut, break, throw down, or in anywise destroy any fence of any description<sup>6</sup> whatsoever, or any wall, stile, or gate, or any part thereof respectively"—*Penalty*, for the first offence, fine (over and above the amount of the injury done) not exceeding £5; "and whosoever, having been convicted of any such offence either against this or any former Act of Parliament, shall afterwards commit any of the said offences in this section before mentioned"—*Penalty*, imprisonment not exceeding twelve months with hard labour (s. 25).

Fences, &c.

"Whosoever shall unlawfully and maliciously cut, break, throw down, destroy, injure or remove any battery, machinery, wire, cable, post, or other matter or thing whatsoever, being part of or being used or employed in or about any electric or magnetic telegraph, or in the working thereof, or shall unlawfully and maliciously prevent or obstruct in any manner whatsoever the sending, conveyance, or delivery of any communication by any such telegraph" may be sent for trial; but "if it shall appear to any justice on the examination of any person charged with any offence against this section that it is not expedient to the ends of justice that the same should be prosecuted by indictment," the offender is

Electric telegraphs.

<sup>1</sup> Any subsequent offence against the section is indictable.

<sup>2</sup> Where defendants had entered upon ground used as a vegetable garden in the assertion of an alleged public right, and had done more damage than was reasonably necessary for the assertion of such right, it was held by the K.B.D. in England that justices were right in convicting under this section (*Heaven v. Crutchley*, (1903) 68 J.P. 53).

<sup>3</sup> Any subsequent offence against the section is indictable.

<sup>4</sup> There must be appreciable damage, and an inference by justices that damages must have resulted from a trespass upon land growing "cultivated roots or plants" will not justify a conviction (*Eley v. Lytle*, (1885) 50 J.P. 308). But where a trespasser who walked 130 yards through grass that was knee-deep, was convicted of damaging the grass to the extent of 6d. the conviction was upheld (*Gayford v. Chouler*, (1898) 1 Q.B. 316).

<sup>5</sup> Clover is a cultivated plant used for the food of beasts (*R. v. Brumby*, (1851) 3 C. & K. 315).

<sup>6</sup> In *Evison v. Marshall*, (1868) 32 J.P. 691, it was held by the Q.B.D. in England that where a defendant, in assertion of an asserted right of way, broke down more of a fence than was necessary to make a passage, the justices were wrong in convicting him: but this decision was not followed in *H. v. Clemens*, (1898) 1 Q.B. 556, decided upon s. 51, in which it was held that where persons do more damage than is reasonably necessary for the assertion of a right, their act is malicious, nor in *Heaven v. Crutchley*, noted under s. 23.

Summary  
offences under  
Malicious  
Damage Act,  
1861.

punishable with *imprisonment* not exceeding three months with or without hard labour, or *fine* not exceeding £10 (s. 37).

"Whosoever shall unlawfully and maliciously by any overt act, attempt to commit any of the offences in the last preceding section mentioned" is punishable with *imprisonment* not exceeding three months with or without hard labour, or with *fine* not exceeding £10 (s. 38).

Animals.

"Whosoever shall unlawfully and maliciously<sup>1</sup> kill, maim, or wound any dog, bird, beast, or other animal not being cattle,<sup>2</sup> but being either the subject of larceny at common law, or being ordinarily kept in a state of confinement or for any domestic purpose"—*Penalty*, imprisonment not exceeding six months, with or without hard labour, or fine over and above the amount of injury done not exceeding £20; and "whosoever having been convicted of any such offence shall afterwards commit any of the said offences in this section before mentioned"—*Penalty*, imprisonment not exceeding twelve months with hard labour (s. 41).

Damage not  
otherwise  
provided for.

"Whosoever shall wilfully or maliciously commit any damage, injury, or spoil, to or upon any real or personal property<sup>3</sup> whatsoever, either of a public or private nature, for which no punishment is hereinbefore provided," is liable either to *Imprisonment* not exceeding two months, with or without hard labour, or to a *Fine* not exceeding £5, and to payment of such further sum not exceeding £5; "as shall appear to the justice to be a reasonable compensation<sup>4</sup> for the damage, injury, or spoil so committed," which sum so payable as compensation, in the case of private property, is to be paid to the party aggrieved, and, in the case of property of a public nature or wherein any public right is concerned, is to be applied in the same manner as penalties imposed by a justice of the peace under the Act, and if such sums, together with costs, if ordered, are not paid either immediately after the conviction or within such period as the justice at the time of the conviction appoints, then in default of payment the offender may be imprisoned according to the Small Penalties (Ir.) Act, 1873, with or without hard labour, "provided, that nothing herein contained shall extend to any case where the party acted under a fair and reasonable supposition that he had a right to do the act complained of,"<sup>5</sup>

Compensation  
for damage.

<sup>1</sup> It is not an offence against this section to maim a cat by breaking its leg with a spring rat-trap set to catch it in a garden where it is in the habit of trespassing (*Bryan v. Eaton*, (1875) 40 J.P. 213). It is, however, submitted that any person so maiming a cat or any other animal is guilty of an offence against the Cruelty to Animals Act, 1849, s. 2, as to which see p. 356. Killing a dog by means of poisoned meat put for that purpose in a garden which the dog was in the habit of entering was also held not to be an offence against this section (*Daniel v. Janes*, (1877) 2 C.P.D. 351); but the question whether the person so doing does or does not commit an offence against the Poisoned Flesh Protection Act, 1864, as to which see *post*, will turn entirely upon the facts of the particular case. Where an occupier of land, recently sown with seed, shot and killed fowls which were on the land, but did so without malice and merely in order to protect his crop, the Q.B.D. in England reluctantly held, following *Daniel v. Janes*, *supra*, and other authorities, that no offence against this section had been committed (*Smith v. Williams*, (1892) 56 J.P. 840).

<sup>2</sup> The maiming, &c., of cattle, &c., is indictable. See CATALOGUE OF INDICTABLE OFFENCES.

<sup>3</sup> The expression "real or personal property" does not include anything growing wild which the law does not recognize as capable of being owned—such as mushrooms not artificially propagated (*Gardner v. Mansbridge*, (1887) 19 Q. B. D. 217), or "primroses, black-berries, or the like" (*ib.*, p. 222, per Smith and Wills, JJ.). The expression includes only such property as is tangible and visible, and consequently does not include rights of way, rights of grazing, or other similar property (*Laws v. Eltringham*, (1881) 8 Q. B. D. 283).

<sup>4</sup> The words "hereinbefore provided" relate, not merely to the sections of the Act previously set out in this article, but to the sections dealing with indictable offences, and bearing numbers below 52, referred to in CATALOGUE OF INDICTABLE OFFENCES.

<sup>5</sup> Justices have no jurisdiction to order compensation exceeding the amount of the damage proved (*R. (Crilly) v. Derry JJ.*, (1904), 4 N. I. J. R. 169).

<sup>6</sup> As to which see p. 209, *et seq.*

nor to any trespass,<sup>1</sup> not being wilful and malicious, committed in hunting, fishing, or in the pursuit of game, but that every such trespass shall be punishable in the same manner as if this Act had not been passed" (s. 52).

"The provisions in the last preceding section contained shall extend to any person who shall wilfully or maliciously commit any injury to any tree, sapling, shrub, or underwood, for which no punishment is herein-before<sup>2</sup> provided" (s. 53).

Any person found committing any offence against this Act may be arrested without warrant by any peace officer or the owner of the property injured, or his servant, or by any person authorized by such owner, and brought before a justice (s. 61). Abettors in offences punishable summarily under this Act are punishable as principals (s. 63). Sections 66, 67, 68, 69, 70, 76 of the Act (all of which relate to procedure) are word for word the same as ss. 108, 109, 110, 111, 112, and 120, respectively of the Larceny Act, 1861 (dealt with under "LARCENY" at pp. 589, 590), and s. 64 of this Act is the same as s. 106 of the Larceny Act, 1861 (for which also see p. 589), except that s. 64 of this Act deals with the amount of the injury done, and s. 106 of the Larceny Act with the value of the property stolen. For procedure, therefore, see pp. 589, 590. An order directing compensation to be paid "to the representatives of the late owner" is bad (*R. (Williams) v. King's Co. JJ.*, (1902) 2 N.I.J.R. 22).

Summary offences under Malicious Damage Act, 1861.

Trees, &c., generally.

Power of arrest.

Abettors.

Procedure.

## MARINE INSURANCE (GAMBLING POLICIES) ACT, 1909.

This Statute will be found in APPENDIX OF STATUTES.

### MARINE STORE DEALERS.

	PAGE		PAGE
Name over door, . . . . .	605	Buying metals less than certain weight, . . . . .	606
To keep books, . . . . .	605	Unlawful possession of public stores, . . . . .	606
Not to purchase from person under 16, . . . . .	605	Provision under Public Health Act, . . . . .	607
Not to cut up cable, . . . . .	606	1907, . . . . .	607
Marking anchors, . . . . .	606	See also GENERAL DEALERS (p. 508).	

"(1) Every person dealing in, buying, or selling any of the articles following, that is to say, anchors, cables, sails, old junk, or old iron, or other marine stores of any kind (in this part of this Act called a marine store dealer) shall have his name, together with the words 'dealer in marine stores,' distinctly painted, in letters of not less than six inches in length, on every warehouse and place of deposit belonging to him"—Penalty, not exceeding £20 (*Merchant Shipping Act*, 1894, 57 & 58 Vict. c. 60, s. 538).

Name over door.

"(1) Every marine store dealer shall keep proper books, and enter therein an account of all marine stores of which he becomes possessed, stating in respect of each article the time at which and the person from whom he purchased or received the same, and a description of the business and place of abode of that person"—Penalty, not exceeding, first offence, £20; subsequent offence, £50 (s. 539).

To keep books

"(1) A marine store dealer shall not by himself or his agents purchase marine stores of any description from any person apparently under the

Not to purchase from person under sixteen.

<sup>1</sup> It should be noted that the offence under this section is never committed by mere trespass. There must be actual damage (*Butler v. Turley*, (1827) M. & M. 54, decided upon 7 & 8 Geo. 4, c. 30, s. 24, from which s. 52 was taken).

<sup>2</sup> See note to s. 52.



age of sixteen years"—*Penalty*, not exceeding, first offence, £5; subsequent offence, £20 (s. 540).

Not to cut up  
cable without  
permit.

"(1) A marine store dealer shall not, on any pretence, cut up any cable or other like article exceeding five fathoms in length, or unlay the same into twine or paper stuff, without obtaining a written permit" (*from a justice of the peace*) as prescribed by the section—*Penalty*, not exceeding, first offence, £20; subsequent offence, £50 (s. 541).

"(1) A marine store dealer who has obtained such permit shall not act thereon until he has advertised it for a week in any local newspaper with prescribed particulars. (2) Any person believing cable, &c., described in such advertisement to be his may, upon sworn statement, obtain a warrant requiring production of cable and dealer's books; dealer failing without reasonable cause to comply with section"—*Penalty*, not exceeding, first offence, £20; subsequent offence, £50 (s. 542).

Marking  
anchors.

"(1) Every manufacturer of anchors shall mark on every anchor manufactured by him, in legible characters and both on the crown and also on the shank under the stock, his name or initials, and shall in addition mark on the anchor a progressive number and the weight of the anchor. (2) If a manufacturer of anchors fails without reasonable cause to comply with this section, he shall be liable for each offence to a fine not exceeding £5" (s. 543).

The above offences are punishable summarily (s. 680), the limitation of time being six months from the commission of the offence or the cause of complaint, or, if both or either of the parties to the proceeding happen during that time to be out of the United Kingdom, within two months after they both first happened to arrive or be at one time within the United Kingdom (s. 683). The Summary Jurisdiction Acts<sup>2</sup> are made applicable (s. 681).

Dealer in old  
metals  
buying  
metals less  
than certain  
weight.

"Any dealer in old metals who, either personally or by any servant or agent, purchases, receives, or bargains for any metal mentioned in the first column of the schedule annexed hereto, whether new or old, in any quantity at one time of less weight than the quantity set opposite each such metal in the second column of the schedule annexed hereto, shall be guilty of an offence against this Act, and be liable to a penalty not exceeding £5. For the purposes of this section the term 'dealer in old metals' shall mean any person dealing in, buying, and selling old metal, scrap metal, broken metal, or partly manufactured metal goods, or defaced or old metal goods, and whether such person deals in such articles only or together with second-hand goods or marine stores" (*Prevention of Crimes Act, 1871, 34 & 35 Vict. c. 112, s. 13*). Punishable summarily (s. 17).

The quantities mentioned in the schedule are: lead, 112 lbs.; copper, brass, tin, pewter, German silver, 56 lbs.

This section is not repealed by the General Dealers (Ir.) Act. 1903; so that a person licensed as a "general dealer" is not thereby entitled to purchase brass, &c., in less quantities than the amounts mentioned in the schedule to the Act (*Campbell v. Finn*, (1907) 2 I.R. 502; *R. (Rogers) v. Duthie, Large & Co.*, (1908) 42 I.L.T.R. 148). A "general dealer" is not necessarily a "dealer in old metals": it is a question of fact to be decided by the justices whether a person charged is or is not a dealer in old metals (*R. (Rogers) v. Duthie, Large, & Co.*, *supra*). See GENERAL DEALERS, p. 508.

Unlawful  
possession of  
public stores  
38 & 39 Vict.  
c. 25.

Dealer in marine stores or old metals found in possession of public stores and not accounting for them—*Penalty*, on summary conviction, not exceeding £5 (*Public Stores Act, 1875, 38 & 39 Vict. c. 25, ss. 9, 10*).

"Public stores" mean all stores under the care, superintendence, or control of a Secretary of State or of the Admiralty, or any public department or office, or any person in the service of His Majesty (s. 3).

<sup>1</sup> See sect. 541 (2).

<sup>2</sup> As to the meaning of which expression, see p. 335.

Where the Public Health Act Amendment Act, 1907, is in force (as to which see "PUBLIC HEALTH") the following section is applicable:—

"(1) Every person who shall carry on business as a dealer in old metal, or as a marine store dealer, shall register his name and place of abode, and every place of business, warehouse, store, and place of deposit occupied or used by him for the purpose of such business, in a book to be kept for the purpose at the offices of the local authority. (2) Every person carrying on business as aforesaid shall correctly enter in a book to be kept by him for that purpose the description and price of all articles purchased or otherwise acquired by him, and the name, address, and occupation of the person from whom the same were purchased or otherwise acquired. (3) Every person who shall carry on such business without having so registered, or without keeping such book and making such entries as required by this section, shall be liable to a penalty not exceeding five pounds, and to a daily penalty not exceeding forty shillings. (4) Any officer of the local authority or other person duly authorized in writing in that behalf by the local authority, and if so required exhibiting his authority, shall have free access at all reasonable times to every such place of business, warehouse, store, and place of deposit, to inspect the same and the books by this section required to be kept; and every person who shall prevent, hinder, or obstruct any officer or person so authorized in the execution of his duty under this subsection shall be liable to a penalty not exceeding five pounds. (5) The local authority shall give public notice of the provisions of this section by advertisement in two newspapers circulating in the district, and by handbills and otherwise, in such manner as they think sufficient" (*Public Health Acts Amendment Act, 1907, 7 Edw. 7, c. 53, s. 86*).

Provision  
under Public  
Health Act,  
1907.

## MASTER AND SERVANT.

	PAGE		PAGE
Servant misbehaving or leaving service, . . . . .	607	Procedure under 38 & 39 Vict. c. 86—	
Complaint by servant against master, . . . . .	608	Evidence, . . . . .	612
Servant offering to be hired while in service, . . . . .	609	Appeal, . . . . .	613
Discharge—		Act of 1875 not to apply to sea services, . . . . .	613
Master obliged to give certificate, . . . . .	609	Tickets in hosiery trade, . . . . .	613
Servant not to be hired without, . . . . .	609	Tickets in silk-weaving, . . . . .	613
Power of justice to give, . . . . .	609	Servants in colliery, . . . . .	613
Taking servant without, . . . . .	610	Payment of workmen in spirits, . . . . .	613
Wages not recoverable without, . . . . .	610	Payment of wages in public-house, . . . . .	614
Conspiracy in trade disputes, . . . . .	610	Taking pledge for money owing for spirits, . . . . .	614
Intimidation, . . . . .	610	Labour Exchange, . . . . .	614
Peaceful picketing, . . . . .	612	Truck Acts, . . . . .	614
Breach of contract by servant in gas or water company, . . . . .	612	Trade Boards, . . . . .	614
Neglect to provide food for servants or apprentice, . . . . .	612	Civil Jurisdiction, . . . . .	614
Procedure under 38 & 39 Vict. c. 86—		Apprentices—	
Reduction of penalty, . . . . .	612	Ill-treatment of, . . . . .	614
Right of offender to be tried on indictment, . . . . .	612	Misbehaviour of, . . . . .	614
		Powers of justice in respect of, . . . . .	615
		Obligation to support, . . . . .	615
		To sea service, . . . . .	616
		To sea fishing, . . . . .	616

"And for as much as several servants<sup>1</sup> are drunkards, idle, or otherwise disorderly in their services, or waste and purloin their masters' goods, or lend the same without their masters' or mistresses' consent or knowledge, or depart their masters' or mistresses' service without his or her consent

Servant  
misbehaving  
or leaving  
service,  
2 Geo. 1,  
c. 17.

<sup>1</sup> There is no definition of "servants." The preceding section (repealed) speaks of "servants, artificers, and day-labourers"; and later of "such labourer, artificer, or servant". It would seem that "servants" is not confined to menial servants.

Servant mis-  
behaving or  
leaving  
service.

within the time for which they had obliged themselves to serve; be it further enacted upon the authority aforesaid, That upon the complaint of any masters or mistresses upon oath of any such offence of his or her servant, any justice of the peace of any county or city, or chief magistrate of any city or town corporate, where the master or mistress inhabits, is hereby empowered and required to issue a warrant for bringing such servant or servants before him; and upon examination and due proof upon oath made of such offence or offences, it shall and may be lawful for the said justice of the peace or chief magistrate to send them to the house of correction of the county where such offence shall be committed, there to be kept at hard labour for any time not exceeding ten days; and in case that the said master or mistress shall, after the said time of punishment is expired, desire the said servant to return to their service for the remainder of the time that by agreement such servant ought to serve, that then the said justice of the peace or chief magistrate shall order the said servant so to do; and in case the said servant shall refuse or neglect so to do, that then and in such case the said justice of the peace or chief magistrate is again to commit such servant to the house of correction, to be kept to hard labour, and corporally punished, during the time he or she ought to serve his or her master or mistress according to their agreement, or until the next general quarter sessions of the peace, where the justices in open sessions may examine the matter and discharge the said servant, or continue him or her, as to them shall seem meet" (2 Geo. 1, c. 17 (Ir.), s. 2).<sup>1</sup>

25 Geo. 2,  
c. 8.

Complaint by  
servant  
against  
master.

"It shall and may be lawful to and for such justices<sup>2</sup> upon application or complaint made upon oath by any master, mistress, or employer against any such servant, artificer, handicraftsman, miner, collier, keel-man, pit-man, glass-man, potter, or other labourer touching or concerning any misdemeanour, miscarriage, or ill-behaviour in such his or her service or employment (which oath such justices are hereby empowered to administer) to hear, examine, and determine the same, and to punish the offender by commitment to the house of correction, there to remain, and be corrected and held to hard labour for a reasonable time, not exceeding one calendar month, or otherwise by abating some part of his or her wages, or by discharging such servant, artificer, handicraftsman, miner, collier, keel-man, pit-man, glass-man, potter, or other labourer from his, her, or their service or employment;" and in like manner also it shall and may be lawful to and for such justices upon any complaint or application upon oath by any such servant, artificer, handicraftsman, miner, collier, keel-man, pit-man, glass-man, potter, or other labourer, against such master, mistress, or employer, touching or concerning any misusage, refusal of necessary provision, cruelty, or other ill-treatment of, to, or towards such servant, artificer, handicraftsman, miner, collier, keel-man, pit-man, glass-man, potter, or other labourer, to summon such master, mistress, or employer, to appear before such justices at a reasonable time to be prefixed in such summons; and such justices shall and may examine into the matter of such complaint, whether such master, mistress, or employer shall appear or not, proof being made upon oath of his or her being duly summoned, and, upon proof thereof made upon oath to their satisfaction, to discharge such servant, artificer,

<sup>1</sup> It is suggested in *Humphreys' Justice of the Peace* (9th ed., p. 138 n.) that the above sections are in effect repealed by the Summary Jurisdiction (Ir.) Act, 1851, ss. 16 (4) and 26. These sections of the Summary Jurisdiction (Ir.) Act, 1851, are themselves repealed, but the repeal of a repealing statute does not revive the original statute (see p. 335, *ante*). It should, however, be noted that the sections of the statute given in this article were treated as in force in 1878, when the Statute Law Revision (Ir.) Act, 1878, was passed, which repealed portions of the statute 2 Geo. 1, c. 17.

<sup>2</sup> One justice may act (29 Geo. 2, c. 8 (Ir.), s. 13).



handicraftsman, mariner, miner, collier, keel-man, pit-man, glass-man, potter, or other labourer of and from his said service and employment; which discharge shall be given under the hands and seals of such justices gratis" (25 Geo. 2, c. 8 (Ir.), s. 2).

"No servant shall hire him or herself, or offer themselves to be hired into any service, while she or he is actually in service, and before the time for which he or she did contract or hire him or herself be expired, without licence from his or her master or mistress first obtained, unless such servant or servants do first give one month's notice thereof to his or her master or mistress; and in case any servant shall do the contrary, on complaint and due proof upon oath being made thereof before any justice of the peace of the county, or chief magistrate of any town corporate, where such servant resides, every such servant shall be committed to the house of correction for any time not exceeding ten days, there to be kept at hard labour during that time" (2 Geo. 1, c. 17 (Ir.), s. 3).

Servant offering to be hired while in service.

"On the discharge or putting away any servant from his or her service, or upon such servant's regularly leaving his or her service, the master or mistress of such servant shall give a certificate in writing under his or her hand, that such person who is therein named, was his or her servant, and that he or she is discharged from the said service, and shall in the said discharge certify, if desired, or such master or mistress thinks fit, the behaviour of such servant" (2 Geo. 1, c. 17 (Ir.), s. 4).

Discharge. Master obliged to give.

The only remedy open to the servant in case of a refusal is under s. 5 (as to which see *infra*), and no action lies against a master for refusal (*Handley v. Moffat*, (1873) I. R. 7 C. L. 104, 7 I. L. T. R. 9).

"No master or mistress shall hire any servant without a discharge as aforesaid under the hand of the master or mistress with whom the said servant last dwelt; and in case any person shall refuse to give his or her servant a discharge and certificate of their behaviour as aforesaid, that then and in such case such servant may apply him or herself to some neighbouring justice of the peace of the county or city where such master or mistress inhabits, or to the chief magistrate of any city or corporate town, if such master or mistress lives in one, who shall write to the master or mistress of such servant (not being a peer or peeress of this realm), and, in case such master or mistress shall be a peer or peeress of this realm, then to the steward or bailiff of such peer or peeress, and require from them respectively the reason why such servant is refused such discharge and certificate of his or her behaviour; and in case no answer be given to such letter within the space of five days, or that the justice of the peace or chief magistrate shall sooner by an answer to such letter find that the cause of the refusal of such discharge or certificate was not sufficient, in either of the said cases the said justice of the peace or chief magistrate may and are hereby required to give a certificate thereof, or of such reason or reasons as the master or mistress give for refusing such discharge or certificate, that such person who is about to hire such servant may be apprised of such servant's behaviour, and judge thereof, before he or she hires such servant; for which certificate the said justice of the peace or chief magistrate, or their clerks, shall not take any fee or reward; and the said certificate to all intents and purposes shall be as good as if the same had been given by such master or mistress; and that any servant who shall be convicted of counterfeiting, or producing a counterfeited certificate, under the hand of any master or mistress, or justice of the peace or chief magistrate, or under the hand of the steward or bailiff of any peer or peeress, before two justices of the peace by the oath of one or more witnesses, or by such servant's own confession, such servant shall be committed to the house of correction, and shall be kept there for the space of three months to hard labour" (2 Geo. 1, c. 17 (Ir.), s. 5).

Servants not to be hired without discharge.

Power of justice to give discharge.

**Discharge.**  
Taking a  
servant with-  
out discharge.

" . . . If any person or persons shall knowingly take into his or her service any person who has been in any former service, without such discharge or certificate as aforesaid, every such person taking such servant as aforesaid into his or her service, being thereof lawfully convicted at the general sessions of the peace held for the county or place where such offence shall be committed, shall forfeit the sum of £5, to be levied by distress and sale of the offender's goods by warrant of such general quarter sessions of the peace, rendering to the party the overplus" (2 Geo. 1, c. 17 (Ir.), s. 6).

Wages not  
recoverable  
without  
discharge

"No servant, not having such discharge or certificate as aforesaid, shall be intitled to recover any wages by virtue of this Act from such master or mistress to whom he or she shall hire him or herself, without producing such discharge or certificate before such justice of the peace or chief magistrate, or proving by a sufficient witness on oath that such discharge or certificate was given to such servant" (2 Geo. 1, c. 17 (Ir.), s. 6).

**Conspiracy in  
trade dis-  
putes.**

"An agreement or combination<sup>1</sup> by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute<sup>2</sup> [between employers and workmen]<sup>3</sup> shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime. [An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act if done without any such agreement or combination would be actionable.<sup>4</sup>] Nothing in this section shall exempt from punishment any persons guilty of a conspiracy for which a punishment is awarded by any Act of Parliament. Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, or sedition, or any offence against the State or the sovereign. A crime for the purposes of this section means an offence punishable on indictment, or an offence which is punishable on summary conviction, and for the commission of which the offender is liable under the statute making the offence punishable to be imprisoned either absolutely or at the discretion of the court as an alternative for some other punishment. Where a person is convicted of any such agreement or combination as aforesaid to do or procure to be done an act which is punishable only on summary conviction, and is sentenced to imprisonment, the imprisonment shall not exceed three months, or such longer time (if any) as may have been prescribed by the statute for the punishment of the said act when committed by one person" (*Conspiracy and Protection of Property Act, 1875, 38 & 39 Vict. c. 86, s. 3*).<sup>5</sup>

**Intimidation.**

"Every person who, with a view to compel any other person to abstain from doing or to do any act, which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority (1) uses violence to or intimidates such other person or his wife or children, or injures his property; or (2) persistently follows such other person about from place to place; or (3) hides any tools, clothes, or other

<sup>1</sup> The greater portion of the Unlawful Combination (Ir.) Act, 1803, 43 Geo. 3, c. 86, is repealed by the Statute Law Revision Act, 1888, though the fact is not noted in the INDEX to STATUTES, and *Walker v. Bailie*, (1903) 37 I.L.T.R. 211, is a decision on section 7, which was one of the sections repealed by the Act of 1888.

<sup>2</sup> "The expression 'trade dispute' means any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment, or the terms of the employment, or with the conditions of labour, of any person, and the expression 'workmen' means all persons employed in trade or industry, whether or not in the employment of the employer with whom a trade dispute arises" (Trade Disputes Act, 1906 (6 Edw. 7, c. 47), s. 5 (3)).

<sup>3</sup> The words in brackets have been repealed by 6 Edw. 7, c. 47, s. 5.

<sup>4</sup> Words in brackets inserted by Trade Disputes Act, 1906 (6 Edw. 7, c. 47), s. 1.

<sup>5</sup> The Act does not apply to seamen or to apprentices to the sea service (s. 16, noted *post*).



property owned or used by such other person, or deprives him of or hinders **Intimidation.** him in the use thereof; or (4) watches or besets the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place; or (5) follows such other person with two or more other persons in a disorderly manner in or through any street or road"—*Penalty*, on conviction thereof by a court of summary jurisdiction, or on indictment, as hereinafter mentioned, not exceeding £20, or to be imprisoned for a term not exceeding three months, with or without hard labour (s. 7).

As to peaceful picketing, see Trades Disputes Act, 1906, s. 2, *infra*. The section is not confined to trades disputes, or to disputes between employer and workmen (*Lyons v. Wilkins*, (1899) 1 Ch. 255, *per* Chitty, L.J., at p. 272).

Intimidation in the section means such intimidation as would justify a magistrate in binding over the intimidator to keep the peace towards the person intimidated, in other words, such intimidation as implies a threat of personal violence (*Connor v. Kent*; *Gibson v. Lawson*; *Curran v. Treleaven*, (1891) 2 Q.B. 545). Intimidation is "the using of language which causes another man to fear" (*per* Smith, J., in *Judge v. Bennett*, (1877) 36 W. R. 103);<sup>1</sup> and "where a man expresses his intention to picket in such terms as to make the person addressed afraid, that is sufficient to bring his action within the meaning of intimidation" (*ib.*, *per* Stephen, J.). The appellant and the respondent were workmen in the same yard, members of different trade unions. The trade union to which the respondent belonged having resolved to strike, if the appellant did not leave his society and join theirs, the respondent informed the appellant of this, without threatening him with violence to person or property in case of his refusal. The appellant refused to join the respondent's society, and was dismissed in consequence by his employer, in order to avoid a strike. He stated in evidence that "he was afraid, because of what the respondent had said, that he would lose his work, and could not obtain employment anywhere where the respondent's society predominated numerically over his own society." *Held*, that there was no evidence of intimidation by the respondent (*Connor v. Kent*; *Gibson v. Lawson*; *Curran v. Treleaven*, (1891) 2 Q.B. 545). The appellant and two other secretaries of trade unions, in order to prevent the respondent employing non-union men, informed him that if he did not cease to do so, they would call off from their employment by him all the members of their respective unions. After a meeting of the unions, at which it was resolved that this course should be adopted, the appellant and the other secretaries, in the presence of the respondent, whom they asked to attend, made the following statement to the respondent's workmen and others who were assembled:—"Inasmuch as Mr. T" (i.e. the respondent) "still insists on employing non-union men, we, your officials, call upon all union men to leave their work, use no violence, use no immoderate language, but quietly cease to work, and go home." The union men in consequence ceased to work. *Held*, that there was no evidence of intimidation by the appellant within the section (*ib.*).

The foreman on coming out of a factory was hooted by a hostile crowd. The defendant, a workman on strike, who was near the entrance, followed the foreman, at a distance of about twenty yards, through two streets, but did not speak. *Held*, that the defendant was rightly convicted of "persistently following" the foreman (*Smith v. Thomasson*, (1890) 16 Cox 740).

As to the form of conviction under the section, see *R. v. M'Kenzie*,

<sup>1</sup> As to the extended definition of intimidation under the Criminal Law and Procedure (Ir.) Act, 1887, 50 & 51 Vict. c. 20, see *R. v. M'Carthy*, (1903) 2 I.R. 146.



(1892) 2 Q.B. 519; *ex parte Wilkins*, (1895, 18 Cox 161; *Smith v. Moody*, (1903) 1 K.B. 56, noted pp. 85, 86; and *Wilson v. Renton*, (1910) 17 S.L., R. 209, noted, p. 89.

**Peaceful picketing.**

"It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute<sup>1</sup> to attend at or near a house or place where a person resides or works or carries on business or happens to be if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working" (*Trade Disputes Act*, 1906, 6 Ed. 7, c. 47, s. 2).

The section does not confer a right to enter upon private property against the will of the owner (*Larkin v. Belfast Harbour Commissioners*, (1908) 2 I.R. 214).

**Breach of contract by persons employed in supplying gas or water.**

Breach of contract by persons employed in supply of gas or water knowing or having reasonable cause to believe that such breach will deprive inhabitants of supply—*Penalty*, on conviction by a court of summary jurisdiction<sup>2</sup> not exceeding £20, or imprisonment not exceeding three months with or without hard labour. Printed copy of the section to be posted and kept posted up at the gasworks or waterworks—*Penalty*, on neglect by municipal authority, company, or contractor, not exceeding £5 per day. Injuring, defacing, or covering up notice—*Penalty*, not exceeding 40s. (*Conspiracy and Protection of Property Act*, 1875, s. 4).

Breach of contract of service or hiring, knowing or having reasonable cause to believe that the probable consequences will endanger human life, or cause serious bodily injury, or expose valuable property to injury—*Penalty*, on conviction by a court of summary jurisdiction,<sup>3</sup> not exceeding £20, or imprisonment not exceeding three months with or without hard labour (s. 5).

**Neglect to provide food, &c., for servant or apprentice.**

"Where a master, being legally liable to provide for his servant or apprentice necessary food, clothing, medical aid, or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, whereby the health of the servant or apprentice is, or is likely to be, seriously or permanently injured"—*Penalty*, on summary conviction,<sup>4</sup> not exceeding £20, or imprisonment not exceeding six months, with or without hard labour (s. 6).

A master is civilly responsible for the maintenance of his domestic servant in a workhouse or fever hospital so long as the service shall continue, and is also liable to maintain his apprentice residing under his roof (*Poor Relief (Ir.) Act*, 1862, 25 & 26 Vict. c. 83, s. 4).

**Procedure under 38 & 39 Vict. c. 86.**

**Reduction of penalty.**

Offences under the Conspiracy and Protection of Property Act, 1875, are punishable summarily, in Dublin before a divisional justice, elsewhere before two or more justices at petty sessions, in manner provided by the Dublin Police Acts or the Petty Sessions Act, 1851, as the case may be (ss. 10, 21). The court may mitigate to one-fourth any pecuniary penalty imposed by "any Act relating to employers or workmen" where no power is given to reduce such penalty (s. 8). A person accused of an offence made punishable under the Act, with a penalty amounting to £20, or imprisonment, may, on appearing before the court . . . , object to being tried summarily for such offence, and thereupon the case shall be treated as an indictable offence (s. 9). The parties to the contract of service, their husbands or wives, are competent witnesses (s. 11).

**Right of offender to be tried on indictment. Evidence.**

<sup>1</sup> Meaning any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment, or the terms of the employment, or with the conditions of labour, of any person (s. 5 (3)).

<sup>2</sup> Or on indictment. See s. 9, *infra*.

<sup>3</sup> Or on indictment. See s. 9, *infra*.

<sup>4</sup> Or on indictment. See s. 9, *infra*.

A right of appeal is given *against any conviction* to the quarter sessions held not less than fifteen days, and not more than four months, after the decision of the inferior court, the appellant within seven days after the cause of appeal has arisen giving notice to the other parties and to the court of his intention to appeal and of the ground thereof, and immediately after such notice entering into a recognizance conditioned to try the appeal and to abide the decision of the court and to pay the costs. When the appellant is in custody, the justice may, if he thinks fit, release him on the recognizance being entered into. The court of appeal may reverse, confirm, or vary the conviction, or remit the matter to the court of summary jurisdiction, or may make such other order as to the payment of the costs by the other party as the court thinks just (s. 12).

**Procedure under 38 & 39 Vict. c. 86.**  
Appeal.

"Nothing in the Act shall apply to seamen or apprentices to the sea service" (s. 16). This section means only that the punishments prescribed by the Act are not to fall on seamen; the case of an offence against a seaman by a person who is not a seaman is, therefore, not excluded from the Act by the section (*Kennedy v. Cowie*, (1891) 1 Q.B. 771). The expression "seamen" means seamen as defined by the Merchant Shipping Acts,<sup>1</sup> that is to say, persons employed or engaged on board ship; and the section does not exempt persons whose calling or occupation is the sea, but who are not actually so employed or engaged (*R. v. Lynch*, (1898) 1 Q.B. 61). A hand employed on a Thames sailing barge is a seaman (*Corbett v. Pearce*, (1904) 2 K.B. 422).

Act not to apply to sea services.

Masters engaged in the hosiery business are required to furnish tickets containing price, description of work, &c. (which, in the event of a dispute about the work, are to be evidence of the facts therein stated), to workmen when work is given out to them—*Penalty*, for non-compliance, not exceeding £5, recoverable summarily on the complaint of the workman to whom such ticket was not given (*Hosiery Act*, 1845, 8 & 9 Vict. c. 77).

**Tickets in hosiery trade.**

Manufacturer of silk goods required (but without being liable to any penalty for non-compliance) to give to weaver of such goods, unless dispensed with by written agreement, printed or written tickets containing particulars of the work, the price, &c., when work given out to workmen (*Silk Weavers Act*, 1845, 8 & 9 Vict. c. 128, s. 1), which in the event of a dispute between the parties are to be evidence of the facts therein stated (s. 2).

**Tickets in silk-weaving.**

No owner, &c., of a colliery shall knowingly employ persons retained or employed by another—*Penalty*, £5, recoverable by civil bill (25 Geo. 2, c. 8 (Ir.), s. 7).

**Servants in colliery.**

"If any person in Ireland shall agree to pay or shall pay any journeyman, workman, servant, or labourer, or other person employed by or working under him, or her, or under his or her direction, so much money for wages, or any part thereof, which shall be ordinarily and usually paid for the work which such journeyman, servant, labourer, or other person shall be employed in, or shall agree to pay or shall pay such wages partly in money and partly in or by spirituous liquors, or shall set off, stop, or deduct all or any part of the wages or hire due to any journeyman, workman, servant, or labourer, for any spirituous liquors delivered or sold to or drunk by him or her, every such person so offending shall for every such offence, upon being convicted thereof before any magistrate or justice of the peace, forfeit the sum of 40s. British currency; and every person giving or procuring credit to be given for spirituous liquor sold or drunk as aforesaid shall forfeit the sum of £5 British currency" (*Intoxicating Liquors (Ir.) Act*, 1815, 55 Geo. 3, c. 19, s. 64).

**Paying workmen, &c., wholly or partly in spirits.**

<sup>1</sup> See Merchant Shipping Acts, 1854 and 1894, 17 & 18 Vict. c. 104, s. 2; 57 & 58 Vict. c. 60, s. 72.

**Paying workmen, &c., in public-houses.**

"No person in Ireland employing journeymen, workmen, servants, or labourers, shall by himself or herself, or by any other person, pay any journeyman, workman, servant, or labourer, employed by him or her, the whole or any part of the wages due to such journeyman, workman, servant, or labourer, in or at any house in which any spirituous liquors, wine, beer, ale, porter, or cyder, or perry, metheglin, or mead shall be sold by retail, and every person so offending shall for every such offence, upon being convicted thereof before any magistrate or justice of the peace, forfeit the sum of £10 British currency, and all payments of all wages made in manner aforesaid shall be null and void" (s. 65).

**Taking pledge or pawn for money owing for spirits.**

"In case any person shall take or receive any pawn or pledge from any person by way of security for the payment of any sum or sums of money owing by such person for spirituous liquors, every such person so offending, and being convicted thereof before any magistrate or justice of the peace, shall forfeit the sum of 40s. British currency for every pawn or pledge so taken in or received by him or them, and the person or persons to whom any such pawn or pledge shall belong shall have the same remedy for recovering such pawn or pledge, or the value thereof, as if it had not been given as a pledge" (s. 67).

**Labour Exchanges.**

The Labour Exchanges Act, 1909, empowers the Board of Trade to establish and maintain labour exchanges, and to make regulations therefor. "If any person knowingly makes any false statement or false representation to any officer of a labour exchange established under this Act, or to any person acting for or for the purposes of any such labour exchange, for the purpose of obtaining employment or procuring workpeople"—*Penalty*, in respect of each offence on summary conviction, not exceeding £10 (*Labour Exchanges Act*, 1909, 9 Ed. 7, c. 7, s. 3).

**Truck Acts.**

As to Truck Acts, see **TRUCK ACTS**, *post*.

**Trade boards.**

As to the payment of less wages than that allowed under the Trade Boards Act, 1909, see that statute. **APPENDIX OF STATUTES.**

**Civil jurisdiction.**

As to civil jurisdiction in case of disputes between master and servant, or master and apprentice, see p. 157, *et seq.*

**Apprentices. Ill-treatment of.**

"It shall and may be lawful to and for any two or more such justices<sup>1</sup> upon any complaint or application by any apprentice, upon whose binding out no larger a sum than £5 sterling was paid, touching or concerning any misuse, refusal of necessary provision, cruelty, or ill-treatment of or towards such apprentice, by his or her master or mistress, to summon such master or mistress to appear before such justices at a reasonable time to be named in such summons; and such justices shall and may examine into the matter of such complaint, and upon proof thereof made upon oath to their satisfaction, whether the master or mistress be present or not, if service of the summons be also upon oath proved, the said justices may discharge such apprentice by warrant or by certificate under their hands and seals, for which warrant or certificate no fees shall be paid" (25 Geo. 2, c. 8 (Ir.), s. 3).

**Misbehaviour of apprentice.**

"It shall and may be lawful to and for such justices<sup>1</sup> upon application or complaint made upon oath by any master or mistress against any such apprentice touching or concerning any misdemeanour, miscarriage, or ill-behaviour in such his or her service (which oath such justices are hereby empowered to administer) to hear, examine, and determine the same, and to punish the offender by commitment to the house of correction, there to remain and be corrected, and held to hard labour for a reasonable time, not exceeding one calendar month, or otherwise by discharging such apprentice in manner and form before mentioned" (25 Geo. 2, c. 8 (Ir.), s. 4).

<sup>1</sup> One justice may act (29 Geo. 2, c. 8, s. 13 (Ir.)).



"In a proceeding before a court of summary jurisdiction in relation to a dispute under this Act between a master and an apprentice, the court shall have the same powers as if the dispute were between an employer and a workman, and the master were the employer and the apprentice the workman, and the instrument of apprenticeship a contract between an employer and a workman, and shall also have the following powers: (1) It may make an order directing the apprentice to perform his duties under the apprenticeship; and, (2) If it rescinds the instrument of apprenticeship, it may, if it thinks it just so to do, order the whole or any part of the premium paid on the binding of the apprentice to be repaid. Where an order is made directing an apprentice to perform his duties under the apprenticeship, the court may, from time to time, if satisfied after the expiration of not less than one month from the date of the order that the apprentice has failed to comply therewith, order him to be imprisoned for a period not exceeding fourteen days" (*Employer and Workman Act, 1875, s. 6*).

As to obligation to support apprentice, see p. 612.

Special provisions are contained in the Merchant Shipping Act, 1894, 57 & 58 Vict. c. 60, as to indentures in respect of apprentices to sea service (see ss. 108, 109), and as to punishment of such apprentices (see ss. 220, 221, 225).

The Merchant Shipping Act, 1894, contains provisions as to offences by apprentices to sea fishing, applicable to boats of 25 tons and upwards (see ss. 383, 384, 387, 392, 395).

**Apprentices.**  
Powers of  
justices in  
respect of  
apprentices.

Obligation to  
support  
apprentices.  
Apprentices  
to sea service.

Apprentices  
to sea-fishing.

## MEDICAL PRACTITIONER.

	PAGE		PAGE
Medical Acts, . . . . .	615	Medical register, . . . . .	616
Falsely pretending to be a physician, . . . . .	615	Non-registered practitioner cannot	
Who may prosecute, . . . . .	616	sue for fees, &c., . . . . .	616

The Acts which now regulate the practice of the medical profession are the Medical Act, 1858, 21 & 22 Vict. c. 90; the Medical Act, 1859, 22 Vict. c. 21; the Medical Acts Amendments Act, 1860, 23 & 24 Vict. c. 7; the Medical Practitioners Act, 1876, 39 & 40 Vict. c. 40; and the Medical Act, 1886, 49 & 50 Vict. c. 48. These Acts are to be read together, and are collectively known as the Medical Acts. By these Acts a body known as the General Medical Council, having a Registrar and Treasurer, has been created. Under these Acts there are only two offences. One is the indictable offence (as to which see CATALOGUE OF INDICTABLE OFFENCES, *post*) of procuring, &c., registration in pursuance of the Medical Act, 1858, by fraudulent representations, &c., created by s. 39 of the Medical Act, 1858. The other is as follows:—

"Any person who shall wilfully and falsely pretend to be or take or use the name or title of a physician, doctor of medicine, licentiate in medicine and surgery, bachelor of medicine, surgeon, general practitioner or apothecary, or any name, title, addition, or description implying that he is registered under this Act or that he is recognized by law as a physician or surgeon, or licentiate in medicine or surgery, or a practitioner in medicine, or an apothecary, shall upon a summary conviction for any such offence pay a sum not exceeding £20" (*Medical Act, 1858, s. 40*).

The penalty is recoverable subject and according to the Summary Jurisdiction (Ireland) Acts, as to which expression see p. 335 (s. 41), and is to be paid to the treasurer of the General Medical Council (s. 42).

**Medical Acts.**  
False repre-  
sentation of  
being physic-  
ian, &c.

No person can be convicted under s. 40 of the Act of 1858, unless it be clearly proved that he pretended to be what in fact he is not (*Penygriff v. Chevalier*, (1860) 8 C.B. N.S.) 240; and whether he has so pretended or not is a question of fact rather than of law (*Carpenter v. Hamilton*, (1877) 41 J.P. 615). But such pretence must, in order to constitute the offence, be made "wilfully and falsely"; and accordingly, where a licentiate of the Apothecaries' Hall, London, who was registered under the Act as an apothecary, described himself as a physician, it was held that, inasmuch as he had done so erroneously, but in good faith and not wilfully and falsely, that is to say, falsely to his knowledge, he was wrongly convicted under the section (*Hunter v. Clare*, (1899) 1 Q.B. 635).

Any member of the public may institute proceedings under s. 40 of the Act of 1858 (*Clarke v. Maguire*, (1909) 2 I.R. 681).

A register of the names and qualifications of persons registered pursuant to the Act (to be known as the "Medical Register") is to be printed and published every year by the registrar of the General Medical Council, and a copy thereof, purporting to be so printed and published, is to be evidence until the contrary is proved, that any person whose name appears therein is, and that any person whose name does not appear therein is not, registered pursuant to the Act (*Act of 1858*, s. 27).

No person can recover in any court for any medical or surgical attendance, &c., or for any medicine that he has both prescribed and supplied, unless he proves that he is registered under the Act (s. 32; see *Lemon v. Fletcher*, (1873) L.R. 8 Q.B. 319).

Who may  
prosecute.

Medical  
Register.

Non-  
registered  
person can-  
not sue for  
attendance  
or medicine.

## MERCHANDISE MARKS.

	PAGE		PAGE
Merchandise Marks Act, 1887—		Merchandise Marks Act, 1887—	
Offences as to trade marks and		False representation as to Royal	
trade descriptions, . . . . .	616	Warrant, . . . . .	621
Definitions, . . . . .	617	Liability of master, . . . . .	621
Forging trade mark, what is, . . . . .	618	Liability of servant, . . . . .	621
Applying trade mark, &c., what		Penalties, . . . . .	621
is, . . . . .	618	Procedure, . . . . .	622
Intent, . . . . .	618	Appeal, . . . . .	623
Verbal misdescription, no offence,	618	Search warrant, . . . . .	623
"Acting innocently," . . . . .	618	Forfeiture, . . . . .	623
Misrepresentation as to place of		Trades Marks Act, 1905—	
origin, . . . . .	619	Falsely representing trade mark as	
Exemption of general trade de-		registered, . . . . .	623
scriptions used at passing of		Irish Handloom Weavers Act, 1909,	623
Act, . . . . .	620	Irish trade mark, . . . . .	624
Watches and watch cases, . . . . .	621		

Merchandise  
Marks Act,  
1887.

Offences as to  
trade marks  
and trade  
descriptions.

"(1) Every person who—(a) forges any trade mark; or (b) falsely applies to goods any trade mark, or any mark so nearly resembling a trade mark as to be calculated to deceive; or (c) makes any die, block, machine, or other instrument for the purpose of forging, or of being used for forging, a trade mark; or (d) applies any false trade description to goods, or (e) disposes of or has in his possession any die, block, machine, or other instrument for the purpose of forging a trade mark; or (f) causes any of the things above in this section mentioned to be done, shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be guilty of an offence against this Act.

"(2) Every person who sells, or exposes for, or has in his possession for sale, or any purpose of trade or manufacture any goods or things to

which any forged trade mark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, as the case may be, shall, unless he proves—(a) That having taken all reasonable precautions against committing an offence against this Act, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark, mark, or trade description; and (b) that on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or (c) that otherwise he had acted innocently; be guilty of an offence against this Act” (*Merchandise Marks Act, 1887, 50 & 51 Vict. c. 28, s. 2*; as to penalties, see p. 622).

“(1) For the purposes of this Act—The expression ‘trade mark’ means a trade mark registered in the register of trade marks kept under the Patents, Designs, and Trade Marks Act, 1883, and includes any trade mark which, either with or without registration, is protected by law in any British possession or foreign State to which the provisions of the one hundred and third section of the Patents, Designs, and Trade Marks Act, 1883, are, under Order in Council, for the time being applicable.

Definitions.  
“Trade mark.”

“The expression ‘trade description’ means any description, statement, or other indication, direct or indirect, (a) as to the number, quantity, measure, gauge or weight of any goods, or (b) as to the place or country in which any goods were made or produced, or (c) as to the mode of manufacturing or producing any goods, or (d) as to the material of which any goods are composed, or (e) as to any goods being the subject of an existing patent, privilege, or copyright, and the use of any figure, word, or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this Act.

“Trade description.”

“The expression ‘false trade description’ means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of this Act.

“False trade description.”

“The expression ‘goods’ means anything which is the subject of trade, manufacture, or merchandise.

“The expressions ‘person,’ ‘manufacturer,’ ‘dealer’ or ‘trader,’ and ‘proprietor,’ include any body of persons corporate or unincorporate.

“Person,” &c.

“The expression ‘name’ includes any abbreviation of a name.

“Name.”

“(2) The provisions of this Act respecting the application of a false trade description to goods shall extend to the application to goods of any such figures, words, or marks, or arrangement or combination thereof, whether including a trade mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

“Application of false trade description.”

“(3) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person and to goods with the false name and initials of a person applied in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression ‘false name or initials’ means as applied to any goods, any name or initials of a person which (a) are not a trade mark or part of a trade mark, and (b) are



Merchandise  
Marks Act,  
1887.

identical with, or a colourable imitation of the name or initials of a person carrying on business in connection with goods of the same description, and not having authorized the use of such name or initials, and (c) are either those of a fictitious person or of some person not *bona fide* carrying on business in connection with such goods" (*Merchandise Marks Act*, 1887, s. 3).

Forging trade  
mark, what is.

"A person shall be deemed to forge a trade mark who either (a) without the assent of the proprietor of the trade mark makes that trade mark or a mark so nearly resembling that trade mark as to be calculated to deceive; or (b) falsifies any genuine trade mark, whether by alteration, addition, effacement, or otherwise; and any trade mark or mark so made or falsified is in this Act referred to as a forged trade mark. Provided that in any prosecution for forging a trade mark the burden of proving the assent of the proprietor shall lie on the defendant" (s. 4).

Applying trade  
marks and  
descriptions,  
what is.

"(1) A person shall be deemed to apply a trade mark or mark or trade description to goods who (a) applies it to the goods themselves; or (b) applies it to any covering, label, reel, or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade, or manufacture; or (c) places, encloses, or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade, or manufacture, in, with, or to any covering, label, reel, or other thing to which a trade mark or trade description has been applied; or (d) uses a trade mark or mark or trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade mark or mark or trade description.

"(2) The expression 'covering' includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, or wrapper;<sup>1</sup> and the expression 'label' includes any band or ticket.

"A trade mark or mark or trade description shall be deemed to be applied whether it is woven, impressed, or otherwise worked into, or annexed, or affixed to the goods, or to any covering, label, reel, or other thing.

"(3) A person shall be deemed to falsely apply to goods a trade mark or mark, who, without the assent of the proprietor of a trade mark, applies such trade mark, or a mark so nearly resembling it as to be calculated to deceive, but in any prosecution for falsely applying a trade mark or mark to goods the burden of proving the assent of the proprietor shall lie on the defendant" (s. 5).

Intent.

If a trade mark is falsely applied, the fact that fraud is not intended, or any person actually deceived (*Thwaites v. McEvilly*, (1904) 1 I.R. 310; *Wood v. Burgess*, (1890) 24 Q.B.D. 162), or that the article sold is as good as, or better than, the article represented to be sold (*Kirshenboim v. Gluckstein*, (1898) 2 Q.B. 19), affords no defence; and see *R. v. Phillips*, (1909) 73 J.P. 458, noted at p. 621, *infra*).

Verbal mis-  
description  
no offence.

No offence is committed by a false verbal description, the statute being limited to a physical mark upon the goods, whether printed, written, or otherwise (*Coppen v. Moore* (No. 1), (1898) 2 Q.B. 300; *Langley v. Bombay Tea Co., Ltd.*, (1900) 2 Q.B. 460); but, as to the use of letters or words, unintelligible without a verbal explanation, see *Cameron v. Wiggins*, (1901) 1 K.B., noted p. 620, *infra*.

"Acting  
innocently."

The burthen of proof that the defendant "acted innocently" lies upon him (see judgment of Channell, J., in *Christie, Manson, & Woods v. Cooper*, (1900) 2 Q.B. 522, at p. 528). Mere suspicion of the genuineness of the article is not conclusive against a defendant (*ib.*). "To prove innocence the vendor must show that he was not aware that he was violating the Act of Parliament" (*per* Porter, M.R., in *Thwaites v. McEvilly*, (1904)

<sup>1</sup> See cases noted under WEIGHTS AND MEASURES as to wrappers or packages.

1 I.R., at p. 313). But mere ignorance of the statute is not enough ; there would have to be evidence before the justices of something showing no intention to commit any offence at all (*per* Lord Alverstone, C.J., in *Stone v. Brown*, (1910) 27 T.L.R. 6). It is difficult to suggest a case in which justices could properly find that the defendant acted innocently where he has not availed himself of his right to go into the witness-box. Merchandise  
Marks Act.  
1887.

Where the defendants filled their own mineral waters into bottles bearing a rival manufacturer's name embossed thereon, but having the defendants' own label, it was held that defendants had not acted innocently, though they had not tried to pass off their manufacture as that of their rival, nor was there any proof that any person had been deceived (*Thwaites v. McEvilly*, (1904) 1 I.R. 310 ; see also *Wood v. Burgess*, (1890) 24 Q.B.D. 162 ; cf. *R. (Findlater) v. Quirke*, (1903) 3 N.I.J.R. 165). But where the occasional user of such embossed labels was without the knowledge of the defendants or any of their servants, and was the result of unavoidable error in spite of all reasonable precautions by the defendants, this was held to be "acting innocently" (*Donohoe v. Cherry*, (1909) 26 R.P.C. 545). The King's Bench Division in England would seem disposed to draw a different inference of fact from the use of an embossed bottle from that drawn by Porter, M.R., and the Court of Appeal in Ireland in *Thwaites v. McEvilly*, *supra*. The defendant, Horatius Stone, bottled Bass's ale in bottles bearing the name of the Felinfoel Brewery Company, and he affixed thereon a Bass's label with the words "bottled by Horatius Stone." The Felinfoel Brewery Company had not given the defendant authority to use bottles bearing their name, and notice had some time previously been given to the defendant by a trade protection association warning him against the use of bottles moulded with the name of any member of the association. The justices found that the embossed name was calculated to deceive, that defendant had not acted innocently, and convicted him of selling goods to which a false trade name had been applied. *Held*, that the decision could be supported on s. 5 (c), *infra* ; but the court intimated their non-concurrence with the findings of fact of the justices (*Stone v. Brown*, (1910) 27 T.L.R. 6). Lord Alverstone, C.J., said :—"If they had been dealing with the case as an ordinary case of applying a false trade description to goods, he would have had no hesitation in saying that as long as the Bass label was on the bottle no reasonable purchaser could have doubted that he was getting Bass's beer and not beer of the complainants. . . In s. 5 (c) of the Act the legislature had been careful to spread the net very wide indeed, and in view of the wording of that section it could not be said that there was no evidence before the justices on which they could say that an offence had been committed. Nor could they quash the conviction on the ground that the defendant had acted innocently. For himself, in view of the evidence of the practice which existed for thirty years,<sup>1</sup> he would not have convicted, but they could not say that the matter was so clear that the justices were bound in law to hold that no offence had been committed." Pickford, J., said that, in his view, the grounds on which the justices had convicted were wrong.

Whether or not the accused "acted innocently" is a question of fact and not of law ; a finding that he acted without intent to defraud is not the same as a finding that he "acted innocently" (*Jenkinson v. Neilson*, (1899) 2 Fraser (J.C.) 13 ; *Haddow v. Nielson*, *ib.*, 19, noted Stroud's Supplement, p. 271).

As to misrepresentation of place of origin, it was held that the words "French Factory" constituted a false trade description where the finishing

Misrepresentation as to place of origin.

<sup>1</sup> The practice in Swansea of bottling Bass's beer into bottles with various names embossed on them.

Merchandise  
Marks Act,  
1887.

process in manufacture was done in England (*Bishop v. Toler*, (1895) 65 L.J. M.C. 1). Where a watch was described as an "English Lever" whereas the greater part of it was made abroad, though assembled in England, it was held that an offence had been committed (*Williamson v. Tierney*, (1900) 17 T.L.R. 174). Where bacon, killed in America and cured partly in America and partly in Ireland, was displayed in a shop of Liptons, Ltd., in Dublin, as "Lipton's Cure" and "own cure at Lipton's market," it was held that no offence was committed (*R. v. Lipton*, (1893) 32 L.R.L. 115; cf. *Stacey v. Chilworth Gunpowder Co.*, (1889) 24 Q.B.D. 90, and see s. 18, *infra*). But where Lipton applied to a ham the description "Tracey's Mild Cure," Tracey being Lipton's foreman curer in America, it was held that Lipton was rightly convicted of an offence under section 3 (3) (c) (*R. v. Lipton*, *supra*).

Although upon a sale of goods a purely oral indication of the country of their production will not amount to a trade description within the meaning of the Act, any writing or mark, however unintelligible without explanation, will, if orally explained by the vendor at the time of sale to be intended to indicate a particular country as the country in which the goods were produced, constitute a sufficient trade description for the purposes of the Act; thus, the letters "N. M.," orally explained at the time of sale as meaning "New Zealand Mutton" were held to constitute a false trade description (*Cameron v. Wiggins*, (1901) 1 K.B. 1).<sup>1</sup>

Exemption of  
general trade  
descriptions  
in use at the  
passing of the  
Act.

"Where, at the passing of this Act, a trade description is lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this Act with respect to false trade descriptions shall not apply to such trade description when so applied: provided that, where such trade description includes the name of a place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, this section shall not apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there" (*Merchandise Marks Act*, 1887, s. 18).

To bring a trade description within the section, it must (a) have been applied generally (i.e., as an accepted popular name or description) to the goods at the date of the passing of the Act (i.e., 24th August, 1887); and (b) such application must not have been contrary to law. Examples of the class of trade descriptions referred to in s. 18 are "patent leather," "mackintosh coats," "Harvey's sauce."

Whether a trade description (in use at the passing of the Act), which includes the name of a place or country, is "calculated to mislead as to the place or country" of origin is a question of fact in each case.<sup>2</sup> Under the Customs Order of 1900, made under the Act of 1887, the terms "Balbriggan," as applied to hosiery, "Kidderminster," as applied carpets, and "Shetland," as applied to shawls, are given as instances of

<sup>1</sup> For an instance of a successful prosecution in reference to a misdescription of the place of origin, see the police court decision in *R. (Irish Industrial Association) v. Mullins*, (1910) 44 I.L.T. & S. J. 107. In that case the gist of the complaint was that defendant sold English goods under a label implying, though not stating, that the goods were Irish made. The label was follows:—"A. & Co., The Catholic Manufacturing Co., X Street, Dublin," implying that the goods were made at X Street, whereas in fact they were made at defendants' Liverpool place of business.

<sup>2</sup> The dicta of Mellish, L.J., in *Ford v. Foster*, (1872) L.R. 7 Ch. 611, at p. 628 (though applied to trade marks), may be referred to as a statement of the test to be applied.



trade descriptions which are calculated to mislead; and the description "Portland," as applied to cement, is given as an appellation not calculated to deceive. "Donegal," as applied to tweeds (*Daniels' Case*, Times, 6th April, 1907), and *semble*, "Witney," as applied to blankets (*Ryland's Case*, Times, 9th April, 1909), both cited in Kerly's Law of Merchandise Marks, 3rd ed., 1909, p. 49 n., were held in the London police courts to be calculated to deceive.

Merchandise  
Marks Act,  
1887.

Cigars of Havana tobacco, with an outside leaf of Sumatra tobacco, not made in Cuba, were packed in boxes bearing the name "Bella de Cuba," certain Spanish words, and a registered trade mark, consisting of a Spanish-looking lady. The boxes were stamped with a rubber stamp on the outside and inside, with the words, "Guaranteed British made"—*Held*, a false trade description (*R. v. Phillips*, (1909) 73 J. P. 458).

"Where a watch-case has thereon any words or marks which constitute, or are by common repute considered as constituting, a description of the country in which the watch was made, and the watch bears no description of the country where it was made, those words or marks shall, *prima facie*, be deemed to be a description of that country within the meaning of this Act; and the provisions of this Act with respect to goods to which a false trade description has been applied, and with respect to selling or exposing for, or having in possession for sale, or any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly; and for the purposes of this section the expression 'watch' means all that portion of a watch which is not the watch-case" (s. 7).

Watches and  
watch-cases.

After date fixed by Order in Council, any person making a false declaration as to the country or place where any watch-case was made, for the purpose of obtaining a false mark of the Assay Office, is liable on conviction on indictment to penalties of perjury, and on summary conviction to a fine not exceeding £20 (s. 8).

False representation that goods are made by a person holding a Royal Warrant, or for the service of His Majesty, or any of the Royal family, or any Government Department—*Penalty*, not exceeding £20 (s. 20).

False repre-  
sentation as  
to Royal  
warrant.

A master will be liable for the criminal acts of his servants while acting within the general scope of their authority (*Coppen v. Moore* (No. 2), (1898) 2 Q.B. 306). See also p. 292.

Liability of  
master.

A servant will be liable for taking part in the sale (see *Pharmaceutical Society v. Wheelton*, (1890) 24 Q.B.D. 683), unless he comes within the following provisions of s. 19 (3):—"Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in the United Kingdom who *bona fide* acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master." Special provision is made by section 11 for the punishment of *accessories* within the United Kingdom who procure the commission abroad of offences against the Act.

Liability of  
servant.

Persons employed, on behalf of other persons, in the business of making dies, &c., if charged with forging a trade mark, are exempt, on proof of *bona fides* and of certain other conditions (s. 6).

No prosecution for an offence against the Act shall be commenced after the expiration of three years next after the commission of the offence, or one year after the first discovery thereof by the prosecutor, whichever expiration first happens (s. 15). The defendant has the right to elect to be tried by indictment, and he must be informed of his right before the case is gone into (s. 2). Should the defendant be not so informed, the proceedings will be invalid (*R. v. Cockshott*, (1898) 1 Q.B. 582).

Procedure.

The defendant, and the wife or husband of the defendant, are competent witnesses (s. 10). Evidence may be given of previous similar acts

Merchandise  
Marks Act,  
1887.

of the defendant showing an intention to defraud (*Budd v. Lucas*, (1891) 1 Q.B. 408; see also *R. v. Francis*, (1873) L.R. 2 C.C.R. 128).

By the Merchandise Marks (Ireland) Act, 1909, 9 Edw. 7, c. 24, the Department of Agriculture and Technical Instruction for Ireland may, with the concurrence of the Lord Chancellor of Ireland and of the Board of Trade, make regulations providing that, in cases which appear to the Department to relate to Irish agricultural produce, or to the produce of any other Irish rural industry and to affect the general interests of the country or of a section of the community or of a trade, the prosecution in Ireland of offences under the Merchandise Marks Act, 1887, shall be undertaken by the Department;<sup>1</sup> and prescribing the conditions on which such prosecutions are to be so undertaken.<sup>2</sup>

On any prosecution under the Merchandise Marks Act, 1887, the court may order costs to be paid to the defendant by the prosecutor, or to the prosecutor by the defendant, having regard to the information given by, and the conduct of, the defendant and prosecutor respectively (*Merchandise Marks Act*, 1887, s. 14).

The word "person" includes any body of persons corporate or unincorporate (*Merchandise Marks Act*, 1887, s. 2 (1)). It is only necessary in legal proceedings to refer to the trade mark or foreign trade mark, without further description (s. 9). The Vexatious Indictments Act, 1859, applies to all offences punishable on indictment under the Act (s. 13).

Penalties.

The penalty for a breach of the Merchandise Marks Act, 1887, is as follows:—

(1) On conviction on indictment, imprisonment, with or without hard labour, for a term not exceeding two years, or fine, or both imprisonment and fine. (2) On summary conviction imprisonment, with or without hard labour, for a term not exceeding four months, or fine not exceeding £20; second or subsequent conviction, imprisonment, with or without hard labour, for term not exceeding six months, or fine not exceeding £50; and (3) in any case, forfeiture of goods or articles (s. 2 (3)).

<sup>1</sup> The following regulations have been made by the Department with the concurrence of the Lord Chancellor and of the Board of Trade:—

(1.) The Department of Agriculture and Technical Instruction for Ireland shall, subject to the conditions in the next following regulations prescribed, undertake the prosecution in Ireland of offences under the Merchandise Marks Act, 1887, in cases which appear to the Department to relate to Irish agricultural produce, or to the produce of any other Irish rural industry, and to affect the general interests of the country, or of a section of the community, or of a trade. (2.) (i.) Every application to the Department to undertake a prosecution shall be accompanied by the following documents:—(a) A statement showing the nature and circumstances of the case, and sufficient to enable the Department to form an opinion whether the case relates to Irish agricultural produce, or to the produce of any other Irish rural industry, and affects the general interests of the country, or of a section of the community, or of a trade. (b) A statement showing the facts which, if the Department undertake the prosecution, will be capable of proof, and setting out the proofs and names of witnesses available to prove such facts. (ii.) The Department may require the above statements to be supplemented or additional evidence to be furnished. (3.) If, on the evidence, the Department are of opinion that there is no reasonable prospect of a conviction being obtained, the Department will not, unless they think fit, undertake the prosecution. (4.) If the Department are of opinion that the prosecution would be better or more properly conducted otherwise than under these regulations, the Department will not undertake the prosecution. (5.) The Department may, before undertaking a prosecution, require the applicant to give security for costs on such terms and in such manner as they think proper. (6.) For the purpose of carrying these regulations into effect, the Department may, from time to time, prescribe the use of such forms and give such directions as they may deem expedient.

<sup>2</sup> Under the Merchandise Marks Act, 1891, 54 & 55 Vict. c. 15, s. 2, the Board of Trade may make regulations providing that in cases appearing to the Board to affect the general interest of the country or of a section of the community, or of a trade, the prosecution shall be undertaken by the Board of Trade.



In case of any conviction, an appeal to quarter sessions is given to the party aggrieved (s. 2 (5)).

Where either a summons or a warrant to arrest has been issued under the Act, a search warrant may be granted, upon information on oath, authorizing a constable to enter the defendant's premises by day, and to seize and take away any goods or things of or in relation to which the offence has been committed (s. 12 (1)).

The Court before whom any person is convicted may order any forfeited articles to be destroyed or otherwise disposed of as the court thinks fit (s. 2 (4)). Where the owner of goods liable to forfeiture cannot be found, a complaint may be made for the purpose only of enforcing such forfeiture; and, after advertisement of a notice that the goods will be forfeited unless the owner or some person interested shows cause to the contrary, an order may be made for forfeiture (s. 12 (2)). Out of the proceeds of the sale of such forfeited goods, the court may award any innocent party any loss he may have innocently sustained in dealing with such goods (s. 12 (3)).

"(1) Any person who represents a trade mark as registered which is not so, shall be liable for every offence on summary conviction to a fine not exceeding £5. (2) A person shall be deemed, for the purposes of this enactment, to represent that a trade mark is registered, if he uses, in connection with the trade mark, the word "registered" or any words expressing or implying that registration has been obtained for the trade mark" (*Trade Marks Act, 1905*, 5 Ed. 7, c. 15, s. 67).

An offence is apparently committed under this section if a trade mark, registered abroad, but not registered in the United Kingdom, is described as "registered" (see *Wright, Crossley, & Co. v. Dobbin*, (1897) 15 R. P. C. 21).

Falsification of entries in register is a misdemeanour (s. 66).

In all proceedings in respect of an alleged infringement of a trade mark, the production of the sealed copy of the register, under section 50 of the Trade Marks Act, 1905, is, if it is submitted, sufficient, having regard to the provisions in section 40, that registration shall be *prima facie* evidence of the validity of the registration. If, out of abundance of caution, it is desired to give in evidence the permission of the Board of Trade, this may be proved by the production of a copy or extract purporting to be signed by the Secretary or Assistant-Secretary of the Board of Trade (See Taylor, 10th ed., p. 1104 n.).

"(1) Every person who weaves in a handloom in Ireland any linen damask table-cloth or napkin, or any piece of linen damask goods, shall weave in the selvage or hem thereof the words 'Irish hand-woven linen damask.' (2) Every person who weaves in a handloom in Ireland any piece of cambric or linen diaper goods shall, as soon as the piece is woven, stamp or print, or cause to be stamped or printed, thereon the words 'Irish hand-woven' in legible character. (3) Any person weaving in a handloom in Ireland any linen damask table-cloth or napkin, or any piece of linen damask goods, or cambric, or linen diaper goods, who fails or neglects to carry out the requirements of this section shall be guilty of an offence under this Act. (4) If any manufacturer, agent, or other person causes or procures any person to weave in a handloom in Ireland any linen damask table-cloth or napkin, or any piece of linen damask goods, or cambric or linen diaper goods, otherwise than in accordance with the requirements of this section, he shall be guilty of an offence under this Act" (*Irish Handloom Weavers Act, 1909*, 9 Ed. 7, c. 21, s. 1).

"Any person selling or exposing for sale any goods being, or purporting to be, linen damask goods, or cambric or linen diaper goods, having woven thereon or stamped or marked thereon the words 'Irish hand-woven,' or 'Irish hand-made,' or other words representing that the goods were

**Merchandise Marks Act, 1887.**

Appeal.

Search warrant.

Forfeiture.

**Trade Marks Act, 1905.**

Falsely representing trade mark as registered.

**Irish Handloom Weavers Act, 1909.**

Irish origin to be indicated on linen goods.

Sale of goods bearing false trade mark.



**Irish Hand-loom Weavers Act, 1909.** woven in a handloom in Ireland, shall, unless the goods were in fact so woven, be guilty of an offence under this Act" (*ib.*, s. 2).

**Procedure and penalties.**

"(1) Offences under this Act may be prosecuted, and penalties recoverable under this Act may be recovered, in a summary manner. (2) Any person guilty of an offence under this Act shall be liable on conviction for the first offence to a penalty not exceeding £10, and for the second or any subsequent offence to a penalty not exceeding £20, or to imprisonment for a term not exceeding six months" (*ib.*, s. 3).

**Irish trade mark.**

The well-known "Irish Trade Mark" is registered in pursuance of section 62 of the Trade Marks Act, 1905, 5 Ed. 7, c. 15, which provides that:—"Where any association or person undertakes the examination of any goods in respect of origin, material, mode of manufacture, quality, accuracy, or other characteristic, and certifies the result of such examination by mark used upon or in connection with such goods, the Board of Trade may, if they shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods, whether or not such association or person be a trading association or trader, or possessed of a goodwill in connection with such examination and certifying. When so registered such trade mark shall be deemed in all respects to be a registered trade mark, and such association or person to be the proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the Board of Trade."

## MILITIA.

	PAGE		PAGE
Application of the Army Act, 1881,	624	Procedure,	625
Offences under Militia Act, 1882,	624		

**Application of Army Act, 1881.**

The following sections of the Army Act, 1881, apply to militia recruits: s. 80 (relating to the mode of enlistment and attestation); s. 96 (relating to the claims of masters to apprentices); s. 98 (imposing a fine for unlawful recruiting); s. 99 (making recruits punishable for false answers); s. 100 (relating to the validity of attestation and enlistment, or re-engagement); s. 101 (relating to the competent military authority); and so much of s. 163 as relates to an attestation paper, or a copy thereof, or a declaration, being evidence; and these sections apply in like manner as if they were re-enacted in the Militia Act, 1882, with the substitution, (a) of "militia" for "regular forces," and of "militiaman" for "soldier"; and (b) (in s. 100) of "during three months, or during the whole period of preliminary training, if less than three months, or during one whole period of annual training" for "during three months" (*Militia Act, 1882, 45 & 46 Vict. c. 49, s. 9*).

The summary jurisdiction given in respect of these sections is set out under ARMY, at p. 373, *et seq.*

**Offences under Militia Act, 1882.**

The following are the offences under the Militia Act, 1882, in respect of which there is summary jurisdiction:—

Persons discharged with disgrace from the army or navy enlisting without declaring same. Person, subject to military law, being concerned with enlistment which he knows, or has reasonable cause to believe, is an offence, or wilfully contravening any enactment, order, or regulation relating to enlistment or attestation in the militia—*Penalty*, imprisonment not exceeding six or less than two months, with or without hard labour (*Militia Act, 1882, s. 10*). Constable failing to conform with orders and regulations under the Militia Act, 1882, with respect to

the publication and service of notices to be given under that Act to militiamen—*Penalty*, not exceeding £20 (s. 22). Militiaman absent from preliminary or annual training, or assembling or embodiment, or who commits an offence against s. 12 or 15<sup>1</sup> of the Army Act, 1881—*Penalty*, not exceeding £25, nor less than £2, and in default imprisonment with or without hard labour for not less than seven days, and not more than the maximum period allowed by law for non-payment of the fine (s. 23).

Any person falsely representing himself to any military, naval, or civil authority to be a deserter or absentee from the militia—*Penalty*, not exceeding three months, with or without hard labour (s. 24). Inducing or aiding, &c., militiaman to absent himself, or employing or continuing to employ any militiaman with knowledge that he is an absentee—*Penalty*, not exceeding £20 (s. 25 (1)). Procuring or aiding, &c., militiaman to desert,<sup>2</sup> or continuing to employ him—*Penalty*, imprisonment, with or without hard labour, not exceeding six months (s. 25 (2)). Fraudulent enlistment or false answer of militiaman—*Penalty*, imprisonment, with or without hard labour, for not less than one month nor more than three months, or fine of not less than £5, nor more than £25, and, in default of payment, imprisonment for not less than one month nor more than the maximum term allowed by law for non-payment of the fine; and for any subsequent offence, imprisonment, with or without hard labour, not less than two nor exceeding six months. Any person who attempts to commit any offence against this section is liable to the punishments above mentioned reduced by one-half (s. 26).

Any of the above offences may be prosecuted in manner provided by ss. 166 and 167 of the Army Act, 1881 (as to which see p. 377), subject to the following modification, that any such fine imposed on a militiaman, or recovered in respect of any such offence on a prosecution instituted by or on behalf of the commanding officer of a militiaman (the application of which is not otherwise provided for by the Militia Acts), is to be paid to the commanding officer of the part of the militia to which the militiaman belongs (s. 42 (3)); any such prosecution against a militiaman may be instituted, whether the term of his militia service has or has not expired, at any time within two months after the offence becomes known to his commanding officer, if the militiaman be then apprehended, or if he be not then apprehended, then within two months after he is apprehended by either a civil or a military authority (s. 43 (2); see also s. 42 (3)). Sections 163 and 164 of the Army Act, 1881, relating to evidence (see *ante*, p. 377), apply to every prosecution under the Militia Act, 1882 (s. 44). As to what is to be deemed evidence of the service on militiamen of notices required by the Militia Act, 1882, see s. 22 of the Act. A militiaman cannot be tried by a court of summary jurisdiction in respect of any of the above offences until the sanction of his commanding officer, or of some authority superior to such commanding officer, has been signified in writing to the court<sup>3</sup> (Royal Warrant, dated 27th December, 1882, issued pursuant to the Militia Act, 1882).

Offences  
under Militia  
Act, 1882.

Procedure.

<sup>1</sup> That is to say, desertion, or inciting others to desert.

<sup>2</sup> The distinction between absence without leave and desertion is not the subject of any enactment or of any decision of the superior courts. The following extract from the note on p. 280 of the *Manual of Military Law* (1907 ed.) to s. 12 of the Army Act, 1881, may be of use to justices:—“To establish desertion it is necessary to prove some circumstance justifying the inference that the accused intended not to return to military duty in any corps, or intended to avoid some important particular service, such as active service, embarkation for foreign service, or service in aid of the civil power.”

<sup>3</sup> The signature appended to such consent must be proved. The Warrant does not say that such consent must be given before the proceedings are instituted, and it would therefore appear that the production of the consent to the court before the hearing of the case is all that is required.

## MINES.

Employment  
in mines.

Regulations as to employment in mines, &c., are contained in the Metalliferous Mines Regulation Acts, 1872 and 1875; the Coal Mines Regulation Acts, 1887 and 1896; Mines (Prohibition of Child Labour Underground) Act, 1900; Coal Mines (Weighing of Minerals) Act, 1905; and the Coal Mines Regulation Act, 1908. The provisions of the Acts are so numerous that an enumeration of them is impracticable.

## Quarries.

Certain provisions of the Metalliferous Mines Regulations Acts, 1872 and 1875, are applied to quarries (*Quarries Act*, 1894, s. 3<sup>1</sup>).

Dangerous  
explosives.

Section 6 of the Coal Mines Regulation Act, 1896, provides that "a Secretary of State, on being satisfied that any explosive is or is likely to become dangerous, may, by order, of which notice shall be given in such manner as he may direct, prohibit the use thereof in any mine or in any class of mines, either absolutely or subject to conditions." . . . Upon the hearing of a summons against the manager of a mine for contravention of an order purporting to be made by a Secretary of State under the above section, a Queen's printers' copy of the order was put in evidence, but no evidence was given of any notice by the Secretary of State of the making of the order or of any direction by him as to the manner in which notice of the order should be given. *Held*, that the provisions as to the giving of notice were directory only, and were not conditions precedent to the coming into operation of the order, and that the order of the Secretary of State was therefore valid and binding (*Jones v. Robson*, (1901) 1 K.B. 673).

Application  
of Weights  
and Measures  
Acts.

As to application to mines of the Weights and Measures Acts, 1878 to 1904, see WEIGHTS AND MEASURES.

## MONEY-LENDERS.

Offences by  
money-  
lenders.

"(1) A money-lender as defined by this Act (a) shall register himself as a money-lender in accordance with regulations under the Act," at an office provided for the purpose by the Commissioners of Inland Revenue, under his own or usual trade name, and in no other name, and with the address, or all the addresses if more than one, at which he carries on his business of money-lender<sup>3</sup>; and (b) shall carry on the money-lending business in his registered name, and in no other name and under no other description, and at his registered address or addresses, and at no other address; and (c) shall not enter into any agreement in the course of his business as a money-lender with respect to the advance and repayment of money or take any security for money in the course of his business as a money-lender otherwise than in his registered name; and (d) shall, on reasonable request and on tender of a reasonable sum for expenses, furnish the borrower with a copy of any document relating to the loan or any security therefor. (2) If a money-lender fails to register himself as required by the Act, or carries on business otherwise than in his registered name, or in more than one name, or elsewhere than at his

<sup>1</sup> The Quarries Act, 1894, applies to every place (not being a mine) in which persons work in getting slate, stone, coprolites, or other minerals, and any part of which is more than twenty feet deep (s. 1). Gravel and sand are minerals within the section (*Scott v. Midland Railway Co.*, (1901) 1 Q.B. 317).

<sup>2</sup> Made by the Commissioners of Inland Revenue pursuant to s. 3 (1).

<sup>3</sup> Such registration has effect for three years only, but may then be renewed, and it has effect for three years from the date of that or any subsequent renewal (s. 3 (2)).



registered address, or fails to comply with any other requirement of this section, he shall be liable, on conviction under the Summary Jurisdiction Acts,<sup>1</sup> to a fine not exceeding £100, and in the case of a second or subsequent conviction, to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding £100, or to both: provided that, if the offender be a body corporate, that body corporate shall be liable, on a second or subsequent conviction, to a fine not exceeding £500. (3) A prosecution under sub-section (1) (a) of this section shall not be instituted except with the consent in . . . Ireland of the Attorney-General or Solicitor-General" (*Money-Lenders Act*, 1900, 63 & 64 Vict. c. 51, s. 2).

Offences by money-lenders.

"The expression 'money-lender' in this Act shall include every person whose business is that of money-lending, or who advertises or announces himself or holds himself out in any way as carrying on that business; but shall not include (a) any pawnbroker in respect of business carried on by him in accordance with the provisions of the Acts for the time being in force in relation to pawnbrokers; or (b) any registered society within the meaning of the Friendly Societies Act, 1896, or any society registered or having rules certified under s. 2 or 4 of that Act, or under the Benefit Building Societies Act, 1836, or the Loan Societies Act, 1840, or under the Building Societies Acts, 1874-1894; or (c) any body corporate incorporated or empowered by a special Act of Parliament to lend money in accordance with such special Act; or (d) any person *bona fide* carrying on the business of banking or insurance, or *bona fide* carrying on any business not having for its primary object the lending of money, in the course of which and for the purposes whereof he lends money; or (e) any body corporate for the time being exempted from registration under this Act by order of the Board of Trade, made and published pursuant to regulations of the Board of Trade" (s. 6).

"Money-lender."

The Act was intended to apply only to persons who are really carrying on the business of money-lending. Speaking generally, a man who carries on a money-lending business is one who is ready and willing to lend to all and sundry, provided they are from his point of view eligible (*per* Farwell, J., in *Litchfield v. Dreyfus*, (1906) 1 K.B. 584, at p. 589; see also *Newton v. Pyke*, (1909) 25 T.L.R. 127; *Newman v. Oughton*, (1911) 1 K.B. 824).

A name assumed by a money-lender for the first time for the purpose of registration cannot be described as his "usual trade name" (*Whiteman v. Sadler*, (1910) A.C. 514).

"Usual trade name."

A money-lender who, under different names, carries on one business as an individual and another as a member of a partnership firm, carries on business "in more than one name" within the meaning of s. 2 (1) (b) (*Whiteman v. Sadler*, *supra*); and the offence is committed though he has in fact succeeded in getting himself registered in respect of both businesses (*Whiteman v. Director of Public Prosecutions*, (1911) 1 K.B. 824).

"More than one name."

The provision in s. 2 (1) (c) strikes at a money-lender who is actually registered by the registration authorities and contracts otherwise than in his registered name, and not at a money-lender who being so registered contracts in that name (*Whiteman v. Sadler*, *supra*).

"Registered name."

A money-lender who receives, at a place which is not his registered address, money in repayment of loans previously made does not thereby carry on business elsewhere than at his registered address (*Hopkin v. Hills*, (1910) 2 K.B. 29).

"Registered address."

For the indictable offences of making false statements and misrepresentations under s. 4, see INDICTABLE OFFENCES, *post*.

Indictable offences.

As to inciting infants to bet or borrow money, see CHILDREN, p. 404.

Inciting infants to bet or borrow.

<sup>1</sup> As to the meaning of which expression, see p. 335.

## MOTOR CARS.

	PAGE		PAGE
Two classes of locomotives on highways,—		Power of L.G.B. to make regulations—	
(A) Heavy locomotives, . . .	628	Prohibition on special roads (Act of 1903, s. 8), . . .	636
(B) Light locomotives, comprising—		Maximum weight (Act of 1896, s. 6; Act of 1903, s. 12), . . .	636
(1) Heavy motor cars, . . .	629	Private roads, . . .	637
(2) Light motor cars, . . .	629	Penalties, . . .	637
Restrictions on use of heavy locomotives, . . .	629	Endorsement of conviction, suspension of licence, and disqualification, . . .	637
Removal of former restrictions from light locomotives, . . .	629	Appeal, . . .	638
Offences as to motor cars—		When defendant a competent witness, . . .	639
Reckless driving, . . .	630	Evidence of L.G.B. regulating, . . .	640
Rate of speed, . . .	631	Evidence of previous conviction, . . .	640
Lights, . . .	633	Liability for acts of servant, . . .	640
Horn, . . .	633	Petroleum, regulations as to, . . .	640
Registration and identification mark, . . .	633	Excise duty on motor cars, . . .	640
Licensing of drivers, . . .	634	Regulations made by Local Government Board:	
Obligation to produce licence, . . .	634	Use and Construction (Ireland) Order, 1904, . . .	641
Obligation to stop in case of accident, . . .	635	Registration and Licensing (Ireland) Order, 1903, . . .	643
Forgery of identification mark, . . .	635	Heavy Motor Car (Ireland) Order, 1905, . . .	644
Power of L.G.B. to make regulations—		Regulations made by Home Office—	
Generally (Act of 1896, s. 6), . . .	635	Petroleum for motor cars, . . .	645
Identification, registration, &c. (Act of 1903, s. 7), . . .	635		

## INDEX TO REGULATIONS (LIGHT MOTOR CARS).

Brakes, p. 642; Condition of car, p. 642; Control, p. 643; Dealers, p. 644; Horn, &c., to be sounded, p. 643; Identification mark, p. 644; Illumination of, p. 644; Interrupting free passage, p. 643; Lamp, pp. 642, 644; Leaving unattended, p. 643; Licence, p. 644; Obstruction, p. 643;

Register, inspection of, p. 644; Registration, p. 643; Reverse gear, p. 642; Reversing, p. 642; Rule of the road, p. 643; Stopping car on request, p. 643; Stopping engine, p. 643; Tires (pneumatic), p. 642; Tires (solid) p. 642; Traction, use for, p. 642; Width of car, p. 642.

## INDEX TO REGULATIONS (HEAVY MOTOR CARS).

Breach of regulations, p. 645; Bridges, p. 645; Register, separate, p. 645; Registration of weight, &c., p. 645; Speed,

p. 645; Springs, p. 645; Trailer, weight of, p. 645; Tires, p. 645; Weight, p. 644; Wheels, p. 645; Width, p. 645.

## Locomotives on highways:

## (A) Heavy locomotives;

## (B) Light locomotives.

The law recognizes two classes of locomotives in use on highways:—

CLASS A.—Heavy locomotives, being mechanically propelled vehicles other than Class B.

CLASS B.—Light locomotives or motor cars, being mechanically propelled vehicles fulfilling the three following conditions<sup>1</sup>:—(a) if it is so constructed that no smoke or visible vapour is emitted therefrom except from any temporary or accidental cause (*Locomotives on Highways Act*, 1896, 59 & 60 Vict. c. 36, s. 1); (b) if its weight unladen does not exceed five tons (*ib.*, s. 1, *Heavy Motor Car (Ir.) Order*, 1905); and (c) if it is not used for the purpose of drawing more than one vehicle, such vehicle

<sup>1</sup> A mechanically propelled vehicle not fulfilling all three conditions is a heavy locomotive.

(unladen) with the weight of the locomotive (also unladen) not to exceed six and a half tons (*ib.*, s. 1; *Heavy Motor Car (Ir.) Order*, 1905, Art. 3).<sup>1</sup>

Light locomotives, again, are divided into two classes:—(1) Heavy motor cars, meaning light locomotives exceeding two tons in weight, unladen (*Heavy Motor Car (Ir.) Order*, 1905, Art. 2). (2) Light motor cars, not exceeding two tons, unladen, including motor bicycles unless where the contrary appears (see *Motor Cars Registration and Licensing (Ir.) Order*, 1903, Art. 21).

Heavy locomotives are still subject to the restrictions imposed by the Locomotives on Highways Acts, 1861 and 1865, 24 & 25 Vict. c. 70, and 28 & 29 Vict. c. 83, including the necessity for a man with a red flag. The law as to heavy locomotives is dealt with under title LOCOMOTIVES ON HIGHWAYS, p. 598.

Light locomotives (that is, heavy motor cars and light motor cars) are not subject to the Acts of 1861 and 1865, these statutes having been repealed, so far as light locomotives are concerned, by section 1 of the Act of 1896, but are subject to the Acts of 1896 and 1903, and the Local Government Board Regulations made thereunder, applicable to each class. The power of the Local Government Board to make regulations is derived from section 6 of the Act of 1896 ("with respect to the use of light locomotives on highways and their construction, and the conditions under which they may be used"), and the following sections of the Act of 1903: section 7 (as to registration, identification marks, and licensing), section 8 (as to prohibiting motor cars on specified roads), section 9 (as to special speed limits), section 12 (as to increase of maximum weight and speed limit of heavy motor cars). See also p. 635, *post*.

"(1) The enactments mentioned in the schedule to this Act,<sup>2</sup> and any other enactment restricting the use of locomotives on highways, and contained in any public, general, or local and personal Act in force at the passing of this Act, shall not apply to any vehicle propelled by mechanical power if it is under *three tons*<sup>3</sup> in weight, unladen, and is not used for the purpose of drawing more than one vehicle (such vehicle with its locomotive not to exceed in weight unladen *four tons*),<sup>4</sup> and is so constructed that no smoke or visible vapour is emitted therefrom, except from any temporary or accidental cause; and vehicles so exempted, whether locomotives or drawn by locomotives, are in this Act referred to as light locomotives. Provided that—(a) the council of any county or county borough shall have power to make bye-laws preventing or restricting the use of such locomotives upon any bridge within their area, where such council are satisfied that such use would be attended with damage to the bridge or danger to the public; (b) a light locomotive shall be deemed to be a carriage within the meaning of any Act of Parliament, whether public, general, or local, and of any rule, regulation, or bye-law, made under any Act of Parliament, and, if used as a carriage of any particular class, shall be deemed to be a carriage of that class, and the law relating to carriages of that class shall apply accordingly. (2) In calculating for the purposes of this Act the

Light locomotives:—

- (1) Heavy motor cars.
- (2) Light motor cars.

Restrictions on use of heavy locomotives.

Removal of former restrictions on light locomotives.

<sup>1</sup> Section 1 of the Act of 1896 laid down different weights, three tons and four tons respectively; but section 12 of the Motor Car Act, 1903, 3 Ed. 7, c. 36, gave power to the Local Government Board (*inter alia*) to increase the weight mentioned in the Act of 1896, and accordingly the effect is that a locomotive within the weight laid down by Art. 3 above referred to, and otherwise complying with the conditions as to light locomotives, is a light locomotive within the Acts of 1896 and 1903, and is not subject to the various statutory restrictions as to heavy locomotives (*Evans v. Nicholl*, (1909) 1 K.B. 778).

<sup>2</sup> These enactments are:—The Locomotives Act, 1861 (24 & 25 Vict. c. 70), except so much of section 1 as relates to tolls on locomotives, and sections 7 and 13; the Locomotives Act, 1865 (28 & 29 Vict. c. 83); section 6 of the Public Health (Ireland) Amendment Act, 1879 (42 & 43 Vict. c. 57); and some others that do not relate to Ireland.

<sup>3</sup> Now five tons; see *ante*.

<sup>4</sup> Now six and a half tons, *ante*.



weight of a vehicle unladen, the weight of any water, fuel, or accumulators used for the purpose of propulsion, shall not be included" (*Locomotives on Highways Act, 1896, 59 & 60 Vict. c. 36, s. 1*).

Where smoke is caused by excess of lubricating oil, or through the negligence of the driver, this is a temporary or accidental cause (*Star Omnibus Co. v. Tapp, (1907) 23 T.L.R. 488; R. v. Wilbraham, (1907) 96 L.T. 712*).

**Reckless driving.**

"(1) If any person drives a motor car on a public highway recklessly or negligently, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition, and use of the highway, and to the amount of traffic which actually is at the time, or which might reasonably be expected to be, on the highway, that person shall be guilty of an offence under this Act. (2) Any police constable may apprehend without warrant the driver of any car who commits an offence under this section within his view, if he refuses to give his name and address or produce his licence on demand, or if the motor car does not bear the mark or marks of identification. (3) If the driver of any car who commits an offence under this section refuses to give his name or address, or gives a false name or address, he shall be guilty of an offence under this Act, and it shall be the duty of the owner of the car, if required, to give any information which it is within his power to give, and which may lead to the identification and apprehension of the driver, and if the owner fails to do so he also shall be guilty of an offence under this Act" (*Motor Car Act, 1903, 3 Ed. 7, c. 36, s. 1*).

**Penalty.  
Endorsement.**

The penalty for an offence under the section is a fine not exceeding, first offence £20, subsequent offence £50 or imprisonment not exceeding three months (s. 11). A conviction under the section *must* be endorsed (s. 4 (1) (c)). A right of appeal is given to defendant where any term of imprisonment is imposed, or where a penalty exceeding 20s. is imposed; see s. 19 (3)).

**Appeal.**

**Form of conviction.**

The section creates four different offences: (1) driving recklessly, (2) driving negligently, (3) driving at a speed dangerous to the public, and (4) driving in a manner dangerous to the public; and a conviction for driving "at a speed or in a manner dangerous to the public" is void for uncertainty (*R. v. Wells, (1904) 20 Cox 671*). But the conviction is not uncertain because it does not upon its face specify whether the circumstances taken into consideration by the magistrate were the amount of traffic which was actually at the time on the highway, or the amount which might reasonably be expected to be there; so that a conviction for driving at a speed dangerous to the public "having regard to all the circumstances of the case, including the nature, condition, and use of the highway, and to the amount of traffic which actually was at the time, or which might reasonably be expected to be, on the said highway," is good (*R. (Cahill) v. Dublin JJ., (1904) 2 I.R. 698*). The driver of a motor car was charged with (a) having driven in a manner which was dangerous to the public, and (b) having driven at a speed exceeding twenty miles an hour. He was convicted on (a), the magistrate having taken into account the speed of the car. *Held* (Lawrance and Sutton, JJ., Jelf, J., dissenting), that the magistrate was right in holding that, as the question of speed had been taken into account on the hearing of the first charge, the conviction was a bar to the second charge (*Welton v. Taneborne, (1908) 21 Cox 702*).

**Conviction when a bar to offence of exceeding speed limit.**

**What is driving to the danger of the public.**

To sustain a conviction, it is not necessary to show that any vehicle or person using the highway was interrupted, interfered with, incommoded, or affected (see *Smith v. Boon, (1901) 19 Cox 698*);<sup>1</sup> and a person

<sup>1</sup> Decided under Art. 4 (1) of the revoked Light Locomotives on Highways Order, 1896, prohibiting the driving at any speed greater than is reasonable and proper, having regard to the traffic on the highway.

may be convicted of driving to the danger of the public who is shown to have driven at a fast pace, although there is no evidence to show that there were any passengers on the highway at the time (*Mayhew v. Sutton*, (1901) 20 Cox, 146; see also *Ex parte Stone*, (1909) 25 T.L.R. 787; *R. (Cahill) v. Dublin J.J.*, (1904) 2 I.R. 698). Evidence of excessive speed may support a conviction for driving in a manner dangerous to the public (*Hargreaves v. Baldwin*, (1905) 21 T.L.R. 715). The appellant having refused to pay a toll for a motor car, the respondent, the toll-collector, placed himself in front of the car to prevent it proceeding. Having been warned to stand clear, the respondent, after the car was in motion, hung on to the side of the car, was carried along, and after having asked the appellant to stop, fell off and was injured. The speed of the car was reasonable, and no danger was caused to anyone but the respondent. *Held*, that a conviction for reckless driving could not be supported (*Troughton v. Manning*, (1905) 20 Cox 861). The sub-section does not strike at driving which is reckless as regards passengers in the car, but at driving which is reckless as regards the public (*ib.*, per Kennedy, J.). The appellant appealed from a conviction for having driven at a speed which was dangerous to the public, "having regard to all the circumstances of the case," and on the hearing of the appeal evidence was admitted of hypothetical traffic, namely, the traffic which might reasonably be expected to be on the highway. *Held*, that the evidence was rightly admitted (*Elwes v. Hopkins*, (1906) 2 K.B. 1).

Reckless driving.

A conviction of the owner of a motor car under section 1 (3) stated that the defendant did unlawfully refuse to give the name and address of the person who at a specified time and place was driving the defendant's motor car, such name and address being required in order that proceedings might be taken against him under section 1 of the Motor Car Act, 1903, and Art. 4 (6) of the Statutory Rules and Orders, 1904. *Held*, that the conviction was bad, in that it did not state what offence the driver of the motor car had committed (*R. v. Hankey*, (1905) 2 K.B. 687; *R. v. Chancellor*, (1905) 69 J.P. 383). It is not a condition precedent to the obligation of the owner of a motor car to give the name and address of the driver of his car that the driver should previously have been asked for and should have refused to give his name and address (*R. v. Hankey*, *supra*). In the same case Lord Alverstone expressed a doubt whether the obligation to give the name and address arose where the offence was one against the regulations, as distinguished from an offence against the Act (p. 690); but it appears from the later case of *Brown v. Crossley*, (1911) 27 T.L.R. 194, noted *infra*, that no such distinction can be drawn.

Name and address.

The owner who is in control of a car driven recklessly, though not actually driving it at the time the offence is committed, may be convicted of the offence as a principal (*Du Cros v. Lambourne*, (1907) 1 K.B. 40).

Owner may be convicted.

"(1) Section four of the principal Act<sup>1</sup> (which relates to the rate of speed of motor cars) is hereby repealed; but a person shall not, under any circumstances, drive a motor car on a public highway at a speed<sup>2</sup> exceeding twenty miles per hour, and, within any limits or place referred to in regulations made by the Local Government Board with a view to the safety of the public on the application of the local authority of the area in which the limits or place are situate, a person shall not drive a motor car at a speed exceeding ten miles per hour. If any person acts in contravention of this provision, he shall be liable, on summary conviction, in respect of the first offence to a fine not exceeding £10, and in respect of the second offence to a fine not exceeding £20, and in respect of any subsequent offence to a fine not exceeding £50. But a person shall not be convicted under this provision for exceeding the limit of speed of

Rate of speed.

<sup>1</sup> That is, the Locomotives on Highways Act, 1896.

<sup>2</sup> As to regulations in case of heavy motor cars, see p. 644.



**Rate of speed.** twenty miles, merely on the opinion of one witness as to the rate of speed. (2) Where a person is prosecuted for an offence under this section, he shall not be convicted unless he is warned of the intended prosecution at the time the offence is committed, or unless notice of the intended prosecution is sent to him, or to the owner of the car as entered on the register, within such time after the offence is committed, not exceeding twenty-one days, as the court think reasonable. (3) The Local Government Board may, without any application from the local authority, after considering any objections which may be raised by the local authority, revoke or alter any regulation made by them under this section. (4) For the purposes of this section the expression 'local authority' means. . . (b) As respects a municipal borough with a population of over ten thousand according to the last census taken before the passing of this Act, the council of the borough; and (c) as respects any other area, the county council" (*Motor Car Act, 1903, 3 Ed. 7, c. 36, s. 9*).

*Appeal.*

As to appeal, see p. 638.

*Endorsing  
licence.*

On a third or subsequent, but not on a first or second, conviction for exceeding the speed limit, the conviction must be endorsed on the licence, and the court may suspend or disqualify the defendant pursuant to s. 4 (*post*, p. 637).

A third offence of exceeding the limit prescribed by regulations referring to a Royal Park may be endorsed, though the regulation was made subsequent to the date of the Act (*R. v. Plowden, (1909) 2 K.B. 269*).

*Evidence.*

A police sergeant, who was the only witness, swore that, on a motor car entering a measured distance, he started a stop-watch, and stopped it when the car had completed the distance, and that the rate of speed thus shown was twenty-eight miles an hour. *Held*, that the evidence of the police sergeant was not evidence of his "opinion" merely, and that therefore the justices were at liberty to convict (*Plancq v. Marks, (1906) 21 Cox 157*). A conviction has been upheld when the timing was done with an ordinary watch (*Gorham v. Brice, (1902) 18 T.L.R. 421*). The fact that the defendant was driving when the car was stopped by the police at one end of a measured distance (of four miles) is some evidence that he was driving over the whole measured distance (*Beresford v. St. Albans JJ., (1905) 22 T.L.R. 1*).

*Notice of  
prosecution.*

A constable seeing a motor car approaching him at what he considered an excessive speed, stopped the car and informed the driver that he thought he was exceeding the speed limit, but that if, after he (the constable) had compared the time taken by his watch with that of another constable, it appeared that the driver had not exceeded the speed limit, he would hear nothing further about it. *Held*, that this was a sufficient warning given at the time (*Jessopp v. Clarke, (1908) 24 T.L.R. 672*). But where no warning is given at the time, the section requires that a notice, which apparently must be in writing, must be sent, and should set forth the particulars of the offence, stating generally what it was and the place, date, and hour at which it occurred (*Hughes v. Nimmo, (1910) Court of Session, 47 S.L.R. 381, noted 44 I.L.T. & S.J. 102*)<sup>2</sup> A notice

<sup>1</sup> The Scotch High Court of Justiciary quashed a conviction for exceeding the speed limit where the evidence was that two constables, with stop-watches, were placed together 30 yards distant from one end of a trap 440 yards long, so that they were 470 yards distant from the further end of the trap, and from such position they timed the motor car as doing twenty-five miles an hour. The court (Lords Low, Ardwall, and Dundas) considered that the method of timing was not sufficiently precise to warrant a conviction, at all events where the excess deposited to was only five miles an hour (*Wright v. Mitchell, (1910) 2 Sc. L.T. 30*).

<sup>2</sup> In that case the prosecutor gave evidence of a verbal notification three days after the offence, in reference to which Lord Ardwall said, "I am unable to hold that a casual conversation with a constable is proper notice in terms of the Act."



stated an offence as having been committed "between St. Albans and Markyate," distant over ten miles from each other. It was in fact committed between the seventh and the third milestones from St. Albans, where the defendant was stopped. *Held*, that as the defendant was in no way misled or taken by surprise, the notice was sufficient (*Beresford v. St. Albans JJ.*, (1905) 22 T.L.R. 1).

Notice of an intended prosecution for exceeding the speed limit was delivered by the police officer to the porter of a block of flats where the driver of the car resided. The officer told the porter the purport of the notice. It was held that there was some evidence upon which the justices could find that notice of the prosecution had been sent to the driver within s. 9 (2) of the Act (*Martin v. Brooman*, (1909) 25 T.L.R. 783).

As to right to examine defendant, see p. 639, *post*.

A person who warns the driver of a motor car who is exceeding the speed limit to slacken speed, with the intention of preventing policemen, stationed in a "motor trap," from obtaining evidence to support the charge of exceeding the speed limit, is guilty of the offence of wilfully obstructing a constable in the execution of his duty (*Betts v. Stevens*, (1910) 1 K.B. 1); but to support the charge it must be proved that the car had, before the warning, been going at an illegal speed (*Bastable v. Little*, (1907) 1 K.B. 59).

*Giving  
warning of  
police trap.*

"During the period between one hour after sunset and one hour before sunrise, the person in charge of a light locomotive shall carry attached thereto a lamp so constructed and placed as to exhibit a light in accordance with the regulations to be made by the Local Government Board" (*Locomotives on Highways Act*, 1896, s. 2).<sup>1</sup> The regulations made under this section will be found, p. 642, *post*.

**Lights.**

As to penalties under this section, see p. 637; as to appeal, see p. 638.

A breach of a regulation made in pursuance of this section is an offence which must be endorsed (*Brown v. Crossley*, (1911) 27 T.L.R. 194).

"Every light locomotive shall carry a bell or other instrument capable of giving audible and sufficient warning of the approach or position of the carriage" (*Locomotives on Highways Act*, 1896, s. 3). See further, Art. 4 (5) of the Regulations of 1904, p. 643, *post*, as to giving warning of approach.

**Horn.**

For penalties under this section, see p. 637; as to right to examine defendant, see p. 639; as to right of appeal, see p. 638; as to indorsement, see pp. 637, 638.

"(1) Every motor car shall be registered with the council of a county or county borough, and every such council shall assign a separate number to every car registered with them. (2) A mark indicating the registered number of the car and the council with which the car is registered shall be fixed on the car or on a vehicle drawn by the car, or on both, in such manner as the council require in conformity with regulations of the Local Government Board made under this Act.<sup>2</sup> (3) A fee of 20s. shall be charged by the council of a county or county borough on the registration of a car, except in the case of motor cycles, for which the fee shall be 5s. (4) If a car is used on a public highway without being registered, or if the mark to be fixed in accordance with this Act is not so fixed, or if, being so fixed, it is in any way obscured, or rendered or allowed to become not easily distinguishable, the person driving the car shall be guilty of an offence under this Act, unless, in the case of a prosecution for

**Registration  
and identifi-  
cation mark.**

<sup>1</sup> That is the L.G.B. for Ireland (s. 11). As to carrying lamp so as to illuminate identification plate, see pp. 642, 644.

<sup>2</sup> Under s. 7, p. 635.

Registration  
and identifi-  
cation mark.

obscuring a mark, or rendering or allowing it to become not easily distinguishable, he proves that he has taken all steps reasonably practicable to prevent the mark being obscured or rendered not easily distinguishable. Provided that—(a) A person shall not be liable to a penalty under this section if he proves that he has had no reasonable opportunity of registering the car in accordance with this section, and that the car is being driven on a highway for the purpose of being so registered; and (b) the council of any county or county borough in which the business premises of any manufacturer of, or dealer in, motor cars are situated, may, on payment of such annual fee, not exceeding £3, as the council require, assign to that manufacturer or dealer a general identification mark which may be used for any car on trial after completion, or on trial by an intending purchaser, and a person shall not be liable to a penalty under this section while so using the car if the mark so assigned is fixed upon the car in the manner required by the council in accordance with regulations of the Local Government Board made under this Act" (*Motor Car Act, 1903, s. 2*).

As to penalties under this section, see p. 637; as to appeal, see p. 638; as to indorsement, see pp. 637, 638.

The regulations made by the Local Government Board for Ireland are contained in the Motor Cars Registration and Licensing Order, 1903, summarized, p. 643. If a car is driven with an identification plate which is not in accordance with the regulations, an offence is committed under this section (*R. v. Gill, (1909) 100 L.T. 858*). Such offence is an "offence in connection with the driving of a motor car" within s. 4 of the Act of 1903 (*ib.*), and therefore must be endorsed on defendant's licence.

As to making a master responsible for the acts of his servant, see *Provincial Motor Cab Co. v. Dunning, (1909) 2 K.B. 599*, noted *post*, p. 640.

Licensing of  
drivers.

"(1) A person shall not drive a motor car on a public highway unless he is licensed for the purpose under this section, and a person shall not employ any person who is not so licensed to drive a motor car. If any person acts in contravention of this provision, he shall be guilty of an offence under this Act. (2) The council of a county or county borough shall grant a licence to drive a motor car to any person applying for it who resides in that county or county borough on payment of a fee of 5s., unless the applicant is disqualified under the provisions of this Act. (3) A licence shall remain in force for a period of twelve months from the date on which it is granted, but shall be renewable, and the same provisions shall apply with respect to the renewal of the licence as apply with respect to the grant of the licence. (4) A licence must be produced by any person driving a motor car when demanded by a police constable. If any person fails so to produce his licence, he shall be liable, on summary conviction, in respect of each offence to a fine not exceeding £5. (5) Any person under the age of seventeen years shall be disqualified for obtaining a licence (except that a licence limited to driving motor cycles may be granted to a person over the age of fourteen years), and any person who already holds a licence shall be disqualified for obtaining another licence while the licence so held by him is in force" (*Motor Car Act, 1903, s. 3*). The regulations under this section are contained in the Motor Car Registration and Licensing (Ireland) Order, 1903, summarized *post*, p. 643.

Obligation  
to produce  
licence.

No capacity to drive is required to enable an applicant to obtain a licence. The disqualifications are: (1) being under the age specified in s. 3 (5); (2) disqualification by reason of convictions as prescribed by s. 4 (5). The council has no power to refuse a licence to a person not disqualified (see *R. v. Middlesex Co. Council, (1898) 15 T. L. R. 14*).



As to penalties under this section, see p. 637; as to appeal, see p. 638; as to endorsement, see pp. 637, 638.

The appellant was stopped by a police constable for exceeding the speed limit, and on demand produced his licence, from which the constable took his name. At the hearing of the charge for exceeding the speed limit, it was objected on appellant's behalf that, as no notice to produce the licence had been served, secondary evidence of its contents could not be given. *Held*, that the evidence was rightly admitted (*Marshall v. Ford*, (1908) 99 L.T. 796; see *Martin v. White*, (1910) 1 K.B. 665, noted in chapter on EVIDENCE, p. 281, *ante*).

"A person driving a motor car shall, in any case, if an accident occurs to any person, whether on foot, on horseback, or in a vehicle, or to any horse or vehicle in charge of any person, owing to the presence of the motor car on the road, stop, and, if required, give his name and address, and also the name and address of the owner and the registration mark or number of the car; and if any person knowingly<sup>1</sup> acts in contravention of this section, he shall be liable, on summary conviction, in respect of the first offence to a fine not exceeding £10, and in respect of the second offence to a fine not exceeding £20, and in respect of any subsequent offence to a fine not exceeding £20, or, in the discretion of the court, to a term of imprisonment not exceeding one month" (*Motor Car Act*, 1903, s. 6).

Obligation to stop in case of accident.

As to appeal, see p. 638; as to endorsement, see pp. 637, 638.

"If any person forges or fraudulently alters or uses, or fraudulently lends or allows to be used by any other person, any mark for identifying a car or any licence under this Act, he shall be guilty of an offence under this Act" (*Motor Car Act*, 1903, s. 5).

Forgery, &c., of identification mark or licence.

As to penalties under this section, see p. 637; as to appeal, see p. 638; as to endorsement, see pp. 637, 638.

"(1) The Local Government Board<sup>2</sup> may make regulations with respect to the use of light locomotives on highways, and their construction and the conditions under which they may be used. (2) Regulations under this section may, if the Local Government Board deem it necessary, be of a local nature and limited in their application to a particular area, and may, on the application of any local authority, prohibit or restrict the use of locomotives for purposes of traction in crowded streets, or in other places where such use may be attended with danger to the public. All regulations under this section shall have full effect notwithstanding anything in any other Act, whether general or local, or any bye-laws or regulations made thereunder. Every regulation purporting to be made in pursuance of this section shall be forthwith laid before both Houses of Parliament" (*Locomotives on Highways Act*, 1896, s. 6). See also s. 9 of Act of 1903 (p. 632) as to 10-mile limit of speed.

Power of L.G.B. to make regulations.

Generally (Act of 1896, s. 6).

As to the effect of an omission to lay such regulations before Parliament, see p. 337.

"(1) The Local Government Board may, under section 6 of the Locomotives on Highways Act, 1896 (in this Act referred to as the principal Act), make regulations (a) providing generally for facilitating the identification of motor cars, and in particular for determining and regulating generally the size, shape, and character of the identifying marks to be fixed under this Act, and the mode in which they are to be fixed and to be rendered easily distinguishable whether by night or by day, and with respect to the registration of cars, and the entry of particulars, including particulars of the ownership of the car, in the register, and the giving of those particulars, and for making any particulars contained in the register available for use by the police, and for making the

Identification and registration, &c., of car (Act of 1903, s. 7).

<sup>1</sup> That is, it is submitted, knowing of the accident and its cause.

<sup>2</sup> That is, the L.G.B. for Ireland (s. 11).



Power of  
L.G.B. to  
make  
regulations.

registration of a car void if the regulations as to registration are not complied with, and *b*) with respect to the licences to be granted by the councils of counties or county boroughs under this Act, and in particular with respect to the register to be kept of those licences and the renewal of licences, and for providing special facilities for granting licences to persons not resident in the United Kingdom, and for communicating particulars thereof to adjoining and other county or county borough councils, and for making any particulars with respect to any persons whose licences are suspended or endorsed available for use by the police, and for preventing a person holding more than one licence. (2) The councils of counties and county boroughs shall comply with any regulations so made by the Local Government Board, and may, if authorized by those regulations and in accordance therewith, charge in respect of the entry of particulars of the ownership of a car on change of ownership such fee, not exceeding 10s., as may be prescribed by the regulations, and, in respect of the issue of a new licence in the place of a licence lost or defaced, such fee, not exceeding 1s., as may be prescribed by the regulations" (*Motor Car Act, 1903, s. 7*).

For regulations—Registration and Licensing, see p. 643; Use and Construction, see p. 641: and Heavy Motor Cars, see p. 644.

Prohibition on  
special roads.  
Act of 1903,  
s. 8.

"The Local Government Board may, by regulations made under sec. 6 of the principal Act,<sup>1</sup> prohibit or restrict the driving of any motor cars, or of any special kind of motor cars, on any specified highway, or part of a highway, which does not exceed sixteen feet in width, or on which ordinary motor car traffic would, in their opinion, be especially dangerous" (*Motor Car Act, 1903, s. 8*).

As to penalty, under this section see p. 637; as to appeal, see p. 638; as to endorsement, see pp. 637, 638.

The following is a form of summons or conviction under the section :

"that you, the defendant, did on                      day of                      within the county and  
district aforesaid drive a motor car at                      between                      and  
being a place whereon the driving of motor cars is prohibited by  
Local Government Board regulation dated                      day of                      ."

The regulation should be proved; as to manner of proof, see p. 278.

"(1) Local authorities within the meaning of the last preceding section shall give public notice of any regulation of the Local Government Board made in pursuance of this Act, prohibiting or restricting the use of motor cars on any highway or part of a highway, or limiting the speed of motor cars within any limits or place, and, for the purpose of giving effect to any such regulation, shall place notices in conspicuous places on or near the highway, part of a highway, limits, or place to which the regulation refers. (2) Subject to regulations as to size and colours to be made by the Local Government Board, local authorities within the meaning of the last preceding section shall within their areas cause to be set up sign-posts denoting dangerous corners, cross-roads, and precipitous places, where such sign-posts appear to them to be necessary" (*Motor Car Act, 1903, s. 10*).

Maximum  
weight (Act of  
1903, s. 12).

Local authorities are required (1) to give notice, e.g., by advertising in a newspaper circulating in the district, and (2) to place notice-boards as described; and it is submitted that their doing so is a condition precedent to a prosecution under this section (see *R. v. Surrey J.J.*, (1870) L.R. 5 Q.B. 466; *Walsh v. Somerville*, (1888) 22 L.R.I. 314).

"(1) The Local Government Board by regulations made under section 6 of the principal Act may, as respects any class of vehicle

<sup>1</sup> The Act of 1896.

mentioned in the regulations, increase the maximum weights of three and four tons mentioned in section 1 of that Act, subject to any conditions as to the use and construction of the vehicle which may be made by the regulations. (2) The power of the Local Government Board to make regulations under section 6 of the Locomotives on Highways Act, 1896, shall, as respects motor cars exceeding two tons in weight unladen, include a power to make regulations as to speed" (*Motor Car Act, 1903, s. 12*).

"The provisions of this Act, and of the principal Act, shall apply in the case of a roadway to which the public are granted access in the same manner as they apply in the case of a public highway" (*Motor Car Act, 1903, s. 20 (1)*). Private roads.

"A breach of any bye-law or regulation made under this Act, or of any provision of this Act, may, on summary conviction, be punished by a fine, not exceeding £10" (*Locomotives on Highways Act, 1896, s. 7*). Penalties.  
Breach of regulations.

"A person guilty of an offence under this Act for which no special penalty is provided shall be liable on summary conviction in respect of each offence to a fine not exceeding £20, or in the case of a subsequent conviction to a fine not exceeding £50, or, in the discretion of the court, to imprisonment for a period not exceeding three months" (*Motor Car Act, 1903, s. 11 (1)*). No special penalty provided.

Penalties under the Acts are recoverable "on summary conviction" (*Act of 1896, s. 7; Act of 1903, s. 11*), which has the effect of applying the Petty Sessions Act (see *R. v. Unkles*, (1873) *L.R. 8 C.L. 50*, noted p. 41, *ante*).

"(1) Any court before whom a person is convicted of an offence under this Act or of any offence in connection with the driving of a motor car, other than a first or second offence consisting solely of exceeding any limit of speed fixed under this Act—(a) may, if the person convicted holds any licence under this Act, suspend that licence for such time as the court thinks fit, and, if the court thinks fit, also declare the person convicted disqualified for obtaining a licence for such further time after the expiration of the licence as the court thinks fit; and (b) may, if the person convicted does not hold any licence under this Act, declare him disqualified for obtaining a licence for such time as the court thinks fit; and (c) if the person convicted holds any licence under this Act, shall cause particulars of the conviction and of any order of the court made under this section, to be endorsed upon any licence held by him, and shall also cause a copy of those particulars to be sent to the council by whom any licence so endorsed has been granted. (2) Any person so convicted, if he holds any licence under this Act, shall produce the licence within a reasonable time for the purposes of endorsement, and if he fails to do so shall be guilty of an offence under this Act. (3) A licence so suspended by the court shall during the term of suspension be of no effect, and a person whose licence is suspended or who is declared by the court to be disqualified for obtaining a licence shall during the period of suspension or disqualification be disqualified for obtaining a licence. (4) Any person who is by virtue of an order of the court under this section disqualified for obtaining a licence may appeal against the order in the same manner as a person may appeal who is ordered to be imprisoned without the option of a fine; and the court may, if they think fit, pending the appeal, defer the operation of the order. (5) If any person who under the provisions of this Act is disqualified for obtaining a licence, applies for or obtains a licence while he is so disqualified, or if any person whose licence has been endorsed applies for or obtains a licence without giving particulars of the endorsement, that person shall be guilty of an offence under this Act, and any licence so obtained shall be of no effect" (*Motor Car Act, 1903, s. 4*). Suspension of licence and disqualification; endorsement.  
Suspension.  
Disqualification.  
Endorsement.  
Licence to be produced.  
Effect of suspension or disqualification



**Suspension of licence and disqualification; endorsement.**

*Date from which suspension runs.*

*Speed limit under special regulations.*

*Endorsement obligatory.*

*What offences must be endorsed.*

When a court of summary jurisdiction convict a person holding a licence under the Motor Car Act, 1903, and suspend his licence under s. 4 (1a) of the Act, but make no order under s. 4 (4), deferring the operation of the order of suspension pending an appeal to quarter sessions, it does not defer the operation of the order of suspension, which runs from the date when it is made, and not from the date when the appeal is disposed of by quarter sessions (*Kidner v. Daniels*, (1910) 102 L.T. 132).

The offence of exceeding the speed limit for motor cars in Royal Parks, fixed under regulations made in pursuance of the Parks Regulation Act, 1872, stands upon the same footing as regards endorsement as a conviction for exceeding the speed limit under s. 9, and therefore a first conviction for such offence cannot be endorsed (*R. v. Marsham*, (1907) 2 K.B. 638).

Where the offence is one to which the clause as to endorsement is applicable, it should be noticed that the justices have no discretion, and that the endorsement is obligatory.

The offences which must be endorsed are of two classes:—(a) offences “under this Act,” i.e., the Act of 1903, and (b) offences “in connection with the driving” of a motor car, except the first or second offence of exceeding the speed limit.

The words “any offence in connection with the driving of a motor car” point to offences connected with the handling or manipulation of the car in the process of driving it, and inasmuch as a person wilfully obstructing the free passage of a highway may be convicted under other statutes independently of the Motor Car Acts and the regulations made under them, there is no reason for construing the words in question so as to include that offence; therefore, a breach of Art. 4 of the Motor Cars (Use and Construction) Order, 1904, in allowing a motor car to stand on a highway so as to cause an unnecessary obstruction cannot be endorsed (*R. v. Yorkshire J.J.*, (1910) 1 K.B. 439; *R. v. Lyndon*, (1908) 72 J.P. 227; *R. v. Beaver*, (1910) 74 J.P. 127). But to drive a motor car without a light or a proper light, whether head light (*Ex parte Symes*, (1910) 27 T.L.R. 21), or a tail light (*Brown v. Crossley*, (1911) 27 T.L.R. 194), is an offence “in connection with the driving” of a motor car.

Offences “under this Act” (i.e., Act of 1903) include not only offences against the provisions of that Act, but also a breach of any regulations made under and in pursuance of the combined operation of section 7 of the Act of 1903 (*supra*) and section 6 of the Act of 1896, *supra* (*Brown v. Crossley*, *supra*); so that, apparently, breaches of regulations as to identification marks, registration of cars, and licences are offences which must be recorded.

**Appeal.**

No appeal is, at all events expressly, provided for by the Act of 1896. Section 19 of the Act of 1903 enacts as follows:—

“Section 23 of the Summary Jurisdiction (Ir.) Act, 1851 (which gives a right of appeal), shall apply as respects convictions for offences under this Act as if any term of imprisonment without the option of a fine were substituted for a term of imprisonment exceeding one month” (s. 19 (3)).<sup>1</sup>

Section 4 of the Act of 1903, p. 637, *supra*, gives a right of appeal from any order of disqualification.

<sup>1</sup> Section 23 of the Summary Jurisdiction (Ir.) Act, 1851, gives a right of appeal in any case where an order shall be made for the payment of any penal or other sum exceeding 20s., or for any term of imprisonment exceeding one month. By this section the right of appeal is extended to cases where the order is an order of imprisonment, even for a less period than one month. As to procedure, see p. 139, *ante*.



Section 20 (3) of the Act of 1903 enacts that the Act of 1896 and the Act of 1903 may be "cited together as the Motor Car Acts, 1896 and 1903," and refers (sub-sec. 3) to the Act of 1896 as "the principal Act." There is no provision that the Acts are to be read or construed as one Act; but as the judgments in *Brown v. Crossley*, *supra*, lay down that a breach of a regulation made under s. 7 of the Act of 1903 and s. 6 of the Act of 1896, is an offence under the Act of 1903, it follows that an appeal under the above section would lie under s. 19 (3) of the Act of 1903 in case of such offences (see, however, *Steer v. Bennett*, (1903) 67 J.P. 112; *Davey v. Bennett*, (1905) 69 J.P. 200, decisions of Lord Coleridge sitting as chairman of quarter sessions). It is submitted that, in Ireland, the appeal provisions of the Petty Sessions Act would apply (see p. 181, *ante*) even if the provisions of s. 19 (3) of the Act of 1903 were held not to be applicable.

"Sections one to four, inclusive, of the Criminal Evidence Act, 1898, shall extend to Ireland in the case of a person charged with any offence under this Act" (*Motor Car Act*, 1903, s. 19).

When defendant a competent witness.

From what has been said in the last paragraph, it would seem that this provision applies to offences under the regulations made under the Act of 1896.

1. The following is the text of the sections referred to:—

1. Every person charged with an offence, and the wife or the husband, as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person. Provided as follows:—(a) A person so charged shall not be called as a witness in pursuance of this Act, except upon his own application: (b) The failure of any person charged with an offence, or of the wife or husband, as the case may be, of the person so charged, to give evidence shall not be made the subject of any comment by the prosecution: (c) The wife or husband of the person charged shall not, save as in this Act mentioned, be called as a witness in pursuance of this Act, except upon the application of the person so charged: (d) Nothing in this Act shall make a husband compellable to disclose any communication made to him by his wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during marriage: (e) A person charged, and being a witness in pursuance of this Act, may be asked any question in cross-examination, notwithstanding that it would tend to incriminate him as to the offence charged: (f) A person charged and called as a witness in pursuance of this Act shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless—(i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or (ii) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution; or (iii) he has given evidence against any other person charged with the same offence: (g) Every person called as a witness in pursuance of this Act shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence: (h) Nothing in this Act shall affect the provisions of section eighteen of the Indictable Offences Act, 1848, or any right of the person charged to make a statement without being sworn.

2. Where the only witness to the facts of the case called by the defence is the person charged, he shall be called as a witness immediately after the close of the evidence for the prosecution.

3. In cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply.

4. (1) The wife or husband of a person charged with an offence under any enactment mentioned in the schedule of this Act may be called as a witness either for the prosecution or defence, and without the consent of the person charged. (2) Nothing in this Act shall affect a case where the wife or husband of a person charged with an offence may at common law be called as a witness without the consent of that person.

Where a defendant examined on his own behalf was, contrary to the statute, cross-examined as to previous convictions, the conviction was quashed (*Charnock v. Marchant* (1900) 1 Q. B. 474).

Evidence of  
L.G.B.  
regulations.

In any prosecution for a breach of the Local Government Board regulations, such regulations must, it is submitted, be duly proved in manner pointed out at p. 278, *ante*.

Evidence of  
previous con-  
viction.

As to evidence of previous convictions, see *Martin v. White*, (1910) 1 K.B. 665, noted fully, p. 291, *ante*.

Master's  
liability for  
acts of servant

A limited liability company were convicted of aiding and abetting a driver in their service in using a motor cab in contravention of Art. 11 of the [English] Motor Car (Registration and Licensing) Order, 1903 (identical with Art. 11 of the corresponding Irish Order, *post*, p. 644), providing for the illumination, at night, of the identification plate. The driver was using the cab having a lamp, which was lighted, but hanging too low to illuminate the identification plate. The motor cab was fitted with a proper and permanent bracket on which to hang the lamp. The company had in their service a foreman who was charged by them with the duty of seeing that the cabs left their premises in such a condition as to satisfy the statutes and regulations. The magistrate found that the appellants were careless in not seeing to it that a proper lamp was fixed on the cab. *Held*, that there was evidence to support the conviction (*Provincial Motor Cab Co., Ltd. v. Dunning*, (1909) 2 K.B. 599). "A breach of the regulations is not to be regarded as a criminal offence in the full sense of the word; that is to say, there may be a breach of the regulation without a criminal intent and *mens rea*. . . . If a corporation have a large number of cars, and act, as they must act, by agents, and these agents send out the cars in a way which does not comply with the regulations, in my judgment the corporation are responsible for the penalties imposed thereby" (*ib.*, per Lord Alverstone, L.C.J., pp. 602-3).

Petroleum.  
regulations  
as to.

The keeping and use of petroleum or of any other inflammable liquid or fuel for the purpose of light locomotives shall be subject to regulations made by a Secretary of State, and regulations so made shall have effect, notwithstanding anything in the Petroleum Acts, 1871 to 1881 (*Act of* 1896, s. 5; *Act of* 1903, s. 5). See regulations, p. 645.

Excise duty  
on motor cars.

Up to 1910 there was no duty payable by any person keeping a motor car or other carriage in Ireland; but s. 86 of the Finance (1909-10) Act, 1910, now provides that the Excise duty for carriages, payable in respect of any motor car which is a carriage within the meaning of s. 4 of the Customs and Inland Revenue Act, 1888, shall be at the rates specified in Part II. of the fifth schedule to the Finance (1909-10) Act, 1910, and the duty so payable shall be charged throughout the United Kingdom; and the Acts relating to the payment of the duty shall extend accordingly.

Accordingly, the following provisions of the Revenue Act, 1869, 32 & 33 Vict. c. 14, seem applicable to persons keeping a motor car<sup>1</sup> in Ireland:—

Section 25, enacting a penalty of £20 (over and above the duties payable) for neglecting or refusing to deliver any declaration in conformity with the Act, or delivering a declaration wherein the required particulars are not fully and truly stated; and section 27, enacting a penalty of £20 on "every person who shall keep a carriage" without a licence; section 33, enacting a penalty of £5 on any person failing to produce the licence to an Inland Revenue Officer within a reasonable time after being requested to do so.

Under Order in Council dated 2nd August, 1910, and known as the Motor Car Licence Duties (Ireland) Collection Order, 1910, it is provided:—(*Art. 3*) that every county council shall have within their county all powers and duties now vested in the Commissioners of Customs and Excise for carrying into execution every enactment relating to the duties

<sup>1</sup> Section 86 (4) of the Finance (1909-10) Act, 1910, provides for a rebate of one-half the duty in case of a duly qualified medical practitioner where the motor car is kept by him for the purpose of his profession.



on licences for motor cars imposed by the Finance (1909-10) Act, 1910, on motor cars; and (*Art. 9*), that any officer selected by a county council in pursuance of the order may request the production of a licence under s. 33 of the Revenue Act, 1869, 32 & 33 Vict. c. 14, for the purpose of its being examined and read by him, and that that section shall apply accordingly, and that if any person obstructs, molests, or hinders any such officer in the execution of his duty or of any power or authority by law given him in relation to such duties on licences for motor cars, he shall be subject to the same liability<sup>1</sup> as if he had obstructed an officer of Customs and Excise in the execution of his duty.

"Carriage" does not include a "hackney carriage," or "a waggon, cart, or other such vehicle, which is constructed or adapted for use, and is used, solely for the conveyance of any goods or burden in the course of trade or husbandry, and whereon the Christian name and surname, and place of abode, or place of business of the person, or the name or style and principal or only place of business of the company or firm, keeping the same, shall be visibly and legibly painted in letters of not less than one inch in length" (*Customs and Inland Revenue Act*, 1888, 51 & 52 Vict. c. 8, s. 4).

Nothing in s. 86 of the Finance (1909-10) Act, 1910, shall be construed to increase or affect the duty payable in respect of any motor car, motor omnibus, or other vehicle, being a hackney carriage within the meaning of s. 4 of the Customs and Inland Revenue Act, 1888, or to require a licence to be taken out, for any motor car which is not a carriage within the meaning of that section (*Finance (1909-10) Act*, 1910, s. 86 (3)). "Hackney carriage" means any carriage standing or plying for hire, and includes any carriage let for hire by a coachmaker or other person whose trade or business it is to sell carriages or to let carriages for hire, provided that such carriage is not let for a period amounting to three months or more (*Customs and Inland Revenue Act*, 1888, s. 4 (3)). The licence on a hackney carriage is 15s. per annum (*ib.*), though it is submitted, having regard to s. 86 (3) of the Finance (1909-10) Act, 1910, that no duty is payable on a motor car kept for hire in Ireland, inasmuch as no duty was heretofore payable on or in respect of same.

Where a vehicle, kept for the conveyance of the defendant's milk (and so exempt from duty), was on one occasion used by a bailiff who had entire charge and custody of defendant's farm and vehicles for the bailiff's own use: *Held*, that the defendant could not bring himself within the exception in s. 4 of the Customs and Inland Revenue Act, 1888 (*Strutt v. Clift*, (1910) 27 T.L.R. 14).

MOTOR CARS (USE AND CONSTRUCTION) (I.) ORDER, 1904, DATED 6TH MAY, 1904. **Use and Construction Order, 1904.**

1. In this Order—the expression "carriage" includes a waggon, cart, or other vehicle. The expression "horse" includes a mule or other beast of draught or burden, and the expression "cattle" includes sheep. The expression "motor car" means a vehicle propelled by mechanical power which is under *three tons* in weight unladen, and is not used for the purpose of drawing more than one vehicle (such vehicle with its locomotive not exceeding in weight unladen *four tons*) and is so constructed that no smoke or visible vapour is emitted therefrom except from any temporary or accidental cause.<sup>3</sup> In calculating for the purposes of this order the weight of a vehicle unladen, the weight of any water, fuel, or accumulators

<sup>1</sup> That is to say, he incurs a fine of £100 (*Inland Revenue Regulation Act*, 1890, 53 & 54 Vict. c. 21, s. 11), recoverable summarily (s. 21). As to procedure under the Act of 1890, see p. 79.

<sup>2</sup> But see p. 628.

<sup>3</sup> See *Star Omnibus Co. v. Tagg*, (1907) 23 T.L.R. 488; *R. v. Wilbraham*, (1907) 96 L.T. 712, noted p. 630.

Article 1.  
Definitions:  
"Carriage."  
"Horse."  
"Cattle."  
"Motor Car."  
"Highway."



**Use and  
Construction  
Order, 1904.**

**Article 2.**

used for the purpose of propulsion shall not be included. The expression "highway" includes any roadway to which the public are granted access.

2. No person shall cause or permit a motor car to be used on any highway, or shall drive or have charge of a motor car when so used, unless the conditions hereinafter set forth are satisfied, namely:—

*Reverse gear.*

(1) The motor car, if it exceeds in weight unladen five hundredweight, shall be capable of being so worked that it may travel either forwards or backwards.

*Width.*

(2) The motor car shall not exceed 7 feet 2 inches in width, such width to be measured between its extreme projecting points.

*Tires.*

(3) The tire of each wheel of the motor car shall be smooth, and shall, where the same touches the ground, be flat and of the width following, namely:—(a) if the weight of the motor car unladen exceeds fifteen hundredweight, but does not exceed one ton, not less than  $2\frac{1}{2}$  inches; (b) if such weight exceeds one ton, but does not exceed two tons, not less than 3 inches; (c) if such weight exceeds two tons, but does not exceed three tons, not less than 4 inches. Provided that where a pneumatic tire or other tire of a soft or elastic material is used, the conditions hereinbefore set forth with respect to tires shall not apply.

*Brakes.*

(4) The motor car shall have two independent brakes<sup>1</sup> in good working order, and of such efficiency that the application of either to the motor car shall cause two of its wheels on the same axle to be so held that the wheels shall be effectually prevented from revolving or shall have the same effect in stopping the motor car as if such wheels were so held. Provided that in the case of a motor car having less than four wheels this condition shall apply as if, instead of two wheels on the same axle, one wheel was therein referred to.

*Solid tires.*

(5) Where the weight of a motor car unladen exceeds fifteen hundredweight and the motor car is fitted with tires other than pneumatic tires or tires of a soft or elastic material, the weight of the motor car unladen shall be painted in one or more straight lines upon some conspicuous part of the right or off side of the motor car in large legible letters in white upon black or black upon white, not less than one inch in height.

*Condition of  
car.*

(6) The motor car and all the fittings thereof shall be in such a condition as not to cause, or to be likely to cause, danger to any person on the motor car or on any highway.

*Lamp.*

(7) (i) The lamp to be carried attached to the motor car in pursuance of section 2 of the Act of 1896 shall be so constructed and placed as to exhibit, during the period between one hour after sunset and one hour before sunrise, a white light visible within a reasonable distance in the direction towards which the motor car is proceeding, or is intended to proceed, and to exhibit a red light so visible in the reverse direction. The lamp shall be placed on the extreme right or off side of the motor car in such a position as to be free from all obstruction to the light. Provided that where a lamp, which exhibits a red light in the direction contrary to that towards which the motor car is proceeding, is carried attached at the back of the motor car, the condition requiring the lamp attached in pursuance of section 2 of the Act of 1896 to exhibit a red light shall not apply or have effect with regard to the motor car: Provided also that the first paragraph of this condition shall not extend to any bicycle, tricycle, or other similar machine, but the lamp to be carried by such bicycle, tricycle, or other similar machine shall be so constructed and placed as to exhibit a white light in the direction towards which such bicycle, tricycle, or other machine is proceeding. (ii) Every lamp carried by the motor car when in use on a highway at any time during the period mentioned in this condition shall be so constructed, fitted, and attached as to prevent the movement or the use as a searchlight of the light exhibited by any such lamp.

**Article 3.**

*Use for  
traction.*

3. No person shall cause or permit a motor car to be used on any highway for the purpose of drawing any vehicle, or shall drive or have charge of a motor car when used for such purposes, unless the conditions hereinafter set forth are satisfied, namely:—

(1) Conditions (2), (3), (5), and (6) of Article II. of this Order shall apply as if the vehicle drawn by the motor car was therein referred to instead of the motor car itself.

<sup>1</sup> The engine, though capable of being used as a brake, is not a brake within the regulation (*Wilmott v. Southwell*, (1908) 25 T.L.R. 22).

Use and  
Construction  
Order, 1904.

(2) Every vehicle exceeding two hundredweight in weight unladen, drawn by a motor car, shall have a brake in good working order of such efficiency that its application to the vehicle shall cause two of the wheels of the vehicle on the same axle to be so held that the wheels shall be effectually prevented from revolving, or shall have the same effect in stopping the vehicle as if such wheels were so held.

(3) The vehicle drawn by a motor car shall, when in pursuance of the condition lastly hereinbefore set forth a brake is required to be attached thereto, carry upon the vehicle a person competent to apply efficiently the brake: Provided that it shall not be necessary to comply with this condition if the brakes upon the motor car by which the vehicle is drawn are so constructed and arranged that neither of such brakes can be used without bringing into action simultaneously the brake attached to the vehicle drawn, or if the brake of the vehicle drawn can be applied from the motor car by a person upon the motor car independently of the brakes of the latter.

4. Every person driving or in charge of a motor car when used on any highway shall comply with the regulations hereinafter set forth, namely:— Article 4.

(1) He shall not cause the motor car to travel backwards for a greater distance or time than may be requisite for the safety or convenience of the occupants of the motor car and of the passenger and other traffic on the highway. *Reversing.*

(2) He shall not, when on the motor car, be in such a position that he cannot have control over the same, or that he cannot obtain a full view of the road and traffic ahead of the motor car, nor shall he quit the motor car without having taken due precaution against its being started in his absence, nor allow the motor car or any vehicle drawn thereby to stand on such highway so as to cause any unnecessary obstruction thereof. *Control.  
Leaving  
unattended.  
Obstruction.*

(3) He shall, when meeting any carriage,<sup>1</sup> horse, or cattle, keep the motor car on the left or near side of the road, and when passing any carriage, horse, or cattle proceeding in the same direction, keep the motor car on the right or off side of the same. *Rule of the  
road.*

(4) He shall not negligently or wilfully prevent, hinder, or interrupt the free passage of any person, carriage, horse, or cattle on any highway, and shall keep the motor car and any vehicle drawn thereby on the left or near side of the road for the purpose of allowing such passage. *Interrupting  
free passage.*

(5) He shall, whenever necessary, by sounding the bell or other instrument required by section 3 of the Act of 1896, give audible and sufficient warning of the approach or position of the motor car. *Sounding horn.*

(6) He shall on the request of any police constable in uniform, or of any person having charge of a horse, or if any such constable or person shall put up his hand as a signal for that purpose, cause the motor car to stop and to remain stationary so long as may be reasonably necessary. *Request to stop.*

5. Every motor car shall be so constructed as to enable the driver, when the motor car is stationary otherwise than through an enforced stoppage owing to the necessities of traffic, to stop the action of any machinery attached to or forming part of the motor car so far as may be necessary for the prevention of noise. The driver shall on every such occasion make prompt and effective use of all such means as, in pursuance of this condition, are provided for the prevention of noise as above mentioned: Provided that this regulation shall not apply so as to prevent the examination or working of the machinery attached to or forming part of a motor car where any such operation is rendered necessary by any failure or derangement of the said machinery. Article 5.  
*Power to stop  
machinery.*

This Order may be cited as "The Motor Cars (Use and Construction) (I.) Order, 1904."

MOTOR CARS REGISTRATION AND LICENSING (I.) ORDER, 1903 (DATED 23RD NOVEMBER, 1903).

(Summarised).

Registration  
and Licensing  
Order, 1903.

The following is a summary of the chief provisions of the Motor Cars Registration and Licensing (I.) Order, 1903, in respect of the registration and licensing of motor cars.

<sup>1</sup> A tramcar is a carriage (*Burton v. Nicholson*, (1909) 1 K.B. 397).

**Registration and Licensing Order, 1903.***Registration.*

Register of motor cars and motor cycles to be kept, index mark distinguishing the council to be the letter or letters contained in the first schedule to the Order (Art. 1). Fee of 20s. to be paid in case of a motor car, and 5s. in case of a motor cycle (Art. 2). Separate number to be assigned to motor car (Art. 3). On change of ownership, registration to be continued; fee of 5s. in case of motor car, 1s. in case of motor cycle (Art. 4). Change in circumstances affecting accuracy of registration to be notified by owner and registered accordingly (Art. 5). Provisions as to cancellation of registration where motor car destroyed, &c. (Art. 6).

*Identification mark.*

The identification mark to consist of two plates to conform to the fourth schedule to the order (Art. 7). Plates to be affixed one on the front and one on the back of the motor car in an upright position, so that every letter and figure of the plate is upright and easily distinguishable. In the case of motor tricycle or motor bicycle, the front plate if provided with duplicate faces to be affixed so as to have the letters or figures distinguishable, from either side of cycle (Art. 8). Whenever vehicle is attached to a motor car, either in front or behind, the plate required to be fixed on the front or the back of the motor car, or a duplicate of such plate, shall be affixed to the front or back of the vehicle, attached in the same manner as the plate is required to be affixed on the motor car (Art. 9). Council may furnish identification plates (Art. 10). "Whenever during the period between one hour after sunset and one hour before sunrise a motor car is used on a public highway,<sup>1</sup> a lamp shall be kept burning on the car, so contrived as to illuminate by means of reflection, transparency or otherwise, and render easily distinguishable every letter or figure on the identification plate fixed on the back of the motor car, or of any vehicle attached to the back of the motor car, as the case may be. In the application of this Article to a motor tricycle or motor bicycle of a weight unladen not exceeding three hundred weights, the plate fixed on the front of the motor car may, if desired, be substituted for the plate fixed on the back of the motor car" (Art. 11; see also Art. 2, cl. 7, of Order of 6 May, 1904, *supra*).

*Dealer's identification mark.*

General identification marks to manufacturer or dealer under sect. 2 (4) of the Act of 1903 with different colouring shall be provided; record of user to be kept by manufacturer or dealer; if general identification mark is used at the same time on more than one car, distinguishing number plates on or annexed to the plates must be put on each car; register of general identification marks to be kept (Art. 12). The council shall, on application by any other registering authority, or by any police authority, or by any superior police officer, or by any constable authorized by such superior police officer, provide, free of charge, a copy of the entries in the register relating to any specified motor car, or of the entries of general identification marks relating to any manufacturer or dealer; the council shall also supply to any other person applying for a copy of the entry relating to the any motor car a copy of such entry on payment of a fee of 1s., if he shows that he has a reasonable cause for requiring such copy; an Inland Revenue Officer may at all reasonable times inspect the register and take copies of any entries in it (Art. 13).

*Licence.*

Application for licence on payment of 5s. for licence (Art. 14). Form of licence or renewal (Art. 15) licence may be granted to person with residence outside the United Kingdom, even though not resident within the county or county borough (Art. 16). Issue of duplicate licence, or renewal in case of loss or destruction of original (Art. 17). Register of licences to be kept (Art. 18). Council upon application by any other licensing authority or by any police authority, or by any superior officer of police or constable authorized by such superior police officer shall provide, free of charge, copy of the particulars in the register of licences; particulars of any conviction to be sent to the police authority for the area in which the offender resides (Art. 19). Except where the contrary intention appears, motor car in the order includes a motor cycle. In calculating weight, the weight of any motor fuel, water, or accumulators shall not be included (Art. 21).

**Heavy Motor Car Order, 1905.****HEAVY MOTOR CAR (I.) ORDER (1905) (DATED 27TH JANUARY, 1905).***(Summarised.)*

*"Heavy motor car."*  
*"Trailer."*

"Heavy motor car" means a motor car exceeding two tons in weight unladen.  
 "Trailer" means a vehicle drawn by a heavy motor car (Art. 2). A heavy

<sup>1</sup> The provisions of the order apply in the case of a roadway to which the public are granted access in the same manner as they apply in the case of a public highway (Art. 21).



motor car may be used on a highway if its weight does not exceed five tons, or if the weight of the heavy motor car unladen with the weight of a vehicle unladen drawn by it does not exceed six and a half tons (Art. 3).<sup>1</sup> Ascertainment and registration of the weight unladen, the axle-weight of each axle, and the diameter of each wheel are provided for; the registered weight unladen, the registered axle-weight, and the highest rate of speed to be painted or marked as prescribed on the heavy motor car (Art. 4). The axle-weight of an axle of a heavy motor car shall not exceed the registered axle-weight; the registered axle-weight shall not exceed eight tons, and the sum of the registered axle-weights of all the axles shall not exceed twelve tons. Local Government Board may make an order reducing the maximum axle-weight<sup>2</sup> in respect of a road on the application of the road authority (Art. 5). Provisions are made for tires (Art. 6). The speed shall not exceed eight miles an hour, provided that if the weight of the heavy motor car unladen exceeds three tons, or if the registered axle-weight of any axle exceeds six tons, or if the heavy motor car draws a trailer, it shall not exceed five miles an hour; provided also that if the heavy motor car has all its wheels fitted with pneumatic tires, or with tires made of a soft or elastic material, the speed at which any heavy motor car shall be drawn on a highway shall not exceed (a) twelve miles an hour where the registered axle-weight of any axle does not exceed six tons, and (b) eight miles an hour where the registered axle-weight of any axle exceeds six tons (Art. 7). Provision is made as regards sizes of wheels (Art. 8). Width of vehicle not to exceed seven feet six inches (Art. 9). Springs (Art. 10). With regard to trailers, the weight of the trailer unladen and axle-weight of each axle to be painted or marked as prescribed; provision is made as to tires and size of wheels of trailers; axle-weight of an axle of a trailer shall not exceed four tons; every trailer to have sufficient springs; heavy motor car used for the conveyance of passengers for gain or hire shall not draw a trailer (Art. 11). No person shall cause or permit to be used on any highway, or have charge of a heavy motor car or trailer not in conformity with these regulations (Art. 13). Road authority may fix notice on bridges forbidding the crossing thereon of heavy motor cars, the registered axle-weight of which exceeds three tons, or any greater weight specified in the notice; any dispute or difference in relation to the insufficiency of a bridge to be determined by arbitration as provided; where the axle-weight of any axle exceeds six tons, a heavy motor car shall not be driven upon a bridge forming part of a highway at any time at which a heavy motor car or a locomotive to which the Locomotive Act, 1865, applies, is on the bridge (Art. 14). Separate register of heavy motor cars is provided for (Art. 15).

**Heavy Motor Car Order, 1905.**

*Ascertainment & registration of weight, &c.*

*Maximum axle-weight.*

*Tires. Speed.*

*Size of wheels. Width. Springs. Weight of trailer.*

*Breach of regulations. Bridges.*

*Separate register.*

## PETROLEUM FOR MOTOR CARS.

### REGULATIONS.

DATED JULY 31, 1907, MADE BY THE SECRETARY OF STATE UNDER SECTION 5 OF THE LOCOMOTIVES ON HIGHWAYS ACT, 1896, AS TO THE KEEPING AND USE OF PETROLEUM FOR THE PURPOSES OF LIGHT LOCOMOTIVES.

**Regulations as to petroleum for motor cars.**

*The Petroleum Act, 1871,<sup>3</sup> forbids the keeping of petroleum spirit without a licence, to which conditions as to storage, &c., may be annexed. That Act may be availed of by any person, and must be complied with by persons keeping petroleum spirit for sale. A person keeping petroleum not for sale, needs no licence under that Act, if he complies with the following regulations. Regulations 13 and 14 apply to petroleum spirit, kept partly for sale, and partly for use in light locomotives. Under s. 7 of the Act of 1896, a breach of these regulations may, on summary conviction, be punished by a fine not exceeding £10.*

*Explanatory note.*

<sup>1</sup> The effect of this article is that a motor car or other mechanically propelled vehicle weighing less than five tons is put in the same position as a light locomotive under section 1 of the Act of 1896, and is therefore free from the old restrictions, such as requiring a person to walk in front with a flag (*Evans v. Nicholl*, (1909) 1 K.B. 778).

<sup>2</sup> The axle-weight means the aggregate weight transmitted to the road surface by the several wheels attached to that axle when the vehicle is laden.

<sup>3</sup> See PETROLEUM.

Regulations  
as to  
petroleum for  
motor cars.  
"Petroleum  
spirit."

"Storehouse."

Exemption  
from licence.

Application  
of regulations  
where licence  
taken out.

Storehouse.

Quantity of  
spirit.  
More than one  
storehouse.

Storehouse  
near building.

Ventilation.  
Vessels.

In these regulations the expression "petroleum spirit" shall mean the petroleum to which the Petroleum Acts, 1871 and 1879, apply; provided that when any petroleum other than that to which the said Petroleum Acts apply, is on or in any light locomotive, or is being conveyed or kept in any place on or in which there is also present any petroleum spirit as above defined, the whole of such petroleum shall be deemed to be petroleum spirit.

In these regulations the expression "storehouse" shall mean any room, building, coachhouse, lean-to, or other place in which petroleum spirit for the purposes of light locomotives is kept in pursuance of these regulations and shall include an open-air place of storage, when and so long as due precautions for the prevention of unauthorized persons having access to the petroleum spirit are taken in pursuance of No. 13 of these regulations.

1. The following shall be exempt from licence under the Petroleum Act, 1871, namely:—(a) petroleum spirit which is kept for the purpose of, or is being used on light locomotives when kept or used in conformity with these regulations; (b) petroleum spirit which is kept for the purpose of, or is being used on light locomotives by, or by authority of, one of His Majesty's Principal Secretaries of State, the Admiralty, or other department of the Government.

2. These regulations shall apply to petroleum spirit which is kept for the purpose of, or is being used on, light locomotives, and for which (save as hereinafter provided) no licence has been granted by the local authority under the Petroleum Act, 1871, and shall not apply to petroleum spirit which is kept for sale, or partly for sale and partly for use on light locomotives, and which must be kept in accordance with the provisions of the Petroleum Acts as heretofore, except that regulations 13 and 14 shall apply to petroleum spirit which is kept partly for sale and partly for use on light locomotives.

These regulations shall not apply to the keeping or use of petroleum spirit by or under the control of any Government Department. Such keeping or use may be the subject of regulations to be made by the department concerned.

3. Where for any special reason a person keeping petroleum spirit for the purpose of light locomotives applies for a licence under the Petroleum Act, 1871, and the local authority see fit to grant such licence, such petroleum spirit shall be subject only to regulations 8 to 15 and the conditions of such licence, in so far as the said conditions are not contrary to the said regulations 8 to 15.

4. Where a storehouse forms part of, or is attached to, another building, and where the intervening floor or partition is of an unsubstantial or highly inflammable character, or has an opening therein, the whole of such building shall be deemed to be the storehouse, and no portion of such storehouse shall be used as a dwelling or as a place where persons assemble. A storehouse shall have a separate entrance from the open air distinct from that of any dwelling or building in which persons assemble.

5. The amount of petroleum spirit to be kept in any one storehouse, whether or not upon light locomotives, shall not exceed 60 gallons at any one time.

6. Where two or more storehouses are in the same occupation, and are situated within 20 feet of one another, they shall for the purposes of these regulations be deemed to be one and the same storehouse, and the maximum amount of petroleum spirit prescribed in the foregoing regulation shall be the maximum to be kept in all such storehouses taken together. Where two or more storehouses in the same occupation are distant more than 20 feet from one another, the maximum amount shall apply to each storehouse.

7. Any person who keeps petroleum spirit in a storehouse which is situated within 20 feet of any other building whether or not in his occupation, or of any timber stack or other inflammable goods not owned by him, shall give notice to the local authority under the Petroleum Acts for the district in which he is keeping such petroleum spirit, that he is so keeping petroleum spirit, and shall renew such notice in the month of January in each year during the continuance of such keeping, and shall permit any duly authorized officer of the local authority to inspect such petroleum spirit at any reasonable time. This regulation shall not apply to petroleum spirit kept in a tank forming part of a light locomotive.

8. Every storehouse shall be thoroughly ventilated.

9. Petroleum spirit shall not be kept, used, or conveyed except in metal vessels so substantially constructed as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective or insecure. Every such vessel shall be so constructed and maintained that no leakage, whether of liquid or vapour, can take place therefrom.



10. Every such vessel, not forming part of a light locomotive, when used for conveying or keeping petroleum spirit shall bear the words "petroleum spirit, highly inflammable," conspicuously and indelibly stamped or marked thereon, or on a metallic or enamelled label attached thereto, and shall be of a capacity not exceeding two gallons: Provided that this limitation of capacity shall not apply in any place of storage which is licensed under the Petroleum Act, 1871, unless such limitation is required by the conditions of the licence.

11. Before repairs are done to any such vessel, that vessel shall, as far as practicable, be cleaned by the removal of all petroleum spirit and of all dangerous vapours derived from the same.

12. The filling or replenishing of a vessel with petroleum spirit shall not be carried on, nor shall the contents of any such vessel be exposed in the presence of fire or artificial light, except a light of such construction, position, or character, as not to be liable to ignite any inflammable vapour arising from such spirit; and no fire or artificial light capable of igniting inflammable vapour shall be brought within dangerous proximity of the place where any vessel containing petroleum spirit is being kept.

13. In the case of all petroleum spirit kept or conveyed for the purpose of, or in connection with, any light locomotive, (a) all due precautions shall be taken for the prevention of accidents by fire or explosion, and for the prevention of unauthorized persons having access to any petroleum spirit kept or conveyed, and to the vessels containing, or intended to contain, or having actually contained, the same; and (b) every person managing, or employed on or in connection with, any light locomotive shall abstain from every act whatever which tends to cause fire or explosion, and which is not reasonably necessary, and shall prevent any other person from committing such act.

14. In the storehouse or in any place where a light locomotive is kept or is present, petroleum spirit shall not be used for the purpose of cleaning or lighting, or as a solvent, or for any purpose other than as fuel for the engine of a light locomotive: Provided that where due precaution is taken to prevent petroleum spirit from escaping into a sewer or drain, and provision made for disposing safely of any surplus petroleum spirit, and where no fire or naked light is present, quantities not exceeding one gill may be used for the cleaning of a light locomotive at a safe distance from any building, place of storage of inflammable goods, or much frequented highway, or for the repair of tires, under suitable precautions. This regulation shall apply to premises on which petroleum spirit is kept for the purpose of, or is being used on, light locomotives, whether such premises are licensed or not, unless the local authority see fit, in the case of licensed premises to grant an exemption by a special term of the licence.

15. Petroleum shall not be allowed to escape into any inlet or drain communicating with a sewer.

NOTE.—From the above regulations it will be seen that there are two methods in which petroleum spirit required for use in motor cars may be kept. The first of these will be the usual method, namely, to keep in accordance with these regulations; but where a person finds that for some special reason he cannot observe one of the regulations 4, 5, or 6, he may resort to the second method, namely, to apply to the local authority for a licence. In such cases the place will be examined by the local authority officer, who will advise the local authority as to its suitability for licence. Where a licence has been granted regulations 4 to 7 no longer apply. In no case is petroleum spirit, kept wholly or partly for sale, exempt from the necessity of a licence.

## MUSEUMS AND GYMNASIUMS.

Where the Museums and Gymnasiums Act, 1891, 54 & 55 Vict. c. 22, is adopted, in manner prescribed by s. 3, by an urban authority (meaning—see ss. 14, 15 (1)—an urban sanitary authority under the Public Health (Ir.) Acts), such authority may provide and maintain museums and gymnasiums (s. 4), and may make bye-laws for regulating the conduct of persons admitted thereto (s. 7 (2)), and the provisions of ss. 219–223 of the Public Health (Ir.) Act, 1878, shall be applicable thereto (*ib.*, s. 15 (2); see PUBLIC HEALTH).



## NAVY.

**Royal Navy.**

Naval  
deserters to be  
committed.  
10 & 11 Vict.  
c. 62.

Punishment of  
pretended  
naval  
deserters.

Bringing drink  
on board H. M.  
ships.  
Hovering  
about H. M.  
ships.

Purchasing  
seamen's  
clothing, &c.

Failure to  
account for  
seaman's  
property.

Person belonging to navy improperly absent from duty, to be committed to gaol, and the justice committing him to report to the Admiralty or to the officer commanding any of H. M. ships or, if such person be apprehended near one of H. M. ships, to be sent on board such vessel (*Naval Deserters Act, 1847, s. 9*). Person falsely alleging himself to be a deserter or absentee from navy, shall, if the naval authorities accept him, be deemed to belong to the navy, and be compellable to serve therein; or, if the naval authorities reject him, shall upon conviction before two justices at or near the place where he delivered himself up or made such false statement, or where he may happen to be, be imprisoned with hard labour for not more than three months (s. 10). Any person bringing on board any of H. M. ships spirituous or fermented liquor without consent of officer commanding, or hovering about such ship with intent either of putting such liquors aboard without such consent, or of aiding anyone belonging to such ship to improperly absent himself; Forfeiture of not more than £10 recoverable with costs and to be applied as penalties under the *Naval Deserters Act, 1847<sup>1</sup> (s. 12)*. Any person who, on entering or offering himself for the naval service<sup>2</sup> of H. M., makes, whether orally or in writing, any false statement with intent to deceive the recruiting official, is to be deemed a rogue and a vagabond within the meaning of the *Vagrancy Act, 1824, s. 4<sup>3</sup>*; Punishable with imprisonment with hard labour not exceeding three months (*Naval Deserters Act, 1847, s. 16*). Any person within the municipal borough of Cork or the urban district of Queenstown who buys or otherwise receives from any seaman,<sup>4</sup> or from anyone acting for a seaman, any seaman's property,<sup>5</sup> or who solicits any seaman or is employed by any seaman to sell, exchange, or pawn such property, unless he proves that he did not know such property to be seaman's property, or that he did not know that he was dealing with or acting for a seaman, or that such property was sold by order of the naval authorities: *Penalty*, for first offence, not exceeding £20, and for any subsequent offence, like *Penalty* or, at the discretion of the court, imprisonment not exceeding six months with or without hard labour (*Seamen's Clothing Act, 1869, 32 & 33 Vict. c. 57, ss. 2, 4, Sch.*). Any person in Cork or Queenstown in whose possession or keeping<sup>6</sup> seaman's property is found, and who is brought or summoned before a justice shall, if it appear to such justice that such property was stolen or obtained in contravention of this Act, and if such person do not satisfy such justice that such property was lawfully obtained, be liable to a penalty not exceeding £5 (s. 5). Sec. 93 (relating to abettors), sec. 103 (relating to arrest and

<sup>1</sup> By s. 13 of that Act it is provided that offences under that Act may be prosecuted before any justice residing in or near the place where the offence was committed, or where the offender is, no matter where the offence may have been committed; and that one moiety of any penalty shall be paid to the informer or complainant, and the residue to the Commissioners of Greenwich Hospital.

<sup>2</sup> This expression is by s. 3 of the Seamen's and Soldiers' False Characters Act, 1906 (6 Edw. 7, c. 5), extended so as to include service in any of the Naval Reserve forces.

<sup>3</sup> This enactment is extended to Ireland by the Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 15.

<sup>4</sup> This term means a person belonging to a ship in H. M. service who is below the rank of subordinate officer (s. 3).

<sup>5</sup> This term means any clothes, slops, medals, or articles deemed to be necessities on board ship belonging to a seaman (s. 3).

<sup>6</sup> For the purposes of this section, the property is in the possession or keeping of anyone if he knowingly has it in any place whatever (within Cork or Queenstown), whether occupied by himself or not, and whether for the benefit of himself or some other person (s. 5).

search warrants), secs. 107–112, and sec. 120 (relating to summary procedure and appeals) of the Larceny Act, 1861, are incorporated with the Act<sup>1</sup> (s. 6). As to the offences of forgery of service or discharge certificates or personation of men who have served in the navy, and as to the offences of using or making false statements on or for the purpose of entry into the navy, see the Soldiers' and Seamen's False Characters Act, 1906, under **ARMY**.

**Royal Navy.**  
Forgery of certificates and false statements on enlistment.

## NEWSPAPERS.

A register of the proprietors of newspapers<sup>2</sup> shall be published under the superintendence of the registrar<sup>3</sup> (*Newspaper Libel and Registration Act*, 1881, 44 & 45 Vict. c. 60, s. 8).

**Register of newspaper proprietors.**

A return must be made to the registrar of newspapers<sup>3</sup> by the printers and publishers of every newspaper every year in the month of July, specifying the title of the newspaper, the names, occupations, places of business (if any), and places of residence of all the proprietors (s. 9)—*Penalty*, on failure to make return before 1st September, not exceeding £25. and a summary order to make return within a specified time may be made (s. 10). Wilful misrepresentation in or omission from return—*Penalty*, not exceeding £100 (s. 12). Penalties recoverable under Summary Jurisdiction Acts<sup>4</sup> (ss. 16, 17). The provisions as to registration do not apply to the case of a newspaper belonging to an incorporated company (s. 18).

**Return to registrar.**

Every copy of an entry in or extract from the register, purporting to be certified by the registrar or his deputy, or under the official seal of the registrar, shall be conclusive evidence of the contents of the register; and every such certified copy or extract shall, in all proceedings, civil or criminal, be accepted as sufficient *prima facie* evidence of all the matters and things thereby appearing, unless and until the contrary be shown (s. 15).

**Evidence.**

As to special provisions relating to newspapers on a charge of criminal libel, see **LIBEL**, p. 591.

**Libel.**

## OBSCENE BOOKS, PICTURES, &c.

“It shall be lawful for any metropolitan police magistrate or other stipendiary magistrate,<sup>5</sup> or for any two justices, upon complaint made before him or them upon oath that the complainant has reason to believe, and does believe, that any obscene books, papers, writings, prints, pictures, drawings, or other representations are kept in any house, shop, room, or

**Issue of warrant**

<sup>1</sup> Section 106, dealing with the application of penalties, is not incorporated, and the application of penalties is therefore governed by the Fines Act, 1851.

<sup>2</sup> “The word ‘newspaper’ shall mean any paper containing public news, intelligence, or occurrences, or any remarks, or other observations therein printed for sale, and published in England or Ireland periodically, or in parts or numbers at intervals not exceeding 26 days between the publication of any two such papers, parts, or numbers” (s. 1).

<sup>3</sup> That is, the assistant registrar for the time being of Joint Stock Companies for Ireland, or such person as the Board of Trade may from time to time appoint (s. 1).

<sup>4</sup> For the meaning of which term, see p. 335.

<sup>5</sup> The expression “stipendiary magistrate,” in s. 1 of the Married Women (Maintenance in case of Desertion) Act, 1886, includes a divisional justice of the Dublin metropolitan police district (*R. (Redding) v. Swift*, (1909) 2 I.R. 302); and it is submitted that the same expression, as used in this section, also includes such divisional justice.

other place within the limits of the jurisdiction of any such magistrate or justices for the purpose of sale or distribution, exhibition for purposes of gain, lending upon hire, or being otherwise published for purposes of gain, which complainant shall also state upon oath, and that one or more articles of the like character have been sold, distributed, exhibited, lent, or otherwise published as aforesaid at or in connection with such place, so as to satisfy such magistrate or justices that the belief of the said complainant is well founded, and upon such magistrate or justices being also satisfied that any of such articles so kept for any of the purposes aforesaid are of such character and description that the publication of them would be a misdemeanour and proper to be prosecuted as such,<sup>1</sup> to give authority by special warrant to any constable or police officer, into such house, shop, room, or other place, with such assistance as may be necessary, to enter in the daytime, and, if necessary, to use force by breaking open doors or otherwise, and to search for and seize all such books, papers, writings, prints, pictures, drawings, or other representations as aforesaid found in such house, shop, room, or other place, and to carry all the articles so seized before the magistrate or justices issuing the said warrant, or some other magistrate or justices exercising the same jurisdiction; and such magistrate or justices shall thereupon issue a summons calling upon the occupier of the house or other place which may have been so entered by virtue of the said warrant to appear within seven days before such police stipendiary magistrate or any two justices in petty sessions for the district, to show cause why the articles so seized should not be destroyed; and if such occupier or some other person claiming to be the owner of the said articles shall not appear within the time aforesaid, or shall appear, and such magistrate or justices shall be satisfied that such articles or any of them are of the character stated in the warrant, and that such or any of them have been kept for any of the purposes aforesaid, it shall be lawful for the said magistrate or justices, and he or they are hereby required, to order<sup>2</sup> the articles so seized, except such of them as he or they may consider necessary to be preserved as evidence in some further proceeding, to be destroyed at the expiration of the time hereinafter allowed for lodging an appeal, unless notice of appeal as hereinafter mentioned be given, and such articles shall be in the meantime impounded; and if such magistrate or justices shall be satisfied that the articles seized are not of the character stated in the warrant, or have not been kept for any of the purposes aforesaid, he or they shall forthwith direct them to be restored to the occupier of the house or other place in which they were seized" (*Obscene Publications Act, 1857, 20 & 21 Vict. c. 83, s. 1*).

Issue of  
summons

Order for  
destruction.

Appeal.

A special right of appeal is given to the next quarter sessions on a notice in writing being given of the appeal and of the grounds thereof within seven days after the act or determination of the justices, and on entering within such seven days into a recognizance, with sufficient surety, before a justice of the peace personally to appear and prosecute the appeal,

<sup>1</sup> To bring any book, &c., within the Act the only thing necessary is that its publication would be a misdemeanour and proper to be prosecuted as such. If the book, &c., come within that description the fact that it was written, &c., for some purpose other than the corruption of public morals is no defence (*R. v. Hicklin*, (1868) L.R., 3 Q.B. 360; *Scott v. Wolverhampton J.J.*, (1868) 32 J.P. 533). Whether the book, &c., does or does not come within that description is to be decided by applying the test laid down by Cockburn, C.J., in *R. v. Hicklin*, *supra*: "Whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall."

<sup>2</sup> The order will be bad unless the justices state in it that they are satisfied that the publication of the books, &c., would be a misdemeanour and proper to be prosecuted as such (*Ex parte Bradlaugh*, (1878) 3 Q.B.D. 509).



and to abide the order of and pay such costs as shall be awarded by the court of appeal. The court of appeal may award such costs to appellant or respondent as they may think proper. No grounds of appeal are to be entertained save those set forth in notice of appeal (s. 4).

For cognate offences, see LIBEL, INDECENCY, POST OFFICE, and ADVERTISEMENTS.

### OLD AGE PENSIONS.

"If for the purpose of obtaining or continuing an old age pension under this Act, either for himself or for any other person, or for the purpose of obtaining or continuing an old age pension under this Act for himself or for any other person, at a higher rate than that appropriate to the case, any person knowingly makes any false statement, or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding six months with hard labour" (*Old Age Pensions Act*, 1908, 8 Ed. 7, c. 40, s. 9 (1)).

**Making false statements, &c., for purpose of obtaining, &c., old age pensions.**

"Where a person of sixty years of age or upwards, having been convicted before any court, is liable to have a detention order made against him under the Inebriates Act, 1898,<sup>1</sup> and is not necessarily, by virtue of the provisions of this Act, disqualified for receiving or continuing to receive an old age pension under this Act, the court may, if they think fit, order that the person convicted be so disqualified for such period, not exceeding ten years, as the court direct" (s. 3).

**Depriving habitual inebriate of pension.**

### PATENTS.

Any person not registered<sup>2</sup> as a patent agent<sup>3</sup> falsely describing himself as such—*Penalty*, not exceeding £2 (*Patents and Designs Act*, 1907, 8 Ed. 7, c. 29, s. 84 (1)). "If any person falsely represents that any article sold by him is a patented article, or falsely describes any design applied to any article sold by him as registered"<sup>4</sup>—*Penalty*, not exceeding £5 (s. 89 (2)). "Any person who, after the copyright in a design has expired, puts or causes to be put on any article to which the design has been applied the word 'registered' or any word or words implying that there is a subsisting copyright in the design"—*Penalty*, not exceeding £5 (s. 89 (4)). "If any person uses on his place of business, or on any document issued by him, or otherwise, the words 'Patent Office' or any other words suggesting that his place of business is officially connected with or is the Patent Office"—*Penalty*, not exceeding £20 (s. 89 (5)).

**False representations. "Patent agent," "Patented," "registered," "Copyright."**

**"Patent Office."**

<sup>1</sup> See HABITUAL DRUNKARDS.

<sup>2</sup> The fact that an unregistered person is entitled to be registered is no defence (*Starey v. Grahame*, (1899) 1 Q.B. 406).

<sup>3</sup> In this section "patent agent" means exclusively an agent for obtaining patents in the United Kingdom (s. 84 (4)).

<sup>4</sup> "If any person sells an article having stamped, engraved, or impressed thereon or otherwise applied thereto the word "patent," "patented," "registered," or any other word expressing or implying that the article is patented or that the design applied thereto is registered, he shall be deemed for the purposes of this section to represent that the article is a patented article or that the design applied thereto is a registered design" (s. 89 (3)).



are regulated by the Stamp Duties (Ir.) Act, 1842, 5 & 6 Vict. c. 82, and plate licences by the Revenue Act, 1867, 30 & 31 Vict. c. 90, and police licences for Dublin pawnbrokers by the 44 Geo. 3, c. 22 (Local and Personal Acts).

A pawnbroker is defined as "any person who shall receive or take by way of pawn, pledge, or exchange any goods or chattels for the repayment of money lent thereon" (*Stamp Duties (Ir.) Act*, 1842, s. 17). Persons lending money upon pawn at any rate of interest not exceeding £5 per cent. without taking or attempting to take any further profit are not included (*ib.*). Definition.

A loan exceeding £10 Irish (equivalent to £9 4s. English) is not a loan to which either the procedure as to loans laid down by the Acts relating to pawnbroking in Ireland or a great number of the other provisions of those Acts apply, the sum of £10 Irish being the highest sum to which the sections as to rate of interest apply (see *infra*). The repealed English Act of 1800 (39 & 40 Geo. 3, c. 99) contained provisions similar to those contained in the Irish Acts as to interest on loans up to £10; and where a pawnbroker advanced a sum exceeding £10 at more than 5 per cent., and did not make any entries or deliver a duplicate, it was held that the transaction, being concerned with a loan exceeding £10, was legal, and that the Act of 1800 did not apply (*Pennell v. Attenborough*, (1843) 4 Q.B. 868; see also *Cowie v. Harris*, (1827) M. & M. 141; *Tregoning v. Attenborough*, (1830) 9 L.J. (O.S.) C.P. 28). Lord Denman, C.J., in *Pennell v. Attenborough* (*supra*), adopted the decisions in *Cowie v. Harris* and *Tregoning v. Attenborough* (*supra*), and decided that the 39 & 40 Geo. 3, c. 99, did not apply to loans exceeding £10. *Cowie v. Harris* and *Tregoning v. Attenborough* were both cases on the legality of the rate of interest charged by the pawnbroker, and, as the interest section in the Act of 1800 (like s. 19 of 28 Geo. 3, c. 49 (Ir.)) allowed rates of interest on loans up to £10 which would otherwise have been illegal as exorbitant, it is clear that the Act of 1800 and the Irish Acts intended to restrict the power to charge such interest to such loans. It is submitted, however, that the above cases are not authorities for the wider proposition that the application of all the sections of the Act of 1800 was excluded where the loan exceeded £10, so as to exclude in such case provisions made in the public interest for the prevention of theft and wrongful disposal, such as sections 13 and 14 of that Act. It is submitted, therefore, that the provisions of section 8 of 26 Geo. 3, c. 43 (Ir.) (illegal pawning), and sections 11 and 12 of that Act (suspected goods) (see *post*, p. 662), which correspond to sections 12 and 13 of the Act of 1800, apply to loans of any amount. The provisions as to stolen goods of the Dublin Police Magistrates Act, 1808, s. 51 (see *post*, p. 663), apply to all loans by pawnbrokers,<sup>1</sup> as do the various enactments noticed hereinafter in reference to pawning by seamen, soldiers, and persons under fourteen, and to the pawning of public stores, and to pawnings dealt with by the Summary Jurisdiction (Ir.) Act, 1908. Limited application of statutes to loans exceeding £10.

of the Dublin metropolis, and such provisions, with unrepealed sections of the Dublin Police Magistrates Act, 1808 (48 Geo. 3, c. 140 (Ir.)), and of the Dublin Justices Act, 1824 (5 Geo. 4, c. 102), form a code regulating the law of pawnbrokers in Dublin, differing, chiefly as to qualification and mode of sale, from the law relating to pawnbrokers in other parts of Ireland. Where any section applies solely to Dublin, a note is added to that effect.

<sup>1</sup> The wider construction of the decision in *Pennell v. Attenborough*, *supra*, has apparently been adopted by the legislature under the English Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93), s. 10, which provides that nothing in the Act shall apply to a loan by a pawnbroker of above £10. This section appears to exclude, where the loan exceeds £10, the application of section 33 of the Act of 1872, which makes a provision as to illegal pawning somewhat similar to s. 8 of 26 Geo. 3, c. 43 (Ir.). As to the (English) Pawnbrokers Act, 1872, see *R. v. Tregoning*, (1899) 63 J.P. 504. As to exemption of charitable pawn societies, see 5 & 6 Vict. c. 75.



**Loans and interest.**

Loans to be in current coin, and not to be made up by including any other sort of value or payment (26 Geo. 3, c. 43 (Ir.), s. 2). Rates of interest allowed under the Acts to be exhibited in a conspicuous part of pawnbroking establishment (26 Geo. 3, c. 43 (Ir.), s. 38). Rates of interest<sup>1</sup> on loans up to £10 are fixed by 28 Geo. 3, c. 49 (Ir.), s. 19, and this section applies throughout Ireland (*per* Lord O'Brien, L.C.J., in *Seddall v. Wilson*, (1891) 25 I.L.T.R. 62). No penalty is provided for taking higher rates on loans under £10,<sup>2</sup> but, it is submitted, the taking of greater interest would avoid the loan and deprive the pawnee of his lien.

**Qualifications.**

(1) Outside D.M.P. district.

The following is the qualification for pawnbrokers outside the police district of Dublin metropolis:—Bond of £300 Irish by pawnbroker, conditioned for performance of duties and obligations of a pawnbroker, with three sureties bound in £100 Irish each, payable to treasurer or town clerk of the county, city, borough, or town corporate where the pawnbroker carries on business (26 Geo. 3, c. 43 (Ir.), s. 14).<sup>3</sup> No other qualifications except the Inland Revenue licence and licence for dealing in plate (see pp. 655, 656) are required by a pawnbroker trading outside the police district of Dublin metropolis. Trading without giving securities—*Penalty*, £10 Irish to £20 Irish, and goods to be returned on payment of principal in presence of two justices; imprisonment not exceeding six months with hard labour if goods not returned (s. 18).<sup>4</sup>

Knowingly or wilfully neglecting to renew surety within three months of death or failure of any of the sureties—*Penalty*, on conviction before two justices, £5 Irish to £20 Irish (s. 15).

(2) D.M.P. district.

Every pawnbroker within the police district of Dublin metropolis must: (1) procure a certificate of fitness from five reputable resident citizens, and a similar certificate from a divisional justice (28 Geo. 3, c. 49 (Ir.), s. 2); (2) procure a licence from the divisional justices (*Dublin Police Magistrates Act*, 1808, 48 Geo. 3, c. 140 (Ir.), s. 66), for which he shall pay the duty of £100, imposed by 44 Geo. 3, c. xxii., now payable to the Dublin Corporation or the council of the county district, as the case may be (*Local Government (Ir.) Act*, 1898, s. 67);<sup>5</sup> (3) give a bond of £1,000 (Irish) conditioned for due discharge of duties, with three sureties approved by a divisional justice bound in £300 (Irish) each (28 Geo. 3, c. 49 (Ir.), s. 2); now given to the town clerk of Dublin or the clerk to the urban district council, as the case may be (see *Local Government Act (Ir.)*, 1898, s. 67). Trading without having given securities—*Penalty*, same as for trading without giving securities under 26 Geo. 3, c. 43 (Ir.), s. 18 (28 Geo. 3, c. 49 (Ir.), s. 3). Persons not duly qualified and licensed trading as pawnbrokers—*Penalty*, £5 (Irish) in addition to penalties for unqualified trading imposed by 26 Geo. 3, c. 43 (Ir.), s. 18 (28 Geo. 3, c. 49 (Ir.), s. 1).

The word "licensed" in this section refers, it is submitted, to the police licence which is required in Dublin metropolitan police district by 48 Geo. 3, c. 140, and therefore that part of the section has no operation outside of that district.<sup>6</sup>

<sup>1</sup> The rates of interest are as follows:—Rates of interest per calendar month, above 1s. and not exceeding 2s.,  $\frac{1}{2}d.$ ; 2s. to 4s., 1d.; 4s. to 6s.,  $1\frac{1}{2}d.$ ; and in like proportion  $\frac{1}{2}d.$  for every increase of 2s. or fraction of 2s. of loan (28 Geo. 3, c. 49 (Ir.), s. 19).

<sup>2</sup> It is stated in Attenborough's "Laws of Pawnbroking," at p. 95, that pawnbrokers in England have been fined for taking rates of interest exceeding the rates allowed under section 15 of the English Act of 1872; but that Act contains a general section imposing fines for offences "against the Act." The Irish Acts have no such provision.

<sup>3</sup> As to certificates on perfecting securities, see p. 655, *post*.

<sup>4</sup> As to the application of s. 1 of 28 Geo. 3, c. 49, see p. 656 n., *post*.

<sup>5</sup> It would appear that partners in a pawnbroking business in Dublin would have to take out this police licence for each partner, as the Act does not otherwise provide.

<sup>6</sup> The above submission, however, is opposed to the dictum of Lord O'Brien, L.C.J., in *Seddall v. Wilson*, (1891) 25 I.L.T.R. at p. 63, but is advanced for the following

Every pawnbroker within the police district of Dublin metropolis before renewing his licence must give notice of his name, place of abode, and occupation, to the divisional justice, and receive a certificate of such notice having been given; and every change of abode at any time must be similarly notified by the licensed pawnbroker (48 Geo. 3, c. 140, s. 50). Qualifications.

Before renewing a licence the Dublin pawnbroker must, in addition to the above notice, produce new certificates of fitness (*R. v. Darley*, (1829) 2 Hud. & Bro. 486). Apparently he need not renew his securities annually, but only when required under the 26 Geo. 3, c. 43 (Ir.), s. 15. All the conditions required by 28 Geo. 3, c. 49 (Ir.), are conditions precedent to obtaining the police licence (as to which see *post*) under the Dublin Police Magistrates Act, 1808, and, together with the provisions as to notice under the latter Act, must be fulfilled before the licence is obtained (*R. v. Darley, supra*; *R. (M'Guinness) v. Dublin JJ.*, (1883) 12 L.R.I. 178). When these conditions have been complied with, it is mandatory on the divisional justices to issue the police licence (*R. (M'Guinness) v. Dublin JJ., supra*). Where an applicant applies to a divisional justice for a certificate of fitness, the justice can refuse the certificate only upon the ground of the unfitness of the applicant, and cannot take into consideration that the intended shop may deteriorate the value of property in its vicinity (*ib.*).

The following provisions apply to all pawnbrokers. Upon perfecting securities of a pawnbroker anywhere in Ireland the town clerk or treasurer to whom the same are made payable must give a certificate, for a fee of 6s. 8d. (Irish) above stamp duties, each certificate to be delivered within one month of date thereof to the City Marshal of Dublin,<sup>1</sup> and registered by him at a fee of 5s. (Irish) (26 Geo. 3, c. 43 (Ir.), ss. 39 and 40). No penalties are provided for failure to comply with these provisions. (3) Generally.

If a pawnbroker within the police district of Dublin metropolis shall be proved, to the satisfaction of a divisional justice, to have bought, exchanged, or taken in pawn any goods that he knew to have been stolen or fraudulently obtained, then such justice shall certify the same, in writing, under his hand and seal; and, upon the lodging of such certificate in the office of the Town Clerk of Dublin, such pawnbroker shall be for ever disqualified (28 Geo. 3, c. 49 (Ir.), s. 5; 35 Geo. 3, c. 36 (Ir.); *Dublin Police Magistrate Act*, (1808) s. 70), and if he subsequently trades as a pawnbroker he shall be liable to the penalties provided by 26 Geo. 3, c. 43, s. 18, *supra*, for trading without sureties (28 Geo. 3, c. 49 (Ir.), s. 5). An appeal lies to quarter sessions from such disqualification (s. 6). Disqualification of Dublin pawnbroker.

Every pawnbroker within the police district of Dublin metropolis must take out every year a police licence, costing £100 (Irish) annually, and expiring on the 25th March in each year (44 Geo. 3, c. 22 (Local and Personal), s. 2, Sch.). Licences.  
Police licence in Dublin.

Every pawnbroker in Ireland must take out, every year, an Inland Revenue licence, expiring 31st July in each year, costing £7 10s. 0d. annually (*Stamp Act*, 1854, 17 & 18 Vict. c. 83, s. 20), and by trading without such licence incurs an *Excise penalty* of £50 (*Stamp Duties (Ir.) Act*, 1842, 5 & 6 Vict. c. 82, s. 17.) Not more than one house can be Inland Revenue licence.

reasons:—The 28 Geo. 3, c. 45 (Ir.), which was a Dublin Police Act appointing commissioners of the watch, made a police licence necessary (sect. 79). The 28 Geo. 3, c. 49, in dealing with licences, can only have referred to the licence required by 28 Geo. 3, c. 45, because at that date no other licence was required. The 28 Geo. 3, c. 45 is repealed, but the 48 Geo. 3, c. 140 (the Dublin Police Magistrates Act, 1808), contains (s. 66) substituted provisions making a police licence necessary.

<sup>1</sup> The Marshal of the City of Dublin is by virtue of his office registrar of pawnbrokers of Ireland, and as Marshal and registrar is entitled to receive considerable fees. Where a person in consideration of being appointed City Marshal entered into an agreement with the Corporation of Dublin to take a fixed salary less than the fees, and to pay over the fees to the City Treasurer, the agreement was held void as contrary to public policy (*Mayor of Dublin v. Hayes*, (1876) 1 R. 10 C. L. 226).



**Licences.** included in such licence; but partners need take out only a single licence in respect of one house, shop, or tenement (s. 18).

**Plate licence.** Every pawnbroker in Ireland who shall trade in or sell any articles composed wholly or in part of gold or silver, or who shall take in pawn or deliver out of pawn any such article, must take out an Excise licence for trading in gold and silver plate, yearly; fee, £5 15s., in respect of every house, shop, or other place in which his trade or business shall be carried on (*Revenue Act*, 1867, 30 & 31 Vict. c. 90, s. 1). Duties and licences under the Act to be Excise duties and licences and provisions of Excise Acts to apply to same (s. 2). Every plate licence runs from the date of grant to the 5th of July following (s. 6). Dealing in gold or silver plate without licence required by Act—*Penalty*, £50. It is sufficient to allege that the defendant did deal in plate without a licence (s. 3). See further **GOLD AND SILVER PLATE.**

A person who sold on a particular occasion a piece of silver plate was held not to be a dealer in plate under the 31 Geo. 2, c. 32, s. 6, which enacted that persons using the trade of selling plate should be deemed traders in, or vendors of, plate (*R. v. Buckle*, (1803) 4 East 346).

**Splitting loans.** Sums lent are not to be split up so as to entitle a pawnbroker to payment for more than one duplicate. Pawnbroker demanding or receiving payment for more than one duplicate for any sum authorized to be lent by the Act—*Penalty*, on conviction before one justice, £1 (Irish) (28 Geo. 3, c. 49 (Ir.), s. 8). Where a pawnbroker received a parcel of goods on one day, and on that day, and on several subsequent days, lent various sums on the goods, each sum not exceeding £10, Lord Tenterden held it was a question for the jury to decide whether this was a mere contrivance for receiving a higher rate of interest than allowed by the Pawnbrokers Act, or whether the advances were distinct (*Cowie v. Harris*, (1827) M. and M., 141.) And see *Tregoning v. Attenborough*, (1830) 9 L.J. (O. S.) C.P. 28.

**Device to obtain exorbitant profit.** Making up loan by giving goods in part, or buying, agreeing for, or receiving a pledge at a certain rate and returning it at a higher rate, so as to gain exorbitant profit—*Penalty*, £5, goods to be returned on payment of principal only (28 Geo. 3, c. 49 (Ir.), s. 1).<sup>1</sup>

**Name over door.** Every pawnbroker in Ireland must have painted over his door, in legible characters, the name or names of the proprietor, and the word "pawnbroker" or "pawnbrokers"—*Penalty*, £5 Irish (26 Geo. 3, c. 43, (Ir.) s. 16). When partners carry on business, the names of both should be stated as above (*Gordon v. Howden*, (1845) 12 Cl. & Fin. 237; *Armstrong v. Armstrong*, (1834) 3 My. & K. 45). It is suggested by Tindal, C.J., in his judgment in *Ferguson v. Norman*, (1838) 5 Bing. (N.C.) 76, at p. 84, that the fact that the pawnbroker's name was not above the door, as required, at the time the loan was made, would not invalidate the loan, the regulations as to names being a matter collateral to the contract.

**Selling excisable liquors.** No licence to sell malt liquors, strong waters, or spirits shall be granted to any pawnbroker in Ireland. Pawnbroker retailing such liquor—*Penalty*, £10 Irish, to be enforced notwithstanding any licence obtained (26 Geo. 3, c. 43 (Ir.), s. 21).

For provisions as to Belfast, see p. 663, *post*.

**Books to be kept.** Pawnbrokers in Ireland to keep books, in which entries are to be made of (a) goods pledged, (b) loan, (c) day of month and year when pledged, (d) name and abode of pawnbroker, (e) name and abode of owner as disclosed by pawnor; duplicates of entries (tickets) to be given to the pawnor, to be delivered on redemption to the pawnee; fees, 1d. where loan does not exceed 10s., 2d. if between 10s. and 40s., 4d. if above 40s.

**Duplicates to be given.**

<sup>1</sup> The above provisions of 28 Geo. 3, c. 49 (Ir.), s. 1, appear to apply generally (*Seddall v. Wilson*, (1891) 25 I.L.T.R. 62); but other portions of the Act would appear to apply to Dublin pawnbrokers only (see note, p. 653).



the currency in each case being Irish; duplicates must bear name and abode of pawnee, with the number and sign (if any) of his abode—*Penalty for non-compliance*, £2 (Irish) on conviction before one justice (26 Geo. 3, c. 43 (Ir.), s. 5). Duplicates to be given.

Under similar provisions of the repealed English Act, 39 & 40 Geo. 3, c. 99, s. 6 (1), it was held that, where the pawnee makes entry on the information of the pawnor, he is not liable for a false entry, so long as the entry was made without knowledge that it was false (*Attenborough v. London*, (1853) 8 Ex. 661; cf. *Toppin v. Marcus*, (1908) 2 I.R. 423, noted p. 510). The entry of address should be reasonably specific, and the entry of such an address as "Pimlico" is bad (*Attenborough v. London*, *supra*). In *Ferguson v. Norman*, (1838) 5 Bing (N.C.) 76, it was held that a failure to comply with the similar requirements of the English Act of 1800 deprived the pawnee of his lien on the goods pledged.

Any person producing the duplicate as the owner therein named, or his agent, to be deemed the owner or agent. On production of duplicate and payment of principal and interest due, the pawnbroker must deliver<sup>1</sup> the pledge to such person. The pawnbroker is indemnified in respect of such delivery, unless (1) he has notice from the owner not to deliver the goods to persons producing the duplicate, (2) has notice that the goods are suspected to have been fraudulently or feloniously taken, or (3) unless the real owner proceeds as provided by the Act in the case of lost duplicates (26 Geo. 3, c. 43 (Ir.), s. 6). Where a duplicate is lost before redemption, the owner or pawnor of the pledge must prove the property in the pledge before a justice of the peace for the county, city, borough, or town corporate, and make an affidavit or statutory declaration before a justice as to the circumstances of the case. On such proof of title the pawnbroker must deliver the pledge on being repaid principal and interest, and is indemnified for so doing (26 Geo. 3, c. 43 (Ir.), s. 7). Re-delivery of pledge.

Under similar provisions as to lost duplicates in s. 16 of the repealed English Act, 39 & 40 Geo. 3, c. 99, it was held that where a pawnor had proved his title as required by the statute, and, returning to the pawnee's shop, showed him the proofs, the pawnor was not bound to redeem there and then, but had such time for redemption as he would have had from the date when the pawn was made if the ticket had not been lost (*Burslem v. Attenborough*, (1873) L.R. 8 C.P. 122).

The English Pawnbrokers Act, 1872, provides penalties for non-delivery on tender of principal and interest. The only jurisdiction given by the Irish Acts to justices in the case of non-delivery is the provision as regards disputes between pawnbrokers and pawnors (see p. 661, *post*), and where delivery is part of a penalty. Otherwise, the remedy of the pawnor is by action or process. The jurisdiction as to disputes would appear to be restricted to loans not exceeding £10 (see *ante*, p. 653).

These sections as to books, duplicates, &c., apply generally; the offence in Dublin being dealt with by a divisional justice. Stealing a pawnbroker's ticket is larceny (*R. v. Morrison*, (1859) 8 Cox, 194).

The power of sale of unredeemed pledges by any pawnbroker in Ireland arises under the 26 Geo. 3, c. 43 (Ir.), where (1) loan does not exceed 20s. (Irish) and interest is in arrear for six months; or, (2) loan exceeds 20s. (Irish), but not 40s. (Irish), and nine months' interest is in arrear (26 Geo. 3, c. 43 (Ir.), ss. 22 and 24); or, (3) in all cases where the pledge remains unredeemed for more than one year from the date of pledge (s. 23.) No pledge to be sold within a year except in cases 1 and 2 above, or except where the pawnbroker dies, fails in credit, or gives up business (s. 24.) For penalty, see s. 30, *post*, p. 658.<sup>2</sup> Sale of pledge.  
(1) Outside D.M.P. district, with occasional application to D.M.P. district.

<sup>1</sup> Subject to the pawnbroker's right of sale, if previously exercised; see *infra*.

<sup>2</sup> The procedure as to sales of unredeemed pledges has been considerably altered as regards Dublin pawnbrokers by 28 Geo. 3, c. 49 (Ir.), noted *post*, p. 659. In all cases the

**Sale of pledge.**

(1 Outside D.M.P. district, with occasional application to D.M.P. district.

Before sale, an appraisalment of the pledges must be made by an auctioneer. Each appraiser to keep books, and enter therein a schedule of goods to be sold, with a fair valuation thereof on the basis of auction value, less expenses. Such entry to be compared with the entry in the pawnbroker's book (which must be produced to the appraiser), and any difference in quantity, quality, or condition noted with special remark '26 Geo. 3, c. 43 (Ir.), s. 25.)<sup>1</sup> Two copies of appraisalment to be given to pawnbroker, who is required to keep one and serve the other on the owner or pawnor of the goods appraised at the address declared in the pawnbroker's entry, if to be found. If owner cannot be found, a bill of appraisalment, containing the prescribed particulars, to be posted on the market-house or court-house nearest the pawnbroker's place of business. If goods are not redeemed within fourteen days of delivery or posting of notice, they may be sold by public auction by appraiser or his duly appointed deputy (s. 27).

The above provisions do not apply to Dublin.

Each appraiser to keep a sales book, and enter therein prescribed particulars (s. 27).

Every pawnbroker in Ireland to keep entry of sales copied from the appraiser's sales entry, with a note of the appraiser's name and address, the date of sale, and the price received; and the pawnor or his personal representatives or assigns are entitled to inspection on payment of a fee of 1d. (s. 28).

If, at the sale, the price yields an overplus, after deducting principal and interest due and expenses, and such person as above mentioned makes demand within three years of sale, the overplus must be paid over to such person (s. 28).<sup>2</sup>

Appraisers or auctioneers refusing inspection to persons entitled to same, or in case of overplus, not making the required entries, or not *bona fide* selling pledge, or refusing to deliver overplus to person entitled—*Penalty*, treble the amount of loan recoverable before two justices (s. 28).<sup>3</sup>

Appraiser must enter into a bond of £300, conditioned for due discharge of duties, with three sufficient sureties, payable to treasurer or town clerk of county, city, borough, or town corporate, of appraiser's residence (s. 31),<sup>4</sup> and must make a statutory declaration (which by 5 and 6 Wm. 4, s. 62, c. 12, was substituted for an oath) to perform duties (s. 33). Acting as appraiser without qualification—*Penalty*, on conviction before one justice, £10 (Irish) for each offence (s. 35).

Selling or disposing of pawn, except as herein—*Penalty*, £5 and value of goods (s. 30).

Knowingly or wilfully failing to renew sureties within three months of death or failure of any surety—*Penalty*, £5 (Irish); disqualification till surety renewed (s. 32).

Appraiser lending money upon pledges, and taking more than 5 per cent.—*Penalty*, £10 to £20 (Irish) (s. 30).<sup>5</sup>

The appraiser may appoint a deputy, for whose acts he is responsible (s. 31). Grand juries may appoint appraisers (s. 36),<sup>6</sup> such appraisers to give the securities, &c., aforesaid (s. 37).

sums of money mentioned in the Acts of 23 Geo. 3, c. 43 (Ir.); 28 Geo. 3, c. 49 (Ir.); 48 Geo. 3, c. 140; 5 Geo. 4, c. 102, are in Irish currency.

<sup>1</sup> Under 28 Geo. 3, c. 49 (Ir.), s. 14, no appraisalment is now necessary in the Dublin area.

<sup>2</sup> A special provision as to entries of sales in the case of "divisional auctioneers" is provided by 28 Geo. 3, c. 49 (Ir.), s. 18, see *post*.

<sup>3</sup> Applies throughout Ireland; divisional auctioneer being substituted for appraiser in the Dublin area.

<sup>4</sup> These sections do not apply to Dublin.

<sup>5</sup> Sections 30, 32, 35, would seem to apply, with any necessary modifications, to offences of like nature as regards divisional auctioneers in Dublin.

<sup>6</sup> Sections 31 and 36 do not apply to Dublin.



Four auctioneers are appointed to the four divisions of the district of the Dublin metropolis (28 Geo. 3, c. 49 (Ir.), s. 9).<sup>1</sup> Each auctioneer to enter into a bond for £1,000 conditioned for due discharge of duties, &c., with three sureties approved by a divisional justice in £300 each (s. 11),<sup>2</sup> and to make a statutory declaration (5 & 6 Wm. 4, c. 62, s. 12) to duly discharge duties (s. 12); and may appoint a deputy, who is required to make a statutory declaration (s. 16; 5 & 6 Wm. 4, c. 62, s. 12).

**Sale of pledge.**  
(2) Provisions relating solely to D.M.P. district.

Each auctioneer to have a public auction-room in his division; a pawnbroker may select any of the four auctioneers above mentioned to sell his pledges; and no auctioneer shall, under a *penalty* of £10, sell or cause to be sold elsewhere than in his division pledges committed to him (s. 10). No notice of sale required where loan does not exceed 4s.; but where loan exceeds 4s., and pledge becomes saleable (see 26 Geo. 3, c. 43 (Ir.), ss. 22 and 23), pawnbroker to obtain notice or summons from the registrar, setting out (a) loan, (b) schedule of pledges for loan, (c) requisition to borrower to redeem within fourteen days of service, (d) auction-room in which sale will take place; and if pledge not redeemed within fourteen days, the registrar, within six days from requisition so to do by pawnbroker, shall serve the summons on the borrower, or at his address as declared in the pawnbroker's entry if within the Dublin district, service to be by registrar's agents, for whose acts he is responsible, and services to be entered by registrar at a fee, for loans under 20s., of 3d., and for loans exceeding 20s., of 4d., all Irish currency, payable by pawnbroker to registrar, who is responsible to pawnbroker and any other person affected for loss caused by non-service (s. 14); sales to be publicly advertised at least three days before sale (s. 15).

Any pawnbroker selling or causing to be sold any pledge, (1) without obtaining such notice or summons, (2) at any place other than divisional auction-room named in such notice, (3) by any person other than the divisional auctioneer of such room or his duly appointed deputy—*Penalty*, on conviction before one justice, £5 (Irish) (s. 17). For other offences see 26 Geo. 3, c. 43 (Ir.), ss. 27, 28, *supra*. Every auctioneer to keep account of sales of pledges for each month, and make returns, with statutory declaration (5 & 6 Wm. 4, c. 62, s. 12), in the month succeeding each sale, to the registrar, if required—*Penalty* for failing to keep or return such accounts, 40s. (Irish) (s. 18).

The provisions of s. 28 of the 26 Geo. 3, c. 43 (Ir.), as to sale and return of overplus, are similar to the provisions of s. 20 of the repealed English Act, 39 & 40 Geo. 3, c. 99. Where a pawnor pledged several articles with a pawnbroker at different times, which, when sold, realized more than the principal and interest due and costs of sale, but other articles, pawned by and with the same parties respectively, did not upon sale realize sufficient to pay principal, interest, and expenses, it was held, under the English Act of 39 & 40 Geo. 3, c. 99, that the pawnbroker had no right to set-off the loss on the latter articles against the overplus on the former (*Dobree v. Norcliffe*, (1870) 23 L.T. 552). Where a pawnbroker, on the sale of a pledge, receives a sum insufficient to repay the principal, interest, and expenses, his right to recover the balance at common law is not affected by the Pawnbrokers Acts (*Jones v. Marshall*, (1889) 24 Q.B.D. 269). At common law, apart from the above statutory provisions, the pawnbroker can be sued for the recovery of any overplus arising from a sale of the

<sup>1</sup> The divisions are—Stephen's Green, Castle, Rotunda, and Barrack division. The city sword-bearer is the auctioneer for Rotunda division, and the city marshal for Stephen's Green division (s. 10).

<sup>2</sup> For offence of acting without giving securities and failing to renew sureties, see ss. 32 and 35, 26 Geo. 3, c. 43 (Ir.), *supra*. The moneys secured by the bond are payable and recoverable as provided by 26 Geo. 3, c. 43 (Ir.), s. 14.



**Sale of  
pledge.**

pledge (see *Langton v. Waite*, (1868) L.R. 6 Eq. 165). After the term prescribed by the statute for redemption has elapsed, if the goods remain still in the possession of the pawnbroker, the pawnor is entitled to have them back on payment of principal and interest (*Walter v. Smith*, (1822) 1 D. & R. 1).

A pawnbroker who sells a forfeited pledge gives no warranty to the purchaser save that the article is a pledge, and is irredeemable, and that he is not cognisant of any defect of title to it (*Morley v. Attenborough*, (1848) 3 Ex. 500).

The Irish Acts do not give power to the pawnbroker to bid at the auction of his pledges, and if he buys in at the sale, he will not get good title against the true owner (see *Burrows v. Barnes*, (1900) 82 L.T. 721).

**Damage to  
pledge.**

If, in the course of any proceedings before a justice of the peace<sup>1</sup> under ss. 1-8 of the 26 Geo. 3, c. 43<sup>2</sup> it is proved that damage<sup>3</sup> has occurred to a pledge through the default of the pawnbroker or his servants, compensation may be awarded to the owner of the pledge (26 Geo. 3, c. 43 (Ir.), s. 9). The compensation awarded is to be deducted from the principal and interest due upon the pawn, and it is sufficient for the pawnor or pawnors or their representatives to tender the balance due after deducting the compensation awarded, after which tender the justices shall proceed as if the whole principal and interest due had been paid or tendered (*ib.*).

As to procedure as regards delivery of pledges illegally detained, see p. 657.

**Pawning  
prohibited.**

Pawning is prohibited in the following cases:—

**Linen.**

(1.) Linen or apparel entrusted to a person to wash, scour, iron, mend, or make up—*Penalty*, double sum lent, and return of goods (26 Geo. 3, c. 43 (Ir.), s. 10).

**Seamen's  
property.**

(2.) Any person in a dockyard town to which the Act applies<sup>4</sup> taking or receiving in pawn, &c., from a naval seaman—*Penalty*, 1st offence not exceeding £20; 2nd offence, £20 or imprisonment with or without hard labour not exceeding six months (*Seamen's Clothing Act*, 1869, 32 & 33 Vict. c. 57, s. 4). As to defences of ignorance, see s. 46; see also under NAVY.

**Public stores.**

Pawnbroker in possession of public stores which he cannot prove to have been lawfully obtained—*Penalty*, on conviction before two justices not exceeding £5 (*Public Stores Act*, 1875, 38 & 39 Vict. c. 25, s. 9; see also s. 7). See also under PUBLIC STORES.

**Military  
property.**

Receiving, &c., in pawn, military property from soldier—*Penalty*, first offence not exceeding £20, with treble value of property; second offence, £5 to £20, with treble value property, or imprisonment with or without hard labour, not exceeding 6 months (*Army Act*, 1881, 44 & 45 Vict. c. 58, s. 156 (1); see also s. 156 (2), (3), (4), (5), and (6); as to defence of ignorance, &c., see s. 156 (1)).

Where a soldier in uniform pledged a musical instrument with a pawnbroker's assistant, the latter knowing that the soldier was a member of the regimental band, it was held that the pawnbroker was guilty of an offence under s. 156 of the Army Act, 1881 (*Jones v. Cashin*, (1893) 27 I.L.T. 87, Co. Ct.). In such a case the principal is liable to all penalties

<sup>1</sup> Or, it is submitted, in Dublin, a divisional justice—the Act applies throughout Ireland.

<sup>2</sup> Such proceedings are conversant with disputes between pawnbrokers and pawnors (s. 4), with offences in relation to duplicates (s. 5), return of pledges (ss. 6, 7), pawning goods without authority (s. 8). It should be noted that the jurisdiction conferred by the section on award compensation for damage is confined to cases where proceedings under said ss. 1-8 are brought. In other words, there is no summary remedy to recover *simpliciter* compensation for damage to a pledge.

<sup>3</sup> Under this section jurisdiction does not apply in case of a total loss of the pledge.

<sup>4</sup> In Ireland, Cork and Queenstown.

incurred by the acts of his assistant (*per* Anderson, C.C.J., *ib.*, p. 88). **Pawning Prohibited.**  
See also under ARMY.

Pawnbroker taking articles in pawn from any person apparently under the age of fourteen years—*Penalty*, not exceeding £10 with right to appeal as provided by Summary Jurisdiction Acts (*Children Act*, 1908, 8 Ed. 7, c. 67, s. 133 (12)). It is a good defence to prove that the person pawning was actually of or over the age of fourteen, s. 123 (4). See statute, APPENDIX OF STATUTES.

Pledging or pawning by or receiving in pledge or pawn from an habitual drunkard of any article specified in a protection order made under the Summary Jurisdiction (Ir.) Act, 1908—*Penalty*, not exceeding 40s., or imprisonment, with or without hard labour, not exceeding one month (*Summary Jurisdiction (Ir.) Act*, 1908, 8 Ed. 7, c. 24, s. 4). See HABITUAL DRUNKARDS, p. 521.

No pawnbroker shall receive or take in any pledge or pawn upon Sundays, nor before 10 o'clock in the morning of any other day of the week, or after 4 o'clock in the afternoon of any of the said days between the 29th September and 25th March, nor before 10 o'clock in the morning aforesaid or after 7 o'clock in the afternoon of any of the said days between the 25th March and 29th September—*Penalty*, 40s. (Irish) (28 Geo. 3, c. 49 (Ir.), s. 20). This section applies not merely to pawnbrokers within the D.M.P. district, but to all pawnbrokers throughout Ireland (*Seddall v. Wilson*, (1891) 25 I.L.T.R. 62).

Knowingly pawning, &c., the goods of another without authority—*Penalty*, 20s. (Irish) to be applied towards satisfaction of person injured, &c. (26 Geo. 3, c. 43 (Ir.), s. 8). A person convicted of larceny of a chattel may be subsequently prosecuted for the illegal pawning of the stolen chattel (*Pickford v. Corsi*, (1901) 2 K.B. 212). **Unlawful pawning.**

Outside Dublin, disputes between pawnbrokers and pawnors as to re-delivery of pledges or the money to be paid to the pawnbroker, if loan does not exceed 40s., may be determined by one justice; where exceeding 40s., by two justices of county, borough, or town corporate, whose determination is to be final. No such dispute to be determined except as above provided (26 Geo. 3, c. 49, s. 4). **Disputes. Outside D.M.P. district.**

The above provisions as to disputes appear to be the only summary procedure provided by the Irish Acts with reference to refusal to deliver pledges, except where delivery forms part of the penalty provided for any offence under the Acts. A refusal to deliver without reasonable cause on tender of principal and interest due, is an offence under the English Act.

The effect of 28 Geo. 3, c. 49 (Ir.), s. 4, the 35 Geo. 3, c. 36 (Ir.), and the Dublin Police Magistrates Act, 1808 (48 Geo. 3, c. 140, s. 70), is that all disputes between pawnbrokers and pawnors within the police district of Dublin metropolis (see the Dublin Justices Act, 1824 (5 Geo. 4, c. 102, s. 22), are to be determined summarily by a divisional justice, from whose decision an appeal lies to the Recorder if the amount advanced exceeded 40s. Irish, but not if the amount advanced is 40s. Irish or less. **D.M.P. District.**

Whenever any dispute between a pawnbroker and a borrower touching or concerning any pledge has been determined by the divisional justices, and any sum awarded by them, in case of non-payment thereof, the same may be enforced by distress under warrant of the justices, and, in default of distress, imprisonment not exceeding one calendar month may be ordered (5 Geo. 4, c. 102, s. 22).<sup>1</sup>

Under the Dublin Police Act, 1842, s. 68, a divisional justice may order any goods, not exceeding £15 in value, that are illegally detained to be returned to the owner, and, upon non-delivery, may order the person

<sup>1</sup> No similar power is given to justices outside the Dublin area.

**Disputes.**  
D.M.P.  
district.

illegally detaining such goods to pay to the owner such amount, not exceeding £15, as such justice decides to be the value thereof; but no corresponding enactment is in force outside the Dublin police district.

A company lent a sewing machine to one Holmes, on the hire-purchase system, under a contract which was aimed chiefly at preserving the property in the company, notwithstanding change of possession, until the last instalment was paid. Before the last instalment was paid, Holmes pawned the sewing machine with one Ivors. Holmes was summoned for the instalments and settled the case with the plaintiffs. On application by the plaintiffs to Ivors for delivery of the machine, Ivors refused, except on the terms of being paid the principal lent and interest due. *Held*, that as the value of the machine was under £15, an order for delivery should be made under 5 Vict. c. 24, s. 68 (*Wilson v. Ivors*, (1875) 9 I.L.T. 83, D.M.P. Court).

**Suspected  
goods.**  
Generally.

A person offering in pawn, pledge, exchange, or sale goods, and unable to give a satisfactory account of himself or of the means by which the said goods have been acquired, or if there be reason to suspect the goods to have been stolen or illegally obtained, may be seized by the person to whom the goods are offered and immediately conveyed, with the goods, before a justice or justices for the county, borough, or town corporate where the offence is committed. If justices, upon examination, have cause to suspect that the goods have been stolen or illegally obtained, they may commit the intending pawnor to gaol for a period not exceeding three days to be further examined, and if, upon the first or further examination, the justices are satisfied that the goods have been stolen or illegally obtained, the intending pawnor to be committed to gaol to be dealt with by law (26 Geo. 3, c. 43 (Ir.), s. 11). If it afterwards appear that the goods have been legally obtained, or that the person offering them was duly authorized, then the person seizing the person who offered the goods is indemnified (s. 12).

P. offered in pawn to defendant a horse-shoe pin, set with seven diamonds, and a ring. The defendant had received from the police notice of articles stolen, including a gold horse-shoe pin set with seven diamonds, and asked plaintiff if he was a dealer, and was answered in the negative. Defendant also asked plaintiff where he obtained the articles. The plaintiff stated he received them from a publican, whose name he refused to disclose. Defendant gave plaintiff in custody. It was afterwards proved that the articles had not been stolen, and that the plaintiff's statements to the defendant were true. In an action against the defendant the jury found for the plaintiff. *Held* that the question whether the defendant reasonably suspected that the pin had been stolen or otherwise illegally or clandestinely obtained was for the judge; and that on the facts, there was no evidence of absence of reasonable suspicion in the mind of the defendant, and therefore that judgment should be entered for him (*Howard v. Clarke*, (1888) 20 Q.B.D. 558.) The moment of reasonable suspicion is the moment the article is offered in pawn, per A. L. Smith, J. (*ib.*).

Any person to whom any property is offered to be sold or pawned, if he have reasonable cause to suspect that an offence punishable summarily or by indictment has been committed with respect to such property, or that the same or any part thereof has been stolen, may and, if he has the power, shall apprehend and detain the person so offering, and, as soon as may be, deliver such offender unto the custody of a constable, together with the property, to be dealt with by law (*Dublin Police Act*, 1842, 5 & 6 Vict. c. 24, s. 29).

**Stolen goods.**  
Generally.

If the owner of goods unlawfully pawned, pledged, or exchanged, make complaint upon oath before any justice that goods have been unlawfully



taken away or obtained, and that there is just cause to suspect a person or persons within the jurisdiction of such justice, and if the justice is satisfied that there is reasonable ground for such suspicion, he may issue a warrant to search in the day-time the house, warehouse, or other place of the person charged as suspected. Upon request of authorized officer executing such warrant, such suspected person shall open the place aforesaid and permit inspection. Upon refusal, the officer may break open such place and search, doing no wilful damage. Opposing or hindering such search—*Penalty*, £5 (Ir.) (26 Geo. 3, c. 43 (Ir.), s. 13).

**Stolen goods.**  
Generally.

As often as any pawnbroker who shall have in his possession goods, and after receiving printed or written notice with description that such goods, &c., have been stolen, shall wilfully omit or refuse to make discovery thereof to a divisional justice, or on being required by notice in writing, signed by a divisional justice, neglect or omit to attend for examination, or refuse to be examined concerning the same—*Penalty*, £50 (Irish) and forfeiture of value of goods and chattels. Refusal upon requisition of constable to produce the same—*Penalty*, £50 (Irish) and forfeiture of value of goods and chattels (*Dublin Police Magistrates Act*, 1808, 48 Geo. 3, c. 140, s. 51).

D.M.P.  
district.

In Dublin a divisional justice may issue summons or warrant for the appearance of broker or dealer in whose possession are goods stolen or unlawfully obtained, and for the production of the goods, and may order such goods to be delivered to the owner either without payment or upon payment of such sum as the justice shall think fit; no such order to bar any broker or dealer from recovering possession of such goods by an action at law from the person into whose possession they may come by virtue of the justice's order, such action to be commenced within six months after such order shall be made (*Dublin Police Act*, 1842, 5 and 6 Vict. c. 24, s. 56).

The following special provision applies to Belfast:—

**Belfast.**

If goods stolen or fraudulently obtained be unlawfully deposited, pawned, pledged, sold, or exchanged, and complaint thereof be made to a justice, and that such goods are in the possession of any broker or other person who shall have advanced money upon the credit of such goods, the justice may issue a summons or warrant for appearance of broker and delivery of goods to the owner, on such terms as the justice may direct. Pawnbroker refusing or neglecting to deliver, or disposing, or making away with goods after notice that the same have been stolen or unlawfully obtained—*Penalty*, forfeiture of full value of goods as determined by the justice. Justice's order shall not bar the pawnbroker from taking action to recover goods from any person into whose possession they may come by the order (*Belfast Improvement Act*, 1845, 8 & 9 Vict. c. cxlii., s. 249). Brokers or dealers in second-hand goods not to carry on business of a publican or retailer of excisable liquors, nor to purchase from, or make any contract with holder of a pawnbroker's ticket, without first getting a transfer of ticket and getting the transfer endorsed on the ticket—*Penalty*, for offence against this section by broker, dealer, or servant or person in charge of the premises not exceeding £10 (s. 250). Brokers may detain persons offering goods for pawn which are suspected to be stolen or illegally obtained; a constable may take such person before a magistrate to be examined; upon such examination the justice may discharge person, or, if he has grounds for believing articles stolen, &c., remand person for three days for further examination to prison or on bail, and if on further examination the justice be satisfied that goods were stolen, &c., he shall remand prisoner to prison to be dealt with by law (s. 251). Unclaimed stolen goods to be delivered to city treasurer, and, if of a perishable nature, may be sold by him; proceeds of sale shall be accounted for by the treasurer to the owner (s. 252).

*Stolen goods.*

*Dealers in  
second-hand  
goods.*

*Suspected  
goods.*

*Stolen goods.*

Appeals.  
D.M.P.  
district.

Upon the authority of *R. v. Wall*, (1824) Sm. and B. 121, it is submitted that within the D.M.P. district an appeal lies under the Dublin Police Act, 1837 (7 Wm. 4 and 1 Vict. c. 25, s. 27), from any order imposing a penalty exceeding £5, or imprisonment exceeding one month.

Outside  
D.M.P.  
district.

Outside the D.M.P. district appeals in respect of conviction of offences as to pawning are governed by the Petty Sessions (Ir.) Act, 1851, s. 20.

### PEDLARS.

See the Pedlars Act, 1871, 34 & 35 Vict. c. 96 (as amended by the Pedlars Act, 1881, 44 & 45 Vict. c. 45), APPENDIX OF STATUTES.

### PETROLEUM.

	PAGE		PAGE
Petroleum Acts, . . . . .	664	Hawking petroleum—	
Definition of petroleum, . . . . .	664	Licence required, . . . . .	666
Bye-laws as to ships carrying petroleum, . . . . .	664	Regulations, . . . . .	666
Notice by owner or master of ship carrying petroleum, . . . . .	665	Offences by hawkers, . . . . .	667
Label on vessel containing petroleum, . . . . .	665	Offences by servants of hawkers, . . . . .	667
Regulations as to storage, . . . . .	665	Petroleum in carriages, . . . . .	667
Definition of local authority, . . . . .	665	Application of Petroleum Act, 1871, to hawkers, . . . . .	667
Licences generally, . . . . .	665	Constable's power of seizure, . . . . .	667
Licences by Lord Lieutenant, . . . . .	666	In municipal boroughs, . . . . .	668
Testing of petroleum, . . . . .	666	Definition of carriage, . . . . .	668
Obstruction, &c., of officer of local authority, . . . . .	666	Definition of hawking, . . . . .	668
Search warrants, . . . . .	666	Carbide of calcium, . . . . .	668
Search warrants, obstructing execution of, . . . . .	666	Petroleum mixtures, . . . . .	669
		Procedure, . . . . .	669

Petroleum  
Acts, 1871 to  
1881.

The enactments now in force as to the safe keeping and sale of petroleum are the Petroleum Act, 1871, 34 & 35 Vict. c. 105, the Petroleum Act, 1879, 42 & 43 Vict. c. 47, and the Petroleum (Hawkers) Act, 1881, 44 & 45 Vict. c. 67, all of which Acts are to be construed as one, and are termed the Petroleum Acts, 1871 to 1881 (*Act of 1879*, s. 1, and *Act of 1881*, s. 7).

Definition of  
petroleum.

“For the purposes of this Act the term ‘petroleum’ includes any rock oil, Rangoon oil, Burmah oil, oil made from petroleum, coal, schist, shale, peat, or other bituminous substance, and any products of petroleum, or any of the above-named oils” (*Petroleum Act*, 1871, s. 3); and “In the Petroleum Act, 1871, the term ‘petroleum’ to which this Act applies shall mean such of the petroleum defined by s. 3 of that Act as, when tested in manner set forth in Schedule 1 to this Act, gives off an inflammable vapour at a temperature of less than 73° of Fahrenheit’s thermometer”<sup>1</sup> (*Petroleum Act*, 1879, s. 2).

Bye-laws as  
to ships  
carrying  
petroleum.

Any master or owner of a ship carrying “petroleum to which this Act applies,” or the owner of such petroleum who contravenes any bye-law made pursuant to s. 4 of the Act of 1871 by anything done as to the mooring of such ship, or as to the landing of such petroleum in harbours subject to such bye-law—*Penalty*, not exceeding £50 for each day during which such contravention continues, and such ship or such petroleum may be moved by the harbour-master of such harbour to such place as is

<sup>1</sup> It was held by the English Q. B. D. that the keeping of a compound containing 33 per cent. of petroleum was a keeping of petroleum, inasmuch as petroleum did not cease to be petroleum because it was mixed with other substances (*London County Council v. Holzapfels Composition Co., Ltd.*, (1899) 19 Cox 383).

in conformity with such bye-law, the expense of such removal to be recovered in like manner as penalties under the Act from the owner of the ship (*Petroleum Act, 1871, 34 & 35 Vict. c. 105, s. 4*).

The owner or master of every ship carrying as cargo any "petroleum to which this Act applies" is liable to a penalty not exceeding £500 if there be not given to the harbour-master of any harbour in the United Kingdom which such ship enters notice of the nature of such cargo, unless it be shown to the court that he did not know, and could not with reasonable diligence have known, the nature thereof (s. 5).

Notice by owner or master of ship.

"Where any petroleum to which this Act applies (a) is kept at any place except during the seven days next after it has been imported, or (b) is sent or conveyed by land or water between any two places in the United Kingdom, or (c) is sold or exposed for sale, the vessel containing such petroleum shall have attached thereto a label in conspicuous characters stating the description of the petroleum, with the addition of the words 'highly inflammable,' and with the addition, (a) 'in the case of a vessel kept, of the name and address of the consignee or owner; (b) in the case of a vessel sent or conveyed, of the name and address of the sender; (c) in the case of a vessel sold or exposed for sale, of the name and address of the vendor'—Penalty on any person keeping, sending, selling, or exposing for sale in contravention of this section, fine not exceeding £5, and forfeiture of such petroleum and vessel containing the same (s. 6).

Label on vessel containing petroleum.

Except where petroleum is kept, either for private use<sup>1</sup> or for sale in separate glass, earthenware, or metal vessels, each of which does not contain more than a pint, and is securely stopped, and the aggregate amount kept does not exceed three gallons, no "petroleum to which this Act applies" is to "be kept, except in pursuance of a licence given by such local authority as is in this Act mentioned"; and any petroleum "kept in contravention of this section" and the vessel containing the same is to be forfeited; and the occupier of any place in which petroleum is kept in contravention of this section—Penalty not exceeding £20 for each day during which it is so kept (s. 7).

Regulations as to storage of petroleum.

The local authorities to grant licences under this Act are:—"In any borough, . . . except as hereafter in this section mentioned, the mayor, aldermen, and burgesses acting by the Council. . . In any place except as hereafter in this section mentioned, within the jurisdiction of any trustees or improvement commissioners appointed under the provisions of any local or general Act of Parliament, and not being a borough or comprising any part of a borough, the trustees or commissioners. . . . In any harbour within the jurisdiction of a harbour authority, whether situate or not within the jurisdiction of any local authority before in this section mentioned, the harbour authority, to the exclusion of any other local authority. . . . In any place in which there is no local authority as before in this section defined, . . . the justices in petty sessions assembled . . . (s. 8); and such licences "shall be valid if signed by two or more of the persons constituting the local authority or executed in any other way in which other licences, if any, granted by such authority are executed," and "may be granted for a limited time, and may be subject to renewal or not in such manner as the local authority think necessary," and "there may be annexed to any such licence such conditions as to the mode of storage, the nature and situation of the premises in which, and the nature of the goods with which "petroleum to which this Act applies" is to be stored, the facilities for the testing of such petroleum from time to time, the mode of carrying such petroleum within the district of the licensing authority, and generally as to the safe keeping of such petroleum, as may seem expedient to the local authority. Any licensee violating any of the

Definition of local authority.

Licences.

<sup>1</sup> As to petroleum for use in motor cars, see p. 645.



Licences by  
Lord  
Lieutenant.  
Testing of  
petroleum.

conditions of his licence shall be deemed to be an unlicensed person . . .” (s. 9). Licences may also be issued by the Lord Lieutenant in certain cases (s. 10). Provision is made for the testing of petroleum; and if any dealer in petroleum be convicted of keeping, sending, conveying, selling, or exposing for sale petroleum in contravention of the Act, the expense of testing any petroleum purchased from him shall be paid by him as part of the costs of the proceedings against him (s. 11).

Refusing  
information  
and obstruct-  
ing officer.

“Any dealer who refuses to show to any officer authorized by the local authority every or any place, or all or any of the vessels in which petroleum in his possession is kept, or to give him such assistance as he may require for examining the same, or to give to such officer samples of such petroleum on payment of the value of such samples, or who wilfully obstructs the local authority, or any officer of the local authority, in the execution of this Act, shall incur a *penalty* not exceeding £20” (s. 12).

Search  
warrants for  
petroleum.

“Where any court of summary jurisdiction is satisfied by information on oath that there is reasonable ground to believe that any petroleum to which this Act applies is being kept, sent, conveyed, or exposed for sale within the jurisdiction of such court in contravention of this Act,” the court is to grant a warrant to search for petroleum, and to take samples of the same if found, and to seize and remove “any petroleum to which this Act applies” which is so kept, sent, conveyed, or exposed for sale, and the vessel containing the same, and may use for the purposes of such removal, any ship or vehicles (with the tackle, beasts, and accoutrements belonging thereto) in which the same is found; and the person executing such warrant may detain such petroleum and vessel until a court of summary jurisdiction has decided whether the same are or are not forfeited, and must commence the proceedings for such forfeiture forthwith after the seizure; and such court may direct the person so using such ship or vehicle to pay to the owner thereof for the use thereof such sum as the court deems fit, such sum to be recovered in like manner as penalties under the Act (s. 13).

Obstructing  
execution of  
search  
warrant.

“Any person who, by himself, or by anyone in his employ, or acting by his direction or with his consent, refuses or fails to admit into any place occupied by or under the control of such person, any person demanding to enter in pursuance of this section, or in any way obstructs or prevents any person in or from making any such search, examination, or seizure, or taking any such samples as authorized by this section”—*Penalty*, not exceeding £20, and forfeiture of all “petroleum to which this Act applies” found in his possession or under his control (s. 13).

Hawking  
petroleum.  
Licence.

“Any person who is licensed in pursuance of the Petroleum Act, 1871, to keep petroleum to which that Act applies, may, subject to the enactments for the time being in force with respect to hawkers and pedlars,<sup>1</sup> hawk such petroleum by himself or his servants” (*Petroleum (Hawkers) Act*, 1881, 44 & 45 Vict. c. 67, s. 1).

Regulations  
as to  
hawking.

“With respect to the hawking of petroleum to which the Petroleum Act, 1871, applies, the following regulations shall be observed:—(1) The amount of petroleum conveyed at one time in any one carriage shall not exceed 20 gallons. (2) The petroleum shall be conveyed in a close vessel so constructed as to be free from leakage. (3) The carriage in which the vessels containing the petroleum are conveyed shall be so ventilated as to prevent any evaporation from the petroleum mixing with the air in or about the carriage, in such proportion as to produce or be liable to produce an explosive mixture. (4) Any fire, or light, or any article of an explosive or highly inflammable nature, shall not be brought into, or

<sup>1</sup> This means that a person who hawks petroleum must have a hawker's licence as to which, see the Hawkers Act, 1888, in Appendix of Statutes, as well as a licence under the Petroleum Acts.

dangerously near to, the carriage in which the vessels containing the petroleum are conveyed. (5) The carriage in which the vessels containing the petroleum are conveyed shall be so constructed or fitted that the petroleum cannot escape therefrom in the form of liquid, whether ignited or otherwise. (6) Proper care shall be taken to prevent any petroleum escaping into any part of a house or building, or of the curtilage thereof, or into a drain or sewer. (7) The petroleum shall be stored in some premises licensed for keeping of petroleum, and in accordance with the licence for such premises, both every night, and also when the petroleum is not in the course of being hawked. (8) All due precautions shall be taken for the prevention of accidents by fire or explosion, and for preventing unauthorized persons having access to the vessels containing the petroleum; and every person concerned in hawking the petroleum shall abstain from any act whatever which tends to cause fire or explosion, and is not reasonably necessary for the purpose of such hawking. (9) No article or substance of an explosive or inflammable character other than petroleum, nor any article liable to cause or communicate fire or explosion, shall be in the carriage while such carriage is being used for the purpose of hawking petroleum" (s. 2).

**Hawking petroleum.**

"In the event of any contravention of this section with reference to any petroleum, the petroleum, together with the vessels containing and the carriage conveying the same, shall be liable to be forfeited; and in addition thereto the licensee by whom or by whose servants the petroleum was being hawked shall be liable on summary conviction to a *penalty* not exceeding £20, provided that:—

**Offences by hawkers.**

"(1) Where some servant of the licensee or other person has in fact committed the offence, such servant or other person shall be liable to the same penalty as if he were the licensee. (2) Where the licensee is charged with a contravention of this section, he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if the licensee prove to the satisfaction of that court that he had used diligence to enforce the execution of this section, and that the said other person had committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the licensee shall be exempt from any penalty" (s. 2).

**Offences by servants.**

"Any petroleum other than that to which the Petroleum Act, 1871, applies, while in any carriage used for the hawking of petroleum to which the Petroleum Act, 1871, applies, shall, for the purposes of this section, be deemed to be petroleum to which the Petroleum Act, 1871, applies" (s. 2).

**Petroleum in carriages.**

"Any conditions annexed to a licence granted in pursuance of the Petroleum Act, 1871, either before or after the passing of this Act, shall, so far as they are inconsistent with this Act, be void, but save as aforesaid, nothing in this Act shall affect the application to a licensee of the provisions of the Petroleum Act, 1871, or of any licence granted thereunder" (s. 3).

**Application of Petroleum Act, 1871, to hawkers.**

"Where a constable or any officer authorized by the local authority has reasonable cause to believe that a contravention of this Act is being committed in relation to any petroleum, he may seize and detain such petroleum and the vessels and carriage containing the same, until some court of summary jurisdiction has determined whether there was or not a contravention of this Act; and s. 13 of the Petroleum Act, 1871, shall apply to such constable and officer as if he were the person named in the warrant mentioned in that section, and as if the seizure were a seizure in pursuance of that section" (s. 4).

**Constable's power of seizure.**



**Hawking  
petroleum.  
Municipal  
boroughs.**

" Nothing in this Act contained shall extend to authorize the hawking of petroleum within the limits of any municipal borough in which, by any lawful authority, such hawking shall have been or may hereafter be forbidden " (s. 5).

" *Carriage.*"

" For the purposes of this Act the expression 'carriage' includes any carriage, waggon, cart, truck, vehicle or other means of conveyance by land, in whatever manner the same may be drawn or propelled " (s. 6).

" *Hawking.*"

" A person shall be deemed for the purposes of this Act to hawk petroleum if by himself or his servants he goes about carrying petroleum to sell, whether going from town to town to other men's houses, or selling it in the streets of the place of his residence or otherwise, and whether with or without any horse or other beast bearing or drawing burden " (s. 6).

**Carbide of  
calcium.**

By s. 14 of the Petroleum Act, 1871, it is provided that the Petroleum Acts, 1871 to 1879, may, in manner specified in that section, be applied to substances other than petroleum; and, in pursuance of this provision, those Acts have been applied to carbide of calcium by orders in Council,<sup>1</sup> dated respectively 26th February, 1897, and 24th October, 1904, which apply to such carbide the whole of these Acts except:—(a) So much of s. 6 of the Petroleum Act, 1871, as specifies the nature of the label to be on the vessel; (b) so much of s. 7 of the same Act as relates to the exemption from such section of small quantities under certain specified conditions; (c) so much of s. 11 of the same Act as relates to the testing of samples taken by an officer of the local authority under the powers conferred by that section; (d) so much of the Petroleum Act, 1879, as relates to the testing of petroleum; and (e) so much of the Petroleum Act, 1881, as relates to the hawking of petroleum. Under these orders vessels containing carbide of calcium must bear in conspicuous characters the words "*Carbide of calcium. Dangerous if not kept dry. The contents of this package are liable if brought into contact with water to give off a highly inflammable gas.*" and the name and address of the owner or consignee, if such vessel is kept; if it is sent or conveyed, the name and address of the sender; and if it is sold or exposed for sale, the name and address of the vendor. Under these orders not more than 5 lbs. of carbide of calcium may be kept without a licence if enclosed in hermetically closed metal vessels containing not more than 1 lb. each, or not more than 28 lbs. may be kept where the following conditions are observed:—(a) The carbide shall be kept only in a metal vessel or vessels hermetically closed at all times when the carbide is not actually being placed in or removed from such vessel or vessels; (b) the vessels containing carbide shall be kept in a dry and well-ventilated place; (c) due precaution shall be taken to prevent unauthorized persons from having access to the carbide; (d) notice shall be given of such keeping to the local authority, and free access shall be afforded to their duly authorized inspector to inspect the premises where the carbide is kept and the generator is situated; and (e) (where a fixed generator is used on the premises) there shall be exhibited near the generator a certificate, signed by the maker or supplier thereof, that the generator complies with the regulations as to acetylene generators of the Acetylene Association; (f) full and detailed instructions as to the care and use of the generator shall be kept constantly posted up in such place as to be conveniently referred to by the generator attendant.<sup>2</sup>

For the keeping of any quantity exceeding 28 lbs., or the keeping of any quantity whatever where the above conditions cannot be complied with, a licence must be obtained from the Local Authority.

<sup>1</sup> As to proof of such orders, see EVIDENCE.

<sup>2</sup> This condition does not apply to lamps for vehicles or other portable lamps.



By Order in Council, dated 7th May, 1907, also made pursuant to s. 14 of the Petroleum Act, 1871, the undermentioned parts of the Petroleum mixtures. Petroleum Acts, 1871 to 1881, are applied "to any mixture of petroleum with any other substance which, when tested in the manner set forth in the schedule to this Order, gives off an inflammable vapour at a temperature of less than seventy-three degrees of Fahrenheit's thermometers, whether such mixture be liquid, viscous, or solid, in the same manner as if such mixture were petroleum to which the said Acts apply, viz.:—The whole of the Petroleum Acts, 1871 to 1881, except:—(a) So much of section 6 of the Petroleum Act, 1871, as specifies the nature of the label to be on the vessel, in lieu of which the label shall be as hereinafter provided. (b) So much of section 7 of the Petroleum Act, 1871, relating to the exemption from such section of small quantities under certain specified conditions, as is inconsistent with or contradictory to the exemptions and conditions hereinafter prescribed. (c) So much of section 11 of the Petroleum Act, 1871, and of the Petroleum Act, 1879, relating to the testing of petroleum, as is inconsistent with or contradictory to the directions for testing contained in the schedule to this Order. The label on the vessel or package containing a petroleum mixture which is subject to the Petroleum Acts in virtue of this Order shall bear in conspicuous characters the name of the mixture and the words "Petroleum Mixture giving off an inflammable heavy vapour." "Not to be exposed near a flame." The quantity of any petroleum mixture which is subject to the Petroleum Acts in virtue of this Order, which may be kept without licence, and the conditions of such keeping, shall be as follows:—(a) Where the petroleum mixture is sufficiently liquid to be measured by liquid measure, the quantity and the conditions of keeping shall be those specified in section 7 of the Petroleum Act, 1871. (b) Where the petroleum mixture is solid, or otherwise unsuitable to be measured by liquid measure, the quantity which may be kept without licence shall not exceed thirty pounds, which may only be so kept provided that it is enclosed in hermetically sealed packages or vessels containing each not more than one pound. Wherever in the Petroleum Acts, 1871 to 1881, or in any order, bye-law, or licence issued under these Acts, a quantity is specified in gallons or pints, such quantity shall, in the case of such solid petroleum mixture, be read as though the weight of ten pounds were substituted for a gallon and of one pound for a pint."

Offences and penalties under the Acts, and all moneys and costs thereby directed to be recovered as penalties, may be prosecuted and recovered in manner provided by the Summary Jurisdiction Acts<sup>1</sup> before a court of summary jurisdiction consisting, within the police district of Dublin metropolis, of one of the divisional justices of that district, and elsewhere of a stipendiary magistrate<sup>2</sup> sitting alone or with others, or of two or more justices sitting in petty sessions. Such court "shall not impose a penalty exceeding £50, but may impose that or any less penalty for any one offence notwithstanding the offence involves a penalty of higher amount." Penalties are to be applied according to the Fines (Ir.) Act, 1851, or any Act amending the same. All forfeitures are to be disposed of as the court directs. Certiorari does not lie in respect of any conviction.<sup>3</sup> The onus of proving all exceptions, exemptions, provisos, excuses, or qualifications is imposed on the defendant (*Act of 1871, s. 15*).

Procedure.

<sup>1</sup> This means as regards Ireland (see the *Interpretation Act*, 1889, s. 13 (10)) the Summary Jurisdiction (Ireland) Acts, as to which term see p. 335.

<sup>2</sup> The expression "stipendiary magistrate" here probably means a Resident Magistrate.

<sup>3</sup> But as to the circumstances in which certiorari lies, this enactment notwithstanding, see p. 226.

## POISONED GRAIN AND POISONED FLESH.

Poisoned  
grain.

“Every person who shall offer, or expose for sale, or sell any grain, seed, or meal which has been so steeped or dipped in poison, or with which any poison or any ingredient or preparation has been so mixed as thereby to render the same poisonous and calculated to destroy life’—*Penalty*, not exceeding £10 (*Poisoned Grain Prohibition Act*, 1863’ 26 & 27 Vict. c. 113, s. 2).

“Every person who shall knowingly and wilfully sow, cast, set, lay, put, or place, or cause to be sown, cast, set, laid, put, or placed into, in, or upon any ground or other exposed place or situation, any such grain, seed, or meal”—*Penalty*, not exceeding £10 (s. 3).

“Nothing in this Act shall prohibit the offering, or exposing for sale, or selling, or the use of any solution or infusion, or any material or ingredient for dressing, protecting, or preparing any grain or seed for *bona fide* use in agriculture only, or the sowing of such last-mentioned grain or seed so prepared” (s. 4).

Penalties recoverable before two justices of the peace; Petty Sessions Act applies; informer, not being a constable, may be awarded a moiety of the penalty; indemnity clause to witnesses who may have participated in the commission of the offence (s. 5).

Poisoned  
flesh.

“Every person who shall knowingly and wilfully set, lay, put, or place, or cause to be set, laid, put, or placed in or upon any land,<sup>1</sup> any flesh or meat which has been mixed with, or steeped in, or impregnated with poison or any poisonous ingredient, so as to render such flesh or meat poisonous and calculated to destroy life”—*Penalty*, not exceeding £10. “Provided always that nothing herein contained shall prevent owners or occupiers of land in Ireland from laying or causing to be laid any poisonous matter as hereinbefore described, after a notice has been posted in a conspicuous place, and notice in writing has been given to the nearest constabulary station” (*Poisoned Flesh Prohibition Act*, 27 & 28 Vict. c. 115, s. 2).

“Nothing in this Act shall make it unlawful for the occupier of any dwellinghouse or other building, or the owner of any rick or stack of wheat, barley, oats, beans, peas, tares, seeds, or of any cultivated vegetable produce, to put or place, or cause to be put or placed in any such dwellinghouse or other building, or in any enclosed garden attached to such dwellinghouse, or in the drains connected with any such dwellinghouse (provided that such drains are so protected with gratings or otherwise as to prevent any dog from entering the same), or within such rick or stack any poison or poisonous ingredient for the destruction of rats, mice, or other small vermin” (s. 3).

Procedure is regulated by s. 5 of the Poisoned Grain Prohibition Act, 1863 (s. 4).

<sup>1</sup> Includes enclosed gardens and buildings (*Rogers v. Hall*, (1896) 60 J.P. 584).

*To face page 670.]*

## **POISONED GRAIN AND POISONED FLESH.**

The Poisoned Grain Prohibition Act, 1863, and the Poisoned Flesh Prohibition Act, 1864, have been repealed by the Protection of Animals Act, 1911, 1 & 2 Geo. 5, c. 27, which became law as the volume was going through the press. That statute, which will be found at p. 1277, contains substituted provisions : see ss. 8, 17 (2).





## POISONS, SALE OF.

	PAGE		PAGE
Sale of arsenic, . . . . .	671	Shop to be managed personally	
Restrictions on sale of poisons		or by qualified assistant, . . .	674
generally—		Exemptions as to weed-killers, &c.,	674
What are poisons, . . . . .	671	Restrictions as to sale of articles under	
Method of sale, . . . . .	672	Act of 1908, . . . . .	675
Who may sell, . . . . .	673	Who may be convicted, . . . . .	675
Assuming title of druggist, &c.,	673	Procedure, . . . . .	675

The sale of arsenic is specially restricted by the Arsenic Act, 1851, 14 & 15 Vict. c. 13. No person<sup>1</sup> is to sell arsenic without entering in a book, in the form set forth in the schedule to the Act, the date of sale, the full name, the address, and the occupation of the purchaser, the quantity sold, and the purpose for which such quantity is required (s. 1). Such sale is not to be made to a purchaser unknown to the vendor, except in the presence of a witness known to the vendor, and who knows the purchaser, and who signs his name and address to the entries required by s. 1; and no sale is to be made to a person under twenty-one (s. 2). No sale is to be made unless the arsenic be discoloured as provided in s. 3 with soot or indigo, except in case the purchaser states that the arsenic is required, not for use in agriculture, but for some other purpose for which such discolouration would render it unfit, in which case not less than ten pounds at any one time may be sold without such discolouration (s. 3). Any person selling arsenic in contravention of the Act, or any purchaser giving false information to the vendor as to any particular required by s. 1 to be entered, or any person witnessing the signature of a purchaser whom he does not know, is liable on conviction before two justices (or one divisional justice<sup>2</sup> of the police district of Dublin metropolis) to a penalty not exceeding £20 (s. 4).

The method of sale<sup>3</sup> of various articles which are, under the Poisons (Ir.) Act, 1870, 33 & 34 Vict. c. 26, to be deemed poisons is restricted by that Act. Poisons are (1) the articles mentioned in Schedule A of the Act; (2) articles added to the list by the Royal College of Physicians in Ireland, by resolution approved of by the Privy Council, and advertised as directed by the section (s. 1).<sup>4</sup>

Restrictions  
on sale of  
poisons gene-  
rally.  
What are  
poisons.

<sup>1</sup> It would seem that a limited company cannot be convicted in respect of anything done in contravention of this Act (*Pharmaceutical Society of Ireland v. Boyd*, (1896) 2 I.R. 394).

<sup>2</sup> See p. 307.

<sup>3</sup> As to restriction on class of persons who can sell, see PHARMACY ACT, p. 673.

<sup>4</sup> The following articles are those mentioned in Part I of Schedule (A):—Arsenic and its preparations; Aconite and its preparations; Cantharides; Corrosive Sublimate; Cyanide of Potassium and all Metallic Cyanides; Emetic Tartar; Ergot of Rye and its preparations; Prussic Acid; Savin and its Oil; Strychnine and all poisonous vegetable alkaloids and their salts. No articles have been added to Part I of Schedule (A) pursuant to s. 1. The following articles are those mentioned in Part 2 of Schedule (A)—Almonds, Essential Oil of, unless deprived of its prussic acid; Belladonna and its preparations; Cantharides, the tincture and all vesicating preparations of; Chloroform; Corrosive Sublimate, preparations of; Mercury ammoniated (commonly known as White Precipitate of Mercury); Mercury, Red Oxide of (commonly known as Red Precipitate of Mercury); Morphine, preparations of; Opium, and all preparations of Opium or of Poppies; Oxalic Acid; and every compound containing any of the poisons mentioned in either Part I or Part II of the Schedule, when prepared or sold for the destruction of vermin. The following articles have been added to Part II of Schedule A pursuant to s. 1: Chloral Hydrate and all its preparations, and Phosphorous and all preparations containing it in a free state (see "Dublin Gazette," January 15th, 1875); Nux Vomica and its preparations (see "Dublin Gazette," March 16th, 1883); Sulphuric Ether (see "Dublin Gazette," December 2nd, 1890); Phenol (commonly called Carbolic Acid), all Oxalates, Biniodide of Mercury, and Preparations of Strychnine (see "Dublin Gazette," June 18th, 1897). See also poisons added by Act of 1908, p. 675.

Restrictions  
on sale of  
poisons  
generally.

A compound containing only an infinitesimally small quantity of morphine is not a poison within the Act of 1870 (*Pharmaceutical Society v. Delve*, (1894) 1 Q. B. 71). But where a compound contains an appreciable quantity of any poison within the meaning of the Act, such compound is to be deemed a poison (see *Pharmaceutical Society v. Piper*, (1893) 1 Q. B. 686, in which case the compound was "chlorodyne," containing opium and chloroform; *Pharmaceutical Society v. Armonson*, (1894) 1 Q. B. 720, in which case the compound was "Balsam of Aniseed," containing morphine). A compound containing a large proportion of poison is, *a fortiori*, to be deemed a poison (see *Pharmaceutical Society v. Wheeldon*, (1890) 24 Q. B. D. 683).

Method of  
sale.

"It shall be unlawful to sell any poison, either by wholesale or by retail, unless the box, bottle, vessel, wrapper, or cover in which such poison is contained, be distinctly labelled with the name of the article and the word "poison," and with the name and address of the seller of the poison<sup>1</sup>; and it shall be unlawful to sell any of the poisons which are named in the first part of Schedule A to this Act annexed, or which may hereafter be added thereto under s. 1 of this Act, to any person unknown to the seller, unless such person is introduced by some person known to the seller; and on every sale of any such article the seller shall before delivery make or cause to be made an entry in a book to be kept for that purpose, stating, in the form set forth in the Schedule B to this Act annexed, the date of the sale, and name and address of the purchaser, the name and quantity of the article sold, and the purpose for which it is stated by the purchaser to be required, to which entry the signature of the purchaser and of the person, if any, who introduced him shall be affixed; and any person selling poison otherwise than is herein provided shall be liable to a *penalty* not exceeding £5 for the first offence, and to a *penalty* not exceeding £10 for the second or any subsequent offence; and for the purpose of this section the person on whose behalf any sale is made by any apprentice or servant shall be deemed to be the seller: but the provisions of this section which are solely applicable to poisons in the first part of the Schedule A to this Act annexed, or which require that the label shall contain the name and address of the seller, shall not apply to articles to be exported from Ireland by wholesale dealers, nor to sales by wholesale to retail dealers in the ordinary course of wholesale dealing, nor shall any of the provisions of this section apply to any medicine supplied by a duly qualified apothecary, nor apply to any article when forming part of the ingredients of any medicine dispensed by a duly qualified apothecary, provided such medicine be labelled in the manner aforesaid with the name and address of the seller, and the ingredients thereof be entered with the name of the person to whom it is sold or delivered in a book to be kept by the seller for that purpose, and nothing in this Act contained shall repeal or affect any of the provisions of the Arsenic Act, 1851" (*Poisons (Ir.) Act, 1870*, 33 & 34 Vict. c. 26, s. 2).

The prohibitions in this section apply as well to bodies corporate as to individuals, and a common informer may prosecute for non-compliance with the provisions of the section (*Lawler v. Egan*, (1901) 2 I. R. 589).

When a seller sold poison labelled with his address and his trade name, such trade name not being his personal name, he was held to have sufficiently complied with the requirements of s. 17<sup>3</sup> of the Pharmacy Act, 1868, as to the vendor's name and address (*Pharmaceutical Society v. Mercer*,

<sup>1</sup> The enactment contained in the preceding words applies to sales of articles mentioned in both parts of Schedule A, or added to either of them by resolution pursuant to s. 2.

<sup>2</sup> This section, like s. 2 of the Poisons (Ir.) Act, 1878, enacts that it shall be unlawful to sell any poison unless the box, &c., in which the same is enclosed, be distinctly labelled with the name and address of the seller, and that the person on whose behalf any sale is made by any apprentice or servant shall be deemed to be the seller.



(1910) 26 T. L. R. 420). Where a shop-keeper sold a poison labelled, not with his own name and address, but with the name and address of another shopkeeper who had supplied it to him, and who paid him a commission on the sale, he was held to have committed an offence under s. 17 of the Pharmacy Act, 1868 (*Templeman v. Trafford*, (1881) 8 Q. B. D. 397). But where a florist merely took an order for a compound containing a large quantity of arsenic, and then sent the order on to the makers of the compound, who sent the compound direct to the purchaser, and paid the florist a commission on the order, the florist was held not to be a seller of the compound within the meaning of s. 15 of the Pharmacy Act, 1868 (*Pharmaceutical Society v. White*, (1901) 1 Q. B. 601) and it is clear that any person so taking orders is not a seller within the meaning of s. 2 of the Poisons (Ir.) Act, 1870.

Restrictions  
on sale of  
poisons  
generally.

"It shall be unlawful for any person to sell or keep open shop for retailing, dispensing, or compounding poisons within the meaning of the Poisons (Ir.) Act, 1870, or medical prescriptions, unless such person be registered as a pharmaceutical chemist under this Act, or to assume or use the title of pharmaceutical chemist, or pharmacist, or pharmacist, or dispensing chemist, in any part of Ireland unless such person shall be registered as a pharmaceutical chemist under this Act; and any person acting in contravention of this enactment, or compounding any medicines of the British Pharmacopœia, except according to the formularies of the said Pharmacopœia, shall, for every such offence, be liable to a penalty of £5<sup>1</sup>; but no such penalty shall exempt any person from being liable to any other penalty, damage, or punishment to which he would have been subject if this Act had not passed: Provided always that nothing in this section contained shall affect any licentiate of Apothecaries' Hall, or any person who shall have been registered as a legally qualified medical practitioner before the passing of this Act, or who shall be registered as a legally qualified practitioner after the passing of this Act, and who, in order to obtain his diploma, shall have passed an examination in pharmacy" (*Pharmacy (Ir.) Act*, 1875, s. 30).

Who may sell.

The word "person" does not include a body corporate (*Pharmaceutical Society v. Boyd*, (1896) 2 I.R. 394). Section 30 is not affected by s. 15 of the Act of 1890, *infra* (*McGann v. Kelly*, (1894) 2 I.R. 8).

"Nothing in this Act contained shall extend to or interfere with the making or dealing in patent medicines, or with the business of wholesale dealers in supplying poisons in the ordinary course of wholesale dealing, save and except the provisions against the compounding of poisons or medical prescriptions, and against the preparing of any medicines of the British Pharmacopœia except according to the formularies of the said Pharmacopœia; and nothing in this Act contained shall prevent any person who is a member of the Royal College of Veterinary Surgeons of Great Britain, or holds a certificate in veterinary surgery from the Highland and Agricultural Society of Scotland, from dispensing medicines for animals under his care" (*Pharmacy (Ir.) Act*, 1875, s. 31).

"It shall be unlawful for any person to use the title of a registered druggist, or chemist and druggist, in any part of Ireland, or to sell poisons, unless such person shall be registered as a chemist and druggist, or registered druggist, under this Act; and any person acting in contravention of this enactment shall, for every such offence, be liable to pay a penalty not exceeding £5" (*Pharmacy Act (Ir.)*, 1875, *Amendment Act*, 1890, 53 & 54 Vict. c. 48, s. 15). See also s. 3 of Act of 1875, *supra*.

Assuming title  
of druggist,  
&c.

The defendant, who was not registered as a pharmaceutical chemist, sold medicines in a shop over which was his name, followed by the words,

<sup>1</sup> The justices cannot inflict a smaller penalty than £5 (*Knox v. Galbraith*, (1891) 32 I.L.T.R. 50).

Restrictions  
on sale of  
poisons  
generally.

"The Pharmacy." The same words appeared on the medicines supplied by him. *Held*, that by such use of the words, "The Pharmacy," the defendant had not been guilty of a contravention of s. 12 of the English Act of 1852, 15 & 16 Vict. c. 56, by assuming, using, or exhibiting a name, title, or sign implying that he was registered under the Act, or was a member of the Pharmaceutical Society (*Pharmaceutical Society v. Mercer*, (1910) 26 T.L.R. 35).

The offence of selling or keeping open shop for the sale of poisons under s. 30 of the Act of 1875, is not repealed or affected by s. 15 of the Act of 1890 (*McGiann v. Kelly* (1894) 2 I.R. 8); and it is not competent for justices on a charge under the Act of 1875 to amend, against the wish of the complainant, to a charge under s. 15 of the Act of 1890 (*ib.*); and it seems that the latter section is only applicable to a sale by chemists and druggists who are not registered (*Knoc v. Galbraith*, (1898) 32 I.L.T.R. 50). The justices are obliged to impose the full penalty of £5 under s. 30 of the Act of 1875 (*ib.*).<sup>1</sup>

Business to  
be conducted  
personally or  
by qualified  
assistant.

"Any person or persons lawfully keeping open shop for selling, retailing, or mixing poisons, shall personally manage and conduct such shop and the retailing and mixing of poisons therein, or shall employ for the purposes aforesaid, as an assistant or manager in such shop, a duly registered chemist and druggist, or registered druggist, or pharmaceutical chemist, or licentiate apothecary; and such person or persons lawfully keeping open shop as aforesaid shall, for the purposes of this Act and of the principal Act, be held to be the retailer and compounder of poisons aforesaid therein: and every person or persons lawfully keeping open shop for selling and retailing poisons, and dispensing and compounding medical prescriptions, shall personally manage and conduct such shop and the retailing, dispensing, and compounding of poisons and medical prescriptions therein, or shall employ for the purposes aforesaid as assistant or manager in such shop a duly qualified pharmaceutical chemist or licentiate apothecary; and such person or persons lawfully keeping open shop as aforesaid shall, for the purposes of this Act and of the principal Act, be held to be the retailer and compounder of poisons or medical prescriptions as aforesaid therein; and any person or persons acting in contravention of this enactment shall, for every such offence, be liable to pay a penalty not exceeding £5" (*Pharmacy Act (Ir.)*, 1875; *Pharmacy Act (Ir.)*, 1875, Amendment Act, 1890, s. 17).

The word "person" in s. 30 of the Act of 1875 does not include a body corporate, so that a limited liability company cannot be convicted of the offence (*Pharmaceutical Society v. Boyd*, (1896) 2 I.R. 394); and the same principle, it is submitted, applies to sections 15 & 17 of the Act of 1890.

Exemptions  
as to weed-  
killers, &c.

"So much of the [Pharmacy Act (Ireland) 1875, and the Pharmacy Act (Ireland), 1875, Amendment Act, 1890],<sup>2</sup> as make it an offence for any person to sell or keep open shop for the sale of poisons, unless he is a duly registered pharmaceutical chemist, or chemist and druggist, shall not apply in the case of poisonous substances to be used exclusively in agriculture or horticulture for the destruction of insects, fungi, or bacteria, or as sheep dips or weed-killers, which are poisonous by reason of their containing arsenic, tobacco, or the alkaloids of tobacco, if the person so selling or keeping open shop is duly licensed for the purpose under this section by a local authority,<sup>3</sup> and conforms to any regulations as to the keeping, transporting, and selling of poisons made under this section; but nothing in this section shall exempt any person so licensed from the

<sup>1</sup> As to the D.M.P. district, see 5 & 6 Vict. c. 24, s. 63, noted, p. 311.

<sup>2</sup> Words in brackets substituted for "Pharmacy Act," 1868, (s. 6).

<sup>3</sup> That is, the county council, (s. 2 (4)).

requirements of any other provision of the [Pharmacy Act (Ireland), 1875, or the Pharmacy Act (Ireland), 1875, Amendment Act, 1890], or the Arsenic Act, 1851, relating to poisons: Provided that [the Lord Lieutenant] may by Order in Council amend this provision by adding thereto or removing therefrom any poisonous substance, and, upon any such order being made, this provision shall have effect as if the added poisonous substances were included therein and the removed poisonous substances were excluded therefrom" (*Poisons and Pharmacy Act*, 1908, 8 Ed. 7, c. 55, s. 2 (1)).<sup>1</sup>

Restrictions on sale of poisons generally.

The words "the persons so selling" include the person actually conducting the sale; and an unlicensed shop assistant, who sells, on behalf of his master, one of the specified poisonous substances, is not protected from the liability to the penalty imposed by the Pharmacy Act, 1868, by the fact that his master is duly licensed (*Pharmaceutical Society v. Nash*, (1911) 1 K. B. 520).

"It shall not be lawful<sup>2</sup> to sell any substance to which this section applies by retail unless the box, bottle, vessel, wrapper, or cover in which the substance is contained is distinctly labelled with the name of the substance and the word 'poisonous' and with the name and address of the seller of the substance, and unless such other regulations as may be prescribed under this section by Order in Council<sup>3</sup> are complied with"—Penalty, on selling otherwise, on summary conviction, not exceeding £5 (*Poisons and Pharmacy Act*, 1908, s. 5). The section applies to sulphuric acid, nitric acid, hydrochloric acid, soluble salts of oxalic acid,<sup>4</sup> or such other substances as may for the time being be prescribed by Order in Council by the Lord Lieutenant (s. 5 (2)).

Restrictions as to sale of articles under Poisons and Pharmacy Act, 1908.

In every case already noted in this article in which a body corporate cannot be convicted under any Act that is dealt with it in this article, the person in the employment of, or who, on behalf of such body, commits an offence, can of course be convicted (*Pharmaceutical Society v. London and Provincial Supply Association*, (1880) 5 A.C. 857). See also *Pharmaceutical Society v. Nash*, (1911) 1 K.B. 520, noted *supra*.

Who may be convicted.

Penalties under the Acts of 1875 and 1890, which are to be read together (*Act of 1890*, s. 23), are recoverable in Dublin according to the Dublin Police Acts, elsewhere before a justice or justices at petty sessions under the Petty Sessions Act; one third of the penalty must be awarded to the informer, and the remainder to the treasurer of the Pharmaceutical Society

Procedure.

<sup>1</sup> In pursuance of this power the Poisons and Pharmacy (Ir.) Regulations, 1909, dated July 22nd, 1909 (as to which see the *Dublin Gazette* of July 23, 1909), have been issued. Those regulations do not deal with the list of poisonous substances which a licensee may sell; and those of them with which justices are chiefly concerned are as follows:—"A licensee shall personally manage and conduct the sale of the poisonous substances which he shall be licensed to sell or to retail" (Par. 14). "All poisonous substances shall be kept by the licensee in a separate drawer or cupboard, or closed receptacle, apart from other goods" (Par. 16). "A poisonous substance shall not be sold except in an enclosed vessel or receptacle, as received from the manufacturer, distinctly labelled with the word 'poison,' the name of the substance, the name and address of the seller, and a notice of the special purpose for which it has been prepared" (Par. 18). "Liquid preparations shall be sold only in bottles or tins as received from the manufacturer, and such bottles and tins shall be so constructed as to bear the ordinary risk of transit without leakage, and to be easily distinguishable by touch from ordinary bottles or tins, and the word 'poison' or 'poisons' shall be indelibly marked on each bottle or tin" (Par. 19). "Solid preparations shall be securely packed in such a manner as to avoid, so far as possible, the risk of breakage or leakage from transport, and the package shall contain a notice that it must be destroyed when empty" (Par. 20). Perhaps the effect of selling in contravention of any of the above-quoted regulations would render a licensee liable to the same penalties as if the statute had created no exception in his favour (see *Quinn v. Bourke*, (1906) 2 I.R. 94).

<sup>2</sup> It would seem that the prohibition in this section applies as well to bodies corporate as to individuals (see *Lawler v. Egan*, (1901) 2 I.R. 589).

<sup>3</sup> That is, by the Lord Lieutenant in Council: see s. 6 (c). No such regulations have been made.

<sup>4</sup> Up to the Act of 1908 there was no restriction on the sale of such substances.



(appointed under s. 23), to be applied by him in manner prescribed by any regulation made in pursuance of the Act (*Act of 1875*, s. 36). There is no provision as to appeal, as to which see, therefore, p. 131. Penalties under the Act of 1908 are recoverable under the Summary Jurisdiction Acts<sup>1</sup> (s. 5), and there is no special provision as to the application of penalties, which, consequently, are to be applied as provided by the Fines Act (Ir.), 1851.

### POLICE, OFFENCES BY.

#### R.I.C.

Neglect of duty.

Failure to deliver up accoutrements.

Resigning without leave.

Unlawful possession of constable's uniform, &c., or falsely pretending to be a constable.

Neglect with regard to execution of warrant, &c.

Similar offences by police.

Failure by constable to account for amount levied on warrant.

Indictable offences.

(Chief or other constable<sup>2</sup> neglecting or refusing to obey any warrant, or guilty of any neglect or violation of duty in his office—*Penalty*, on summary conviction before two justices, not exceeding £5, to be deducted from pay (*Constabulary (Ir.) Act*, 1836, 6 & 7 Wm. 4, c. 13, s. 19). Constable or sub-constable neglecting when dismissed to deliver up arms, accoutrements, &c.—*Penalty*, on summary conviction before two justices, not exceeding two months, with hard labour (s. 20). Constable or sub-constable resigning or withdrawing without leave—*Penalty*, on summary conviction before two justices, not exceeding £10, to be paid to the paymaster<sup>3</sup> or one of the paymasters of the county (s. 21). Persons unlawfully in possession of arms, clothing, accoutrements, &c., supplied to constables, and unable satisfactorily to account for the same, or assuming the dress, name, designation, &c., of any constable for the purpose of obtaining admission into any house or place, in addition to any liability for assuming a false name, dress, &c.—*Penalty*, on summary conviction before two justices, not exceeding £10 (payable as are penalties under s. 21, which see) (s. 25).

Sub-inspector,<sup>4</sup> head or other constable, wilfully neglecting to return any unexecuted warrant at the time required by the justices, or committing wilful default in respect of the execution of same—*Penalty*, not exceeding £5, to be deducted from pay (*Petty Sessions Act*, 1851, s. 35).

Similar provisions are contained in ss. 10, 11, 12, and 16 of the Town Police Clauses Act, 1847, 10 & 11 Vict. c. 89, and apply to constables appointed pursuant to that Act and any special Act that incorporates it.

Any member of the constabulary or metropolitan police forces, by whom any warrant shall be executed, who shall neglect to pay over the amount received or levied thereunder, or duly to account for such levies, of which neglect or refusal the certificate of the Chief or Under Secretary shall be *prima facie* evidence—*Penalty*, not exceeding £20, recoverable on summary conviction before two justices in petty sessions (*Fines (Ireland) Act*, 1851, 14 & 15 Vict. c. 93, s. 8 (2)).

As to assault, &c., on constables, see ASSAULTS; as to indictable offences by constables, see POLICE, OFFENCES BY AND RELATING TO, in CATALOGUE OF INDICTABLE OFFENCES.

<sup>1</sup> For the meaning of which expression, see p. 335.

<sup>2</sup> The expression "chief constable" now means "district inspector," and the expression "other constable" now means "head-constable, sergeant, acting-sergeant, or constable" (2 & 3 Vict. c. 75, s. 5; 46 & 47 Vict. c. 14, s. 12).

<sup>3</sup> Paymasters were abolished by 14 & 15 Vict. c. 85, s. 1, which by s. 2 authorizes the Treasury to direct such persons in the Constabulary as the Treasury see fit to perform the duties theretofore performed by paymasters. The Treasury have directed the Inspector-General to perform such duties; and it accordingly is to him that any such penalty is now payable.

<sup>4</sup> Now district-inspector (46 & 47 Vict. c. 14, s. 12).

## POOR.

	PAGE		PAGE
Offences by and relating to workhouse inmates, . . . . .	677	Procedure, . . . . .	677
Copies of or extracts from rate, . . . . .	677	Pauper children—	
Offences by union officials, . . . . .	677	Provision for relief out of work-	
Disobedience to L.G.B. Order, . . . . .	677	houses, . . . . .	677
		Prohibition of employment, . . . . .	678

“ Every person who shall refuse to be lodged and maintained in the workhouse of any union, or abscond out of such workhouse while his wife or any child whom he may be liable to maintain shall be relieved therein, and every person maintained in a workhouse who shall refuse to be set to work, or shall be guilty of drunkenness, insubordination to the officers of the union, or disobedience to the rules prescribed or sanctioned by the commissioners<sup>1</sup> for the government of such workhouse, or of other misbehaviour therein, and every person who shall introduce or attempt to introduce spirituous or fermented liquors into any workhouse ”—*Penalty*, imprisonment with hard labour, not exceeding one calendar month (*Poor Relief (Ir.) Act, 1888, 1 & 2 Vict. c. 56, s. 58*). Justices may issue warrant to apprehend offender (s. 60).

Offences by  
and relating  
to workhouse  
inmates.

Persons having custody of rate refusing to permit persons legally entitled to take copies or extracts—*Penalty*, not exceeding ten shillings (s. 70).

Copies of, or  
extract from  
rate.

Master or other officer of union wilfully disobeying the legal and reasonable order of the guardians—*Penalty*, upon conviction, before two justices, not exceeding £5 (s. 100). Officers purloining, embezzling, or wilfully wasting, or misapplying goods or property of the union—*Penalty*, upon conviction before two justices, not exceeding £20, with treble value of property (s. 101).

Offences  
by union  
officials.

Wilfully neglecting or disobeying any sealed orders of the commissioners<sup>1</sup>—*Penalties*, first offence, not exceeding £5; second offence, not exceeding £20, nor less than £5; third offence, misdemeanour, punishable on indictment with fine, not less than £20, and such imprisonment, with or without hard labour, as may be awarded (s. 102).

Disobedience  
to L.G.B.  
order.

Penalties or forfeiture under the Act are recoverable before two justices (ss. 99, 103), and the procedure is regulated by the Petty Sessions Act (see p. 41).

Procedure.

The Pauper Children (Ir.) Act, 1898 (61 & 62 Vict. c. 30), enables the board of guardians of any poor law union, subject to regulations of the Local Government Board, to provide for the relief of any orphan or deserted child out of a workhouse, by placing such child out at nurse, or boarding it out, and to withdraw such child from the care of the person with whom it has been placed on nurse or boarded out. If the Local Government Board are of opinion that any child placed out at service should be removed from the care of its foster parent, or the person with whom it is boarded out, or placed out at service, the board of guardians shall at any time upon the request of the Local Government Board cause such child to be removed accordingly and brought back to the workhouse.

Pauper  
children.  
Provision for  
relief out of  
workhouses.

“ Any person failing or refusing to deliver up a child when required to do so pursuant to this section, shall be liable, on conviction before a court of summary jurisdiction, to a penalty of forty shillings; and the court shall, upon such conviction, order the child to be taken out of the custody of such person and handed over to the custody of the board of guardians ” (s. 1 (4)).

<sup>1</sup> Now Local Government Board (*Local Government (Ir.) Act, 1872, 35 & 36 Vict. c. 69, s. 2*).

Pauper children.  
Prohibition of employment.

"No person shall take into his employment for any purpose any child being relieved in the workhouse of any union, or subject to the control of the board of guardians of any union, and being under the age of twelve years, and any person acting in contravention of this section shall be liable on conviction before a court of summary jurisdiction to a fine not exceeding £5" (s. 4 (1)).

### POOR LAW UNIONS.

Inspection of rate by rate-payer.

The secretary of every county council and the clerk of every urban district council is to send to the board of guardians of every union, wholly or partly situate within the county or district, a certified copy of the poor rate relating to such union; the person having custody of such certified copy is to allow any person affected by the rate at all reasonable times to inspect and take copies of, or extracts from, such copy under a *penalty* not exceeding 10s. (*Poor Relief (Ir.) Act*, 1838, 1 & 2 Vict. c. 56, s. 70; *Local Government (Ir.) Act*, 1898, 61 & 62 Vict. c. 37, s. 96).

Insubordination of union officer.

Wilful disobedience by master of workhouse or other officer of any union to the legal and reasonable order of the guardians—*Penalty*, not exceeding £10 (*Poor Relief (Ir.) Act*, 1838, s. 100).

Embezzlement, &c., by union officer.

Any master of a workhouse, or other paid officer, or any other person employed by or under the authority of the guardians, purloining, embezzling, or wilfully wasting any of the moneys, goods, or chattels belonging to any union—*Penalty* (over and above penalties otherwise provided), not exceeding £20, and treble the value of the money, &c. so purloined, &c., and perpetual disqualification for "any office relating to the relief of the destitute poor" (s. 101).

Disobedience to sealed order of L. G. B.

Wilful neglect or disobedience of any order purporting to be a sealed order of the Commissioners<sup>1</sup>—*Penalty*, upon conviction before two justices, first offence, not exceeding £5; second offence, not less than £5 or more than £20. *Penalty*, upon indictment, for a subsequent offence, not less than £20 and such imprisonment, with, or without hard labour, as may be awarded by the court (s. 102.)

Procedure.

The provisions of ss. 105 and 106 as to procedure are now superseded by the provisions of the Petty Sessions Act.

### POST OFFICE.

	PAGE		PAGE
Soldiers' and sailors' letters, . . .	679	Dealing, &c., in fictitious stamps, . .	680
Ships' letters, . . .	679	False notices as to receiving letters, .	680
Unauthorized conveyance of letters, .	679	Obstruction of postal officers, . . .	681
Surrender of clothing, &c., by postal officers, . . .	679	Obstruction outside G.P.O., Dublin, .	681
Carelessness, &c., as to mails, . . .	679	Ferryman failing to carry mails, . . .	681
Injury to letter box, . . .	679	Abettors in D.M.P. district, . . .	681
Placards on post office property, . .	680	Frauds in relation to adhesive stamps, .	681
Sending dangerous things, or indecent prints, &c., by post, . . .	680	Procedure: . . .	
Imitating post office stamps, &c., . .	680	Where offender may be tried, . . .	681
		What is a postal packet, . . .	682

8 Edw. 7, c. 48.

The various enactments relating to the Post Office were consolidated and amended by the Post Office Act, 1908, 8 Edw. 7, c. 48. For the offences in respect of which indictments lie under that Act, see CATALOGUE OF INDICTABLE OFFENCES. The following offences under the Act are punishable on summary conviction.

<sup>1</sup> Now the Local Government Board (*Local Government (Ir.) Act*, 1872, 35 & 36 Vict. c. 69, s. 2).



Offences with regard to letters of soldiers or sailors privileged to be sent at less than usual rate—*Penalty*, not exceeding £5 (s. 6).

Offences as to letters of soldiers and sailors.  
Ships' letters.

Master of vessel breaking bulk or making entry of any part of his cargo before delivery, as required by s. 27, of his postal packets,<sup>1</sup> or any person entrusted by master of vessel with postal packets<sup>1</sup> to bring on shore, breaking seal or wilfully opening them—*Penalty*, not exceeding £5 (ss. 27, 28). Any person, with intent to evade any postage, falsely super-scribing any letter as being the owner, charterer, or consignee of the vessel conveying the same, or as the owner, shipper or consignee of goods on the vessel—*Penalty*, not exceeding £5 (s. 30). Master, officer, or seaman of, or passenger on, any vessel detaining any postal packet within the privilege of the Postmaster-General<sup>2</sup> after the master has sent any postal packet to the post office—*Penalty*, for each such packet retained, not exceeding £5; or, if such detention be after demand made by any person authorized to demand the postal packets on board—*Penalty*, for each such packet, not exceeding £10 (s. 32).

Any unauthorized person who sends, or causes to be sent, or tenders or delivers in or to be sent, or conveys, or performs any service incidental to conveying, otherwise than by post, any letter not excepted from the exclusive privilege of the Postmaster-General,<sup>2</sup> or makes a collection of such excepted letters for the purpose of conveying or sending them by post or otherwise—*Penalty*, not exceeding £5 for every letter or packet (s. 34).

Unauthorized persons conveying letters.

Officer of Post Office vacating his office, or, if he be dead, his personal representative, failing to deliver in good order to the Postmaster General all articles issued to such officer as such, and which are not the property of such officer—*Penalty*, not exceeding £2, and further sum not exceeding £2 as value of articles, or for damage thereto. Justices may issue in respect of such articles a search warrant as for stolen goods (s. 44).

Surrender of clothing, &c., by postal officer.

"If any person employed to convey or deliver a mail-bag or a postal packet in course of transmission by post (a) whilst so employed, or whilst the mail-bag or postal packet is in his custody or possession, leaves it, or suffers any person not being the guard or person employed for that purpose, to ride in the place appointed for the guard in or upon any carriage used for the conveyance of it or to ride on or upon a carriage so used and not licensed to carry passengers, or upon a horse used for the conveyance on horseback of it; or (b) is guilty of any act of drunkenness whilst so employed; or (c) is guilty of carelessness, negligence, or other misconduct whereby the safety of the mail-bag or postal packet is endangered; or (d) without authority collects or receives or conveys or delivers a postal packet otherwise than in the ordinary course of post; or (e) gives any false information of an assault or attempt at robbery upon him; or (f) loiters on the road or passage, or wilfully misspends his time so as to retard the progress or delay the arrival of a mail-bag or postal packet in the course of transmission by post, or does not use due care and diligence safely to convey a mail-bag or postal packet at the due rate of speed"—*Penalty*, not exceeding £20 (s. 57).

Carelessness, negligence, or misconduct of persons carrying mails.

A person who places, or attempts to place, in or against any Post Office letter-box, any fire, match, light, explosive substance, dangerous substance, filth, or noxious or deleterious substance, or any fluid, or commits a nuisance in or against any such box, or does or attempts to do anything likely to injure such box or its appurtenances or contents—*Penalty*, not exceeding £10 (s. 61).

Putting injurious substances, &c., in or against letter-boxes.

<sup>1</sup> For definition of postal packet, see s. 74. Throughout this Act the expression "postal packet" includes a telegram (s. 89).

<sup>2</sup> The privilege of the Postmaster-General is defined in s. 34 (2).

<sup>3</sup> This offence is also indictable.

Putting placards, &c., on Post Office property.

Any person who without due authority affixes, or attempts to affix, any placard, advertisement, notice, list, document, board or thing, in or on, or paints or tars, any post office, Post Office letter box, telegraph post, or other property belonging to or used by or on behalf of the Postmaster-General, or who in any way disfigures any such office, box, post or property.—*Penalty*, not exceeding £2 (s. 62).

Sending by post inflammable or deleterious substances, or indecent or offensive matter.

“(1) A person shall not send or attempt to send a postal packet which either: (a) encloses any explosive substance, any dangerous substance, any filth, any noxious or deleterious substance, any sharp instrument not properly protected, any living creature which is either noxious or likely to injure other postal packets in course of conveyance or an officer of the post office, or any article or thing whatsoever which is likely to injure either other postal packets in course of conveyance or an officer of the post office; or (b) encloses any indecent or obscene print, painting, photograph, lithograph, engraving, book or card, or any indecent or obscene article, whether similar to the above or not; or (c) has on the packet, or on the cover thereof, any words, marks, or designs of an indecent, obscene, or grossly offensive character”.—*Penalty*, not exceeding £10<sup>2</sup> (s. 63).

Imitation of Post Office stamps, envelopes, forms, and marks.

“(1) A person shall not without due authority (a) make, issue, or send by post or otherwise any envelope, wrapper, card, form, or paper, in imitation of one issued by or under the authority of the Postmaster-General or any foreign or colonial postal authority, or having thereon any words, letters, or marks which signify or imply, or may reasonably lead the recipient to believe, that a postal packet bearing them is sent on His Majesty's Service; or (b) make on any envelope, wrapper, card, form, or paper for the purpose of being issued or sent by post or otherwise, or otherwise used, any mark in imitation of, or similar to, or purporting to be any stamp or mark of any post office under the Postmaster-General or under any foreign or colonial postal authority, or any words, letters, or marks which signify or imply, or may reasonably lead the recipient thereof to believe, that a postal packet bearing them is sent on His Majesty's Service; or (c) issue or send by post or otherwise any envelope, wrapper, card, form, or paper so marked”.—*Penalty*, not exceeding £2 (s. 64).

Dealing, &c., in fictitious stamps.

Any person who makes, knowingly utters, deals in, or sells, or for any postal purpose uses, or, unless he shows a lawful excuse, has in his possession any fictitious stamp, or makes, or, unless he shows a lawful excuse, has in his possession any die, plate, instrument, or materials for making any such stamp, is liable, on prosecution by order of the Commissioners of Inland Revenue, to a fine not exceeding £20 (subject to the right of appeal as in the case of penalty under the Excise Acts) (s. 65 (1, 2)). Any such stamp, die, plate, instrument, or materials found in the possession of any person in contravention of this section may be seized, and shall be forfeited (s. 65 (3)). “Fictitious stamp” means any facsimile, imitation, or representation, whether on paper or otherwise, of any stamp for denoting a rate of postage of any British possession, or of any foreign country (s. 65 (4)).

False notices as to reception of letters.

“(1) A person shall not, without authority from the Postmaster-General, place or maintain in or on any house, wall, door, window, box,

<sup>1</sup> Where the editor of a newspaper inserted therein advertisements of books and photographs which to his knowledge were obscene, and those books and photographs were sent by post to purchasers who were led by those advertisements to apply for them, it was held that, by force of s. 8 of the Aiders and Abettors Act, 1861 (24 & 25 Vict. c. 94), he was rightly convicted on indictment under s. 4 of the Post Office (Protection) Act, 1884 (47 & 48 Vict. c. 76) of procuring such book, &c., to be so sent (*R. v. de Marney*, (1907) 2 K.B. 388). That section of the Act of 1884 was repealed by the Act of 1908; but s. 63 of the present Act is identical with it. Section 71 (3) of the Act of 1908, and s. 22 of the Petty Sessions (Ireland) Act, 1851, apply to the case of an abettor prosecuted summarily.

<sup>2</sup> This offence is also indictable.

post, pillar, or other place, belonging to him or under his control, any of the words, letters, or marks following, that is to say:—(a) the words “Post Office” or “Postal Telegraph Office,” or (b) the words “Letter Box” accompanied with words, letters, or marks which signify or imply, or may reasonably lead the public to believe, that it is a Post Office letter box; or (c) any words, letters or marks, which signify or imply, or may reasonably lead the public to believe, that any house or place is a Post Office, or that any box is a Post Office letter box: and every person, when required by a notice given by the Postmaster-General<sup>1</sup> to remove or efface any such words, letters, or marks as aforesaid, or to remove or effectually close up any letter box belonging to him or under his control which has been a Post Office letter box, shall comply with the request”—*Penalty*, for non-compliance, not exceeding £2; and, if the offence is continued after a previous conviction, not exceeding 5s. for every day during which the offence so continues (s. 66).

“(1) If any person wilfully obstructs, or incites anyone to obstruct, an officer of the Post Office in the execution of his duty, or whilst in any post office, or within any premises belonging to any post office or used therewith, obstructs the course of business of the Post Office”—*Penalty*, not exceeding £2. Any person guilty of such offence who fails or refuses, when required by any officer of the Post Office, to leave a post office or any such premises as aforesaid—*Further penalty*, not exceeding £5 (s. 67).

Obstruction of officers of Post Office.

If any horse-drawn carriage stands or plies for hire opposite the General Post Office, Dublin, or any part thereof, any driver or person having the management of such carriage is liable to a fine not exceeding £5; and if any hawker, news vendor, or idle disorderly person stops or loiters on the flagway opposite the General Post Office, Dublin, he is liable to the like fine (s. 68).

Obstruction outside G. P. O., Dublin.

If any ferryman, or other person employed to receive the tolls at a ferry, demands any toll for any mail, or does not, within fifteen minutes after demand made, convey the mail (if it be possible or safe to do so) across the ferry to the usual landing-place—*Penalty*, not exceeding £5 (s. 79).

Ferryman failing to carry mails.

Any person who aids, abets, counsels, or procures the commission of any offence punishable on summary conviction under this Act is, on conviction within the D. M. P. district, liable to the same punishment as the principal offender<sup>2</sup> (s. 71 (3)).

Abettors in D. M. P. District.

Frauds in relation to adhesive stamps are punishable summarily by a fine of £50 (*Stamp Act*, 1891, 54 & 55 Vict. c. 39, s. 9).

Penalty for frauds in relation to adhesive stamps.

All the foregoing offences may be prosecuted and the fines or forfeiture recoverable in respect of such offences respectively may be recovered in manner provided by the Summary Jurisdiction Acts<sup>3</sup> (s. 71). Such right of appeal as exists under those Acts applies to every conviction under this Act. See p. 130.

Procedure.

Any offence set forth in this article may be tried either in the place where it was committed, or in the place in which the alleged offender is apprehended or in custody, or (where such offence is in respect of a mail, mail-bag, or postal packet) in any place through which such mail, mail-bag, or postal packet passed in due course of conveyance by post, or (where such offence is committed on any highway, harbour, canal, river, arm of the sea, or other water, constituting the boundary of two or more counties

Where offenders may be tried.

<sup>1</sup> Or by any of the Secretaries of the Post Office (s. 35 of the Act).

<sup>2</sup> The punishment of such aider, abettor, &c., if convicted in any other part of Ireland, is provided for by s. 22 of the Petty Sessions (Ireland) Act, 1851.

<sup>3</sup> This expression is by s. 13 (10) of the Interpretation Act, 1889 (52 & 53 Vict. c. 63) defined to mean the Summary Jurisdiction (Ireland) Acts, as to the meaning of which latter expression see p. 335.



or places) it may be tried in any of the said counties or places, and where the offence consists of being accessory to, or of aiding or abetting in any offence against the Act, such accessory may be tried wherever the offence to which he was accessory, &c., may be tried (s. 72).

Evidence of  
thing being a  
postal packet.

Evidence that any article is in the course of transmission by post, or has been accepted on behalf of the Postmaster-General for such transmission, is sufficient evidence that such article is a postal packet (s. 74).

### POUND.

Sections 19 & 20 of the Summary Jurisdiction Act, 1851, contain provisions regulating the impounding of animals (see the statute, APPENDIX OF STATUTES).

Pound breach.

In case any person or persons shall release or attempt to release any horse, ass, sheep, swine, or other beast or cattle which shall be lawfully seized for the purpose of being impounded, in consequence of having been found wandering, straying, or lying, or being depastured on any inclosed land, from the pound, or place where the same shall be so impounded or on the way to or from any such pound or place, or injuring pound—*Penalty* on conviction before any two justices of the peace not exceeding £5 with reasonable costs and expenses. Justices may award whole or part of penalty to the person or whose behalf the cattle were distrained (*Pound Breach Act, 1843, 6 & 7 Vict. c. 30, s. 1*).

Justices not to hear any case of pound breach under this Act in which there shall arise any question as to title to lands, or any question as to any bankruptcy, or as to any execution under the process of any court of justice, or as to the obligation of maintaining, repairing, or keeping in repair any wall, hedge, paling, ditch, sunk fence, or fence whatsoever (s. 2).

### PREVENTION OF CRIME.

	PAGE		PAGE
Statutes, . . . . .	682	Offences by persons twice convicted	
Convict on licence living dishonestly, . . . . .	683	of crime, . . . . .	685
Police supervision of person twice		Harbouring thieves, . . . . .	686
convicted of crime, . . . . .	683	Brothel-keeper harbouring thieves, . . . . .	687
Arrest on suspicion of convict on		Assaults on constables, . . . . .	687
licence or person under police		Police search for stolen goods, . . . . .	687
supervision, . . . . .	683	Procedure—	
Offences by holder of licence with		Constitution of court, . . . . .	688
usual conditions, . . . . .	684	Onus of proof of exceptions, . . . . .	688
Offences by holder of licence with		Certiorari taken away, . . . . .	688
unusual conditions, . . . . .	684	Evidence, . . . . .	688
Convict on licence and police super-		Prevention of Crime Act, 1908, . . . . .	688
visee to notify residence to police, . . . . .	684	Reformatory school offences, . . . . .	688
And, if male, to report himself		Licences to youthful offenders under	
once a month, . . . . .	684	preventive detention, . . . . .	689
Penalties for failure to notify or		Licences to habitual criminals under	
report, . . . . .	685	preventive detention, . . . . .	689

Statutes.

The Acts dealing with this subject are the Penal Servitude Act, 1864, 27 & 28 Vict. c. 47; the Prevention of Crimes Act, 1871, 34 & 35 Vict. c. 112, as amended by the Prevention of Crime Act, 1879, 42 & 43 Vict. c. 55, and amended and extended by the Penal Servitude Act, 1891,

54 & 55 Vict. c. 69, and by the Prevention of Crime Act, 1908, 8 Edw. 7, c. 59. Several sections and parts of sections of the Penal Servitude Act, 1864, and of the Prevention of Crimes Act, 1871, have been repealed by various subsequent enactments.<sup>1</sup> The effect of the five Acts above mentioned, as they now stand, and so far as they relate to summary jurisdiction, is as follows:—

Any constable of any police district<sup>2</sup> may, if authorized so to do in writing by the chief officer of police<sup>3</sup> of that district, without warrant take into custody any convict who is the holder of a licence granted under the Penal Servitude Acts,<sup>4</sup> if it appears to such constable that such convict is getting his livelihood by dishonest means, and may bring him before a court of summary jurisdiction<sup>5</sup> for adjudication. If it appears from the facts proved before such court that there are reasonable grounds for believing that the convict so brought before it is getting his livelihood by dishonest means, he shall be deemed guilty of an offence against the Act, and his licence shall be forfeited<sup>6</sup> (*Prevention of Crimes Act, 1871*, (s. 3), and the court may commit him to any prison within its jurisdiction until he can be removed to a convict prison to undergo the remainder of his term of penal servitude (s. 17 (4)).

Convict on licence living dishonestly.

Where any person is convicted on indictment of a crime<sup>7</sup> and a previous conviction of a crime is proved against him, the court having cognizance of such indictment may, in addition to any other punishment which it may award to him, direct that he is to be subject to the supervision of the police for a period not exceeding seven years, commencing immediately after the expiration of the sentence passed on him for the last of such crimes (*Prevention of Crimes Act, 1871*, s. 8).

Police supervision of person twice convicted of crime.

Any constable may take into custody, without warrant, any holder of a licence under the Penal Servitude Acts,<sup>8</sup> or any person under the supervision of the police in pursuance of the Prevention of Crimes Act, 1871, whom he reasonably suspects of having committed any offence,<sup>9</sup> and may take him before a court of summary jurisdiction to be dealt with according to law (*Penal Servitude Act, 1891*, s. 2 (1)). No special provision is made in any Act as to the manner in which a person under police supervision who is brought before justices under this section is to be

Arrest on suspicion of convict on licence or person under police supervision.

<sup>1</sup> The Statutes Revised show the result of such subsequent enactments. It should, however, be noted that so much of the provisions of s. 17 (1) of the Prevention of Crimes Act, 1871, as are set forth on p. 688, have never been repealed, although in the Statutes Revised they are omitted from the text of the Act.

<sup>2</sup> This means in Ireland—(1) the police district of Dublin metropolis, and (2) elsewhere in Ireland any district, over which is appointed a district inspector of the Royal Irish Constabulary (34 & 35 Vict. c. 112, s. 20; 46 & 47 Vict. c. 14, s. 12).

<sup>3</sup> This means, as regards the police district of Dublin metropolis, either of the Commissioners of Police for the said district; and elsewhere in Ireland, in any other police district, the district inspector of the Royal Irish Constabulary (34 & 35 Vict. c. 112, s. 20; 46 & 47 Vict. c. 14, s. 12).

<sup>4</sup> Under this term are included the Penal Servitude Act, 1853, 16 & 17 Vict. c. 99, the Penal Servitude Act, 1857, 20 & 21 Vict. c. 3, the Penal Servitude Act, 1864, 27 & 28 Vict. c. 47, and the Penal Servitude Act, 1891, 54 & 55 Vict. c. 69 (*Short Titles Act, 1896*, 59 & 60 Vict. c. 14).

<sup>5</sup> Constituted in accordance with s. 17 (1) of the Prevention of Crime Act, 1871, as to which see p. 688.

<sup>6</sup> The Court shall forthwith forward by post to the Lord Lieutenant a certificate of such conviction in the form given in Sch. B annexed to the Penal Servitude Act, 1864 (see s. 8 of that Act).

<sup>7</sup> For the purposes of the Prevention of Crimes Act, 1871, a "crime" means any felony, or the offence of uttering false or counterfeit gold or silver coin, obtaining money or goods by false pretences, conspiracy to defraud, or any misdemeanour under the Larceny Act, 1861, 24 & 25 Vict. c. 96, s. 58; and an "offence" means any act or omission which is not a "crime" as above defined, and which is punishable on indictment or summary conviction (s. 20).

disposed of, and consequently he must be discharged unless an act which would be punishable if done by any ordinary member of the public is proved against him; but if the person arrested under this section be a convict on licence, the court, constituted in accordance with s. 17 (1) of the Prevention of Crimes Act, 1871, has precisely the same power as with regard to a convict arrested under s. 3 of that Act (as to which section see *supra*), for—"Any convict may be convicted before a court of summary jurisdiction of an offence against s. 3 of the Prevention of Crimes Act, 1871, although he was brought before the court on some other charge or not in manner provided by that section" (*Penal Servitude Act, 1891, s. 2 (2)*).

Offences by holder of licence with usual conditions.

If any holder of a licence in the form set forth in Schedule (A) of the Penal Servitude Act, 1864, fails without reasonable excuse to produce his licence when required by any magistrate before whom he may be charged with any offence, or by any constable in whose custody he may be, or breaks any of the other conditions<sup>2</sup> of his licence by an act that is not in itself punishable either upon indictment or summary conviction, he shall be liable, on summary conviction before two or more justices, to imprisonment not exceeding three months with or without hard labour (*Penal Servitude Act, 1864, s. 5*). The proceedings are governed by the Petty Sessions (Ir.) Act, 1851 (s. 7).

Offences by holder of licence with unusual conditions.

Where in any licence granted under the Penal Servitude Acts<sup>3</sup> any conditions different from or in addition to those contained in Schedule (A) of the Penal Servitude Act, 1864, are inserted, the holder of such licence, if he breaks any such condition by an act that is not in itself punishable either upon indictment or summary conviction, shall be deemed guilty of an offence against the Prevention of Crimes Act, 1871, and shall be liable on summary conviction<sup>4</sup> to imprisonment not exceeding three months with or without hard labour (*Prevention of Crimes Act, 1871, s. 4*).

Convict on licence and person under police supervision to notify residence to police.

Every holder of a licence granted under the Penal Servitude Acts,<sup>3</sup> and every person under the supervision of the police pursuant to the Prevention of Crimes Act, 1871, s. 8, shall notify his residence to the chief officer of police of the district in which his residence is situated, and shall, whenever he changes his residence within the same police district, notify such change to the chief officer of police of that district, and, whenever he is about to leave a police district, he shall notify such his intention to the chief officer of police of that district, stating the place to which he is going, and also, if required and so far as practicable, his address at that place, and whenever he arrives in any police district he shall forthwith notify his residence to the chief officer of police of such last mentioned district<sup>5</sup>; and, if a male, shall once in each month report himself, at such

Such person, if a male, to report himself once a month to police.

<sup>1</sup> If the Court convicts, the certificate specified in s. 8 of the Penal Servitude Act, 1864, must be forthwith forwarded by post to the Lord Lieutenant (see s. 8 of that Act).

<sup>2</sup> The conditions are—(1) The holder shall preserve his licence, and produce it when called upon to do so by a magistrate or police officer; (2) he shall abstain from any violation of the law; (3) he shall not habitually associate with notoriously bad characters, such as reputed thieves or prostitutes; (4) he shall not lead an idle and dissolute life, without visible means of obtaining an honest livelihood.

<sup>3</sup> See p. 683, n. 4.

<sup>4</sup> Before a court constituted in accordance with s. 17 (1) of the Prevention of Crime Act, 1871, as to which see p. 688.

<sup>5</sup> The requirements of the 34 & 35 Vict. c. 112, ss. 5 and 8, as to notification of residence and change of residence, shall be complied with if the holder of a licence or person under police supervision present himself personally and declare his place of residence to the constable or person who, at the time when such notification is made, is in charge of the police station or office of which notice has been given to the person subject to those requirements, as the place for receiving his notification, or, if no such notice has been given, is in charge of the chief office of the chief officer of police, as mentioned in those sections (*Prevention of Crime Act, 1879, s. 2*).



time as may be prescribed by the chief officer of police of the district in which such holder or person under police supervision may be, either to such chief officer himself or to such other person as that officer may direct,<sup>1</sup> and such report may, according as such chief officer directs, be required to be made personally or by letter<sup>2</sup> (*Prevention of Crimes Act, 1871*, ss. 5 and 8, as amended by the *Penal Servitude Act, 1891*, s. 4).

If any person to whom either s. 5 or s. 8 of the Prevention of Crimes Act, 1871, as amended by the Penal Servitude Act, 1891, s. 4, applies, fails to comply with any of the requirements of such section, he shall be guilty of an offence against the Prevention of Crimes Act, 1871, unless he proves to the satisfaction of the court<sup>3</sup> before whom he is tried either that, being on a journey he tarried no longer than was reasonably necessary in the place in respect of which he is charged with failing to notify his place of residence, or that otherwise he did his best to act in conformity with the law—*Penalty*, either forfeiture of licence<sup>4</sup> or imprisonment with or without hard labour for not more than one year;<sup>5</sup> and the offender, if a convict on licence, may, if the court order his licence to be forfeited, be committed to any prison within the jurisdiction of the court to undergo the remainder of his term of penal servitude. (*Prevention of Crimes Act, 1871*, ss. 5 and 8, as amended by the *Penal Servitude Act, 1891*, s. 4). The court shall, if the offender be a convict, forward to the Lord Lieutenant the certificate of conviction specified in s. 8 of the Penal Servitude Act, 1864 (*Penal Servitude Act, 1864*, s. 8).

Penalties for failing to notify residence, or change of residence, or to report monthly.

Where any person is convicted on indictment of a crime,<sup>6</sup> and a previous conviction of a crime is proved against him, he shall, if the sentence passed on him for the last of such crimes be to a term of imprisonment, at any time within seven years after the expiration of such sentence, and, if the sentence passed on him for the last of such crimes be to a term of penal servitude, then whilst at large on licence under that sentence, and also at any time within seven years after the expiration of that sentence, be guilty of an offence against this Act, and be liable to imprisonment with or without hard labour not exceeding one year, under the following circumstances or any of them :—

Offences by person twice convicted of crime.

(1) If on being charged by a constable with getting his livelihood by dishonest means,<sup>7</sup> and being brought before a court of summary jurisdiction,<sup>8</sup> it appears to such court that there are reasonable grounds for

<sup>1</sup> The chief officer may direct the report to be made to the constable or person in charge of any particular police office or station without naming the individual person (*Prevention of Crime Act, 1879*, s. 2).

<sup>2</sup> Evidence that it appears from the records kept by the chief officer of police that a person subject to these requirements, or to any of them, has failed to comply therewith, shall be *prima facie* evidence that such person has failed to comply therewith; but if the person charged alleges that he made the required report or notification to any particular person or at any particular time, the court shall require the attendance of whatever person may be necessary to prove the truth or falsehood of such allegation (*Prevention of Crime Act, 1879*, s. 2).

<sup>3</sup> Constituted in accordance with s. 17 (1) of the Prevention of Crime Act, 1871, as to which see p. 688.

<sup>4</sup> The forfeiture alternative can only apply in the case of a convict on licence, for a person under police supervision has no licence of any kind.

<sup>5</sup> With, probably, such right of appeal as is given by the Petty Sessions Act. See p. 131.

<sup>6</sup> As to the meaning of crime, see p. 683, n. 7.

<sup>7</sup> Such person so charged may be arrested by any constable without warrant, if such constable is authorized so to do by the chief officer of police of his district (*Prevention of Crimes Act, 1871*, s. 7). In the case of such arrest it is not provided (as is done in the case of an arrest under s. 3 of the same Act) that the authorization must be in writing, and it is submitted that a verbal authorization is sufficient. For the meaning of "district" see p. 683, n. 2, and "chief officer," p. 683, n. 3.

<sup>8</sup> This means a court constituted in accordance with s. 17 (1) of the Prevention of Crimes Act, 1871, as to which see p. 688.

Offences by  
person twice  
convicted of  
crime.

believing that he is getting his livelihood by dishonest means; or (2) if on being charged with any offence punishable on indictment or summary conviction, and on being required by a court of summary jurisdiction<sup>1</sup> to give his name and address, he refuses to do so, or gives a false name or a false address; or (3) if he is found in any place, whether public or private, under such circumstances as to satisfy the court before whom he is brought that he was about to commit or to aid in the commission of any offence punishable on indictment or summary conviction, or was waiting for an opportunity to commit or to aid in the commission of any such offence<sup>2</sup>; or (4) if he is found in or upon any dwelling-house, or any building, yard, or premises, being parcel of or attached to such dwelling-house, or in or upon any shop, warehouse, counting-house, or other place of business, or in any garden, orchard, pleasure-ground, or nursery ground, or in any building or erection in any garden, orchard, pleasure ground, or nursery ground, without being able to account to the satisfaction of the court<sup>1</sup> before whom he is brought for his being found on such premises<sup>3</sup> (*Prevention of Crimes Act, 1871, s. 7, as amended by the Penal Servitude Act, 1891, s. 6*).

Harbouring  
thieves, &c.

“ Every person who occupies or keeps any lodging-house, beer-house, public-house, or other house or place where intoxicating liquors are sold, or any place of public entertainment or public resort, and knowingly lodges or knowingly harbours thieves or reputed thieves or knowingly permits or knowingly suffers them to meet or assemble therein or knowingly allows the deposit of goods therein having reasonable cause for believing them to be stolen, shall be guilty of an offence against this Act ” —*Penalty*,<sup>4</sup> not exceeding £10, and in default of payment, imprisonment not exceeding four months with or without hard labour, and the court may, in addition to or in lieu of any penalty, require him to enter into recognizances, with or without sureties, for keeping the peace and being of good behaviour during twelve months: Provided (1) that no person shall be imprisoned for not finding sureties in pursuance of this section for a longer period than three months, and (2) the security required from a surety shall not exceed £20 (*Prevention of Crimes Act, 1871, s. 10*). Any licensed person brought before a court under this section must produce his licence for examination, and, if such licence is forfeited, deliver it up altogether—*Penalty* on summary conviction for non-compliance (over and above any other penalty under the section, not exceeding £5 (*ib.*)). As to forfeiture of licence for the sale of intoxicating liquors in the case of offences by a licensed person against this section, see INTOXICATING LIQUORS, p. 548.

The 39 & 40 Vict. c. 20, s. 5, gives the same right of appeal against any conviction under this section as against a conviction under the Licensing Act, 1872, as to which see p. 584.

Brothel-  
keeper har-  
bouring  
thieves, &c.

“ Every person who occupies or keeps a brothel, and knowingly lodges or knowingly harbours thieves or reputed thieves, or knowingly permits or knowingly suffers them to meet or assemble therein, or knowingly allows

<sup>1</sup> This means a court constituted in accordance with s. 17 (1) of the Prevention of Crimes Act, 1871, as to which see p. 688.

<sup>2</sup> Such person so found may be arrested by any constable without warrant, and although such constable is not specially authorized to take him into custody (*Prevention of Crimes Act, 1871, s. 7*).

<sup>3</sup> Such person so found may, without warrant, be apprehended by any constable, or by the owner or occupier of the property on which he is found, or by the servant of the owner or occupier, or by any other person authorized by the owner or occupier, and may be detained until he can be delivered into the custody of a constable (*Prevention of Crimes Act, 1871, s. 7*).

<sup>4</sup> On conviction before a Court constituted in accordance with s. 17 (1) of the Prevention of Crimes Act, 1871, as to which see p. 685.

the deposit of goods therein, having reasonable cause for believing them to be stolen, shall be guilty of an offence against this Act"—*Penalty*,<sup>1</sup> not exceeding £10, and, in default of payment, imprisonment not exceeding four months, with or without hard labour; and the court may, in addition to or in lieu of any penalty, require him to enter into recognizances, with or without sureties "as in the Act described"<sup>2</sup> (*Prevention of Crimes Act, 1871; s. 11*).

Brothel-keeper harbouring thieves. &c.

The Prevention of Crimes Act, 1871, deals in s. 12 with assaults on constables in the execution of their duty; as to which see p. 381.

Assaults on constables.

As to dealers in old metals, see MARINE STORE DEALERS and GENERAL DEALERS.

Dealers in old metals.

As to vagrancy, see VAGRANCY.

Vagrancy.

"Any constable may, under the circumstances hereafter in this section mentioned, be authorized in writing by a chief officer of police<sup>3</sup> to enter, and if so authorized may enter, any house, shop, warehouse, yard, or other premises in search of stolen property, and search and seize and secure any property he may believe to have been stolen in the same manner as he would be authorized to do if he had a search warrant and the property seized, if any, corresponded to the property described in such search warrant.

Power of police to search for stolen property.

"In every case in which any property is seized in pursuance of this section, the person on whose premises it was at the time of seizure, or the person from whom it was taken if other than the person on whose premises it was, shall, unless previously charged with receiving the same knowing it to have been stolen, be summoned before a court of summary jurisdiction<sup>4</sup> to account for his possession of such property, and such court shall make such order respecting the disposal of such property and may award such costs,<sup>5</sup> as the justice of the case may require.

"It shall be lawful for any chief officer of police to give such authority as aforesaid in the following cases or either of them:—First. When the premises to be searched are, or within the preceding twelve months have been, in the occupation of any person who has been convicted of receiving stolen property or of harbouring thieves: or, Second. When the premises to be searched are in the occupation of any person who has been convicted of any offence involving fraud or dishonesty and punishable by penal servitude or imprisonment. And it shall not be necessary for such chief officer of police on giving such authority to specify any particular property, but he may give such authority if he has reason to believe generally that such premises are being made a receptacle for stolen goods" (*Prevention of Crimes Act, 1871, s. 16*).

Offences may be prosecuted (within the D. M. P. District according to the Dublin Police Acts, elsewhere, according to the Petty Sessions (Ireland) Act, 1851) before a court of summary jurisdiction, consisting of

Procedure under 34 & 35 Vict. c. 119.

<sup>1</sup> On conviction before a court constituted in accordance with s. 17 (1) of the Prevention of Crimes Act, 1871, as to which see p. 688.

<sup>2</sup> The only part of this Act to which the words, "as in this Act described," can possibly refer is s. 10. There is no other reference to recognizances throughout the Act. Consequently, it is submitted that the effect of those words is to read into s. 11 the words of s. 10, which provide that no person shall be imprisoned for not finding sureties for a longer period than three months, and that no surety in more than £20 shall be required.

<sup>3</sup> For definition see note p. 683, n. 2.

<sup>4</sup> Constituted in accordance with the Prevention of Crimes Act, 1871, s. 17 (1), as to which see p. 688.

<sup>5</sup> *Quære*, are costs under this section limited, in petty sessions districts, to the amount that may be awarded under the Petty Sessions (Ir.) Act, 1851, as to which see p. 68. It is suggested that costs under this section are not so limited.



**Procedure under 34 & 35 Vict. c. 119. Procedure.**

(1) Constitution of Court.

(2) Proof of exceptions, &c.

(3) Certiorari taken away.

(4) Evidence.

**Prevention of Crime Act, 1908.**

**Reformatory school offences.**

a divisional justice in Dublin, and elsewhere of a stipendiary magistrate sitting alone or with others, or of any two or more justices sitting in Petty Sessions (*Prevention of Crimes Act, 1871, s. 17 (1)*). As to the right of appeal see p. 132.

"Any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negated in the information or complaint, and if so specified or negated, no proof in relation to the matter so specified or negated shall be required on the part of the informant, or prosecutor or complainant" (s. 17 (3)).

Certiorari does not lie in respect of any warrant or conviction under the Act (s. 17 (6)). As to effect of this clause, see p. 226.

Sect. 18 of the Prevention of Crimes Act, 1871, deals with the way in which previous convictions may be proved (as to which see p. 281), and s. 19 with evidence in cases of receiving stolen goods (as to which see p. 268).

The Prevention of Crime Act, 1908, deals with the reformation of young criminals and the prolonged detention of habitual criminals. There is no enactment providing that the Act is to be construed as one with the Prevention of Crimes Act, 1871, and the only summary jurisdiction under it is that given by ss. 2, 5, and 15.

"Where a youthful offender sentenced to detention in a reformatory school is convicted under any Act before a court of summary jurisdiction of the offence of committing a breach of the rules of the school, or of inciting to such a breach, or of escaping from such a school, and the court might under that Act sentence the offender to imprisonment, the court may, in lieu of sentencing him to imprisonment, sentence him to detention in a Borstal Institution for a term not less than one year or more than three years, and in such case the sentence shall supersede the sentence of

<sup>1</sup> The expression "stipendiary magistrate" here, it is submitted, means a Resident Magistrate. It clearly does not mean a divisional justice of the D.M.P. district; and, outside Dublin, there is no "stipendiary magistrate" other than a Resident Magistrate in Ireland. *R. (Jackson) v. Tipperary Justices*, (1894) 22 I.L.T.R. 107, merely decided that, for the purposes of s. 51 of the Licensing Act, 1872, the expression did not include a Resident Magistrate.

<sup>2</sup> No definition of the term is given in the Act. Nor is any definition given in the Children Act, 1908 (8 Ed. 7, c. 67), which, however, defines (s. 131) a "child" as a person under 14, and a "young person" as a person between 14 and 16. The heading to Part V of that Act, read along with ss. 94-113 (which collectively form Part V), impliedly defines "juvenile offender" as any person under 16. Section 57 of the Children Act, 1908, which is the only Act under which anyone can now be sent to a reformatory school, provides that "a youthful offender who, in the opinion of the court before which he is charged, is 12 years of age or upwards, but less than 16 years of age," may, under the circumstances set forth in the section, be sent to a certified reformatory school. If no person could be detained in a reformatory school under any other section of the Act, it would be clear that "a youthful offender sentenced to detention in a reformatory school," as the expression is used in the Prevention of Crime Act, 1908, s. 2, simply meant any person so detained pursuant to the Children Act, 1908. But under s. 58 of the Children Act, 1908, a "child" may be committed to a certified industrial school, from which, under the circumstances set forth in s. 71 (2) of the Act (in which sub-section he is still called a "child"), he may be summarily sent to a reformatory school, "there to be detained subject and according to the provisions of this part of the Act." The part of the Children Act, 1908, last referred to is Part IV, which is headed, "Mode of Sending Offenders (*sic*) and Children to Reformatory and Industrial Schools," &c., and includes ss. 57-93. Whether a child sent to a reformatory school under s. 71 (2) of the Children Act, 1908, is "a youthful offender detained in a certified reformatory school" for the purposes of s. 71 (1) of that Act, and is consequently a "youthful offender sentenced to detention in a reformatory school" for the purposes of s. 2 of the Prevention of Crime Act, 1908, is not absolutely clear; but it is submitted that on the true construction of the two Acts a "child" so sent to a reformatory school then and thereupon becomes a "youthful offender" for the purposes of s. 71 (1) of the Children Act, 1908, and of s. 2 of the Prevention of Crime Act, 1908.

detention in a reformatory school" (*Prevention of Crime Act, 1908*, 8 Edw. 7, c. 59, s. 2).

Borstal Institutions<sup>1</sup> are "places in which young offenders whilst detained may be given such industrial training and other instruction, and will be subjected to such disciplinary and moral influences, as will conduce to their reformation and the prevention of crime" (*ib.*, s. 4 (1)).

Under ss. 1-4 (1) of the *Prevention of Crime Act, 1908*, certain offenders between the ages of 16 and 21<sup>2</sup> may on indictment be sentenced to detention in, or to be transferred from convict or other prisons to, a Borstal Institution. Any such person may, subject to the conditions laid down in s. 5 (1) of that Act, be released upon a licence upon condition that he be placed under the supervision or authority of any society or person named in the licence and subject (s. 5 (7)) to such other conditions as may be prescribed by regulations made by the Lord Lieutenant.

Licences to youthful offenders under preventive detention.

"If a person absent from a Borstal Institution under such a licence escapes from the supervision of the society or person in whose charge he is placed, or commits any breach of the conditions contained in the licence, he shall be considered thereby to have forfeited the licence" (*Prevention of Crime Act, 1908*, s. 5 (4)).

"A court of summary jurisdiction for the place where the Borstal Institution from which the person has been placed out on licence is situate, or where such person is found, may, on information on oath that the licence has been forfeited under this section, issue a warrant for his apprehension,<sup>3</sup> and he shall, on apprehension, be brought before a court of summary jurisdiction which, if satisfied that the licence has been forfeited, may order him to be remitted to the Borstal Institution, and may commit him to any prison within the jurisdiction of the court until he can be conveniently removed to the institution" (*Prevention of Crime Act, 1908*, s. 5 (5)).

Under s. 10 of the *Prevention of Crime Act, 1908*, an habitual criminal, as defined in that Act, may be sentenced to a term of preventive detention as well as, and in addition to, penal servitude, and the Lord Lieutenant (ss. 12 and 18 (a)) may, in the case of an habitual criminal within the meaning of the Act, who is undergoing a term of penal servitude, commute portion of such term to preventive detention. A person so undergoing preventive detention may at any time be released upon licence (s. 14 (2)). "A person so discharged on licence may be discharged on probation, and on condition that he be placed under the supervision or authority of any society or person named in the licence who may be willing to take charge of the case, or on such other conditions as may be specified in the licence" (s. 14 (3)); the licence may be in such form, and contain such conditions as may be prescribed by the Lord Lieutenant (s. 14 (6) and 18 (a)) and the provisions relating to licences to be at large granted to persons undergoing penal servitude shall not apply to such licences (s. 14 (7)).

Licences to habitual criminals under preventive detention

<sup>1</sup> So called from the name of the place near Rochester where the first institution of the kind was established in 1901.

<sup>2</sup> Section 1 (2) empowers the Secretary by order made pursuant thereto to direct that persons not more than twenty-three years of age may be sentenced to be detained in Borstal institutions.

<sup>3</sup> It should be noticed that the information must be made, not to any individual magistrate, but to the court, which in the Dublin police district means a divisional justice sitting in a police court, and elsewhere in Ireland a court of petty sessions, consisting of one or more justices (see p. 335). The information need not be in writing, though it will be better for magistrates to get it so made. The application for the warrant is not a summary proceeding within the meaning of s. 9 (1) of the Petty Sessions Act, and consequently need not be heard in open court.

Licences to  
habitual  
criminals  
under pre  
ventive  
detention.

"If a person absent from prison under such a licence escapes from the supervision of the person or society in whose charge he is placed, or commits any breach of the conditions contained in the licence, he shall be considered thereby to have forfeited the licence, and shall be taken back to prison" (s. 15 (3)).

"A court of summary jurisdiction for the place where the prison from which the person has been discharged on licence is situate, or where such person is found, may, on information on oath that the licence has been forfeited under this section, issue a warrant for his apprehension,<sup>1</sup> and he shall, on apprehension, be brought before a court of summary jurisdiction, which, if satisfied that the licence has been forfeited, shall order him to be remitted to preventive detention, and may commit him to any prison within the jurisdiction of the court until he can conveniently be removed to a prison or part of a prison, set apart for the purpose of the confinement of persons undergoing preventive detention" (s. 15 (4)).

### PRINTERS.

Name and  
address of  
printer of  
election  
placards.

Any person printing, publishing, or posting, or causing to be printed, published, or posted, any bill, placard, or poster (having reference to a parliamentary election) which fails to bear upon the face thereof the name and address of the printer and publisher shall, if he is the candidate, or the election agent of the candidate, be guilty of an illegal practice, and if he is not the candidate or the election agent of the candidate, be liable, on summary conviction, to a fine not exceeding £100 (*Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 Vict. c. 51, s. 18*). A person guilty of an illegal practice is liable on summary conviction to a fine not exceeding £100, and is subject to certain disqualifications as to both parliamentary and other elections (s. 10). The foregoing provisions are applied to municipal elections (*Municipal Elections (Corrupt and Illegal Practices) Act, 1884, 47 & 48 Vict. c. 70, ss. 14, 7, 34*), the only variation being a slight difference as to the disqualification incurred. The above-mentioned sections of the Municipal Elections (*Corrupt and Illegal Practices Act*), 1884, have been applied by the Adaptation of Enactments Order, par. 5 (3), of 22nd Dec., 1898, to all elections held under rules framed under that order; that is to say, all Local Government elections.<sup>2</sup>

See also "LIBEL"; "NEWSPAPER."

### PRISONS.

Conveying  
spirituous  
liquors into  
prisons.

Person conveying or attempting to convey into any prison intoxicating liquors without authority may be apprehended by keeper or other officer of prison and brought before a justice of the peace—*Penalty*, on conviction, imprisonment not exceeding three months, or fine not exceeding £20, one moiety to be paid to the informer,<sup>3</sup> and the other moiety to the treasurer of the county (*Prisons (Ir.) Act, 1826, 7 Geo. 4, c. 11 (Ir.), s. 4*). Keeper of prison or any prisoner or other person selling, using,

<sup>1</sup> See note, p. 689, to s. 5 (5).

<sup>2</sup> See Vanston, *Loc. Gov.*, p. 171.

<sup>3</sup> The person who prosecutes (*Powell v. Castletown*, (1891) 30 L.R.I. 93)



lending or giving away, or knowingly permitting or suffering to be sold, &c., in such prison, or brought into the same, such liquors, to forfeit £20,<sup>1</sup> or if a prisoner, in lieu of such penalty, shall be placed in solitary confinement for any period not exceeding one month<sup>1</sup> (*ib.*). Person bringing or endeavouring to bring into any prison any tobacco or other article not allowed by the regulations of such prison may be apprehended by any person, brought before a justice, and upon conviction may be sentenced to imprisonment not exceeding one month, with or without hard labour, or fine not exceeding £5 or less than 40s., to be paid to the board of superintendence<sup>2</sup> (*Prisons (Ir.) Act, 1856, 19 & 20 Vict. c. 68, s. 34*).

If any head jailer or keeper of a prison, or such other person in whose custody the prisoner shall be detained, shall refuse to deliver, or within the space of six hours after admission shall not deliver to the prisoner, or a person demanding on his behalf, a true copy of warrant of commitment, he shall for first offence forfeit £100 Irish; for the second offence, £200 Irish, recoverable by the prisoner or party aggrieved by action of debt; and shall be incapable of holding office (*Habeas Corpus (Ir.) Act, 1781, 21 & 22 Geo. 3, c. 111 (Ir.), s. 4*).

Any justice who is a member of the visiting committee of a prison may, upon a report from the governor that a prisoner has been guilty of repeated breaches of the prison rules, or has been guilty of some offence against those rules which the governor is not empowered to punish, investigate the matter and sentence the offender to solitary confinement upon bread and water for not more than fourteen days (*Prisons (Ir.) Act, 1826, s. 109, rule 16, and General Prisons (Ir.) Act, 1877, 40 & 41 Vict. c. 49, ss. 25, 55*).

As to the appointment and duties of visiting justices, see p. 155, *ante*; and as to the right of justices generally to visit persons, see p. 154, *ante*.

As to indictable offences in connection with the escape and rescue of prisoners, see CATALOGUE OF INDICTABLE OFFENCES.

Prisoner entitled to copy of warrant of commitment

Breach of prison rules.

Miscellaneous.

## PROPERTY OF CONVICTS.

Section 2 of the Forfeiture Act, 1870, 33 & 34 Vict. c. 23, enacts that if any person convicted of treason or felony<sup>3</sup> for which he is sentenced to, amongst other things, any term of imprisonment with hard labour or exceeding twelve months, shall at the time of such conviction hold any office under the Crown, or any other public employment, or any ecclesiastical benefice, or any office in any university, college, or other corporation, or be entitled to any pension, superannuation allowance, or emolument payable by the public or out of any public fund, such office, &c., shall become vacant, and such pension, &c., shall cease to be payable upon such conviction, unless such person receives a free pardon within two months of such conviction or before such office, &c., shall be filled.

Forfeiture of public office or pension.

<sup>1</sup> Whether a justice has power to impose this penalty, or whether it is to be recovered by civil action, is not clear.

<sup>2</sup> Now to the General Prisons Board (*General Prisons (Ir.) Act, 1877, 40 & 41 Vict. c. 49, ss. 4, 9, 17*).

<sup>3</sup> The Criminal Justice Act, 1855, 18 & 19 Vict. c. 126, s. 11, provides that no summary conviction under that statute shall be attended with any forfeiture. The Children Act, 1908, s. 100, provides that a conviction of a child or young person shall not be regarded as a conviction of felony for the purposes of any disqualification attaching to felony.

Forfeiture  
Act. 1870.

Meaning of  
"Convict."

When convict  
ceases to be  
subject to the  
operation of  
the Act.

Appointment  
by Crown of  
administra-  
tion of  
convict's  
property.

Appointment  
by justices  
of interim  
curator of  
convict's  
property.

Proceedings  
before  
justices.

Removal of  
interim  
curator.

Order by  
justices for  
sale of  
personal  
property of  
convict.

The term "convict" for the purposes of the section hereafter mentioned of the Forfeiture Act, 1870, means "any person against whom judgment of death or of penal servitude shall have been pronounced or recorded by any court of competent jurisdiction in England, Wales, or Ireland, upon any charge of treason or felony" (*Forfeiture Act, 1870, 33 & 34 Vict. c. 23, s. 6*).

"When any convict shall die or be made bankrupt, or shall have suffered any punishment to which sentence of death or penal servitude if pronounced or recorded against him may be lawfully commuted, or shall have undergone the full term of penal servitude for which judgment shall have been pronounced or recorded against him, or such other punishment as may by competent authority have been substituted for such full term, or shall have received Her Majesty's pardon for the treason or felony of which he may have been convicted, he shall thenceforth, so far as relates to the provisions hereinafter contained, cease to be subject to the operation of this Act" (s. 7).

Sections 9–20 provide for the appointment by the Crown of an administrator of the convict's property, and as to the remuneration, powers, and duties of such administrator.

"If no such administrator as aforesaid shall have been appointed, an interim curator of the property of any convict may be appointed by any justices of the peace in petty sessions assembled, or, where there are no petty sessions, by any justice of the peace having jurisdiction in the place where such convict before his conviction shall have last usually resided, upon the application of any person who shall be able to satisfy such justice that the application is made *bona fide* with a view to the benefit of the convict or his family, or to the due and proper administration and management of his property and affairs; and the interim curator to be appointed may be either the person making the application or any other person willing to accept the office, and competent to discharge its duties, as to such justice shall seem fit" (s. 21).

"Before making any such appointment the justice shall require the applicant to make oath that no administrator or interim curator of the property of such convict has been to his knowledge or belief already appointed; and the applicant shall also state upon oath, to the best of his knowledge and belief, who are the nearest relatives (including any husband or wife) of such convict and (if any such there be) where they are residing, and whether any and which of them have consented to or have had notice of such application; and it shall be competent for such justice to require notice of such application to be given to all such persons and in such manner as to such justice shall seem fit" (s. 22).

"Any interim curator so appointed may be removed for any cause shown to the satisfaction of the justices or justices . . . upon the application of any relative of the convict or of any person interested in the due and proper administration and management of his property and affairs either by the petty sessions or justice by whom he was appointed (or, in the event of such justice dying or being unable to act, by any other justice having the like jurisdiction) . . . ; and upon the death or removal of any such interim curator a new interim curator may be appointed in the same manner as aforesaid . . ." (s. 23), but the powers of justices under s. 23 are suspended if and whilst proceedings for an account under s. 28 are being taken against the interim curator in the county court or the superior courts (*ib.*, s. 28). The interim curator may with the authority of such justices or justice, unless whilst such proceedings for an account are being taken, sell any personal property of the convict (s. 25). It should be noted that justices have no power to authorize any sale of realty.

## PUBLIC HEALTH.

	PAGE		PAGE
Matters cognisable by justices . . . . .	693	Slaughterhouses . . . . .	718
Who are sanitary authorities . . . . .	693	Housing of the Working Classes	
Procedure . . . . .	694	Acts . . . . .	720
Drains and sewers . . . . .	696	Offensive trades . . . . .	722
Paving, sewerage, &c., of private		Unsound meat and food . . . . .	724
streets . . . . .	699	Infectious diseases . . . . .	726
Buildings and streets . . . . .	701	Burials . . . . .	729
Bye-laws . . . . .	702	Entry on lands . . . . .	731
Works contrary to bye-law . . . . .	703	Obstructing execution of Public	
Sanitary accommodation . . . . .	704	Health Acts . . . . .	732
Removal of house refuse and		Injuring works of sanitary autho-	
cleansing of streets . . . . .	705	rity . . . . .	732
Purification, &c., of houses . . . . .	706	Compensation for injury done by	
Nuisances, generally . . . . .	706	sanitary authority . . . . .	732
Nuisances, particular . . . . .	712	Public Health Acts Amendment	
Water supply . . . . .	714	Act, 1890, for summary see p. . . . .	733
Cellar dwellings . . . . .	716	Public Health Acts Amendment	
Common lodging-houses . . . . .	717	Act, 1907, for summary see p. . . . .	742
Houses let in lodgings . . . . .	718		

Under the Public Health (Ir.) Acts there are a number of offences cognisable by justices, to whom are also given jurisdiction to give decrees for expenses incurred by sanitary authorities in executing sanitary works on the premises of the person responsible for the same. Certain matters cognisable by justices.

The sanitary authorities in the districts of Ireland are the following Who are sanitary authorities.  
(*Public Health (Ir.) Act*, 1878, 41 & 42 Vict. c. 52, s. 4):—

### URBAN SANITARY DISTRICT.

City of Dublin.

Towns corporate (except Dublin).

Towns, the population of which according to the last parliamentary census exceeds 6000, having town commissioners under the Lighting of Towns (Ir.) Act, 1828, 9 Geo. 4, c. 83.

Towns, the population of which according to the last parliamentary census exceeds 6000, having municipal commissioners under 3 & 4 Vict. c. 108.

Towns, the population of which according to the last parliamentary census exceeds 6000, having town commissioners under the Towns Improvement (Ir.) Act, 1854, 17 & 18 Vict. c. 103.

Towns or townships having commissioners under Local Acts.

### RURAL SANITARY DISTRICTS.

Rural sanitary districts, which in general correspond with the area of poor law unions (*Public Health (Ir.) Act*, 1878, s. 6).

### URBAN SANITARY AUTHORITY.

The Lord Mayor, aldermen and burgesses, acting by the town council.

The Mayor, aldermen and burgesses, acting by the town council.

The Commissioners.

The Municipal Commissioners.

The Town Commissioners.

The Town or Township Commissioners.

### RURAL SANITARY AUTHORITY.

The guardians of the union.



## PROCEDURE.

Who may take proceedings, p. 694 ; disqualification of justices, p. 694 ; application of Summary Jurisdiction Acts, p. 694 ; time limit, p. 695 ; application of penalties, p. 695 ; certiorari taken away, p. 695 ; appeal, p. 695.

**Procedure.**

Who may  
take proceed-  
ings.

Proceedings under the Public Health Acts can only be taken by a party aggrieved, or by the sanitary authority of the district, or by any other person with the consent in writing of the Attorney-General (*Public Health (Ir.) Act*, 1878, s. 251). The sanitary authority may appear before any court by their clerk, or by any officer or member authorised either generally, or in respect of any special proceeding, by resolution of such authority, and the clerk or any officer or member so authorised shall be at liberty to institute and carry on any proceeding which the sanitary authority may institute and carry on (s. 257). A local board passed a resolution that the superintendent and sergeants of the county police within the district be authorised as officers of the board to institute and prosecute all such proceedings as might be necessary. *Held*, that the board had no power<sup>1</sup> to delegate the prosecution to the police, who were not officers of the board or under their control (*Kyle v. Barbor* (1888), 16 Cox 378). The sanitary authority can appear by solicitor and counsel like any other litigant (see *Petty Sessions Act*, 1851, s. 9 (1)), or by their officer duly authorised under the section (*Guardians of Mitchelstown Union v. Duffy* (1893), 28 I.L.T.R. 20), but the proceedings should be in the name of the sanitary authority, and not of their officer (*R. (Corker) v. Cavan JJ.* (1904), 5 N.I.J.R. 94). It would seem that the clerk can appear without any authority, but that any other officer must be authorised under the section. A party aggrieved means one aggrieved otherwise than as a ratepayer or as a member of the public (*Boyce v. Higgins* (1853), 14 C.B. 1 ; *Hollis v. Marshall* (1858), 2 H. & N. 755), that is to say, it means a person who has sustained actual damage by reason of the act complained of (*Robinson v. Currey* (1881), 7 Q.B.D. 465 ; cf. *Verdin v. Wray* (1877), 2 Q.B.D. 608).

Disqualifica-  
tion of  
justices.

The fact that a justice is a member of the prosecuting sanitary authority or is a ratepayer and so interested in the result of the proceedings does not *ipso facto* disqualify that justice from adjudicating (s. 256). This provision will not, however, render a decision valid, where the justice has taken an active part in instituting the proceedings or for any other reason may be substantially interested in the result (*R. v. Milledge* (1879), 4 Q.B.D. 332 ; *R. v. Henley* (1892), 1 Q.B. 504). As to other cases on bias, see p. 215.

Application  
of Summary  
Jurisdiction  
Acts.

All offences under the Public Health Acts and all penalties, forfeitures, costs and expenses directed to be recovered in a summary manner, or the recovery of which is not otherwise provided for may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts<sup>2</sup> before a court of summary jurisdiction. The court of summary jurisdiction, when hearing and determining an information or complaint, shall be constituted of two or more justices sitting in petty sessions, or of some magistrate or officer for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace sitting at some court or other place appointed for the administration of justice (s. 249).

An order to abate a nuisance must be signed by at least two justices (*Wing v. Epsom U.D.C.* (1904), 1 K.B. 788). Summonses under s. 111, praying the abatement of a nuisance, were heard before five justices. Three

<sup>1</sup> Under s. 259 of the English Public Health Act, 1875, *verbatim* with s. 257, *supra*.

<sup>2</sup> As to the meaning of which term, see p. 335.

justices were of opinion that a nuisance existed, and an order was pronounced for its abatement. A formal order was drawn up and signed, several days after the decision, by two of the justices, one of them being one of the dissenting justices, and served on the defendant. A conditional order having been obtained to quash the order, it was signed by the other two justices who formed the majority of the court. *Held*, (1) that the orders should have been signed by the majority of the adjudicating justices; (2) that the omission of the signatures did not go to jurisdiction, and that such omission could be corrected by the justices signing afterwards; (3) that the delay in signing and completing the orders did not warrant certiorari (*R. (Donnell) v. Londonderry JJ.* (1910), 2 I.R. 458). Procedure.

The order for the abatement of a nuisance is not the entry in the order book, but the document drawn up in accordance with Form C in the schedule to the Act (*R. (Ewing) v. Down JJ.* (1905), 2 I.R. 648).

Every information or complaint must be made within six months from the time when the matter of complaint arose (s. 250). In the case of a continuing offence, penalties may be recovered in respect of such offence (*e.g.* the erection of a building in contravention of s. 40) where the offence has been originally committed more than six months before the complaint, but continued (as by the non-removal of such building) into the period of six months preceding the complaint, the penalties being limited to the period of six months preceding the complaint (*Rumball v. Schmidt* (1882), 8 Q.B.D. 603). Where the sanitary authority sue the owner of property for expenses incurred, the six months is to be reckoned from the service of the notice of demand (s. 255). Time limit.

Where the application of the penalty is not otherwise provided for, one half is to go to the informer and the remainder to the sanitary authority, but if the sanitary authority is the informer they are to be entitled to the whole penalty (s. 252). Application of penalties.

Certiorari is taken away (*Act of 1878*, s. 261). As to effect of this provision, see p. 226, *ante*. Certiorari taken away.

Where any person deems himself aggrieved by any rate made under the provisions of the Public Health (Ir.) Act, 1878, or by any order, conviction, &c., of any court of summary jurisdiction, power to appeal is provided for by section 269 of that statute, and the procedure is as follows. (1) The appeal is to the next quarter sessions holden not less than twenty-one days from the demand of the rate or the decision of the court; (2) notice is to be given by the appellant to the other party, and to the authority or court of summary jurisdiction,<sup>1</sup> by whose act he deems himself aggrieved, within fourteen days after the cause of appeal has arisen, of his intention to appeal and of the grounds thereof; (3) appellant shall, immediately after such notice, enter into a recognisance before a justice of the peace with two sureties to prosecute the appeal, and abide the judgment of the court thereon, and pay such costs as may be awarded by the court, or give such other security, by deposit of money or otherwise, as the justice may allow. Where the appellant is in custody the justice may, on the appellant entering into such recognisance or giving such security, release him from custody. No ground save that mentioned in the notice shall be entertained on the appeal, and where the appeal is on any ground that requires the alteration of the rates of any other person, the fourteen day notice must be served on such other person. The court of appeal may confirm, reverse, or modify the decision of the court of summary jurisdiction or may remit the matter to such court with the opinion of the court of appeal thereon. As regards appeals against a rate, the chairman of the court before whom the appeal is brought has wide powers, including that of quashing the rate and ordering the Appeal.

<sup>1</sup> And to the clerk of the sanitary authority in case of an appeal from a rate.

**Procedure.**

sanitary authority to make a new rate. On all appeals the decision of the chairman is final, subject to the statement of a case, if the court of appeal thinks fit, for the determination of the High Court. In all cases, costs, in the discretion of the court, may be awarded.

An unsuccessful complainant has no right of appeal (*R. v. London JJ.* (1890), 25 Q.B.D. 357; *R. v. Wright* (1908), 72 J.P. 23). In the last case it was held that a sanitary authority, prosecuting for an offence of discharging refuse into a sewer, had no right of appeal.

The section provides a code of procedure complete in itself and is unaffected by the provisions of the Petty Sessions Act, so that notice to prosecute an appeal need not be given (*R. (Commissioners of Public Works) v. Down JJ.* (1902), 2 I.R. 220; *R. (Lyster) v. Queen's Co. JJ.* (1886) (1901), 2 I.R. 132 n.).

**DRAINS AND SEWERS.**

"Drain," "sewer," p. 696; use of sewer by owner or occupier within district, p. 697; use of sewer by owner or occupier without district, p. 697; enforcement of drainage within district by sanitary authority, p. 698; altering drains or sewers, p. 698; building houses without drains in urban district, p. 699; injurious matter not to pass into sewer, p. 699.

**Drains and sewers.**

"Drain,"  
"sewer."

"'Drain' means any drain of and used for the drainage of one building only or of premises within the same curtilage, and made merely for the purpose of communicating therefrom with a cesspool or other like receptacle for drainage or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed. 'Sewer' includes sewers and drains of every description, except drains to which the word drain interpreted as aforesaid applies, and except drains vested in or under the control of any authority having the management of roads and not being a sanitary authority under this Act" (*Act of 1878*, s. 2).

There are a great number of decisions as to the meaning of "drain" and "sewer." The test whether a certain channel is a "drain" or a "sewer" is, whether the houses which discharge into it are separate buildings or not (*Hedley v. Webb* (1901), 2 Ch. 126), and each case must be decided on its own facts (*Humphrey v. Young* (1903), 1 K.B. 44). The word "sewer" should receive the largest possible interpretation (*per Kay, J.*, in *Acton L.B. v. Batten* (1884), 28 C.D. 283). The connection of a drain from other premises, though unauthorised, makes the original drain a sewer (*Geen v. Leamington Vestry* (1898), 2 Q.B. 1; *Falconer v. Corporation of South Shields* (1895), 11 T.L.R. 223). A cesspool is not a sewer, for a sewer must have a *terminus a quo* and a *terminus ad quem* (*Pakenham v. Ticehurst R.D.C.* (1903), 67 J.P. 448; *Sutton v. Mayor of Norwich* (1858), 27 L.J.Ch. 739).

A drain becomes a sewer at and from the point where more than one building is connected with it (*Acton L.B. v. Batten* (1884), 28 C.D. 283; *Beckenham U.D.C. v. Wood* (1896), 60 J.P. 490), which latter case overrules the dictum of Wills, J., in *Travis v. Uttley* (1894), 1 Q.B. 233, that in such a case the drain becomes a sewer from end to end.

Once a sewer, always a sewer, and, therefore, where a sewer ceases to receive the drainage of more than one house, it does not thereby cease to be a sewer (*St. Leonard's, Shoreditch v. Phelan* (1896), 1 Q.B. 533).

A drain or sewer need not necessarily convey sewage matter, and may only convey rain and surface water (*Ferrand v. Hallas Land, &c., Co.* (1893), 2 Q.B. 135, at p. 144, *per Smith, L.J.*; *Holland v. Lazarus* (1897), 66 L.J.Q.B. 285; *Silles v. Fulham Borough Co.* (1903), 1 K.B. 829).

The following are examples:—



*Held to be a sewer.*

Drains and  
sewers.

*St. Martin's Vestry v. Bird* (1895), 1 Q.B. 428. The Lowther Arcade, which consists of twenty-five houses enclosed by a gate at either end of the passage, on each side of which they are built, is not "premises within the same curtilage" so as to make the common channel a drain.

*Falconer v. South Shields Corporation* (1895), 11 T.L.R. 223. An open stream into which a number of houses have drained for many years may be a sewer (see also *Wheatcroft v. Matlock L.B.* (1885), 52 L.T. 356; and cf. *W. Riding Rivers Board v. Gaunt & Sons, Ltd.* (1902), 19 T.L.R. 140; *W. Riding of Yorkshire Rivers B. v. Preston* (1904), 92 L.T. 24).

*Wilkinson v. Llandaff & Dinas Powis R.D.C.* (1903), 2 Ch. 695. At the side of the road, which was vested in a local authority, was an open channel (not paved with stone and not very clearly defined on the side toward the centre of the road) made for the purpose of carrying off the surface water from the road. In the channel were gullies by which the water passed through pipes into an underground drain. Rain water from the roofs and the curtilages of many of the houses in the road also passed through pipes into the channel. *Held*, that the channel was a sewer.

*Harris v. Scurfield* (1904), 20 T.L.R. 659. In this case, which was one of a number of houses in a court, Lord Alverstone, L.C.J., said: "There is no definition of a curtilage which would include the case of a number of houses, separately occupied by different people, simply because there is a common access and to some extent common accommodation" (see also *Brass v. London C.C.* (1904), 2 K.B. 336).

*Held not to be a sewer.*

*Pilbrow v. St. Leonard's, Shoreditch* (1895), 1 Q.B. 433. Two blocks of buildings consisting of forty-six apartments, and separated by a causeway twenty feet wide, held to be premises within the same curtilage, and consequently that the channel draining the two blocks was a drain and not a sewer.

*O'Neill v. Waldron* (1905), 5 N.I.J.R. 241. An open ditch at the side of the road into which the drainage from several houses had been discharged for a considerable time, which had no outlet except a drain crossing the road into a public park, was held not to be a sewer.

See s. 19 of the Public Health Act, 1890 (*post*, p. 735), for an extended definition of drain for the purpose of that section.

Drain under  
Act of 1890.

"The owner or occupier of any premises within the district of a sanitary authority shall be entitled to cause his drains to empty into the sewers of that authority,<sup>1</sup> on condition of his giving such notice as may be required by that authority of his intention so to do, and of complying with the regulations of that authority in respect of the mode in which the communications between such drains and sewers are to be made, and subject to the control of any person who may be appointed by that authority to superintend the making of such communications. Any person causing a drain to empty into a sewer of a sanitary authority without complying with the provisions of this section shall be liable to a penalty not exceeding £20, and the sanitary authority may close any communication between a drain and sewer made in contravention of this section, and may recover in a summary manner from the person so offending any expenses incurred by them under this section" (*Act of 1878, s. 23*).

Use of sewer  
by owner or  
occupier  
within  
district.

"The owner or occupier of any premises without the district of a sanitary authority may cause any sewer or drain from such premises to empty into the sewers of that authority, on condition of his giving such notice as may be required by that authority of his intention so to do, and of complying with the regulations of that authority in respect of the mode in which the communications between such drains and sewers are to be made, and subject to the control of any person who may be appointed by that authority to superintend the making of such communications. Any person causing a drain to empty into a sewer of a sanitary authority without complying with the provisions of this section shall be liable to a penalty not exceeding £20, and the sanitary authority may close any communication between a drain and sewer made in contravention of this section, and may recover in a summary manner from the person so offending any expenses incurred by them under this section" (*Act of 1878, s. 23*).

Use of sewer  
by owner or  
occupier  
without  
district.

<sup>1</sup> By s. 15 all sewers, with certain stated exceptions, are vested in the sanitary authority.

**Drains and sewers.**

communicate with any sewer of the sanitary authority on such terms and conditions as may be agreed on between such owner or occupier and such sanitary authority, or as in case of dispute may be settled, at the option of the owner or occupier, by a court of summary jurisdiction or by arbitration in manner provided by this Act" (*Act of 1878*, s. 24).

**Enforcement of drainage within district by sanitary authority.**

"Where any house within the district . . . is without a drain sufficient for effectual drainage, the sanitary authority may by written notice require the owner or occupier of such house, within a reasonable time therein specified, to make a covered drain or drains emptying into any sewer which the sanitary authority are entitled to use and which is not more than 100 feet from the site of such house; but if no such means of drainage are within that distance, then emptying into such covered cesspool or other place not being under any house as the sanitary authority direct; and the sanitary authority may require any such drain or drains, cesspool or cesspools to be of such materials and size and to be so ventilated and to be laid at such level and with such fall as may appear to them to be necessary. Provided that where, in the opinion of the sanitary authority, greater expense would be incurred in the construction of such cesspool or cesspools than in the making of a drain emptying into a sewer which they are entitled to use, the sanitary authority may require the owner or occupier to make such drain, notwithstanding that the sewer into which it is to empty is not within 100 feet of the site of the house. If such notice is not complied with, the sanitary authority may, after the expiration of the time specified in the notice, do the work required and may recover in a summary manner the expenses incurred by them in so doing from the owner, or may by order declare the same to be private improvement expenses.<sup>1</sup> Provided that where in the opinion of the sanitary authority greater expense would be incurred in causing the drains of two or more houses to empty into an existing sewer pursuant to this section than in constructing a new sewer, and causing such drains to empty therein, the sanitary authority may construct such new sewer and require the owners or occupiers of such houses to cause their drains to empty therein, and may apportion as they deem just the expenses of the construction of such sewer among the owners of the several houses and recover in a summary manner the sums apportioned from such owners or may by order declare the same to be private improvement expenses" (*Act of 1878*, s. 25). See also *Act of 1890*, s. 18, *post*.

It would seem that the owner can dispute liability on the ground that the house is not without a "drain" sufficient for effectual drainage (see *Eccles v. Wirral R.S.A.* (1886), 17 Q.B.D. 107). The mere fact that the sanitary authority wishes the system of drainage to be altered is not sufficient to enable them to proceed under the section (*St. Martin-in-the-Fields Vestry v. Ward* (1897), 1 Q.B. 40). The sanitary authority may insist on their reasonable regulations being carried out, even if there may be an alternative which is as good (*Austin v. St. Mary's Vestry* (1858), 27 L.J. Ch. 677). The sanitary authority cannot compel a man to commit a trespass by making a drain through another's land to the sewer (*R. v. Trimble* (1877), 36 L.T. 508).

The Dublin Corporation Act, 1890, s. 60, provides that where any dwelling-house within the city of Dublin is drained only by a brick or built drain, the house shall be deemed to be without a drain sufficient for effectual drainage within the meaning of s. 25.

**Altering drains or sewers.**

In districts, whether rural or urban, where Part III. of the Public Health Acts Amendment Act, 1890, has been adopted, the local authority must, upon the request of any owner or occupier who is entitled to cause any sewer or drain from his premises to communicate with any sewer of such

<sup>1</sup> For which a special rate can be levied (ss. 229-231; P.H. Act, 1896, s. 4).

authority, and upon payment in advance of the cost, make the communication, the cost to be estimated by the surveyor, and if the owner or occupier is dissatisfied he may, if the estimate is under £50, apply to a court of summary jurisdiction to fix the amount to be paid; but if the estimate is over £50, the amount is to be fixed by arbitration<sup>1</sup> (*Act of 1890*, s. 18).

"It shall not be lawful in any urban district newly to erect any house or to rebuild any house which has been pulled down to or below the first floor or to occupy any house so newly erected or rebuilt unless and until a covered drain or drains be constructed, of such size, and materials, in such manner, and at such level and with such fall as may appear to the urban authority to be necessary for the effectual drainage of such house; and the drain or drains so to be constructed shall empty into some sewer which the urban authority are entitled to use, and which is within 100 feet of some part of the site of the house to be built or rebuilt; but if no such means of drainage are within that distance then shall empty into such properly constructed cesspool or other place, not being under any house, as the urban authority direct. Provided always, that the sanitary authority may, at the request of the owner of the house, permit such drain or drains to be disconnected from the interior of the house in such manner as it may think proper. Any person who causes any house to be erected or rebuilt or any drain to be constructed in contravention of this section shall be liable to a penalty not exceeding £50" (*Act of 1878*, s. 27).

Apparently no penalty is provided for "occupying" a house in violation of this section. The sanitary authority may require a separate drain for each semi-detached house (*Woodford U.D.C. v. Stark* (1902), 18 T.L.R. 439).

As to allowing injurious matter, chemical refuse, &c., to pass into sewers, see ss. 16 & 17 of the Public Health Act Amendment Act, 1890, which may be applied in either an urban or rural sanitary district (see p. 734, *post*).

Building houses without drains in urban district.

Injurious matter not to pass into sewer.

#### PAVING, SEWERING, &C., OF PRIVATE STREETS.

Enforcing paving, sewerage, &c., of private streets, p. 699; "street," p. 700; "sewer," p. 700; "notice," p. 700; "abutting," p. 701; "owner," p. 701; election by sanitary authority, p. 701; power of justices, p. 701.

"Where any street within any urban district (not being for such purposes in charge of the sanitary authority, or of any grand jury or other public body), or the carriage way, footway, or any other part of such street is not sewered, levelled,<sup>2</sup> metalled, paved, flagged, channelled, and made good, or is not lighted to the satisfaction of the urban authority, such authority may, by notice addressed to the respective owners or occupiers of the premises fronting, adjoining, or abutting on such parts thereof as may require to be sewered, levelled, paved, metalled, flagged, or channelled, or to be lighted, require them to sewer, level, pave, metal, flag, channel, or make good, or to provide proper means for lighting the same within a time to be specified in such notice. Before giving such notice the urban authority shall cause plans and sections of any structural works intended to be executed under this section, and an estimate of the probable cost thereof, to be made under the direction of their surveyor or other duly appointed officer, such plans and sections to be on a scale of not less than 1 inch for 88 feet for a horizontal plan, and on a scale of not less than 1 inch for 10 feet for a vertical section, and in case of a sewer showing the depth of such sewer below the surface of the ground; such

Private streets.

Enforcing paving, sewerage, &c.

<sup>1</sup> As to which see ss. 216-218 of the Act of 1878.

<sup>2</sup> The word "levelled" was inserted in this section by the Public Health Act, 1896, s. 27.



**Private streets.**

plans, sections, and estimate shall be deposited in the office of the urban authority, and shall be open at all reasonable hours for the inspection of all persons interested therein during the time specified in such notice, and a reference to such plans and sections in such notice shall be sufficient without requiring any copy of such plans and sections to be annexed to such notice. If such notice is not complied with, the urban authority may, if they think fit, execute the works mentioned or referred to therein, and may recover in a summary manner the expenses incurred by them in so doing from the owners in default, according to the frontage of their respective premises, and in such proportion as is settled by the surveyor of the urban authority, or (in case of dispute) by arbitration in manner provided by this Act,<sup>1</sup> or the urban authority may by order declare the expenses so incurred to be private improvement expenses.<sup>2</sup> The same proceedings may be taken and the same powers may be exercised in respect of any such street or road of which a part is or may be a public footpath, under charge of the sanitary authority, or grand jury,<sup>3</sup> or other public body as fully as if the whole of such street or road or highway was not in charge of the sanitary authority, or grand jury, or other public body" (*Act of 1878*, s. 28). For form of notice, see Sch. C of Act.

**"Street."**

"Street" includes any highway, and any public bridge and any road, lane, footway, square, court, alley or passage, whether a thoroughfare or not" (*Act of 1878*, s. 2). It was laid down in *Jowett v. Idle L.B.* (1888), 36 W.R. 530, that the word is used in the corresponding section (s. 150) of the English Act of 1875 in the extended sense of the definition. In *Taylor v. Corporation of Oldham* (1876), 4 C.D. 395, Jessel, M.R., said that the word "streets" as used in the English Act of 1875 "clearly extends to places which are in all respects private and over which the public have no right." The question whether a place is a street or not is one of fact for the justices to decide (*Midland R. Co. v. Watton* (1886), 17 Q.B.D. 30). The following have been held to be "streets":—a private alley (*Jowett v. Idle L.B.* (1888), 36 W.R. 530); a private road enclosed by gates, over which the public were allowed to pass on payment of tolls for the passage of vehicles, horses and cattle (*Midland R. Co. v. Watton* (1886), 17 Q.B.D. 30); a railway bridge which the railway company allowed the public to use (*North London R. Co. v. St. Mary's, Islington* (1872), 27 L.T. 672; see also *Walthamstow U.D.C. v. Sandell* (1904), 68 J.P. 509; *Fenwick v. Croydon R.S.A.* (1891), 2 Q.B. 216, in which latter case the court expressly declined to follow the decision in *R. v. Burnup* (1886), 50 J.P. 598, to the effect that in s. 150 of the Act of 1875, "street" was to be read in the colloquial sense).

**"Sewer."**

The sewerage under the section means the initial drainage system and not an alteration or improvement of it (*Bonella v. Twickenham L.B.* (1887), 20 Q.B.D. 63), and consequently, where a sewer has once been laid with the approval of the authority, or where the sewer has been laid for a long period without their dissent, they cannot act under this section (*Fulham D.B. of Works v. Goodwin* (1876), 1 Ex.D. 400; *Wilmslow U.D.C. v. Sidebottom* (1906), 70 J.P. 537; *Hornsey L.B. v. Davies* (1893), 1 Q.B. 756).

**"Notice."**

The notice to the owner or occupier is a condition precedent to recovering (*Jarrow L.B. v. Kennedy* (1870), L.R. 6 Q.B. 128). Apparently if the notice has not been served on every frontager, the expenses cannot be recovered even from those who have been served (*per Kekewich, J.*, in *Handsworth D.C. v. Derington* (1897), 2 Ch. 438), but

<sup>1</sup> Provisions as to arbitration are contained in ss. 216, 218.

<sup>2</sup> See p. 698, n. 1.

<sup>3</sup> For "grand jury" now read "county council" (*Local Government (Ir.) Act*, 1898, s. 4).

in case of an arbitration this objection is late if not taken before the arbitrator (*ib.*). The notice should specify the required works and refer to the plans (*Parkinson v. Mayor of Blackburn* (1859), 28 L.J.M.C. 7; *Bayley v. Wilkinson* (1864), 16 C.B.N.S. 161; *Worthington v. Sudlow* (1862), 2 B. & S. 508). A notice may be good in part and bad in part (*Hall v. Potter* (1869), 39 L.J.M.C. 1). The deposit of plans and estimates is not a condition precedent to recovery (*Shanklin L.B. v. Miller* (1880), 5 C.P.D. 272). In *Manchester Corporation v. Hampson* (1887), 35 W.R. 334, Manisty, J., was of opinion that such deposit was, but Huddleston, B., was of opinion that it was not, a condition precedent.

"Abutting" is a question of fact (*Barnett v. Covell* (1903), 20 T.L.R. 134; *Wakefield L.B. v. Lee* (1876), 1 Ex.D. 336). and it is immaterial that the owner has no means of access from the premises to the street (*Williams v. Wandsworth B. of W.* (1884), 13 Q.B.D. 211). A house not facing a street but having access thereto from the rear has been held (within the meaning of the English Act, 18 & 19 Vict. c. 120, s. 105) to "form part" of the street (*London School B. v. St. Mary, Islington* (1875), 1 Q.B.D. 65), and consequently, it is submitted, "abuts" thereon. A house with its front and only entrance in A street, but with the dead wall at the end of its back garden forming part of the line of B street, "abuts" on B street (*Paddington Vestry v. Bramwell* (1880), 44 J.P. 815). A railway running under a street does not "bound or abut on" the street (*G. E. R. v. Hackney Board* (1883), 8 A.C. 687).

"Owner" is the person receiving the rack rent on his own account or as agent (*Act of 1878*, s. 2). A mortgagor, where the mortgagee is in possession, is not an owner (*Maguire v. Leigh-on-Sea U.D.C.* (1906), 95 L.T. 319). Trustees in receipt of rents have been held to be owners (*Harrison v. Barney* (1894), 3 Ch. 562); and an agent is an owner whether he has money in hands or not (*Mayor of St. Helens v. Kirkham* (1885), 16 Q.B.D. 403). The person owning the premises when the works are completed is liable for the expenses, though he may have ceased to be owner when the demand is served (*Millard v. Balby U.D.C.* (1905), 1 K.B. 60).

When the authority have chosen to treat the expenses as private improvement expenses they cannot subsequently recover them summarily (*Gould v. Bacup L.B.* (1881), 50 L.J.M.C. 44).

The justices may not review the decision of the sanitary authority, as to the necessity for the works (*Stroud v. Wandsworth B. of Works* (1894), 2 Q.B. 1), nor can they inquire whether the defendant has been charged for more frontage than he owns, as that point should be raised on the apportionment (*Midland R. Co. v. Watton* (1886), 17 Q.B.D. 30).

#### BUILDINGS AND STREETS.

As to dangerous buildings in a town, see TOWNS IMPROVEMENT, **Buildings and streets.**

"Any person who in any urban district, without the written consent of the urban authority (1) causes any building to be newly erected over any sewer<sup>1</sup> of the urban authority; or (2) causes any vault, arch, or cellar to be newly built or constructed under the carriage-way of any street, shall forfeit to the urban authority the sum of £5 and a further sum of 40s. for every day during which the offence is continued after a written notice in this behalf from the urban authority; and the urban authority may cause any building, vault, arch, or cellar, erected or constructed in contravention of this section to be altered, pulled down, or otherwise dealt with as they may think fit and may recover in a summary manner

<sup>1</sup> For definition of sewer, see p. 696, *ante*.

**Buildings and streets.** any expenses incurred by them in so doing from the offender" (*Act of 1878, s. 29*).

"Street" includes any highway and any public bridge and any road, lane, footway, square, court, alley or passage, whether a thoroughfare or not" (s. 2). The word includes places whether they are public property or private property and whether the public have any rights over them or not (*Taylor v. Corporation of Oldham* (1876), 4 C.D. 395; *Hill v. Wallasey L.B.* (1894), 1 Ch. 133; see also p. 700).

**Buildings not to be brought forward.**

"It shall not be lawful in any urban district, without the written consent of the urban authority, to erect<sup>1</sup> or bring forward any house or building forming part of any street, or any part thereof, beyond the front wall of the house or building on either side thereof, nor to build any addition thereto beyond the front of the house or building on either side of the same"—*Penalty*, not exceeding 40s. for every day during which the offence is continued after written notice from the urban authority (*Act of 1878, s. 40*).

The section applies only to buildings of a permanent character and does not apply to a portable structure of canvas and wood (*Dublin Corporation v. Irish Church Mission* (1901), 1 N.I.J.R. 28), nor to a wooden advertisement hoarding (*Dublin Corporation v. Allen* (1904), 38 I.L.T.R. 78). Where it was sought to prevent a new house from being built nearer to the road than two houses already built, which were 62 feet from the road, it was held that in such a case there could be no question of a building line and that the section was inapplicable (*R. v. Fulwood* (1895), 72 L.T. 592).

A resolution of the authority approving plans is a "written consent" (*Mullis v. Hubbard* (1903), 2 Ch. 431).

It would seem that the section is only applicable to a roadway where the houses on one side are so contiguous as to be substantially one continuous row (*R. v. Fullford* (1864), 9 Cox 453).

The section does not apply to buildings belonging to a railway company and used for the purpose of such railway under any Act of Parliament (*Act of 1878, s. 41*).

#### BYE-LAWS.

**Bye-laws.**

**Power of S.A. to make :**

*Streets.*

*Structure, &c., of buildings.*

"Every sanitary authority may make bye-laws with respect to the following matters, that is to say : (1) With respect to the level, width, and construction of a new street<sup>2</sup> and the provisions for the sewerage thereof and the preventing of the opening thereof for public use until such bye-laws have been complied with : (2) with respect to the structure, and description and quality of the substances used in the construction of new buildings for securing stability and prevention of fires, and for purposes of health : (3) with respect to the sites of houses, buildings, and other erections, and the mode in which, and the materials with which, such foundations and sites shall be made, formed, excavated, filled up, prepared, and completed for securing stability, the prevention of fires and for purposes of health. For the purposes of this Act, the term 'foundations' shall mean the space immediately beneath the footings of a wall. The term 'site' in relation to a house, building, or other erection shall

<sup>1</sup> The words in italics were inserted by the Public Health (Ir.) Act, 1896, s. 26, in consequence of the decision in *Williams v. Wallasey L.B.* (1886), 16 Q.B.D. 718, in which it was held that s. 40, as originally enacted, did not apply to the erection of new buildings on land never before built on.

<sup>2</sup> A new street includes a road which, formerly used as a public thoroughfare, becomes a street by building adjoining houses along one or both sides (*Robinson v. Barton L.B.* (1884), 8 A.C. 798).



mean the whole space to be occupied by such house, building, or other erection between the level of the bottom of the foundations and the level of the base of the walls: (4) with respect to the sufficiency of the space about buildings to secure a free circulation of air and with respect to the ventilation of buildings: (5) with respect to the drainage of buildings, to water-closets, earth-closets, privies, ashpits, and cess-pools in connection with buildings, and to the closing of buildings or parts of buildings unfit for human habitation and to prohibition of their use for such habitation. And they may further provide for the observance of such bye-laws by enacting therein such provisions as they think necessary as to the giving of notices, as to the deposit of plans and sections by persons intending to lay out streets or to construct buildings, as to inspection by the sanitary authority, and as to the power of such authority, subject to the provision of this Act, to remove, alter, or pull down any work begun or done in contravention of such bye-laws: provided that no bye-law made under this section shall affect any building erected before the passing of this Act" (*Act of 1878*, s. 41). Sections 39, 40, and 41 do not apply to buildings belonging to a railway company and used for the purposes of the railway under any Act of Parliament (s. 41).

Bye-laws made in pursuance of an Act of Parliament, as here, must be reasonable and within the powers given by the section. If they are unreasonable or *ultra vires* the justices should not convict (*R. v. Wood* (1855), 5 E. & B. 49; see p. 337, *ante*, as to cases on reasonableness of bye-laws). In *Dublin Corporation v. Irish Church Mission* (1901), 1 N.I.J.R. 28, it was held by the K.B.D. (Barton, J., dissenting) that a temporary portable mission-hall made of canvas and wood was not within a bye-law under this section which required new buildings to be surrounded by walls of incombustible material, and that if the bye-law was intended to apply to such structures it was unreasonable, but see *Salt v. Scott Hall* (1903), 2 K.B. 245; *Pomeroy v. Malvern U.D.C.* (1903), 89 L.T. 555, noted p. 101, *ante*. A bye-law which required whirligigs and swings to be separated from the public road by a wall 14 inches thick was held to be unreasonable as requiring a permanent structure to avoid a temporary danger, where a temporary structure would suffice (*Enniscorthy U.D.C. v. Field* (1904), 2 I.R. 518, 38 I.L.T.R. 86).

The penalty fixed for breach of a bye-law must not exceed £5 for each such offence and, in the case of a continuing offence, a further penalty of 40s. for every day after written notice of the offence from the sanitary authority (s. 220); all bye-laws must be under the common seal of the sanitary authority (s. 219).

A copy of a bye-law signed and certified by the clerk of the sanitary authority is *prima facie* evidence of the due making, confirmation, and evidence of the bye-law without further proof (s. 223).

#### WORKS CONTRARY TO BYE-LAW.

"Where a notice, plan, or description of any work is required by any bye-law made by a sanitary authority to be laid before that authority, the sanitary authority shall within one month after the same has been delivered or sent to their clerk signify in writing their approval or disapproval of the intended work to the person proposing to execute the same; and if the work is commenced after such notice of disapproval, or before the expiration of such month without such approval, and is in any respect not in conformity with any bye-law of the sanitary authority, the sanitary authority may cause so much of the work as has been executed to be pulled down or removed. Where a sanitary authority incur expenses in or about the removal of any work executed contrary

Bye-laws.

Ventilation,  
etc., of build-  
ings.Drainage, &c.,  
of buildings.Observance of  
bye-laws.Reasonable-  
ness of bye-  
laws.Penalty for  
breach of  
bye-law.Evidence of  
bye-law.Works  
contrary to  
bye-law.

Removal.

Works  
contrary to  
bye-law.

to any bye-law, such authority may recover in a summary manner the amount of such expenses, either from the person executing the works removed or from the person causing the works to be executed at their discretion (*Act of 1878*, s. 42).

Continuing  
offence.

"Where a sanitary authority may under this section pull down or remove any work begun or executed in contravention of any bye-law, or where the beginning or the execution of the work is an offence in respect whereof the offender is liable in respect of any bye-law to a penalty, the existence of the work during its continuance in such a form and state as to be in contravention of the bye-law shall be deemed to be a continuing offence, but a penalty shall not be incurred in respect thereof after the expiration of one year from the day when the offence was committed or the bye-law was broken" (s. 42).

Owner must  
be heard.

The sanitary authority must not pull down the building unless they first give the owner an opportunity of being heard (*Hopkins v. Smethwick L.B.* (1890), 24 Q.B.D. 712), and must be able to show not only that plans were not submitted, or were disapproved of, but that the building in itself violates some particular bye-law or statute (*Robinson v. Barton L.B.* (1883), 8 A.C. 798, at p. 803).

#### SANITARY ACCOMMODATION.

Sanitary  
accommoda-  
tion.

Building  
houses  
without.

"It shall not be lawful newly to erect any house, or to rebuild any house pulled down to or below the ground floor, without sufficient water-closet, earth-closet, or privy accommodation, and an ashpit furnished with proper doors and coverings. Any person who causes any house to be erected or rebuilt in contravention of this enactment shall be liable to a penalty not exceeding £20" (*Act of 1878*, s. 44). "Ashpit" includes "any ash-tub or other receptacle for the deposit of ashes, faecal matter, or refuse" (*Act of 1890*, s. 11).

It is not necessarily a breach of the section to provide one privy for two houses (*Clutton Union v. Pointing* (1879), 4 Q.B.D. 340). It is lawful for any person erecting a house to exercise his option as to which class of sanitary convenience he prefers (*Molloy v. Gray* (1889), 24 L.R.I. 258, at p. 277; see also *Public Health Act*, 1907, *post*, p. 749).

Enforcing  
sanitary  
accommoda-  
tion.

"If a house within the district of a sanitary authority appears to such authority to be without sufficient water-closet, earth-closet, or privy accommodation, and a properly constructed ashpit, the sanitary authority shall, by written notice, require the owner or occupier of the house, within a reasonable time therein specified, to provide sufficient water-closet, earth-closet, or privy accommodation, and an ashpit constructed as aforesaid or either of them as the case may require. If such notice is not complied with, the sanitary authority may, at the expiration of the time specified in the notice, do the work thereby required to be done, and may recover in a summary manner from the owner the expenses incurred by them in so doing, or may by order declare the same to be private improvement expenses:<sup>1</sup> Provided that where a water-closet, earth-closet, or privy has been and is used in common by the inmates of two or more houses, or if, in the opinion of the sanitary authority, a water-closet, earth-closet, or privy may be so used, they need not require the same to be provided for each house" (*Act of 1878*, s. 45).

Once the sanitary authority have decided that the existing accommodation is insufficient and have served the prescribed notice, the justices merely act ministerially under this section, and cannot inquire whether the premises were without sufficient accommodation, but are bound to make the order for the recovery of the expenses of putting in whatever

<sup>1</sup> See p. 698, n. 1.



kind of accommodation the sanitary authority have thought fit to put in (*Bogle v. Sherborne L.B.* (1880), 46 J.P. 675; see also the *Public Health Acts Amendment Acts*, 1890, and 1907, *post*). Sanitary accommodation.

"Where it appears to any sanitary authority that any house is used or intended to be used as a factory or building in which persons of both sexes are employed or intended to be employed at one time, in any manufacture, trade or business, the sanitary authority may, if they think fit, by written notice, require the owner or occupier of such house within the time therein specified, to construct a sufficient number of ashpits, and of water-closets, earth-closets, or privies for the separate use of each sex. Any person who neglects or refuses to comply with any such notice shall be liable for each default to a penalty not exceeding £20 and to a further penalty not exceeding 40s. for every day during which the default is continued" (*Act of 1878*, s. 48). Factories.

Section 48 of the Act of 1878 "shall apply to the portions of a mine which are above ground and in which girls and women are employed . . . with the substitution of 'those portions of the mine' for the house in the said section mentioned" (*Coal Mines Regulation Act*, 1887, ss. 74, 77). Mines.

#### REMOVAL OF HOUSE REFUSE AND CLEANSING OF STREETS.

"Every sanitary authority may, and when required by order of the Local Government Board shall, themselves undertake or contract for—the removal of house refuse from premises; the cleansing of earth-closets, privies, ashpits, and cesspools; either for the whole or any part of their district: Moreover, every urban authority and any rural authority invested by the Local Government Board with the requisite powers may, and when required by order of the said Board shall, themselves undertake or contract for the proper cleansing of streets, and may also themselves undertake or contract for the proper watering of streets for the whole or any part of their district. . . . If any person removes, or obstructs the sanitary authority or contractor in removing, any matters by this section authorised to be removed by the sanitary authority he shall for each offence be liable to a penalty not exceeding £5. Provided that the occupier of a house within the district shall not be liable to such penalty in respect of any such matters which are produced on his own premises and are intended to be removed for sale or for his own use, and are in the meantime kept so as not to be a nuisance" (*Act of 1878*, s. 52). Removal of house refuse and cleansing of streets.  
Sanitary authority may undertake.

"House refuse" means only such refuse as arises from the domestic use of a house (*Lydon v. Standbridge* (1857), 2 H. & N. 57). Clinkers produced in the furnace of a steam laundry have been held not to be house refuse within the identical English section, *Public Health (E.) Act*, 1875, s. 42 (*London & Provincial Steam Laundry v. Willesden Board* (1892), 2 Q.B. 277). The ordinary refuse of a hotel, comprising such things as ashes from the grates, sawdust, empty bottles and tins, straw packing cases, tea leaves, waste paper, egg shells, lemon peel, dirt from the rooms and staircases is "house refuse,"<sup>1</sup> within s. 41 of the *Public Health (London) Act*, 1891, 54 & 55 Vict. c. 76 (*Mayor of Westminster v. Gordon Hotels* (1906), 2 K.B. 39).

"If a sanitary authority who have themselves undertaken or contracted for the removal of house refuse from premises, or the cleansing of earth-closets, privies, ashpits, and cesspools, fail without reasonable Obligation on sanitary authority as to refuse, &c.

<sup>1</sup> "House refuse" is defined by the *Public Health (London) Act*, 1891, s. 41, to mean ashes, cinders, breeze, rubbish, night-soil, and filth, but not to include "trade refuse," which means the refuse of any trade, manufacture, or business, or of any building materials. "Street refuse" is defined by the same section to mean dust, dirt, rubbish, mud, road-sweepings, ice, snow, and filth.



Removal of house refuse and cleansing of streets.

excuse, after notice in writing from the occupier of any house within their district requiring them to remove any house refuse, or to cleanse any earth-closet, privy, ashpit, or cesspool belonging to such house or used by the occupiers thereof, to cause the same to be removed or cleansed, as the case may be, within seven days, the sanitary authority shall be liable to pay to the occupier of such house a penalty not exceeding 5s. for every day during which such default continues after the expiration of the said period" (*Act of 1878, s. 53*).

Power to make bye-laws.

"Where the sanitary authority do not themselves undertake or contract for the cleansing of footways, and pavements adjoining any premises, the removal of house refuse from any premises, the cleansing of earth-closets, privies, ashpits, and cesspools belonging to any premises, they may make bye-laws imposing the duty of such cleansing or removal at such intervals as they think fit, on the occupier of any such premises. An urban authority may also, and when required by Order of the Local Government Board shall, make bye-laws for the prevention of nuisances arising from snow, filth, dust, ashes, and rubbish, and for the regulation of the keeping of animals on any premises, or for the prevention of such keeping so as to be injurious to health" (*Act of 1878, s. 54*).

As to bye-laws, see p. 702, *ante*. As to what are reasonable bye-laws with respect to the keeping of animals, see *Wanstead L.B. v. Wooster* (1873), 38 J.P. 21; *Lutton v. Doherty* (1885), 16 L.R.I. 493; *Heap v. Burnley Rural S.A.* (1884), 12 Q.B.D. 617; *Tong Street L.B. v. Seed* (1874), 39 J.P. 278. See the Public Health Acts Amendment Act, 1890, *post*.

#### PURIFICATION OF HOUSES.

Purification of houses.

"Where on the certificate of the medical officer of health or of any two medical practitioners, it appears to any sanitary authority that any house or part thereof is in such a filthy or unwholesome condition that the health of any person is affected or endangered thereby, or that the white-washing, cleansing, or purifying of any house or part thereof would tend to prevent or check infectious disease, the sanitary authority shall give notice in writing to the owner or occupier of such house or part thereof to whitewash, cleanse, or purify the same, as the case may require. If the person to whom notice is so given fails to comply therewith within the time therein specified, he shall be liable to a penalty not exceeding 10s. for every day during which he continues to make default; and the sanitary authority shall cause such house or part thereof to be white-washed, cleansed, or purified, and may recover in a summary manner the expenses incurred by them in so doing from the person in default" (*Act of 1878, s. 56*). As to disinfection, see also p. 726, and as to unsanitary dwellings, see pp. 704, 712.

#### NUISANCES, GENERALLY.

What are, p. 706; bye-laws to prevent nuisances in dwelling-houses, p. 707; abatement of nuisance, p. 708; information as to nuisance, p. 708; notice to abate, p. 708; summons, on non-abatement, p. 708; order for abatement, p. 709; order closing house unfit for habitation, p. 709; penalty for non-abatement of nuisance, p. 709; sale of manure, &c., p. 710; entry of sanitary authority, p. 710; expenses of execution of provisions, p. 710; complaint by individual of nuisance, p. 711; authority to police to enter, p. 711; proceedings by police, p. 711; offender not to be twice punished, p. 712.

Nuisances, generally.  
What are nuisances.

"For the purposes of this Act: (1) any premises in such a state as to be a nuisance or injurious to health: (2) any pool, ditch, gutter, water-course, privy, urinal, cesspool, drain or ashpit so foul or in such a state as to be a nuisance or injurious to health: (3) any animal so kept as to be a nuisance or injurious to health: (4) any accumulation or deposit

which is a nuisance or injurious to health : (5) any house or part of a house so overcrowded as to be dangerous or injurious to the health of the inmates, whether or not members of the same family :<sup>1</sup> (6) any factory, workshop, or work place not kept in a cleanly state or not ventilated in such a manner as to render harmless, as far as practicable, any gases, vapours, dust or other impurities generated in the course of the work carried on therein that are a nuisance or injurious to health, or so overcrowded while work is carried on as to be dangerous or injurious to the health of those employed therein : (7) any fireplace or furnace which does not as far as practicable consume the smoke arising from the combustible used therein, and which is used for working engines by steam, or in any mill, factory, dye-house, brewery, bakehouse, or gaswork, or in any manufactory or trade process whatsoever ; and (8) any chimney<sup>2</sup> (not being the chimney of a private dwelling-house)<sup>3</sup> sending forth black smoke in such quantity as to be a nuisance ; shall be deemed to be nuisances liable to be dealt with summarily in manner provided by this Act ; provided : First : That a penalty shall not be imposed on any person in respect of any accumulation or deposit necessary for the effectual carrying on any business or manufacture if it be proved to the satisfaction of the court that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business or manufacture, and that the best available means have been taken for preventing injury thereby to the public health. Secondly : That where a person is summoned before any court in respect of a nuisance arising from a fireplace or furnace<sup>4</sup> which does not consume the smoke arising from the combustible used in such fireplace or furnace, the court shall hold that no nuisance is created within the meaning of this Act and dismiss the complaint, if it is satisfied that such fireplace or furnace is constructed in such manner as to consume as far as practicable, having regard to the nature of the manufacture or trade, all smoke arising therefrom, and that such fireplace or furnace has been carefully attended to by the person having the charge thereof ” (*Act of 1878*, s. 107).

“ A tent, van, shed or similar structure used for human habitation which is in such a state as to be a nuisance or injurious to health or which is so overcrowded as to be injurious to the health of the inmates, whether or not members of the same family, shall be deemed to be a nuisance within the meaning of ” section 107 of the Public Health (Ir.) Act, 1878, “ and the provisions of that Act shall apply accordingly ” (*Housing of the Working Classes Act*, 1885, ss. 9 (1), 15).

The unfenced shaft of an abandoned coal-mine, if within fifty yards of a road or footpath or in open or unenclosed ground, is within the section (*Coal Mines Regulation Act*, 1887, ss. 37, 77).

The words “ nuisance or injurious to health ” include a state of things which, though offensive, is not injurious to health (*Malton Board of Health v. Malton Manure Co.* (1879), 4 Ex.D. 302) ; *Bishop Auckland L. Board v. Bishop Auckland Iron Co.* (1882), 10 Q.B.D. 138).

“ Where the sanitary authority do not themselves undertake or contract for the cleansing of footways and pavements adjoining any premises, the removal of house refuse from any premises, the cleansing of earth-closets,

Bye-laws to prevent nuisances in connection with dwell-ing-houses.

<sup>1</sup> See s. 125, *post*. “ House ” includes schools and also factories and other buildings in which persons are employed, whatever their number may be (s. 2). A free shelter (*R. v. Mead* (1895), 64 L.J. 169), and a day school where no one resides (*Wimbledon U.D.C. v. Hastings* (1902), 87 L.T. 118), have been held to be within the corresponding English section.

<sup>2</sup> The chimney of a steam-tug is within the section (*Tough v. Hopkins* (1904), 1 K.B. 804).

<sup>3</sup> A club is not a private dwelling-house (*M. Nair v. Baker* (1904), 1 K.B. 208).

<sup>4</sup> This proviso does not relate to chimneys sending forth black smoke in such quantity as to be a nuisance (*Weekes v. King* (1885), 53 L.T. 51).



**Nuisances,  
generally.**

privies, ashpits, and cesspools belonging to any premises, they may make bye-laws imposing the duty of such cleansing or removal, at such intervals as they think fit, on the occupier of any such premises. An urban authority may also, and when required by order of the Local Government Board shall, make bye-laws for the prevention of nuisances arising from snow, filth, dust, ashes, and rubbish, and for the regulation of the keeping of animals on any premises, or for the prevention of such keeping so as to be injurious to health" (*Act of 1878*, s. 54).

As to bye-laws and the penalties attaching to breach thereof, see ss. 219–223 of the Act, noted *ante*, p. 703.

**Abatement  
of nuisance.**

Every sanitary authority is to have their district inspected from time to time, to ascertain what nuisances exist calling for abatement, and to enforce the Act with regard to them, and to compel furnaces and fire-places to consume their own smoke (s. 108).

**Information  
as to  
nuisance.**

"Information of any nuisance under this Act in the district of any sanitary authority may be given to such sanitary authority by any person aggrieved thereby, or by any two inhabitant householders of such district, or by any officer of such authority, or by the relieving officer, or by any constable or officer of the police force of such district" (s. 109).

**Notice to  
abate  
nuisance.**

"On the receipt of any information respecting the existence of a nuisance, the sanitary authority shall, if satisfied of the existence of a nuisance, serve a notice on the person by whose act, default, or sufferance the nuisance arises or continues, or if such person cannot be found, on the owner or occupier of the premises on which the nuisance arises, requiring him to abate the same within a time to be specified in the notice, and to execute such works and do such things as may be necessary for that purpose: provided: First: That where the nuisance arises from the want or defective construction of any structural convenience, or where there is no occupier of the premises, notice under this section shall be served on the owner. Secondly: That where the person causing the nuisance cannot be found, and it is clear that the nuisance does not arise or continue by the act, default, or sufferance of the owner or occupier of the premises, the sanitary authority may themselves abate the same without further order" (s. 110). For form, see p. 764.

The notice should specify the works to be done (*R. v. Llewellyn* (1884), 13 Q.B.D. 681): but this will not apply to cases where the nuisance is not of such a nature as necessarily to require the execution of any works, e.g. keeping animals, factory sending forth black smoke, or the like (*Millard v. Wastall* (1898), 1 Q.B. 342).

As to who are persons by whose act, default, or sufferance the nuisance arises or continues, see *Brown v. Bussell* (1868), L.R. 3 Q.B. 251; *Francomb v. Freeman* (1868), L.R. 3 Q.B. 251; *Draper v. Sperring* (1861), 10 C.B. (N.S.) 113; *Proprietors of Margate Pier v. Margate Town Council* (1869), 20 L.T. (N.S.) 564. In this last case the town council, who were the owners of the harbour, were held to be liable to abate a nuisance caused by a natural accumulation of seaweed in the harbour.

As to liability of a master for the act or default of his servant, see p. 296.

**Summons if  
notice not  
complied  
with.**

"If the person on whom a notice to abate a nuisance has been served makes default in complying with any of the requisitions thereof within the time specified, or if the nuisance, although abated since the service of the notice, is, in the opinion of the sanitary authority, likely to recur on the same premises, the sanitary authority shall cause a complaint relating to such nuisance to be made before a justice, and such justice shall thereupon issue a summons requiring the person on whom the notice was served to appear before a court of summary jurisdiction" (*Act of 1878*, s. 111). For form of summons, see p. 765.



“If the court is satisfied that the alleged nuisance exists or that although abated it is likely to recur on the same premises, the court shall make an order on such person requiring him to comply with all or any of the requisitions of the notice, or otherwise to abate the nuisance within a time specified in the order, and to do any works necessary for that purpose; or an order prohibiting the recurrence of the nuisance and directing the execution of any works necessary to prevent the recurrence; or an order both requiring abatement and prohibiting the recurrence of the nuisance. The court may by their order impose a penalty not exceeding £5 on the person on whom the order is made and shall also give directions as to the payment of all costs incurred up to the time of the hearing or making the order for abatement or prohibition of the nuisance” (*Act of 1878*, s. 112). For form, see p. 765.

Nuisances,  
generally.  
Order for  
abatement.

Where A let part of a house to B who used it as a stable in such a manner as to create a nuisance. *Held*, that the justices were wrong in ordering A to abate the nuisance, as he could not do so without either terminating the tenancy or committing a trespass (*Ballymena U.D.C. v. M-Kay* (1901), 1 N.I.J.R. 48 (Co. Court): see also *R. v. Trimble* (1877), 36 L.T. 508; *Scarborough v. Scarborough* (1876), 1 Ex. D. 344; but cf. *Parker v. Inge* (1886), 17 Q.B.D. 584).

The justices must specify in the order what works are necessary (*Ex p. Saunders* (1883), 11 Q.B.D. 191; *R. v. Inhabitants of Kent* (1885), 1 T.L.R. 539, overruling *Ex p. Whitechurch* (1881), 6 Q.B.D. 545), and an order which does not do so has been held to be bad (*R. v. Wheatley* (1885), 16 Q.B.D. 34; *R. v. Horrocks* (1900), 19 Cox 529; *R. (Clarke) v. Meath JJ.* (1900), 34 I.L.T.R. 47). This, however, will not apply where no works are necessary to abate the nuisance, e.g. keeping animals, factory sending forth black smoke, or the like (see *Millard v. Wastall* (1898), 1 Q.B. 342). The justices may order more or less than appears in the notice (*Whitaker v. Derby S.A.* (1885), 55 L.J. (M.C.) 8). Where defendants raised a point before justices as to the sufficiency of the notice, but after twice applying for and obtaining adjournments of the case, accepted from the complainants further specifications of the required works, they were held to have abandoned their right to object (*R. (Sherlock) v. Cork JJ.* (1908), 42 I.L.T.R. 247). The order under the section is apparently of a criminal nature, so that the decision of the King's Bench Division on any question arising thereon cannot be the subject of appeal (*Ex parte Schofield* (1891), 2 Q.B. 428).

“Where the nuisance proved to exist is such as to render a house or building, in the judgment of the court, unfit for human habitation, the court may prohibit the using thereof for that purpose until, in its judgment, the house or building is rendered fit for that purpose, and on the court being satisfied that it has been rendered fit for that purpose the court may determine its previous order by another, declaring the house or building habitable, and from the date thereof such house or building may be let or inhabited” (*Act of 1878*, s. 113).

Order for  
closing of  
house unfit  
for habita-  
tion.

“Any person not obeying an order to comply with the requisitions of the sanitary authority or otherwise to abate the nuisance shall, if he fails to satisfy the court that he has used all due diligence to carry out such order, be liable to a penalty not exceeding 10s. per day during his default; and any person knowingly and wilfully acting contrary to an order of prohibition shall be liable to a penalty not exceeding 20s. per day during such contrary action; moreover the sanitary authority may enter the premises to which any order relates and abate the nuisance, and do whatever may be necessary in execution of such order and recover in a summary manner the expenses incurred by them from the person on whom the order is made” (*Act of 1878*, s. 114).

Penalty for  
non-abate-  
ment of  
nuisance.

Nuisances,  
generally.

Where there were several summonses for several acts in allowing smoke to issue from a chimney on several days, each act was held to be a separate offence (*R. v. Waterhouse* (1872), L.R. 7 Q.B. 545).

A sanitary authority were held to be within their rights in pulling down a ruinous mud hut, where there was an order to abate the nuisance and quit the hut until it was fit for habitation, which order was not complied with (*Brown v. Biggleswade Union*, *Times newspaper*, 19th May 1879).

"Where any person appeals against an order to the court of quarter sessions in manner provided<sup>1</sup> by this Act, no liability to penalty shall arise nor shall any proceedings be taken or work be done under such order, until after the determination of such appeal, unless such appeal ceases to be prosecuted" (*Act of 1878*, s. 115).

"Whenever it appears to the satisfaction of the court of summary jurisdiction that the person by whose act or default the nuisance arises, or the owner or occupier of the premises is not known or cannot be found, then the order of the court may be addressed to and executed by the sanitary authority" (*Act of 1878*, s. 116). For form, see p. 766.

Sale of  
manure, &c.

The sanitary authority may sell manure, &c., removed in abating a nuisance and pay the balance to the owner after deducting their expenses (*Act of 1878*, s. 117).

Entry of  
sanitary  
authority.

"The sanitary authority, or any of their officers, shall be admitted into any premises for the purpose of examining as to the existence of any nuisance thereon, or of enforcing the provisions of any Act in force . . . requiring fireplaces and furnaces to consume their own smoke, at any time between . . . 9 A.M. and 6 P.M. or in the case of a nuisance arising in respect of any business, then at any hour when such business is in progress or is usually carried on. Where under this Act a nuisance has been ascertained to exist, or an order of abatement or prohibition has been made, the sanitary authority, or any of their officers, shall be admitted from time to time into the premises between the hours aforesaid, until the nuisance is abated, or the works ordered to be done are completed, as the case may be. Where an order of abatement or prohibition has not been complied with or has been infringed, the sanitary authority, or any of their officers, shall be admitted . . . at all reasonable hours, or at all hours during which business is in progress or is usually carried on, into the premises where the nuisance exists, in order to abate the same. If admission to premises for any of the purposes of this section is refused, any justice on complaint thereof on oath by any officer of the sanitary authority (made after reasonable notice in writing of the intention to make the same has been given to the person having custody of the premises) may by order under his hand require the person having custody of the premises to admit the sanitary authority or their officer into the premises during the hours aforesaid, and if no person having custody of the premises can be found, the justice shall, on oath made before him of that fact, by order under his hand, authorise the sanitary authority or any of their officers to enter such premises during the hours aforesaid. Any order made by a justice for admission of the sanitary authority, or any of their officers, on premises shall continue in force until the nuisance has been abated, or the work for which the entry was necessary has been done" (*Act of 1878*, s. 118). For form of order, see p. 767, *post*.

"Any person who refuses to obey an order of a justice for admission of the sanitary authority, or any of their officers, on any premises shall be liable to a penalty not exceeding £5" (*Act of 1878*, s. 119).

Expenses of  
execution of  
provisions as  
to nuisances.

"All reasonable costs and expenses incurred in making a complaint, or giving notice, or in obtaining any order of the court or any justice in relation to a nuisance under this Act, or in carrying the same into effect,

<sup>1</sup> *Supra*, p. 695.



shall be deemed to be money paid for the use and at the request of the Nuisances, person on whom the order is made ; or if the order is made on the sanitary generally. authority, or if no order is made but the nuisance is proved to have existed when the complaint was made or the notice given, then of the person by whose act or default the nuisance was caused ; and in case of nuisances caused by the act or default of the owner of premises such costs and expenses may be recovered from any person who is for the time being owner of such premises : Provided that such costs and expenses shall not exceed in the whole one year's rackrent of the premises. Such costs and expenses, and any penalties incurred in relation to any such nuisance, may be recovered in a summary manner or in the Civil Bill Court or in any superior court ; and the court shall have power to divide costs, expenses, and penalties between persons by whose acts or defaults a nuisance is caused as to it may seem just. Any costs and expenses recoverable under this section by a sanitary authority from an owner of premises may be recovered from the occupier for the time being of such premises ; . . . provided that no such occupier shall be required to pay any further sum than the amount of rent for the time being due from him, or which, after demand of such costs or expenses from such occupier, and after notice not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier, unless he refuses, on application to him by the sanitary authority, truly to disclose the amount of his rent and the name and address of the person to whom such rent is payable ; but the burden of proof that the sum demanded from any such occupier is greater than the rent due by him at the time of such notice, or which has since accrued shall lie on such occupier ; ”<sup>1</sup> . . . (*Act of 1878*, s. 120).

“ Complaint may be made to a justice of the existence of a nuisance under this Act on any premises within the district of any sanitary authority by any person aggrieved thereby, or by any inhabitant of such district, or by any owner of premises within such district, and thereupon the like proceedings shall be had with the like incidents and consequences as to making of orders, penalties for disobedience of orders, appeal, and otherwise, as in the case of a complaint relating to a nuisance made to a justice by the sanitary authority. Provided that the court may, if it thinks fit, adjourn the hearing or further hearing of the summons for an examination of the premises where the nuisance is alleged to exist, and may authorise the entry into such premises of any constable or other person for the purposes of such examination : Provided also, that the court may authorise any constable or other person to do all necessary acts for executing an order made under this section, and to recover the expenses from the person on whom the order is made in a summary manner. Any constable or other person authorised under this section shall have the like powers and be subject to the like restrictions as if he were an officer of the sanitary authority authorised under the provisions of this Act relating to nuisances to enter any premises and do any act thereon ” (*Act of 1878*, s. 121).

Complaint by individual.

Authority to constable, &c., to enter.

“ Where it is proved to the satisfaction of the Local Government Board that a sanitary authority have made default in doing their duty in relation to nuisances under this Act, the Local Government Board may authorise any officer of police or constabulary acting within the district of the defaulting authority to institute any proceeding which the defaulting authority might institute with respect to such nuisances, and such officer may recover in a summary manner, or in the civil bill or any superior court, any expenses incurred by him, and not paid by the person

Proceedings by police.

<sup>1</sup> The section goes on to declare that it shall not affect the liabilities *inter se* of landlord and tenant.



Nuisances,  
generally.

proceeded against from the defaulting authority. But such officer of police or constabulary shall not be at liberty to enter any house or part of a house used as the dwelling of any person without such person's consent, or without the warrant of a justice for the purpose of carrying into effect this enactment" (*Act of 1878, s. 122*).

Offender not  
to be twice  
punished.

"No person shall be punished for the same offence both under . . . this Act relating to nuisances and under any other law or enactment" (*Act of 1878, s. 127*).

#### NUISANCES. PARTICULAR.

Keeping swine, p. 712; stagnant water, p. 712; overflowing water-closet, p. 712; offensive ditches, p. 712; collection of matter, p. 713; removal of manure, p. 713; examination of drains, &c., p. 713; two convictions for overcrowding, p. 714; ships, p. 714; tents and vans, p. 714.

Nuisances,  
particular.

Keeping  
swine.

Stagnant  
water.

Overflowing  
water-closet,  
&c.

"Any person who in any sanitary district (1) keeps any swine or pig-stye in any dwelling-house or so as to be a nuisance to any person; or (2) suffers any waste or stagnant water to remain in any cellar or place within any dwelling-house for twenty-four hours after written notice to him from the sanitary authority to remove the same; or (3) allows the contents of any water-closet, privy or cesspool to overflow or soak therefrom, shall, for every such offence, be liable to a penalty not exceeding 40s., and to a further penalty not exceeding 5s. for every day during which the offence is continued, and the sanitary authority shall abate or cause to be abated every such nuisance and may recover in a summary manner the expenses incurred by them in so doing from the occupier or in the case of houses let to weekly or monthly tenants, or in separate apartments, from the owner of the premises on which the nuisance exists" (*Act of 1878, s. 57*).

Either keeping swine in a particular place or in a particular mode may be an offence under the section (*Digby v. West Ham Board* (1858), 6 W.R. 468). A state of things may be a nuisance though not proved to be injurious to health (*Banbury S.A. v. Page* (1881), 8 Q.B.D. 97). If a dealer in pigs habitually receives each morning a number of pigs and sends them off by rail each evening he "keeps" swine within the meaning of the section (*Steers v. Manton* (1893), 57 J.P. 584).

Offensive  
ditches.

"Where any watercourse or open ditch lying near to or forming the boundary between the district of any sanitary authority and any adjoining district is foul and offensive, so as injuriously to affect the district of such sanitary authority, any justice having jurisdiction in such adjoining district may, on the application of such sanitary authority, summon the sanitary authority of such adjoining district to appear before a court of summary jurisdiction to show cause why an order should not be made by such court for cleansing such watercourse or open ditch, and for executing such permanent or other structural works as may appear to such court to be necessary; and such court after hearing the parties, or *ex parte* in case of the default of any of them to appear, may make such order with reference to the execution of the works, and the persons by whom the same shall be executed, and by whom and in what proportions the costs of such works shall be paid, and also as to the amount thereof, and the time and mode of payment, as to such court may seem reasonable" (*Act of 1878, s. 58*).

The justices may order a sanitary authority to cleanse a ditch which is adjoining to, but not in, their district, if the nuisance is caused by offensive matter flowing from the district of that sanitary authority (*Woburn S.A. v. Newport Pagnell S.A.* (1887), 51 J.P. 694). The time for appeal against the order runs from the decision (*St. Albans S.A. v. Barnet S.A.* (1876), 1 Q.B.D. 558).

"Where in any urban district it appears to the inspector of nuisances or sanitary officer that any accumulation of manure, dung, soil, or filth, or other offensive or noxious matter ought to be removed, he shall give notice to the person to whom the same belongs, or to the occupier of the premises whereon it exists, to remove the same; and if such notice is not complied with within twenty-four hours from the service thereof, the manure, dung, soil, or filth, or matter referred to, shall be vested in and be sold or disposed of by the urban authority, and the proceeds thereof shall be applied in payment of the expenses incurred by them in the execution of this section; and the surplus (if any) shall be paid on demand to the owner of the matter removed. The expenses of removal by the urban authority of any such accumulation, if and so far as they are not covered by the sale thereof, may be recovered by the urban authority in a summary manner from the person to whom the accumulation belongs, or from the occupier of the premises, or (where there is no occupier) from the owner" (*Act of 1878*, s. 59).

Nuisances,  
particular.

Collection of  
matter.

"Notice may be given by any urban authority (by public announcement in the district or otherwise) for the periodical removal of manure or other refuse matter from mews, stables, or other premises; and where any such notice has been given, any person to whom the manure or other refuse matter belongs who fails so to remove the same or permits a further accumulation, and does not continue such periodical removal at such intervals as the urban authority direct, shall be liable without further notice to a penalty not exceeding 20s. for each day during which such manure or other refuse matter is permitted to accumulate" (*Act of 1878*, s. 60).

Removal of  
manure.

"On the written application of any person to a sanitary authority, stating that any drain, water-closet, earth-closet, privy, ashpit, or cesspool on or belonging to any premises within their district is a nuisance or injurious to health (but not otherwise), it shall be lawful for any sanitary officer duly authorised in writing in that behalf by such sanitary authority, after twenty-four hours' written notice to the occupier of such premises or in case of emergency without notice to enter such premises, with or without assistants, and cause the ground to be opened, and examine such drain, water-closet, earth-closet, privy, ashpit, or cesspool. If the drain, water-closet, earth-closet, privy, ashpit, or cesspool on examination is found to be in proper condition, he shall cause the ground to be closed, and any damage done to be made good as soon as can be and the expenses of the works shall be defrayed by the person making the above-mentioned written application. If the drain, water-closet, earth-closet, privy, ashpit, or cesspool on examination appear to be in bad condition, or to require alteration or amendment, the sanitary authority shall forthwith cause notice in writing to be given to the owner or occupier of the premises requiring him forthwith or within a reasonable time therein specified to do the necessary works; and if such notice is not complied with, the person to whom it is given shall be liable to a penalty not exceeding 10s. for every day during which he continues to make default, and the sanitary authority may, if they think fit, execute such works, and may recover in a summary manner from the owner the expenses incurred by them in so doing, or may by order declare the same to be private improvement expenses, as well as the expenses incurred in the previous examination" (*Act of 1878*, s. 51).

Examination  
of drains, &c.

The giving of the notice *before entry* is not a condition precedent to recovering expenses (*Bromley B.C. v. Cheshire* (1908), 1 K.B. 680). The justices have no jurisdiction to consider whether the works were necessary or not (*Hargreaves v. Taylor* (1863), 3 B. & S. 613).

"Where two convictions against the provisions of any Act relating

**Nuisances,  
particular.**

Two convictions for overcrowding.

to the overcrowding of a house<sup>1</sup> have taken place in respect of the same house within a period of three months (whether the persons convicted were or were not the same) a court of summary jurisdiction may, on the application of the sanitary authority . . . direct the closing of the house for such period as the court may deem necessary" (*Act of 1878*, s. 125). Section 107 (5) of the Act of 1878 relates to overcrowding.

**Nuisances  
in ships.**

"For the purpose of the provisions of this Act relating to nuisances any ship or vessel lying in any river, harbour, or other water within the district of a sanitary authority shall be subject to the jurisdiction of that authority in the same manner as if it were a house within such district; and any ship or vessel lying in any river, harbour, or other water not within the district of a sanitary authority shall be deemed to be within the district of such sanitary authority as may have been or may be prescribed by the Local Government Board, and where no sanitary authority has been prescribed, then of the sanitary authority whose district nearest adjoins the place where such ship or vessel is lying. The master or other officer in charge of any such ship or vessel shall be deemed for the purpose of the said provisions to be the occupier of such ship or vessel. This section shall not apply to any ship or vessel under the command or charge of any officer bearing H.M. Commission, or to any ship or vessel belonging to any foreign government" (*Act of 1878*, s. 126).

The various port sanitary districts are laid down in the Order of the Local Government Board of 6th November 1890.

**Tents and  
vans.**

A sanitary authority may make bye-laws as to tents, vans, &c.; tents, vans, &c., may be entered and inspected by any person authorised by sanitary authority or justice of the peace—*Penalty* on obstruction, not exceeding 40s. (*Housing of the Working Classes Act*, 1885, 48 & 49 Vict. c. 72, s. 9).

## WATER SUPPLY.

Supply by sanitary authority, p. 714; duty of sanitary authority as to meters, p. 714; meter evidence, p. 714; injuring meter, p. 714; abstracting, &c., water, p. 714; owner may be required to take water, p. 715; power to close polluted wells, p. 715; incorporation of Waterworks Clauses Acts, 1847 and 1863, p. 715; offences, &c., under Act of 1847, p. 715; offences, &c., under Act of 1863, p. 716.

**Water  
supply.**Supply by  
sanitary  
authority.Duty of  
sanitary  
authority as  
to meters.Meter  
evidence.Injuring  
meter, &c.Abstracting,  
&c., water.

Under the Act of 1878 the sanitary authority may supply water to any premises by agreement (*Act of 1878*, ss. 61–65), and may recover water rents and other moneys payable under such agreements in a summary manner (s. 66). Where they agree to supply by measure, they must keep all meters in proper order for registering the supply of water, and if they do not do so they are not entitled to any rent while the default continues (*Act of 1878*, s. 68). The register of the meter is *prima facie* evidence of the amount of water consumed and any dispute is to be determined by a court of summary jurisdiction who have full jurisdiction over the costs of the proceedings (*Act of 1878*, s. 69). "If any person wilfully or by culpable negligence injures or suffers to be injured any meter or fittings belonging to a sanitary authority, or fraudulently alters the index to any meter, or prevents any meter from duly registering the quantity of water supplied or fraudulently abstracts or uses water of the sanitary authority, he shall without prejudice to any other right or remedy of the sanitary authority be liable to a penalty not exceeding 40s. and the sanitary authority may in addition thereto recover the amount of any damage sustained. The existence of artificial means, under the control of the consumer, for causing any such alteration, prevention, abstraction

<sup>1</sup> See Act of 1878, s. 107 (5), *ante*, p. 706, s. 91, *post*, p. 717.



or use shall be evidence that the consumer has fraudulently effected the same" (*Act of 1878, s. 70*).

Where any house within the district is without a proper supply of water and such supply can be furnished at a cost which the Local Government Board consider reasonable, the sanitary authority may require the owner in writing to obtain such supply within a specified time, and in default may do the work themselves and recover the expense in a summary manner, and may also levy a water rate as if the owner had demanded a supply (*Act of 1878, s. 72*).

"On the representation of any person to any sanitary authority that within their district the water in any well, tank, or cistern, public or private, or supplied from any public pump, and used or likely to be used by man for drinking or domestic purposes, or for manufacturing drinks for the use of man, is so polluted as to be injurious to health, such authority may apply to a court of summary jurisdiction for an order to remedy the same; and thereupon such court shall summon the owner or occupier of the premises to which the well, tank, or cistern, belongs, if it be private, and in the case of a public well, tank, cistern, or pump, any person alleged in the application to be interested in the same, and may either dismiss the application or may make an order directing the well, tank, cistern, or pump to be permanently or temporarily closed, or the water to be used for certain purposes only or such other order as may appear to them to be requisite to prevent injury to the health of persons drinking the water. The court may, if they see fit, cause the water complained of to be analysed at the cost of the sanitary authority applying to them under this section. If the person on whom an order under this section is made fails to comply with the same, the court may, on the application of the sanitary authority, authorise them to do whatever may be necessary in the execution of the order, and any expenses incurred by them may be recovered in a summary manner from the person on whom the order is made" (*Act of 1878, s. 79*).

For the purpose of enabling any sanitary authority to supply water there is incorporated with the Public Health Act, 1878, the Waterworks Clauses Act, 1863, and the following provisions of the Waterworks Clauses Act, 1847. With respect to the breaking up of streets for the purpose of laying pipes (ss. 28-34); to the communication pipes to be laid by the undertakers (ss. 44-47); and by the inhabitants (ss. 48-53); to the waste or misuse of the water supplied by the undertakers (ss. 54-60); to the provisions for guarding against fouling the water of the undertakers (ss. 61-67), and to the payment and recovery of the water rates (ss. 68-74). Any dispute authorised or directed by any of the incorporated provisions to be settled by an inspector or two justices shall be settled by a court of summary jurisdiction (*Act of 1878, s. 67*).

The principal sections of the above Waterworks Clauses Acts are as follows:—Service pipes may not be removed by the proprietors without giving six days' notice in writing—*Penalty*, forfeiture to the undertakers of a sum not exceeding £5 (*Waterworks Clauses Act, 1847, s. 51*). If by the special Act it be provided that the water need not be constantly laid on at high pressure, every person shall, when required, provide a proper cistern and pipe, ball or stop-cock, and keep the same in good repair so as to prevent waste of water (s. 54); and every person who shall suffer any such cistern, pipe, ball or stop-cock to be out of repair so that water shall be wasted shall forfeit to the undertakers a sum not exceeding £5 (s. 55). Every owner or occupier of any tenement who shall supply to any other person or wilfully permit him to take any water from any cistern or pipe in any tenement unless to extinguish a fire, or unless he be supplied with water by the undertakers and his pipes be, without his default, out of

Water supply.

Owner may be required to take water.

Power to close polluted wells.

Incorporation of Waterworks Clauses Acts, 1847 and 1863.

Offences under Waterworks Clauses Act, 1847.

**Water supply.**

repair, shall forfeit to the undertakers a sum not exceeding £5 (s. 58). Every person taking water supply without agreement shall forfeit to the undertakers a sum not exceeding £10 (s. 59). Every person who shall wilfully or carelessly break, injure, or open, any lock, cock, valve, pipe, work, or engine belonging to the undertakers, or who shall flush or draw off the water from the reservoirs or other works of the undertakers, or shall do any other wilful act whereby such water shall be wasted, shall forfeit to the undertakers a sum not exceeding £5 (s. 60). Every person who shall bathe in any stream, reservoir, aqueduct or other waterworks belonging to the undertakers, or wash, throw, or cause to enter therein, any dog or other animal, or throw any rubbish, dirt, filth, or other noisome thing into any such stream, reservoir, &c., or wash or cleanse therein any cloth, wool, leather, or skin of any animal, or any clothes, or other thing, or cause the water of any sink, sewer, or drain, steam-engine, boiler, or other filthy water belonging to him or under his control, to run or be brought into any stream, reservoir, aqueduct, or other waterworks belonging to the undertakers, or shall do any other act whereby the water of the undertakers shall be fouled, shall forfeit to the undertakers a sum not exceeding £5 and 20s. for each day the last mentioned offence (causing the water of any sink, &c.) is continued (s. 61). Sections 61–67 deal with the fouling of water by persons making gas.

**Offences under !  
Waterworks  
Clauses Act,  
1863.**

If any person wilfully and negligently causes or suffers any pipe, valve, cock, cistern, bath, soil pan, water-closet, or other apparatus to be out of repair, or to be so used as to cause waste or contamination of water he shall be liable to a penalty not exceeding £5 (*Waterworks Clauses Act*, 1863, s. 17). If any person not having a supply of water for other than domestic purposes<sup>1</sup> uses for other than domestic purposes any water supplied to him, or having a supply of water for other than domestic purposes, uses it for any purpose other than those for which he is entitled—*Penalty* not exceeding 40s. (s. 18). Altering pipes, &c., without consent—*Penalty* not exceeding £5 (s. 19). If any person not being supplied with water by the undertakers wrongfully<sup>2</sup> takes or uses any water from any reservoir, watercourse, conduit, or pipe belonging to the undertakers, or from any pipe leading to or from such reservoir, &c., he shall for every such offence be liable to a penalty not exceeding £5 (s. 20). There are also provisions for the recovery of water rates and rents for water meters, as to which see *CIVIL JURISDICTION*, p. 165, *ante*.

**CELLAR DWELLINGS.****Prohibition  
of occupation  
of cellar  
dwellings.<sup>1</sup>**

The occupation of cellar dwellings is prohibited, save in the case of such dwellings as were let and occupied as dwellings on the 8th August 1878, and in such cases only subject to a variety of restrictions (*Act of 1878*, ss. 82, 83). Penalties are provided (s. 84), and in case of two convictions within three months the closing of the premises may be ordered (*Act of 1878*, s. 86).

<sup>1</sup> A supply for domestic purposes does not include a supply for cattle or horses, or washing horses or carriages where such horses or carriages are kept for sale or hire, or by a common carrier, or a supply for any trade, manufacture, or business, or for watering gardens, or for fountains, or any ornamental purpose (s. 12). A swimming bath for a school is not a domestic purpose (*Barnard Castle U.D.C. v. Wilson* (1902), 2 Ch. 746). But the washing of a car used by a doctor for professional purposes is a domestic purpose (*Harrogate Corporation v. McKay* (1907), 2 K.B. 611). See *Pidgeon v. Great Yarmouth Waterworks Co.* (1902), 1 K.B. 310; *S.W. Suburban Water Co. v. Marylebone Guardians* (1904), 2 K.B. 174. See also *CIVIL JURISDICTION*, *ante*, p. 166.

<sup>2</sup> Using water from a public fountain contrary to the regulations of the authority supplying them is an offence under this section (*Hildreth v. Adamson* (1860), 8 C.B., N.S., 587), but not taking water from a tap in an empty house (*Piercy v. Pope* (1881), 45 L.T., N.S., 477).



## COMMON LODGING-HOUSES.

Notice over door, p. 717; miscellaneous offences, p. 717; water supply, p. 717; limewashing, p. 717; bye-laws, p. 717; inspection, p. 717; disqualification on third conviction, p. 718.

"The keeper of every common lodging-house<sup>1</sup> shall affix and keep undefaced and legible a notice with the words 'Registered Lodging-house' in some conspicuous place on the outside of such house. The keeper of any such house, who, after requisition in writing from the sanitary authority, refuses or neglects to affix or renew such notice shall be liable to a penalty not exceeding £5. and to a further penalty of 10s. for every day that such refusal or neglect continues after conviction" (*Act of 1878, s. 90*). Common lodging-houses. Notice over door.

"Any keeper of a common lodging-house who (1) receives any lodger in such house without the same being registered under this Act,<sup>2</sup> or (2) fails to make a report after he has been furnished by the sanitary authority with schedules for the purpose, in pursuance of this Act, of the persons resorting to such house,<sup>3</sup> or (3) fails to give the notices required by this Act where any person has been confined to his bed in such house by fever or other infectious disease,<sup>4</sup> shall be liable to a penalty not exceeding £5, and in the case of a continuing offence to a further penalty not exceeding 40s. for every day during which the offence continues" (*Act of 1878, s. 97*). Miscellaneous offences.

Where a common lodging-house can be, but is not, provided with a water supply at a reasonable rate for the use of lodgers, the sanitary authority may serve a notice requiring a supply to be provided; and if such notice be not complied with the house may be removed from the register (*Act of 1878, s. 92*). Water supply to lodging-house.

"The keeper of a common lodging-house shall, to the satisfaction of the sanitary authority, limewash the walls and ceilings thereof in the first week of each of the months of April and October in every year, and shall, if he fails to do so, be liable to a penalty not exceeding 40s., and in the event of such failure the work may be executed by the sanitary authority and the cost recovered in a summary manner" (*Act of 1878, s. 93*). Lime-washing.

"Every sanitary authority shall from time to time make bye-laws (1) for fixing and from time to time varying the number of lodgers who may be received into a common lodging-house, and for the separation of the sexes therein; and (2) for promoting cleanliness and ventilation in such houses; and (3) for the giving of notices and the taking precautions in the case of any infectious disease; and (4) generally for the well ordering of such houses" (*Act of 1878, s. 91*). Bye-laws.

"The keeper of a common lodging-house, and every other person having or acting in the care or management thereof, shall, at all times, when required by any officer of the sanitary authority, give him free access to such house or any part thereof; and any such keeper or person Inspection.

<sup>1</sup> A common lodging-house is defined by sec. 2 as "a house in which, or in any part of which, persons are harboured or lodged for hire for a single night or for less than a week at a time." Lord Hatherly and Cockburn, L.C.J., as law officers, in 1853 advised that the term did not include hotels, inns, public-houses, or lodgings let to the upper or middle classes. (See Lumley's *Public Health*, 7th ed., p. 151.)

<sup>2</sup> The Act provides for the registration of lodging-houses by the sanitary authority (s. 87).

<sup>3</sup> The sanitary authority have power to require in writing the keeper of a common lodging-house to report to them, or to such person as they direct, every person who resorted to such house during the preceding day or night (s. 94).

<sup>4</sup> The keeper of a common lodging-house shall when a person is ill of fever or any infectious disease give immediate notice thereof to an officer of the sanitary authority and also to the poor law relieving officer of union in which the common lodging-house is situated (s. 95).



**Common lodging-houses.**

Disqualification on third conviction.

who refuses such access shall be liable to a penalty not exceeding £5" (*Act of 1878, s. 96*).

"Where the keeper of a common lodging-house is convicted of a third offence against any of the provisions of this Act relating to common lodging-houses, the court before whom the conviction for such third offence takes place may, if it thinks fit, adjudge that he shall not at any time within five years after the conviction, or within such shorter period after the conviction as the court thinks fit, keep a common lodging-house without the previous licence in writing of the sanitary authority, which licence the sanitary authority may withhold or grant on such terms and conditions as they think fit" (*Act of 1878, s. 99*).

There is no power to cancel the licence except under this section, or when the owner or keeper neglects to supply the house with water after notice from the sanitary authority under s. 92. Accordingly, even though the house is of bad repute, the authority cannot withdraw the licence (*Blake v. Kelly* (1887), 52 J.P. 263). But where the Act of 1907 is operative, see p. 756, *post*.

**HOUSES LET IN LODGINGS.****Houses let in lodgings.**

Every sanitary authority "shall be empowered to make bye-laws for the following matters:—

"(1) For fixing, and from time to time varying the number of persons who may occupy a house or part of a house which is let in lodgings or occupied by members of more than one family, and for the separation of the sexes in a house so let or occupied; (2) for the registration of houses so let or occupied; (3) for the inspection of such houses; (4) for enforcing drainage and the provision of privy accommodation for such houses, and for promoting cleanliness and ventilation in such houses; (5) for the cleansing and limewashing at stated times of the premises, and for the paving of the courts and courtyards thereof; (6) for the giving of notices and the taking of precautions in case of any infectious disease" (*Act of 1878, s. 100, as amended by Housing of the Working Classes Act, 1885, s. 8*).

The above section does not apply to common lodging-houses (*Act of 1878, s. 101*). The section applies even where there is only one lodger beside the owner (*Roots v. Beaumont* (1886), 50 J.P. 244; 51 J.P. 197).

**SLAUGHTERHOUSES.**

Urban authority may provide, p. 718; bye-laws, p. 718; notice on premises, p. 719; suspension, &c., of licences, p. 719; inspection and seizure of unsound meat, p. 719; obstructing inspector, p. 720; provisions of Act of 1890, p. 720.

**Slaughter-houses.**

Urban authority may provide. Bye-laws.

"Any urban authority may, if they think fit, provide slaughterhouses, and they shall make bye-laws with respect to the management and charges for the use of any slaughterhouses so provided. For the purpose of enabling any urban authority to regulate slaughterhouses within their district, the provisions of the Towns' Improvement Clauses Act, 1847, with respect to slaughterhouses<sup>1</sup> shall be incorporated with this Act. Nothing in

<sup>1</sup> These incorporated sections (ss. 125–131) are:—Power to commissioners to license (s. 125). Licence required unless for existing and continuously used premises; penalty on using unlicensed premises, £5, and £5 a day (s. 126). Slaughterhouse or knackers' yard to be registered; penalty not exceeding £5 and 10s. a day (s. 127). Power to make bye-laws for licensing, registration, and inspection, and preventing cruelty, and for keeping clean, and for providing with sufficient water, subject to maximum penalties of £5 and 10s. a day (s. 128). Power to justice, on conviction, to revoke or suspend licence (s. 129). Penalty for slaughtering during suspension of licence (s. 130). Power to officers to enter and

this section shall prejudice or affect any rights, powers, or privileges of any persons incorporated by any local Act in force at the time of the passing of this Act for the purpose of making and maintaining slaughterhouses. Any urban authority may make bye-laws for the decent and seemly conveyance of meat through the public thoroughfares" (*Act of 1878*, s. 105).

"'Slaughterhouse' includes the buildings and places commonly called slaughterhouses and knackers' yards, and any building or place used for slaughtering cattle, horses, or animals of any description for sale" (*Act of 1878*, s. 2). The term includes "premises in use with the actual slaughterhouse for processes connected with the slaughtering" (*Hides v. Littlejohn* (1896), 18 Cox 219).

"The owner or occupier of any slaughterhouse licensed or registered under this Act shall, within one month from the licensing or registration of the premises, affix, and shall keep undefaced and legible on some conspicuous place on the premises a notice with the words 'Licensed Slaughterhouse,' or 'Registered Slaughterhouse' as the case may be. Any person who makes default in this respect, or who neglects or refuses to affix or renew such notice after requisition in writing from the urban authority, shall be liable to a penalty not exceeding £5 for every such offence, and of 10s. for every day during which such offence continues after conviction" (*Act of 1878*, s. 106).

On conviction of killing or dressing any cattle contrary to the Towns Improvement Clauses Act, 1847, or the Act with which that Act is incorporated, or of the non-observance of any of the bye-laws or regulations made under either of such Acts, the licence may be suspended for any period not exceeding two months; if defendant be the owner or proprietor, slaughtering may be forbidden for any period not exceeding two months; on conviction for subsequent like offence, licence may be revoked, or if defendant be the owner or proprietor, slaughtering may be absolutely forbidden (*Towns Improvement Clauses Act*, 1854, s. 129). Using slaughterhouse after suspension, &c., of licence—Penalty, not exceeding £5, and a further penalty of £5 a day for every day after conviction for first offence (*Towns Improvement Clauses Act*, 1847, s. 130).

"The inspector of nuisances, the officer of health, or any other officer appointed by the commissioners for that purpose, may at all reasonable times, with or without assistants, enter into and inspect any building or place whatsoever within the said limits kept or used for the sale of butchers' meat or for slaughtering cattle and examine whether any cattle or the carcase of any such cattle is deposited there, and in case such officer shall find any cattle or the carcase or part of the carcase of any beast which appears unfit for the food of man, he may seize and carry the same before a justice, and such justice shall forthwith order the same to be further inspected and examined by competent persons; and in case upon such inspection and examination such cattle, carcase, or part of a carcase be found to be unfit for the food of man, such justice shall order the same to be immediately destroyed, or otherwise disposed of in such way as to prevent the same being exposed for sale or used for the food of man; and such justice may adjudge the person to whom such cattle, carcase, or part of a carcase belongs, or in whose custody the same is found, to pay a penalty not exceeding £10 for every such animal, or carcase, or part of a carcase so found; and the owner or occupier of any building or place kept or used for the sale of butchers' meat, or for slaughtering cattle, and every other person, who obstructs or hinders such inspector

inspect and seize and destroy carcases unfit for food (s. 131). Section 131 is given *verbatim, post*. In *Collman v. Mills* (1897), 1 Q.B. 396, it was held that bye-laws might be made so as to make a master responsible for the acts of his servant, though done without his knowledge, and against his orders.



**Slaughter-houses.**

Obstructing inspector.

or other officer from entering into and inspecting the same, and examining, seizing, or carrying away such animal, or carcase, or part of a carcase, so appearing to be unfit for the food of man, shall be liable to a penalty not exceeding £5 for each offence" (*Towns Improvement Clauses Act, 1847*, s. 131; see also *Public Health (Ir.) Act, 1878*, ss. 132, 135).

The owner of the cattle, &c., need not receive notice of the examination, and an order under the section other than an order inflicting the penalty may be made behind his back (see *White v. Redfern* (1879), 5 Q.B.D. 15; *Thomas v. Van Os* (1900), 2 Q.B. 448). the reason of this exceptional course being the urgency of the matter in the public interest (see observations of Lord Alverstone, L.C.J., in *Ex parte Francis* (1903), 1 K.B. 275).

Provisions of Act of 1890, as to slaughter-houses.

Where Part III. of the Public Health Amendment Act, 1890, has been adopted under s. 3 of that Act by the local authority in urban districts, the following sections are applicable: Licences for slaughterhouses granted after such adoption shall be in force for such time only, not being less than twelve months, as the urban authority shall think fit (*Public Health Acts Amendment Act, 1890*, s. 29). Notice of any change of occupation of slaughterhouses is to be given by the new owner within one month—*Penalty*, not exceeding £5 (s. 30). If the owner of any building licensed as a slaughterhouse for the killing of animals intended as human food is convicted by a court of summary jurisdiction of selling or exposing for sale, or having in his possession or on his premises, the carcase of any animal or any piece of meat or flesh diseased or unsound, or unwholesome or unfit for the use of man as food, the court may revoke the licence (s. 31).

**HOUSING OF THE WORKING CLASSES ACTS.**

Report by medical officer of health, p. 720; order for closing, p. 720; order for demolition, p. 720; disobeying closing order, p. 721; obstructing operation of Acts, p. 721; lodging-houses owned by local authority, p. 721; recovery of penalty, p. 722; form of summons, p. 722; form of closing order, p. 722.

**Housing of the Working Classes Acts.**

Report by medical officer of health.

Order for closing.

Order for demolition.

Under the Housing of the Working Classes (Ir.) Acts, 1890 to 1908,<sup>1</sup> powers as to dealing with houses unfit for human habitation are given to the sanitary authorities. The medical officer is to report on dwellings which are unfit for human habitation (*Housing of the Working Classes Act, 1890*, ss. 30 and 31), and the sanitary authority is then to take steps under ss. 107, 110, 111, 112, and 113 of the Public Health (Ir.) Act, 1878 (see p. 708); and any such proceedings may be taken for the purpose of causing any such dwelling to be closed whether occupied or not, and upon such proceedings the court of summary jurisdiction may impose a penalty not exceeding £20 and make a closing order in the form in the Fourth Schedule to the Housing of the Working Classes Act, 1890 (see p. 733) or to the like effect, and the enactments respecting an appeal from a closing order shall apply to the imposition of such penalty as well as to a closing order (*Housing of the Working Classes Act, 1890*, 53 & 54 Vict. c. 70, s. 32 (2)).

Where proceedings are taken by the local authority under section 32 of the Act of 1890<sup>2</sup> for the purpose of causing a dwelling-house to be closed, the court, in addition to or instead of making an order under that section, may order such dwelling-house to be demolished, unless, within

<sup>1</sup> Collective title given by the Housing of the Working Classes (Ir.) Act, 1908, to the following statutes:—Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), Housing of the Working Classes Act, 1893 (56 & 57 Vict. c. 33), Housing of the Working Classes Act, 1894 (57 & 58 Vict. c. 55), Housing of the Working Classes (Ir.) Act, 1896 (59 & 60 Vict. c. 11), and Housing of the Working Classes (Ir.) Act, 1908 (8 Ed. 7, c. 61).

<sup>2</sup> The Housing of the Working Classes Act, 1890.



such period as may be prescribed in the order, such dwelling-house be rendered fit, to the satisfaction of the local authority, for human habitation; and where such demolition order has been made, and the dwelling-house is not within the time prescribed by the order rendered fit to the satisfaction of the local authority for human habitation, the order shall be carried into effect in the manner provided by section 34 of the said Act: <sup>1</sup> provided that, where proceedings are taken against the occupier, notice of such proceedings shall be served on the owner. Section 33 of the said Act shall be repealed so far as it is inconsistent with this section" (*Housing of the Working Classes Act, 1908*, 3 Ed. 7, c. 39, s. 9). Section 9 of the Act of 1903 (relating to recovery of expenses of demolition) is extended to Ireland by s. 10 of the *Housing of the Working Classes Act of 1908*.

Housing of the Working Classes Acts.

"Where a closing order has been made as respects any dwelling-house, the local authority shall serve notice of the order on every occupying tenant of the dwelling-house, and within such period as is specified in the notice, not being less than seven days after the service of the notice, the order shall be obeyed by him, and he and his family shall cease to inhabit the dwelling-house, and in default he shall be liable to a penalty not exceeding 20s. a day during his disobedience to the order. Provided that the local authority may make to every such tenant such reasonable allowance, on account of his expenses in removing, as may have been authorised by the court making the closing order, which authority the court is hereby authorised to give, and the amount of the said allowance shall be a civil debt due from the owner of the dwelling-house to the local authority, and shall be recoverable summarily" (*Housing of the Working Classes Act, 1890*, s. 32 (3)).

Disobeying closing order.

"(1) If any person being the occupier of any dwelling-house prevents the owner thereof, or being the owner or occupier of any dwelling-house prevents the medical officer of health, or the officers, agents, servants, or workmen of such owner or officer, from carrying into effect with respect to the dwelling-house any of the provisions of this part of this Act,<sup>2</sup> after notice of the intention so to do has been given to such person, any court of summary jurisdiction on proof thereof may order such person to permit to be done on such premises all things requisite for carrying into effect, with respect to such dwelling-house, the provisions of this part of this Act. (2) If at the expiration of ten days after the service of such order such person fails to comply therewith, he shall for every day during which the failure continues be liable on summary conviction to a fine not exceeding £20: Provided that if any such failure is by the occupier, the owner, unless assenting thereto, shall not be liable to such fine" (*Housing of the Working Classes Act, 1890*, s. 51).

Obstructing operation of Housing of the Working Classes Act, 1890.

"Where any person obstructs the medical officer of health, or any officer of the local authority, or of the confirming authority mentioned in Part I. of this Act, in the performance of anything which such officer or authority is by this Act required or authorised to do, such person shall, on summary conviction, be liable to a fine not exceeding £20" (*Housing of the Working Classes Act, 1890*, s. 89).

A local authority may purchase and manage existing or erect new lodging-houses (*Housing of the Working Classes Act, 1890*, ss. 58, 59, 61). The local authority may make bye-laws for the management, use, and

Lodging-houses owned by local authority.

<sup>1</sup> Which provides that "where an order for the demolition of a building has been made, the owner thereof shall within three months after service of the order proceed to take down and remove the building, and if the owner fails therein, the local authority shall proceed to take down and remove the building and shall sell the materials, and after deducting the expenses incident to such taking down and removal, pay over the balance of money (if any) to the owner."

<sup>2</sup> Part II., dealing with unhealthy dwellings.

Housing of  
the Working  
Classes Acts.  
Recovery of  
penalty.

regulation of their lodging-houses (s. 62), and ss. 219–223 of the Public Health (Ir.) Act, 1878, shall apply to such bye-laws (ss. 84, 98).

Offences under the Housing of the Working Classes Act, 1890, punishable on summary conviction, may be prosecuted and fines recovered in manner provided by the Summary Jurisdiction Acts <sup>1</sup> (*Act of 1890*, s. 90).

Form of  
summons.

#### FORM OF SUMMONS FOR CLOSING ORDER.

(See Sch. 4 (Form B), Act of 1890.)

To the owner or occupier of [*describe the premises*] situated at [*insert such a description as may be sufficient to identify the premises*].

County of [*or borough, &c.*  
of  
*or district of*  
*or as the case may be*]  
to Wit.

You are required to appear before [*describe the court of summary jurisdiction*] at the petty sessions [*or court*] holden at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ next at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon to answer the complaint this day made to me by \_\_\_\_\_ that the

premises above mentioned are used as a dwelling-house, and are in a state so dangerous or injurious to health as to be unfit for human habitation.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

Form of  
closing  
order.

#### FORM OF CLOSING ORDER.

(See Sch. 4 (Form C), Act of 1890.)

To the owner [*or occupier*] of [*describe the premises*] situated [*give such description as may be sufficient to identify the premises*].

County of \_\_\_\_\_  
[*or borough &c. of*  
*or*  
*district of*  
*or as the case may be*].

Whereas on the \_\_\_\_\_ day of \_\_\_\_\_ complaint was made before \_\_\_\_\_ Esquire one of H.M. Justices of the Peace acting in and for the county [*or other jurisdiction*] stated in the margin [*or as the case may be*] by \_\_\_\_\_ that certain premises situated at \_\_\_\_\_

in the district under the Public Health (Ir.) Act, 1878, of [*describe the Local Authority*] were in a state so dangerous or injurious to health as to be unfit for human habitation.

And whereas \_\_\_\_\_ the owner [*or occupier*] within the meaning of the said Public Health Act, 1878, hath this day appeared before us [*or me, describing the court*] to answer the matter of the said complaint [*or, in case the party charged do not appear say*] and whereas it hath been this day proved to our [*or my*] satisfaction that a true copy of the summons requiring the owner [*or occupier*] of the said premises [*or the said A. B.*] to appear this day before us [*or me*] hath been duly served according to the said Act and the Housing of the Working Classes Act, 1890:

Now on proof here had before us [*or me*] that the said premises are in a state so dangerous or injurious to health as to be unfit for human habitation we [*or I*] in pursuance of the said Acts do prohibit the using of the premises for the purpose of human habitation until in our [*or my*] judgment they are rendered fit for that purpose.

Given under the hands and seals of us [*or the hand and seal of me, describing the Court*], this day of \_\_\_\_\_ 19 \_\_\_\_\_

J. P. (L. S.)

J. P. (L. S.)

#### OFFENSIVE TRADES.

Offensive  
trades.  
Prohibition  
of.

"Any person who . . . establishes within the district of an urban authority without their consent in writing any offensive trade, that is to say the trade of blood' boiler, or bone boiler, or fellmonger, or soap boiler, or tallow melter, or tripe boiler, or gut manufacturer, or any other noxious or offensive trade, business or manufacture" <sup>2</sup>—*Penalty*, not

<sup>1</sup> Which (see the Interpretation Act, 1889) means as regards Ireland the Summary Jurisdiction (Ir.) Acts, as to which see p. 335.

<sup>2</sup> Where s. 51 of the Public Health Acts Amendment Act, 1907, 7 Ed. 7, c. 53, is applied, the words "any other trade, business, or manufacture which the local authority declare by order confirmed by the L.G.B. and published in such manner as the Board direct to be an offensive trade" shall be substituted for the words "any other nuisance or offensive trade, business, or manufacture," in the above section (*Act of 1907*, ss. 14, 15).

exceeding £50 for the establishment and not exceeding 40s. a day for every day the offence is continued, whether there has or has not been a conviction in respect of the establishment thereof (*Act of 1878*, s. 128). Offensive trades.

Bone steaming, as distinguished from bone boiling, is not necessarily within the section (*Cardiff Manure Co. v. Cardiff Guardians* (1890), 54 J.P. 661). A trade other than those specifically mentioned, to come within the section must be both (1) *necessarily* noxious or offensive (*Wanstead Local Board v. Hill* (1863), 13 C.B., N.S., 479), and not merely carried on in such a manner as to be noxious or offensive, as fish frying (*Braintree L.B. v. Boyton* (1884), 52 L.T. 99), or dealing in artificial manures (*Cardell v. New Quay L.B.* (1875), 39 J.P. 742), and (2) *ejusdem generis* with the trades specified (*Passey v. Oxford L.B.* (1879), 43 J.P. 622). A smallpox hospital accordingly does not come within the section (*Withington L.B. v. Manchester Corp.* (1893), 2 Ch. 19).

“Where any candle house, melting house, melting place, or soap house, or any slaughter house, or any building or place for boiling offal or blood, or for boiling, burning, or crushing bones, or any manufactory, building, or place used for any trade, business, process, or manufacture causing effluvia, is certified to any urban authority by their medical officer of health, or by any two legally qualified medical practitioners or by any ten inhabitants of the district of such urban authority, to be a nuisance or injurious to the health of any of the inhabitants of the district, such urban authority shall direct complaint to be made before a justice, who may summon the person by or on whose behalf the trade so complained of is carried on to appear before a court of summary jurisdiction. The court shall inquire into the complaint and if it appears to the court that the business carried on by the person complained of is a nuisance, or causes any effluvia which is a nuisance or injurious to the health of any of the inhabitants of the district, and unless it be shown that such person has used the best practicable means for abating such nuisance, or preventing or counteracting such effluvia, the person so offending (being the owner or occupier of the premises, or being a foreman or other person employed by such owner or occupier) shall be liable to a penalty not exceeding £5 nor less than 40s., and on a second and any subsequent conviction to a penalty double the amount of the penalty imposed for the last preceding conviction,” but not to exceed £200. “The court may suspend its final determination on condition that the person complained of undertakes to adopt, within a reasonable time, such means as the court may deem to be practicable and order to be carried into effect for abating such nuisance, or mitigating or preventing the injurious effects of such effluvia, or if such person gives notice of appeal to the court of quarter sessions in manner provided by this Act” (*Act of 1878*, s. 130). Nuisance from trades.

The effluvia, if a nuisance, need not necessarily be injurious to health, as the smell of frying fish (*Houldershaw v. Martin* (1885), 1 T.L.R. 323, and see cases cited in Vanston's *Public Health*, 1st ed., p. 135). The above sections (129 and 130) apply also where the business is carried on outside the district, but is a nuisance or injurious to the health of persons within the district. The summary proceedings must be had in the place where the business is situate (see *Act of 1878*, s. 131).

“Every urban authority shall from time to time, with the sanction of the Local Government Board, make bye-laws with respect to any offensive trades established with their consent . . . in order to prevent or diminish the noxious or injurious effects thereof” (s. 129). Bye-laws.



## UN SOUND MEAT AND OTHER ARTICLES INTENDED FOR FOOD.

Power of inspection, &c., by medical officer of health, p. 724 ; destruction may be ordered, p. 724 ; hindering officer, p. 725 ; search warrant, p. 725 ; who may prosecute, 725.

Unsound  
meat and  
food.

Power of  
medical  
officer of  
health to  
inspect meat,  
&c.

" Any sanitary officer of the sanitary authority may, at all reasonable times, inspect and examine any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, milk, or butter exposed or being conveyed for sale, or deposited in any place for the purpose of sale or of preparation for sale, and intended for the food of man, the proof that the same was not exposed or being conveyed or deposited for any such purpose, or was not intended for the food of man, resting with the party charged ; and if any such animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, milk, or butter appears to such sanitary officer to be diseased, or unsound, or unwholesome, or unfit for the food of man, he may seize and carry away the same himself, or by an assistant, in order to have the same dealt with by a justice ; and, should he seize the same in a public thoroughfare, may require the person conveying the same to give his own name and address and that of the owner of the articles seized, and in default, or if the officer have reasonable ground for suspecting the names or addresses so given to be false, may detain such person and give him into custody until his real name and address be ascertained. Any person giving a false name or address to any officer authorised to demand the same under this section shall be liable to a penalty not exceeding £5 " (*Act of 1878*, s. 132).

It should be noted that all foods are not included in the section.<sup>1</sup> Sunday is not necessarily, but may be, an unreasonable time (*Small v. Bickley* (1875), 32 L.T. 726).

Diseased meat placed on a cart, when passing along the streets from a slaughterhouse to a place for the manufacture of preserved meat, was held to be " exposed for sale " within 26 & 27 Vict. c. 117, s. 2 (*Daly v. Webb* (1869), I.R. 4 C.L. 309). The word " place " is not confined to places *ejusdem generis* with those specifically mentioned, but is used generally (*Young v. Gratbridge* (1868), L.R. 4 Q.B. 166).

Power of  
justice to  
order  
destruction  
of unsound  
meat, &c.

" If it appears to the justice that any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, milk, or butter so seized is diseased, or unsound, or unwholesome, or unfit for the food of man, he shall condemn the same, and order it to be destroyed or so disposed of as to prevent it from being exposed for sale or used for the food of man ; and the person to whom the same belongs or did belong at the time of exposure or conveyance for sale, or in whose possession or on whose premises the same was found, shall be liable to a penalty not exceeding £20 for every animal, carcase, or fish, or piece of meat, flesh, or fish, or any poultry or game, or for the parcel of fruit, vegetables, corn, bread, or flour, or for the milk or butter so condemned, or at the discretion of the justice, without the infliction of a fine, to imprisonment for a term of not more than three months. The justice who, under this section, is empowered to convict the offender may be either the justice who may have ordered the article to be disposed of or destroyed or any other justice having jurisdiction in the place " (*Act of 1878*, s. 133).

The justice has two functions under this section. *Firstly*, when proceedings are taken for condemnation of the article, he has merely to inquire whether the article is unsound, unwholesome, or unfit for the food of man, and, if he so finds, it is his duty to condemn the article, and he is not entitled to consider whether it is intended for the food of man (*White v. Redfern* (1879), 5 Q.B.D. 15 ; *Vinter v. Hind* (1882), 10 Q.B.D. 63 ; *Thomas v. Van Os* (1900), 2 Q.B. 448) ; and *secondly*, when pro-

<sup>1</sup> The Act of 1890, where applicable, extends the definition to all food. See *post*, p. 737.

ceedings are taken for the penalty, he should then inquire both whether it is unfit for the food of man and also intended for the food of man, &c. (Vinter v. Hind, *supra*). The condemnation need not be on the same day as the seizure, if reasonable diligence is used (Burton v. Bradley (1886), 51 J.P. 118). The order condemning the meat, &c., may be made *ex parte* (White v. Redfern (1879), 5 Q.B.D. 15), but the justice, if he thinks fit, may hear evidence tendered by the owner (*Re Bater* (1893), 2 Q.B. 77). It has been held by the Recorder of Portsmouth that live animals come within the section (*Moody v. Leach* (1880), 44 J.P. 459).

Unsound  
meat and  
food.

In proceedings for the penalty, the meat, &c., must be both (1) exposed, or being conveyed for sale, or deposited in a place for the purpose of sale or of preparation for sale, and (2) intended for the food of man (*Vinter v. Hind, supra*). A cart is a place (*Daly v. Webb* (1869), I.R. 4 C.L. 309). Actual knowledge that the meat, &c., is unfit for human food is unnecessary for a conviction, for, under the sections, a vendor sells unsound meat at his peril (*Hobbs v. Winchester Corporation* (1910), 102 L.T.J. 841; *Blaker v. Tillstone* (1894), 1 Q.B. 345). Even though the justice has condemned the meat under the first part of the section, the defendant, in a prosecution for the penalty, is entitled to bring evidence to show that the meat was sound (*Waye v. Thompson* (1885), 15 Q.B.D. 342). The exposing of each piece of meat is a distinct offence (*Re Hartley* (1862), 26 J.P. 438). It is an offence to have unsound meat intended for the food of man in one's possession though it is not exposed for sale (*Mallinson v. Carr* (1891), 1 Q.B. 48), provided that it is deposited for sale (*Rendell v. Hemmingway* (1894), 14 T.L.R. 436). As to evidence that it was deposited for sale, see *Wieland v. Butler-Hogan* (1904), 20 Cox 630. It has been held that the deposit for purpose of sale on premises of another is not sufficient for a conviction (*Barlow v. Terrett* (1891), 2 Q.B. 107; *Firth v. McPhail* (1905), 2 K.B. 300).

"Any person who in any manner prevents any sanitary officer, or other person duly authorised by the sanitary authority of the sanitary district, from entering any premises in such district and inspecting any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, milk, or butter exposed or deposited for the purpose of sale or of preparation for sale, and intended for the food of man, or who obstructs or impedes any such officer or person when carrying into execution the provisions of this Act, shall be liable to a penalty not exceeding £5" (*Act of 1878*, s. 134). There was held to be no obstruction in refusing to open a butcher's shop some distance away, out of business hours (*Small v. Bickley* (1875), 32 L.T. 726).

Hindering  
officer.

"On complaint made on oath by a sanitary officer, or other person duly authorised by a sanitary authority, any justice may grant a warrant to any such officer or person to enter any building or part of a building in which such officer or person has reason for believing that there is kept or concealed any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, milk, or butter which is intended for sale for the food of man, and is diseased, unsound, or unwholesome, or unfit for the food of man; and to search for, seize, and carry away any such animal or other article in order to have the same dealt with by a justice under the provisions of this Act. Any person who obstructs any such officer or person in the performance of his duty under such warrant shall, in addition to any other punishment to which he may be subject, be liable to a penalty not exceeding £20" (*Act of 1878*, s. 135).

Search  
warrant may  
be granted by  
a justice.

As to compensation for loss of meat seized, see p. 732. As to L.G.B. regulations as to importation, &c., of food, see *note 2* p. 727, *post*.

S. 257 is applicable; therefore a police constable cannot prosecute without the consent of the Attorney-General (*Dodd v. Pearson* (1911), 27 T.L.R. 376).

Who may  
prosecute.

## INFECTIOUS DISEASES.

Causing premises to be cleansed and disinfected, p. 726; ordering removal of infected person to hospital, p. 726; exposure of infected persons and things, p. 726; failing to disinfect public conveyance, p. 727; letting houses in which infectious persons have been lodging, p. 727; landlord making false statements, p. 727; infection in schools, p. 727; regulations of L.G.B., p. 727; notification of infectious diseases under Infectious Diseases (Notification) Act, 1889, p. 728; notification of infectious diseases under Infectious Diseases (Prevention) Act, 1890, p. 729.

**Infectious diseases.**

Causing premises to be cleansed and disinfected.

"Where any sanitary authority are of opinion, on the certificate of their sanitary officer, or of any legally qualified medical practitioner,<sup>1</sup> that the cleansing and disinfecting of any house or part thereof, and of any articles therein likely to retain infection, would tend to prevent or check infectious disease, it shall be the duty of such authority to give notice in writing to the owner or occupier of such house or part thereof, requiring him to cleanse and disinfect such house or part thereof and articles within a time specified in such notice. If the person to whom notice is so given fails to comply therewith, he shall be liable to a penalty of not less than 1s. and not exceeding 40s. for every day during which he continues to make default; and the sanitary authority shall cause such house or part thereof and articles to be cleansed and disinfected, and may recover the expenses incurred from the owner or occupier in default in a summary manner. Where the owner or occupier of any such house or part thereof is, from poverty or otherwise, unable, in the opinion of the sanitary authority, effectually to carry out the requirements of this section, such authority may, without enforcing such requirements on such owner or occupier, with his consent, cleanse and disinfect such house or part thereof and articles and defray the expenses thereof" (*Act of 1878*, s. 137).

Ordering removal of infected person to hospital.

Removal of infected persons without proper lodging or accommodation to hospital may be ordered by justices on certificate of registered medical practitioner and consent of superintending body of hospital. Wilfully disobeying or obstructing the execution of such order—*Penalty*, not exceeding £10 (*Act of 1878*, s. 141). It has been held that the English section, which is almost identical, empowers justices to make an order for removal to hospital in a case where the sick person, though occupying a separate room, is a source of danger to the other inhabitants of the house (*Warwick v. Graham* (1899), 2 Q.B. 191). The order may be made *ex parte*, and the justices cannot, on proceedings for the recovery of the penalty, go into grounds on which it was made (*R. v. Davey* (1899), 2 Q.B. 301).

Exposure of infected persons and things.

"Any person who (1) while suffering from any dangerous infectious disorder wilfully exposes himself without proper precautions against spreading the said disorder in any street, public place, shop, inn, or public conveyance, or enters any public conveyance without previously notifying to the owner, conductor, or driver thereof that he is so suffering; or (2) being in charge of<sup>2</sup> any person so suffering, so exposes such sufferer; or (3) gives, lends, sells, transmits, or exposes, without previous disinfection, any bedding, clothing, rags, or other things which have been exposed to infection from any such disorder; or (4) exposes or conveys without proper precaution the body of any person who has died of any dangerous infectious disorder; or (5) wakes or permits to be waked in any house, room, or place, over which he has control, the body of any person who

<sup>1</sup> That is, a registered medical practitioner (21 & 22 Vict. c. 90, s. 34).

<sup>2</sup> As to what is "in charge" see *Tunbridge Wells Board v. Bishopp* (1877), 2 C.P.D. 187. Irrespective of this section, it is an indictable offence to expose a person suffering from an infectious disease (*R. v. Vantandillo* (1815), 4 M. & S. 73).



has died of any dangerous infectious disorder, shall be liable to a penalty not exceeding £5; and a person who, while suffering from any such disorder, enters any public conveyance without previously notifying to the owner or driver that he is so suffering, may be summarily ejected therefrom and shall, in addition, be ordered by the court to pay such owner and driver the amount of any loss and expense they may incur in carrying into effect the provisions of this Act with respect to disinfection of the conveyance. Provided that no proceeding under this section shall be taken against persons transmitting with proper precautions any bedding, clothing, rags or other things for the purpose of having the same disinfected" (*Act of 1878, s. 142*).

Infectious diseases.

"Every owner or driver of a public conveyance shall immediately provide for the disinfection of such conveyance after it has to his knowledge conveyed any person suffering from a dangerous infectious disorder, or any bedding, clothing, rags or other things which have been exposed to infection from such disorder, and which have not been previously disinfected, and if he fails to do so he shall be liable to a penalty not exceeding £5, but no such owner or driver shall be required to convey any person so suffering, or any such bedding, clothing, or other things until he has been paid a sum sufficient to cover any loss or expense incurred by him in carrying into effect the provisions of this section" (*Act of 1878, s. 143*).

Failing to disinfect public conveyance.

"Any person who knowingly lets for hire any house, room, or part of a house in which any person has been suffering from any dangerous infectious disorder without having such house, room, or part of a house and all articles therein liable to retain infection, disinfected to the satisfaction of a legally qualified medical practitioner<sup>1</sup> as testified by a certificate signed by him, shall be liable to a penalty not exceeding £20. For the purpose of this section, the keeper of an inn or school shall be deemed to let for hire part of a house to any person admitted as a guest into such inn or school respectively" (*Act of 1878, s. 144*).

Letting houses in which infectious persons have been lodging.

"Any person letting for hire, or showing for the purpose of letting for hire, any house or part of a house, who, on being questioned by any person negotiating for the hire of such house or part of a house as to the fact of there being or within three months previously having been therein any person suffering from any dangerous infectious disorder, or any person hiring or negotiating for the hire of any house or part of a house, who, on being questioned by any person letting, or showing for the purpose of letting, such house or part of a house as to the fact of any of the persons for whose use the said house or part of the house is about being hired being, or within three months previously, having been affected by any dangerous infectious disorder, knowingly makes a false answer to such question"—*Penalty*, not exceeding £20, or imprisonment with or without hard labour not exceeding one month (*s. 145*).

Landlord making false statements.

"Any person who shall knowingly or negligently send a child to school who, within the space of three months, has been suffering from any dangerous infectious disorder, or who has been resident in any house in which such dangerous infectious disorder shall have existed within the space of six weeks, without a certificate from some duly qualified medical practitioner that such child is free from disease and infection, and unless his or her clothes have been properly disinfected"—*Penalty*, not exceeding 40s. (*Act of 1878, s. 146*).

Infection in schools.

The Local Government Board may make regulations for preventing the spread of epidemic, endemic, or infectious disorders<sup>2</sup> to be published

Regulations of Local Government Board.

<sup>1</sup> Registered under 21 & 22 Vict. c. 90, s. 34.

<sup>2</sup> The power is extended to making regulations as to importation, preparation, and storage of articles of food or drink by the Public Health (Regulations as to Food) Act, 1907.

**Infectious diseases.**

in the Dublin Gazette, a copy of which shall be sufficient evidence (s. 148)—*Penalty* for non-observance or obstruction, not exceeding £100; and daily penalty, not exceeding £50 a day (*Public Health Act, 1896, 59 & 60 Vict. c. 19, s. 1 (3)*). They may also make special regulations “where any part of Ireland appears to be threatened by any formidable epidemic, endemic, or infectious disease” (s. 149)—*Penalty* for wilful violation of any such regulation, or wilful obstruction of any person acting thereunder, not exceeding £5 (s. 154).

Notification  
of infectious  
diseases  
under  
Infectious  
Diseases  
(Notification)  
Act, 1889.

“(1) Where an inmate of any building used for human habitation within a district to which this Act extends is suffering from an infectious disease to which this Act applies, then, unless such building is a hospital in which persons suffering from an infectious disease are received, the following provisions shall have effect, that is to say: (a) the head of the family to which such inmate (in this Act referred to as the patient) belongs, and in his default the nearest relatives of the patient present in the building, or being in attendance on the patient, and in default of such relatives every person in charge of or in attendance on the patient, and in default of any such person the occupier of the building, shall, as soon as he becomes aware that the patient is suffering from an infectious disease to which this Act applies, send notice thereof to the medical officer of health of the district: (b) every medical practitioner attending on or called in to visit the patient shall forthwith, on becoming aware that the patient is suffering from an infectious disease to which this Act applies, send to the medical officer of health for the district a certificate stating the name of the patient, the situation of the building, and the infectious disease from which, in the opinion of such medical practitioner, the patient is suffering. (2) Every person required by this section to give a notice or certificate who fails to give the same, shall be liable on summary conviction in manner provided by the Summary Jurisdiction Acts to a fine not exceeding 40s.: Provided that if a person is not required to give notice in the first instance, but only in default of some other person, he shall not be liable to any fine if he satisfies the court that he had reasonable cause to suppose that the notice had been duly given” (*Infectious Diseases (Notification) Act, 1889, s. 3*).

Extent of 52  
& 53 Vict.  
c. 72.

“This Act shall extend to any urban, rural, or port sanitary district after the adoption thereof” (s. 2).

Procedure  
under 52 &  
53 Vict. c. 72.

The court of summary jurisdiction must consist of two justices at Petty Sessions as provided by s. 249 of the Public Health (Ir.) Act, 1878 (s. 18 (3)).

Diseases to  
which 52 &  
53 Vict. c. 72  
refer.

The Act refers to the following diseases: Smallpox, cholera, diphtheria, membranous croup, erysipelas, scarlatina or scarlet fever, typhus, typhoid, enteric, relapsing, continued, or puerperal fevers, and any infectious diseases to which the Act has been applied by the local authority of the district (s. 6). “‘Occupier’ includes a person having the charge, management, or control of a building, or of the part of a building in which the patient is, and in the case of a house the whole of which is let out in separate tenements, or in the case of a lodging-house the whole of which is let to lodgers, the person receiving the rent payable by the tenants or lodgers either as<sup>1</sup> his own account or as the agent of another person and in the case of a ship, vessel, or boat the master or other person in charge thereof” (s. 16). The Act applies to ships, vessels, boats, tents, vans, sheds, or similar structures used for human habitation, but not to vessels of a foreign government (s. 13); and it does not extend to any building, ship, &c., belonging to the Crown, or to any inmate of such building, ship, &c. (s. 15).

By the Infectious Diseases (Prevention) Act, 1890, 53 & 54 Vict. c. 34, which—see s. 3 thereof—is only applicable where adopted by the sanitary

<sup>1</sup> Sic.



authority, provisions are made for the prevention of the spread of infection. The principal provisions are as follows: The Act applies to the diseases specifically mentioned in s. 6 of the Infectious Diseases (Notification) Act, 1889 (s. 2). The medical officer, if in possession of evidence that any person in the district is suffering from infectious disease caused by milk supplied, may obtain from a justice an order to inspect the dairy<sup>1</sup> from which such milk comes and report thereon to the local authority, who may prohibit the supplying of milk by that dairy (s. 4). Supplying milk in contravention of such order—*Penalty*, not exceeding £5, and 40s. per day (ss. 4, 16). If the medical officer or any other registered medical practitioner certifies that the cleansing and disinfection of any house or of any article therein likely to retain infection would tend to prevent or check infectious disease, and if the owner or occupier after receipt of the prescribed notice from the local authority calling on him to cleanse and disinfect fails so to do, the local authority may themselves do so, and recover the expense summarily (s. 5). The medical officer may require the disinfection of bedding under a penalty not exceeding £10 (s. 6). Persons ceasing to occupy infected rooms without having them disinfected or giving notice to the owner or making false statements are liable to penalty not exceeding £10 (s. 7). Dead infected bodies are not to remain in dwelling-place, sleeping-place or workroom—*Penalty*, not exceeding £10 (s. 8). Bodies of infected persons in hospital to be removed only for purpose of burial—*Penalty*, not exceeding £10 (s. 9). Justices may order bodies of persons who have died from infectious disease to be buried (s. 10). Public conveyances if used for carrying dead bodies to be disinfected—*Penalty*, not exceeding £5 (ss. 11, 16). Justice may order infected person without proper accommodation to be detained in hospital (s. 12). Infectious rubbish not to be thrown into ashpits—*Penalty*, not exceeding £5 and 40s. a day (ss. 13, 16). Penalties are recoverable summarily only on information made by local authority or their officer (s. 18).

**Infectious diseases.**  
Notification under Infectious Diseases (Prevention) Act, 1890.

### BURIALS.

Establishment by sanitary authority of mortuaries, p. 729; removal and burial of dead bodies where infection, &c., p. 729; powers of L.G.B. as to burial grounds, p. 729; burying contrary to L.G.B. Order, p. 730; penalty on burying in private grave, p. 730; animals not to graze in burial ground, p. 730; L.G.B. regulations as to burial ground, p. 730; fencing of private burial grounds, p. 730; Cemeteries Clauses Act, p. 731; property in graves, p. 731; coroner's order and registrar's certificate for burial, p. 731.

A sanitary authority has power to provide mortuaries, and may make bye-laws for the regulation of the same and as to charges for the use thereof and may provide thereby for the interment of any body received into a mortuary at fixed charges (*Act of 1878*, s. 157). Justices may order removal and burial of body in case of death from any infectious disease or of retention of body in a living-room, or in such a state as to endanger health. Obstructing the execution of such order—*Penalty*, not exceeding £5 (*Act of 1878*, s. 158). The body of any person who has died of any dangerous infectious disease in any hospital or place for the treatment of the sick shall not be removed from such hospital until removed direct to a mortuary or cemetery, and any person violating, or any officer of a hospital or other person who knowingly permits the violation of this provision shall be liable to a penalty not exceeding £5 (*ib.*). See also the **INFECTIOUS DISEASES (PREVENTION ACT, 1890)**, *post*.

**Burials.**  
Provision of mortuaries.  
Removal and burial of dead bodies in certain cases.

The Local Government Board are authorised, for the protection of public health, &c., to restrain the opening of new burial grounds, and to

Powers of L.G.B. as to burial grounds.

<sup>1</sup> "Dairy" includes any place from which milk is supplied, or in which milk is kept for purpose of sale (s. 2).



**Burials.** order discontinuance of burials in specified places (*Act of 1878*, s. 162). See also s. 163 (as to directing local inquiry). s. 164 (as to postponing or varying order). s. 165 (as to Quakers). s. 166 (as to French Protestants), s. 168 (as to special licence).

**Burying contrary to L.G.B. Order.** "If any person, after the time mentioned in any order under this Act for the discontinuance of burials, knowingly and wilfully buries any body, or in anywise acts or assists in the burial of any body, in or under any church, chapel, churchyard, burial ground, or place of burial, or elsewhere, as the case may be, within the limits in which burials have by such order been ordered to be discontinued, in violation of the provisions of any such order, every person so offending shall, upon conviction thereof before a court of summary jurisdiction, forfeit a sum not exceeding £10" (*Act of 1878*, s. 167).

**Penalty on burying in private grave without consent.** "Where by usage or otherwise any grave, vault, or place of interment in any burial ground or cemetery has been the burial place of and used as such by any family, no corpse of any person not having been a member of such family shall be buried in such grave, vault, or place of interment without the consent in writing of some immediate relative of the member of such family last interred therein; and if any person shall knowingly act or assist in any burial contrary to the provisions of this section, every such person shall be liable, on summary conviction before a court of summary jurisdiction, to a penalty not exceeding £10; and upon any complaint made under this section it shall be lawful for the court to make such order for the exhumation and re-interment of such corpse so buried as to such court shall seem fit" (*Act of 1878*, s. 170).

**Animals not to graze in burial ground.** "No animal of any description shall be allowed to graze or to be within the limits of any burial ground having a sufficient fence: and it shall be lawful for a court of summary jurisdiction to order the owners of any animal or animals so found within such burial ground to pay as a fine a sum not exceeding 2s. and not less than 1s. for each animal so found as aforesaid, and to levy and dispose of said fine in the same manner as fines for trespass of cattle are now levied and disposed of under the provisions of the law at present in force in Ireland" (*Act of 1878*, s. 171).

**L.G.B. regulations as to burial ground. Fencing, &c., of private burial ground.** By s. 181 of the Act of 1878 the Local Government Board may make regulations as to burial grounds and as to places of reception of bodies previous to interment.<sup>1</sup>

Where a burial ground, not being attached to or contiguous to any church, chapel, or place of worship, nor situate in a private demesne, is without a sufficient fence or is not kept in decent order, the Burial Board for the district<sup>2</sup> may by notice in writing to the owner require him to fence it or put it in order, and on default may do so themselves, and for that purpose may enter on any adjoining lands, and any person injured may be compensated (s. 185), the amount of such compensation, if not more than £20 is claimed, to be determined by a court of summary jurisdiction and, if more is claimed, by arbitration<sup>3</sup> (*Act of 1878*, s. 274).

<sup>1</sup> The Local Government Board in pursuance of the powers conferred on them by this section have made the following rules dated 6th July 1888, which only apply to burial grounds provided under the Public Health Act.

The following will give an idea of the subject-matter of the rules:—

(1) Fencing and draining; (2) Division of area into grave spaces, readily ascertainable; map; (3) Size of grave spaces; (4) Depth; (5) Regulations as to interment; (6) One body only to be buried in a grave at one time unless the bodies be those of members of the same family; (7) Restrictions on opening of graves; (8) Regulations as to coffins; (9) Registry book to be kept; copy of rules shall be kept constantly affixed to the registry book; (10) Entry in registry book; (11) Body not to be removed or exhumed; (12) Keeping registry book.

<sup>2</sup> That is to say, the sanitary authority of the sanitary district (*Act of 1878*, s. 160; *Local Government (Ir.) Act*, 1898, s. 28).

<sup>3</sup> As to arbitration, see ss. 216–218.

By s. 193 of the Act of 1878 the following sections of the Cemeteries Burials. Clauses Act, 1847, 10 & 11 Vict. c. 65, are incorporated with the Act of Incorporation of sections of Cemeteries Clauses Act, 1878, so far as concerns any burial ground under the Act: Injuring fence, wall, tree, or plant in cemetery, daubing or destroying wall thereof, injuring, &c., monument, tablet, inscription, or gravestone, doing any wilful damage therein—*Penalty*, forfeiture to the Burial Board not exceeding £5 (s. 58): playing at games or discharging firearms in cemetery (save at a military funeral), or disturbing persons assembled in the cemetery for the purpose of burying any body therein or committing any nuisance within the cemetery—*Penalty*, forfeiture to the Burial Board not exceeding £5 (s. 59).

The property and possession in a Roman Catholic Burial Board are Property in the parish priest (*per* Palles, C.B. (1897), 31 I.L.T.R. 142, Cir. Cas.). graves. A family may acquire by prescription a right to bury in a particular grave (*Jennings v. McCarthy* (Cir. Cas.), *per* Palles, C.B., 42 I.L.T.R. 217).

As to disturbing funerals or riotous behaviour in a churchyard, see DISTURBING CHURCH, *ante*.

On holding an inquest a coroner may give a written order authorising the burial. As to necessity for registrar's certificate, to be handed to person burying, see REGISTRATION OF DEATHS. As to burying still-born children, and notice when coffin contains more than one body, see same subject. Coroner's order and registrar's certificate for burial.

#### MISCELLANEOUS.

Entry on lands, p. 731; obstructing execution of Public Health Acts, p. 732; injuring works of sanitary authority, p. 732; compensation for damage done by sanitary authority, p. 732.

"Whenever it becomes necessary for a sanitary authority or any of their officers to enter, examine, or lay open, any lands or premises for the purpose of making plans, surveying, measuring, taking levels, making, keeping in repair, or examining works, ascertaining the course of sewers or drains, or ascertaining or fixing boundaries, and the owner or occupier of such lands or premises refuses to permit the same to be entered upon, examined, or laid open, for the purposes aforesaid, or any of them, the sanitary authority may, after written notice to such owner or occupier, apply to a court of summary jurisdiction for an order authorising the sanitary authority to enter, examine, and lay open the said lands and premises for the purposes aforesaid, or any of them. If no sufficient cause is shown against the application the court may make an order accordingly, and on such order being made the sanitary authority or any of their officers may, at all reasonable times between the hours of 9 A.M. and 6 P.M. enter, examine, or lay open, the lands or premises mentioned in such order, for such of the said purposes as are therein specified, without being subject to any action or molestation for so doing; provided that except in case of emergency no entry shall be made or works commenced under this section unless at least twenty-four hours' notice of the intended entry, and of the object thereof, be given to the occupier of the premises intended to be entered" (*Act of 1878*, s. 271). For form of order, see p. 767, *post*.

The justices have a discretionary power to grant a licence to enter, and cannot state a case under 20 & 21 Vict. c. 43 as to whether they are justified or not, there being no point of law involved (*Diss U.S.A. v. Aldrich* (1877), 2 Q.B.D. 179). The justices cannot consider whether the sanitary arrangements are in fact sufficient (*Robinson v. Mayor of Sunderland* (1899), 1 Q.B. 751), but are entitled to consider whether the conditions precedent have been complied with (*ib.*; and see *Vines v. N. London Collegiate School* (1899), 63 J.P. 244).

Entry on lands for purposes of Act of 1878.



Obstructing  
execution  
of Act.

"Any person who wilfully obstructs any member of the sanitary authority, or any person duly employed in the execution of this Act, or who destroys, pulls down, injures, or defaces any board on which any bye-law, notice, or other matter is inscribed, shall, if the same was put up by authority of the Local Government Board or of the sanitary authority, be liable for every such offence to a penalty not exceeding £5. Where the occupier of any premises prevents the owner thereof from obeying or carrying into effect any provisions of this Act, any justice to whom application is made in this behalf shall, by order in writing, require such occupier to permit the execution of any works required to be executed, provided that the same appear to such justice to be necessary for the purpose of obeying or carrying into effect the provisions of this Act; and if within twenty-four hours after the making of the order such occupier fails to comply therewith, he shall be liable to a penalty not exceeding £5 for every day during the continuance of such non-compliance. If the occupier of any premises when requested by or on behalf of the sanitary authority to state the name of the owner of the premises occupied by him, refuses or wilfully omits to disclose or wilfully mis-states the same, he shall (unless he shows cause to the satisfaction of the court for his refusal) be liable to a penalty not exceeding £5" (*Act of 1878, s. 272*). This section is extended by ss. 12, 48 of the Public Health Act, 1890, *post*, as regards districts in which Part III. of that Act has been adopted. Actual physical violence is not necessary for "wilful obstruction" (*Borrow v. Howland* (1896), 60 J.P. 391). No one, whether members of the local authority or their officers, can enter premises against the will of the owner without a magistrate's order (*Consett U.D.C. v. Crawford* (1903), 2 K.B. 183). For form of order, see p. 766, *post*.

Injuring  
works of  
sanitary  
authority.

"Any person who wilfully damages any works or property belonging to any sanitary authority shall, in cases where no other penalty is provided by this Act, be liable to a penalty not exceeding £5" (*Act of 1878, s. 273*). See also the Malicious Damage Act, 24 & 25 Vict. c. 97.

Compensa-  
tion for  
damage by  
sanitary  
authority.

"Where any person sustains any damage by reason of the exercise of any of the powers of this Act, in relation to any matter as to which he is not himself in default, full compensation shall be made to such person by the sanitary authority exercising such powers; and any dispute as to the fact of damage or amount of compensation shall be settled by arbitration, in manner provided by this Act, or if the compensation claimed does not exceed the sum of £20, the same may, at the option of either party, be ascertained by and recovered before a court of summary jurisdiction" (*Act of 1878, s. 274*).

In order to bring a case within the doctrine of compensation three things must occur: (1) The Act must be a lawful exercise of statutory powers; (2) the damage must be such as would be actionable but for the Act of Parliament (*Hall v. Mayor of Bristol* (1867), L.R. 2 C.P. 322); (3) the damage must arise from the execution of the works and not merely from the use of them after they have been constructed (*per Wills, J.*, in *Ashford v. Dover Harbour Board*, *Times*, April 2, 1898, cited in *Lumley's Public Health*, 7th ed., p. 653). Consequently, where the damage is caused by work not authorised by the Act the section does not apply (*R. v. Darlington L.B.* (1865), 6 B. & S. 562). The justices should take into account both the damage which has actually happened and which will happen in the future in assessing compensation (*Re Dudley Corporation* (1881), 8 Q.B.D. 86). It is doubtful if there is any time limit to a claim under this section (see *Pettward v. Metropolitan Board of Works* (1865), 19 C.B., N.S., 489). Where a magistrate refuses to condemn meat under s. 133, *ante*, the owner is entitled under this section to recover his costs and expenses, and even if it has been condemned it has been



held that the arbitrator may investigate the fact as to whether it was sound or not (*Walshaw v. Mayor of Brighouse* (1899), 2 Q.B. 286). In addition to the compensation the court should allow the costs of the application (*Corporation of Huddersfield v. Shaw* (1890), 54 J.P. 724). The expressions "damage" and "full compensation" do not include trade loss caused to the owner of an article intended for the food of man by reason of the publicity of proceedings brought by the sanitary authority (*Re Smith and Belfast Corporation* (1910), 2 I.R. 285; see also *Hobbs v. Winchester Corporation* (1910), 102 L.T. 841; *Fitzgerald v. Leonard* (1893), 32 L.R.I. 675). Full compensation includes party and party costs (*Avery v. Wood* (1891), 3 Ch. 115), but not solicitor and client costs (*Barnett v. Eccles Corporation* (1900), 2 Q.B. 423). As to the functions of the arbitrator in dealing with "the fact of damage," see *Brierley Hill Case* (1884), 9 A.C. 595; *Walshaw v. Brighouse Corporation* (1899), 2 Q.B. 286; *Smith and Belfast Corporation, supra*; *Hobbs v. Winchester Corporation, supra*.

Compensation for damage by sanitary authority.

## PUBLIC HEALTH ACTS AMENDMENT ACT, 1890.

[Of Limited Application only, see *infra*.]

	PAGE		PAGE
Construction and application . . .	733	Unsound meat and food . . .	737
Sewers and drains . . .	734	Slaughterhouses . . .	737
Sanitary conveniences . . .	735	Common lodging-houses . . .	738
Erecting buildings on ground filled up with offensive matter . . .	737	Buildings . . .	738
Bye-laws for certain sanitary purposes . . .	737	Places of public resort . . .	739
Cleansing common courts and passages . . .	737	Miscellaneous . . .	740
		Music and dancing . . .	740
		Procedure . . .	742

The Public Health Acts Amendment Act, 1890, is to be construed as one with the Public Health (Ir.) Act, 1878 (ss. 2, 12 (7)).

Part I. (which relates merely to procedure, definitions, &c.) applies to Ireland generally (s. 2 (2)), except s. 5, which (see s. 12 (1)) does not apply to Ireland.

The rest of the Act is applicable as, and to the extent, shown in the following table:—

Construction of Act of 1890.  
Application of Act of 1890.

WHAT AUTHORITY MAY APPLY.	PORTIONS OF ACT THAT MAY BE APPLIED.
URBAN SANITARY AUTHORITY (see ss. 2 (2), 3 (1)).	All or any of Parts II., III., IV., V. ( <i>i.e.</i> ss. 13–52, except s. 41, which—see s. 12 (1)—does not apply to Ireland).
RURAL SANITARY AUTHORITY (see ss. 2 (2), 3 (2), 50).	The following sections of Part III., ss. 16, 17, 18, 19, 21, so much of s. 23 (relating to the extension of s. 157 of the Act of 1878) as applies to rural authorities, ss. 25, 26 (2), 28, 32, 33, 47, 48, 49, 50.

*Act of 1890* THE FOLLOWING PROVISIONS ARE THEREFORE IN FORCE WHERE  
*—of limited* APPLIED ACCORDING TO THE ACT :—

*application* (In the sections hereinafter set forth the modifications effected by s. 12  
*—seep. 733.* for the purpose of applying them to Ireland are in each case made in the  
text.)

#### SEWERS AND DRAINS.

Injurious matter, &c., not to pass into, p. 734; local authority making communications, &c., with sewers, p. 734; examination of drains on complaint of nuisance, p. 735.

##### Sewers and drains.

Injurious matter not to pass into sewers.

“(1) It shall not be lawful for any person to throw, or suffer to be thrown, or to pass into any sewer of a local authority or any drain communicating therewith, any matter or substance by which the free flow of the sewage or surface or storm water may be interfered with, or by which any such sewer or drain may be injured. (2) Every person offending against this enactment shall be liable to a penalty not exceeding £10, and to a daily penalty not exceeding 20s.” (*Act of 1890*, s. 16).

Chemical refuse, steam, &c., not to be turned into sewers.

“(1) Every person who turns or permits to enter into any sewer of a local authority or any drain communicating therewith—(a) Any chemical refuse, or (b) any waste steam, condensing water, heated water, or other liquid (such water or other liquid being of a higher temperature than one hundred and ten degrees of Fahrenheit), which, either alone or in combination with the sewage, causes a nuisance or is dangerous or injurious to health, shall be liable to a penalty not exceeding £10, and to a daily penalty not exceeding £5. (2) The local authority, by any of their officers either generally or specially authorised in that behalf in writing, may enter any premises for the purpose of examining whether the provisions of this section are being contravened, and if such entry be refused, any justice, on complaint on oath by such officer, made after reasonable notice in writing of such intended complaint has been given to the person having custody of the premises, may by order under his hand require such person to admit the officer into the premises, and if it be found that any offence under this section has been or is being committed in respect of the premises, the order shall continue in force until the offence shall have ceased or the work necessary to prevent the recurrence thereof shall have been executed. (3) A person shall not be liable to a penalty for an offence against this section until the local authority have given him notice of the provisions of this section, nor for an offence committed before the expiration of seven days from the service of such notice, provided that the local authority shall not be required to give the same person notice more than once” (s. 17).

Provision as to local authority making communications with or altering, &c., drains and sewers.

“(1) Where the owner or occupier of any premises is entitled to cause any sewer or drain from those premises to communicate with any sewer of the local authority, the local authority shall, if requested to do so by such owner or occupier, and upon the cost thereof being paid in advance to the local authority, themselves make the communication and execute all works necessary for that purpose. (2) The cost of making such communication (including all costs incidental thereto) shall be estimated by the surveyor of the local authority, but in case the owner or occupier of the premises, as the case may be, is dissatisfied with such estimate, he may, if the estimate is under £50, apply to a court of summary jurisdiction to fix the amount to be paid for such cost, and if the estimate is over £50 have the same determined by arbitration in manner provided by the Public Health Acts. (3) A local authority may agree with the owner of any premises that any sewer or drain which such owner

is required, or desires, to make, alter, or enlarge, or any part of such sewer *Act of 1890*  
or drain, shall be made, altered, or enlarged by the local authority" (s. 18). —*of limited*

"(1) Where two or more houses belonging to different owners are *application*  
connected with a public sewer by a single private drain, an application —*see p. 733.*  
may be made under s. 51 of the Public Health (Ir.) Act, 1878 (relating *Examination*  
to complaints as to nuisances from drains), and the local authority may of drains on  
recover any expenses incurred by them in executing any works under the complaint of  
powers conferred on them by that section from the owners of the houses nuisance.  
in such shares and proportions as shall be settled by their surveyor or  
(in case of dispute) by a court of summary jurisdiction. (2) Such expenses may be recovered summarily or may be declared by the urban  
authority to be private improvement expenses under the Public Health  
Acts, and may be recovered accordingly. (3) For the purposes of this  
section the expression 'drain' includes a drain used for the drainage of  
more than one building" (s. 19).

### SANITARY CONVENIENCES.

For public accommodation, p. 735; used in common, p. 735; for factories,  
p. 736; bye-laws as to, p. 736; rooms over privies not to be used as  
dwelling or sleeping rooms, p. 736.

"(1) Where an urban authority provide and maintain for public *Sanitary*  
accommodation any sanitary conveniences, such authority may—(i.) make *conveniences.*  
regulations with respect to the management thereof and make bye-laws *Sanitary con-*  
as to the decent conduct of persons using the same; (ii.) let the same from *veniences*  
time to time for any term not exceeding three years at such rent and *for public*  
subject to such conditions as they may think fit; (iii.) charge such fees *accommoda-*  
for the use of any water-closets provided by them as they may think *tion.*  
proper. (2) No public sanitary convenience shall, after the adoption of  
this part of this Act, be erected in or accessible from any street without  
the consent in writing of the urban authority, who may give such consent  
upon such terms as to the use thereof or the removal thereof at any time,  
if required by the urban authority, as they may think fit. (3) Any person  
who erects a sanitary convenience in contravention of this enactment, and  
after a notice in writing to that effect from the urban authority does not  
remove the same, shall be liable to a penalty not exceeding £5, and to a  
daily penalty not exceeding 20s. (4) Nothing in this section shall extend  
to any sanitary convenience now or hereafter to be erected by any railway  
company within their railway station yard or the approaches thereto"  
(s. 20).

"With respect to any sanitary convenience used in common by the *Sanitary con-*  
occupiers of two or more separate dwelling-houses, or by other persons, *veniences*  
the following provisions shall have effect:—(1) If any person injures or *used in*  
improperly fouls any such sanitary convenience, or anything used in *common.*  
connection therewith, he shall for every such offence be liable to a penalty  
not exceeding 10s. (2) If any sanitary convenience or the approaches  
thereto, or the walls, floors, seats, or fittings thereof is or are in the opinion  
of the urban authority or of the inspector of nuisances or medical officer  
of health of such authority in such a state or condition as to be a nuisance  
or annoyance to any inhabitant of the district for want of the proper  
cleansing thereof, such of the persons having the use thereof in common  
as aforesaid as may be in default, or in the absence of proof satisfactory  
to the court as to which of the persons having the use thereof in common  
is in default, each of those persons shall be liable to a penalty not ex-  
ceeding 10s., and to a daily penalty not exceeding 5s." (s. 21).

"(1) Every building, used as a workshop or manufactory, or where



*Act of 1890*  
*—of limited*  
*application*  
*—see p. 733.*

**Sanitary con-  
 veniences.**

**For factories.**

**Power to  
 make bye-  
 laws.**

**Rooms over  
 privies, &c.,  
 not to be  
 used as  
 dwelling or  
 sleeping  
 rooms.**

persons are employed or intended to be employed in any trade or business, whether erected before or after the adoption of this part of this Act in any district, shall be provided with sufficient and suitable accommodation in the way of sanitary conveniences, having regard to the number of persons employed in or in attendance at such building, and also where persons of both sexes are employed, or intended to be employed, or in attendance, with proper separate accommodation for persons of each sex. (2) Where it appears to an urban authority on the report of their surveyor that the provisions of this section are not complied with in the case of any building, the urban authority may, if they think fit, by written notice, require the owner or occupier of any such building to make such alterations and additions therein as may be required to give such sufficient, suitable, and proper accommodation as aforesaid. (3) Any person who neglects or refuses to comply with any such notice shall be liable for each default to a penalty not exceeding £20, and to a daily penalty not exceeding 40s. (4) Where this section is in force, s. 48 of the Public Health (Ir.) Act, 1878, shall be repealed" (s. 22).

"(1) Section 41 of the Public Health (Ir.) Act, 1878, shall be extended so as to empower every urban authority to make bye-laws with respect to the following matters; that is to say:—The keeping water-closets supplied with sufficient water for flushing; the structure of floors, hearths, and staircases, and the height of rooms intended to be used for human habitation; the paving of yards and open spaces in connection with dwelling-houses; and the provision in connection with the laying out of new streets of secondary means of access where necessary for the purpose of the removal of house refuse and other matters. (2) Any bye-laws under that section as above extended with regard to the drainage of buildings, and to water-closets, earth-closets, privies, ashpits, and cesspools, in connection with buildings, and the keeping water-closets supplied with sufficient water for flushing, may be made so as to affect buildings erected before the times mentioned in the said section. (3) The provisions of the said section (as amended by this Act), so far as they relate to bye-laws with respect to the structure of walls and foundations of new buildings for purposes of health, and with respect to the matters mentioned in sub-sections (3) and (4) of the said section, and with respect to the structure of floors, the height of rooms to be used for human habitation, and to the keeping of water-closets supplied with sufficient water for flushing, shall be extended so as to empower rural authorities to make bye-laws in respect to the said matters, and to provide for the observance of such bye-laws and to enforce the same as if such powers were conferred on the rural authorities by virtue of an order of the Local Government Board made on the day when this part of this Act is adopted; and s. 42 of the Public Health (Ir.) Act, 1878, shall also apply to any such authority, and shall be in force in every rural district where this part of this Act is adopted. (4) Every local authority may make bye-laws to prevent buildings which have been erected in accordance with bye-laws made under the Public Health Acts from being altered in such a way that if at first so constructed they would have contravened the bye-laws" (s. 23).

"(1) Where any portion of a room extends immediately over any privy (not being a water-closet or earth-closet), or immediately over any cesspool, midden, or ashpit, that room, whether built before or after the adoption of this part of this Act, shall not be occupied as a dwelling-place, sleeping-place or workroom, or place of habitual employment of any person in any manufacture, trade, or business during any portion of the day or night. (2) Any person who after the expiration of one month after the adoption of this part of this Act, and after notice from the local authority of not less than seven days, so occupies, and any person who suffers to

be so occupied, any such room, shall be liable to a penalty not exceeding 40s., and to a daily penalty not exceeding 10s." (s. 24).

*Act of 1890  
—of limited  
application  
—see p. 733.*

"(1) It shall not be lawful to erect a new building on any ground which has been filled up with any matter impregnated with faecal, animal, or vegetable matter, or upon which any such matter has been deposited, unless and until such matter shall have been properly removed by excavation or otherwise, or shall have been rendered or have become innocuous. (2) Every person who does or causes, or wilfully permits to be done any act in contravention of this section shall for every such offence be liable to a penalty not exceeding £5, and a daily penalty not exceeding 40s." (s. 25).

**Erecting  
buildings on  
ground filled  
up with offen-  
sive matter.**

"(1) An urban authority may make bye-laws in respect of the following matters, namely:—(a) For prescribing the times for the removal or carriage through the streets of any faecal or offensive or noxious matter or liquid, whether such matter or liquid shall be in course of removal or carriage from within or without or through their district: (b) For providing that the vessel, receptacle, cart, or carriage used therefor shall be properly constructed and covered so as to prevent the escape of any such matter or liquid: (c) For compelling the cleansing of any place whereon such matter or liquid shall have been dropped or spilt in such removal or carriage. (2) Where a local authority themselves undertake or contract for the removal of house refuse they may make bye-laws imposing on the occupier of any premises duties in connection with such removal so as to facilitate the work which the local authority undertake or contract for" (s. 26).

**Bye-laws for  
certain  
sanitary  
purposes.**

"(1) Where any court, or where any passage leading to the back of several buildings in separate occupations, and not being a highway repairable by the inhabitants at large, is not regularly and effectually swept and kept clean and free from rubbish or other accumulation to the satisfaction of the urban authority, the urban authority may, if they think fit, cause to be swept and cleaned such court or passage. (2) The expenses thereby incurred shall be apportioned between the occupiers of the buildings situated in the court or to the back of which the passage leads in such shares as may be determined by the surveyor of the urban authority, or (in case of dispute) by a court of summary jurisdiction, and in default of payment any share so apportioned may be recovered summarily from the occupier on whom it is apportioned" (s. 27).

**Cleansing  
common  
courts and  
passages.**

"(1) Sections 132 to 135 of the Public Health (Ir.) Act, 1878 (relating to unsound meat), shall extend and apply to all articles intended for the food of man, sold or exposed for sale, or deposited in any place for the purpose of sale, or of preparation for sale within the district of any local authority. (2) A justice may condemn any such article, and order it to be destroyed or disposed of, as mentioned in s. 133 of the Public Health (Ir.) Act, 1878, if satisfied on complaint being made to him that such article is diseased, unsound, unwholesome, or unfit for the food of man, although the same has not been seized as mentioned in s. 132 of the said Act" (s. 28).

**Unsound  
meat and  
food.**

"Licences granted after the adoption of this part of this Act for the use and occupation of places as slaughterhouses shall be in force for such time or times only, not being less than twelve months, as the urban authority shall think fit to specify in such licences" (s. 29).

**Slaughter-  
houses.**

**Duration of  
licences.**

"(1) Upon any change of occupation of any building within an urban sanitary district registered or licensed for use and used as a slaughterhouse, the person hereupon becoming the occupier or joint occupier shall give notice in writing of the change of occupation to the inspector of

**Notice of  
change of  
occupation of  
slaughter-  
house.**



*Act of 1890* nuisances. (2) A person who fails or neglects to give such notice within one month after the change of occupation occurs shall be liable to a penalty not exceeding £5. (3) Notice of this enactment shall be endorsed on all licences granted after the adoption of this part of this Act" (s. 30).  
*—of limited application*  
*—see p. 733.*

Revocation of licence on conviction for sale of meat unfit for food. "If the occupier of any building licensed as aforesaid to be used as a slaughterhouse for the killing of animals intended as human food is convicted by a court of summary jurisdiction of selling or exposing for sale, or for having in his possession, or on his premises, the carcase of any animal, or any piece of meat or flesh diseased or unsound, or unwholesome or unfit for the use of man as food, the court may revoke the licence" (s. 31).

**Common lodging-houses.** "Any keeper of a common lodging-house who fails to give the notice required by s. 95 of the Public Health (Ir.) Act, 1878, shall be liable to a penalty not exceeding 40s., and to a daily penalty not exceeding 5s." (s. 32).

**Buildings.** Buildings described in deposited plans otherwise than as dwelling-houses not to be used as such. "(1) Where the plan of a building has been, either before or after the adoption of this part of this Act in any district, deposited with a local authority in pursuance of any Act of Parliament or bye-law, and that building is described therein otherwise than as a dwelling-house, any person who wilfully uses or knowingly permits to be used such building or any part thereof for the purposes of habitation by any person other than the person placed therein to take care thereof, and the family of such person, shall be guilty of an offence under this section, and shall be liable to a penalty not exceeding £5, and to a daily penalty not exceeding 40s. (2) Provided that if such building has in the rear thereof and adjoining and exclusively belonging thereto such an open space as is required by any Act of Parliament or bye-law for the time being in force with respect to buildings intended to be used as dwelling-houses, and if such part of the building as is intended to be used as a dwelling-house has undergone such structural alterations, if any, as are necessary in the opinion of the local authority to render it fit for that purpose, the owner may use the same as a dwelling-house" (s. 33).

Hoads to be set up during progress of buildings, &c. "(1) Every person intending to build or take down any building, or to alter or repair the outward part of any building in any street or court, shall—(a) before beginning the same, unless the urban authority otherwise consent in writing, cause close boarded hoards or fences to the satisfaction of the urban authority to be put up in order to separate the building from the street or court; (b) if the urban authority so require, make a convenient covered platform and handrail to serve as a footway for passengers outside of such hoard or fence; (c) continue such hoard or fence with such platform and handrail as aforesaid standing and in good condition to the satisfaction of the urban authority during such time as they may require; (d) if required by the urban authority, cause the same to be sufficiently lighted during the night; (e) remove the same when required by the urban authority. (2) Every person who fails to comply with any of the provisions of this section shall be liable to a penalty not exceeding £5, and to a daily penalty not exceeding 40s. (3) Where this part of this Act is adopted the eightieth section of the Towns Improvement Clauses Act, 1847, shall be repealed, and this section shall be deemed to be substituted therefor" (s. 34).

As to repair of cellars under streets. "(1) All vaults, arches, and cellars under any street, and all openings into such vaults, arches, or cellars in the surface of any street, and all cellar-heads, gratings, lights, and coal holes in the surface of any street, and all landings, flags, or stones of the path or street supporting the same respectively, shall be kept in good condition and repair by the owners or occupiers of the same, or of the houses or buildings to which the same respectively belong. (2) Where any default is made in complying with



the provisions of this section, the urban authority may, after twenty-four hours' notice in that behalf, cause anything in respect of which such default is made to be repaired or put into good condition, and the expenses of so doing shall be paid to the urban authority by such owner or occupier respectively, or in default may be recovered in a summary manner" (s. 35).

"(1) Every building which, after the adoption of this part of this Act in any urban district, is used as a place of public resort, shall, to the satisfaction of the urban authority, be substantially constructed and supplied with ample, safe, and convenient means of ingress and egress for the use of the public, regard being had to the purposes for which such building is intended to be used, and to the number of persons likely to be assembled at any one time therein. (2) The means of ingress and egress shall during the whole time that such building is used as a place of public resort be kept free and unobstructed to such extent as the urban authority shall require. (3) An officer authorised in writing by the urban authority, and producing his authority if so required, may at all reasonable times enter any such building to see that the provisions of this section are carried into effect. (4) Any person who being the occupier or manager, or in the case of a building let for any period less than one year the owner of any building used as aforesaid, uses the same or suffers the same to be used in contravention of this section, or fails to comply with the provisions of this section in respect thereof, shall for every such offence be liable to a penalty not exceeding £20. (5) Where any alteration in the building is required in order to give proper means of ingress or egress, the court may refuse to inflict a penalty for an offence under this section until a reasonable time has been allowed for making such alteration, but the court may make such order as they think fit for the closing, or otherwise, of the building during such time. (6) For the purposes of this section the expression 'place of public resort' means a building used or constructed or adapted to be used either ordinarily or occasionally as a church, chapel, or other place of public worship (not being merely a dwelling-house so used), or as a theatre, public hall, public concert-room, public ball-room, public lecture-room, or public exhibition room, or as a public place of assembly for persons admitted thereto by tickets or by payment, or used, or constructed, or adapted to be used, either ordinarily or occasionally for any other public purpose, but shall not include a private dwelling-house used occasionally or exceptionally for any of those purposes. Provided that this section shall not extend to any building used as a church or chapel or other place of public worship before or at the time of the adoption of this part of this Act" (s. 36).

"(1) Whenever large numbers of persons are likely to assemble on the occasion of any show, entertainment, public procession, open-air meeting, or other like occasion, every roof of a building, and every platform, balcony, or other structure or part thereof let or used or intended to be let or used for the purpose of affording sitting or standing accommodation for a number of persons, shall be safely constructed or secured to the satisfaction of the surveyor of the urban authority. (2) Any person who uses or allows to be used in contravention of this section, any roof of a building, platform, balcony, or structure not so safely constructed or secured, or who neglects to comply with the provisions of this section in respect thereof, shall be liable to a penalty not exceeding £50" (s. 37).

"An urban authority may make bye-laws for the prevention of danger from whirligigs and swings when such whirligigs and swings are driven by steam power, and from the use of firearms in shooting ranges and galleries" (s. 38).<sup>1</sup>

"(1) An urban authority may from time to time provide, maintain,

*Act of 1890*  
—of limited  
application  
—see p. 733.

**Places of  
public resort.**  
Means of  
ingress to  
and egress  
from.

**Safety of  
platforms,  
&c., erected  
or used on  
public occa-  
sions.**

**Bye-laws as  
to whirligigs,  
shooting-  
galleries, &c.**

<sup>1</sup> See *Enniscorthy U.D.C. v. Field* (1904), 2 I.R. 518, noted *ante*, p. 340.

*Act of 1890* and remove in or near any street in their district suitable erections for  
*—of limited* the use, convenience, and shelter of drivers of hackney carriages, and  
*application* such other persons as the urban authority may permit to use the same.  
*—see p. 733.* (2) The urban authority may from time to time make regulations for

**Cabmen's  
shelters.**

prescribing the terms and conditions and the fees (if any) to be charged for the use of such places of shelter, and may make bye-laws for regulating the conduct of persons using the same" (s. 40).

**Parks and  
pleasure  
grounds.**

"(1) An urban authority may on such days as they think fit (not exceeding twelve days in any one year, nor four consecutive days on any one occasion) close to the public any park or pleasure ground provided by them or any part thereof, and may grant the use of the same, either gratuitously or for payment, to any public charity or institution, or for any agricultural, horticultural, or other show, or any other public purpose, or may use the same for any such show or purpose; and the admission to the said park or pleasure ground, or such part thereof, on the days when the same shall be so closed to the public may be either with or without payment, as directed by the urban authority, or, with the consent of the urban authority, by the society or persons to whom the use of the park or pleasure ground, or such part thereof, may be granted: Provided that no such park or pleasure ground shall be closed on any Sunday or public holiday. (2) An urban authority may either themselves provide and let for hire, or may license any person to let for hire, any pleasure-boats on any lake or piece of water in any such park or pleasure ground, and may make bye-laws for regulating the numbering and naming of such boats, the number of persons to be carried therein, the boathouses and mooring places for the same, and for fixing rates of hire and the qualifications of boatmen, and for securing their good and orderly conduct while in charge of any boat" (s. 44).

**Throwing  
cinders, &c.,  
into streams.**

"(1) It shall not be lawful for any person to throw or place or suffer to be thrown or placed into or in any river, stream, or watercourse within any district in which this part of this Act is adopted, any cinders, ashes, bricks, stone, rubbish, dust, filth, or other matter which is likely to cause annoyance. (2) Every person offending against this enactment shall be liable to a penalty not exceeding 40s. for every such offence" (s. 47).

**Injuring  
board, &c.**

"So much of s. 272 of the Public Health (Ir.) Act, 1878, as imposes penalties on persons who destroy, pull down, injure, or deface any board on which any bye-law, notice, or other matter is inscribed, shall apply to persons who destroy, pull down, injure, or deface any advertisement, placard, bill, or notice put up by or under the direction of a local authority" (s. 48).

**Expenses of  
rural autho-  
rities.**

"The Local Government Board may by order on the application of any rural authority declare any expenses incurred by such authority to be special expenses within the meaning of ss. 229 and 230 of the Public Health (Ir.) Act, 1878" (s. 49).

Where Part IV. of the Public Health Amendment Act, 1890, has been adopted a licence from justices for the use of premises for public music and dancing is necessary under the following sections of that Act.

**Music and  
dancing.  
Licences  
required.**

"For the regulation of places ordinarily used for public dancing or music, or other public entertainment of the like kind, the following provisions shall have effect (namely): 1. After the expiration of six months from the adoption of this part of this Act, a house, room, garden, or other place, whether licensed or not for the sale of wine, spirits, beer, or other fermented or distilled liquors, shall not be kept or used for public dancing, singing, music, or other public entertainment of the like kind without a licence for the purpose or purposes for which the same respectively is to be used first obtained from the justices assembled at the annual licensing quarter sessions of the place in which the house, room, garden, or place



is situate, and for the registration thereof a fee of 5s. shall be paid by the person applying therefor: 2. Such justices may, under the hands of a majority of them assembled at their annual licensing quarter sessions or at any adjournment thereof or at any petty sessions convened with fourteen days' previous notice, grant licences to such persons as they think fit to keep or use houses, rooms, gardens, or places for all or any of the purposes aforesaid upon such terms and conditions, and subject to such restrictions as they by the respective licences determine, and every licence shall be in force for one year or for such shorter period as the justices on the grant of the licence shall determine, unless the same shall have been previously revoked as hereinafter provided: 3. Such justices may from time to time at any such petty sessions aforesaid transfer any such licence to such person as they think fit: 4. Each person shall in each case give fourteen days' notice to the person who keeps the register of licences and to the district inspector of the district in which the house, room, garden, or place is situated or in his absence to the head constable, of his intention to apply for any such licence or for the transfer of any such licence: 5. Any house, room, garden, or place kept or used for any of the purposes aforesaid without such licence first obtained shall be deemed a disorderly house, and the person occupying or rated as occupier of the same shall be liable to a penalty not exceeding £5 for every day on which the same is kept or used for any of the purposes last aforesaid: 6. There shall be affixed and kept up in some conspicuous place on the door or entrance of every house, room, garden, or place so kept or used and so licensed as aforesaid, an inscription in large capital letters in the words following: 'Licensed in pursuance of Act of Parliament for \_\_\_\_\_' with the addition of words showing the purpose or purposes for which the same is licensed: 7. Any house, room, garden, or place so kept or used, although so licensed as aforesaid, shall not be opened for any of the said purposes except on the days and between the hours stated in the licence: 8. The affixing and keeping up of such inscription as aforesaid, and the observance of the days and hours of opening and closing, shall be inserted in and made a condition of every such licence: 9. In case of any breach or disregard of any of the terms or conditions upon or subject to which the licence was granted, the holder thereof shall be liable to a penalty not exceeding £20, and to a daily penalty not exceeding £5, and such licence shall be liable to be revoked by the order of a court of summary jurisdiction: 10. No notice need be given under sub-s. 4 of this section when the application is for a renewal of any existing licence held by the applicant for the same premises: 11. The justices in any petty sessions may, if and as they think fit, grant to any person applying for the same a licence to keep or use any house, room, garden, or place for any purpose within the meaning of this section for any period not exceeding fourteen days which they shall specify in such licence, notwithstanding that no notices shall have been given under sub-s. 4 of this section" (s. 51, as varied in its application to Ireland by s. 12 (9)).

A skating-rink where music is played is within the section (*R. v. Tucker* (1877), 2 Q.B. 417).

Neither a room in which public dancing takes place on isolated occasions (*Gregory v. Tuffs* (1833), 6 C. & P. 271), nor a dancing school to which only subscribers and ladies introduced by them are admitted is "kept for public dancing" (*Bellis v. Burghall* (1799), 2 Esp. 722). It is not necessary that money should be charged for admission to bring a place within the definition (*Archer v. Willingrace* (1802), 4 Esp. 186). Where a licensed victualler had in the public smoke-room of his house a piano on which customers were in the habit of playing for the amusement of themselves and others resorting thereto, but made no extra charge

*Act of 1890*  
—of limited  
application  
—see p. 733.

Music and  
dancing.



*Act of 1890* either for the use of the piano or for the entertainment thus afforded, —*of limited* and did not pay or encourage the performers, it was held that the room *application* was not within the section (*Brearley v. Morley* (1899), 2 Q.B. 121). —*see p. 733.* Prosecutions under this Act are governed by the procedure sections *Procedure.* of the Public Health (Ir.) Acts, 1878 (ss. 2, 6), as to which see p. 694.

*Act of 1907 :* PUBLIC HEALTH ACTS AMENDMENT ACT, 1907.

ss. 1–14

*of general application.*

(*Of Limited Application only, see infra.*)

	PAGE		PAGE
Construction of . . . . .	742	Common lodging-houses . . . . .	756
Application of . . . . .	742	Recreation grounds . . . . .	758
Procedure . . . . .	742	Police . . . . .	759
Streets and buildings . . . . .	743	Fire brigade . . . . .	761
Sanitary provisions . . . . .	748	Sky signs . . . . .	762
Infectious diseases . . . . .	753	Miscellaneous . . . . .	763

*General construction of Act.*

The Public Health Acts Amendment Act, 1907, 7 Edw. 7, c. 53, is to be construed as one with the Public Health (Ir.) Acts, 1878 to 1900 (*Public Health Acts Amendment Act, 1907*, ss. 2, 14).

*Application of Act of 1907.*

Part I. of the Act, which part comprises ss. 1 to 14 inclusive, applies generally throughout Ireland (s. 2). All or any of Parts II.–VI. and Part X., or any section of any of those parts, shall extend to any district to which they are applied by an order of the Local Government Board for Ireland (ss. 2, 3 (1)), and Parts VII.–IX., or any section of those parts, shall extend to any district to which they are applied by the Chief Secretary (ss. 2, 3 (4)).

In the sections hereinafter set forth the modifications effected by s. 14 for the purpose of applying them to Ireland are in each case made in the text.

*Procedure. Generally.*

“Offences under this Act or under any bye-law made under the powers of this Act or under the powers of the Public Health (Ir.) Act, 1878, or any enactment amending or extending that Act, may be prosecuted, and penalties, forfeitures, costs, and expenses recovered, in like manner and subject to the same provisions as offences which may be prosecuted, and penalties, forfeitures, costs, and expenses which may be recovered, in a summary manner under the Public Health (Ir.) Acts, 1878 to 1900” (s. 6).

*Appeal.*

“(1) Except where this Act otherwise expressly provides any person aggrieved—(a) By any order, judgment, determination, or requirement of a local authority under this Act; (b) by the withholding of any order, certificate, licence, consent, or approval, which may be made, granted, or given by a local authority under this Act; (c) by any conviction or order of a court of summary jurisdiction under any provision of this Act; may appeal, in manner provided by the Summary Jurisdiction Acts, to a court of quarter sessions. (2) Where any person deems himself aggrieved by the decision of the local authority in any case in which the local authority, under this Act, are empowered to recover in a summary manner any expenses incurred by them, or to declare the expenses to be private improvement expenses, s. 268 of the Public Health (Ir.) Act, 1878, shall apply as it applies to cases under that Act, and sub-s. (1) of this section shall not apply in any such case, whether arising under the Public Health (Ir.) Act, 1878, or under this Act; but nothing in this sub-section shall

extend to any case in which an appeal to a court of summary jurisdiction in relation to any requirement of a local authority, or to any such expenses, is expressly authorised by this Act" (s. 7).

"Any information, complaint, warrant or summons made or issued for the purpose of this Act or of the Public Health (Ir.) Acts, 1878 to 1900, may contain in the body thereof or in a schedule thereto several sums"<sup>1</sup> (s. 8).

*Act of 1907:*  
ss. 1-14  
*of general application.*  
More than one sum in one summons.

## PART II.—STREETS AND BUILDINGS.

Deposit of plan, p. 743; new streets, p. 743; crossing for cattle over footways, p. 744; urgent repairs to private streets, p. 744; damages to footways by excavations, p. 745; altering names of streets, p. 745; buildings at corners of streets, p. 745; what deemed new buildings, p. 745; height of chimneys, p. 745; yards to be paved, p. 745; entrances to courts, p. 746; temporary buildings, p. 746; removal of materials from streets, p. 747; excavations, &c., in streets, p. 747; dangerous places to be repaired or enclosed, p. 747; fencing lands adjoining streets, p. 747; hoardings to be securely erected, p. 748; exemption of railway buildings, p. 748.

*Act of 1907*  
*—of limited application*  
*—see p. 742.*

"The deposit of any plans or sections of any street or building, in pursuance of any bye-law in force in the district, may by notice in writing to the person by whom the plans or sections have been deposited be declared by the local authority to be of no effect if the work to which the plans or sections relate is not commenced—As to plans and sections deposited before the commencement of this section, within three years from that date; as to plans and sections deposited on or after the commencement of this section, within three years of the deposit of the plans and sections. When the deposit of any plans and sections has been declared to be of no effect, a fresh deposit shall be necessary before the work to which they relate is commenced. The local authority shall give notice of the provisions of this section to every person intending to lay out a new street or erect a new building in relation to which plans and sections have been deposited before the commencement of this section, but the laying out of which street or erection of which building shall not have been commenced, and shall attach a similar notice to the approval of every such intended work in relation to which plans and sections have been deposited subsequent to the commencement of this section" (s. 15).

**Streets and buildings.**

Deposit of plan to be of no effect after certain intervals.

"The local authority may retain any drawings, plans, elevations, sections, specifications, and written particulars, descriptions or details, deposited with and approved by them in pursuance of any enactment for the time being in force in the district or of any bye-law thereunder" (s. 16).

As to plans deposited with local authority.

"(1) The local authority may, on the deposit of a plan and sections of a new street in pursuance of a bye-law in force in the district, by order vary the intended position, direction or termination, or level of the new street so far as is necessary for the purpose of securing more direct, easier, or more convenient means of communication with any other street or intended street or for the purpose of securing an adequate opening at either end of the new street, or of securing compliance with any enactment or bye-law in force in the district for the regulation of streets and buildings. The local authority may also by their order fix the points at which the new street shall be deemed to begin or end, and the limits of the new street as determined by the points so fixed shall have effect for the purposes of the Public Health (Ir.) Acts, 1878 to 1907, and of any bye-laws made under those Acts and in force within the district. (2) The powers of the local authority under this section shall not be exerciseable in any case in which it is shown, to their satisfaction, that compliance with their

Power to vary position or direction and to fix beginning and end of new streets.

<sup>1</sup> "Sums" here clearly means charges.

*Act of 1907* order will entail the purchase of additional lands by the owner of the —of *limited* lands on which the new street is intended to be laid out, or the execution of works elsewhere than on those lands. (3) Where the local authority *application* make an order under this section a person shall not lay out or construct the new street otherwise than in compliance with the order. If any person *Streets and buildings.* acts in contravention of this provision, he shall be liable to a penalty not exceeding £5, and to a daily penalty not exceeding 40s. (4) The local authority shall pay compensation to any person injuriously affected by the exercise by the local authority of their powers under this section" (s. 17).

Crossing for cattle, &c., over foot-ways.

"The provision and use of new means of access for any cattle, any beast of draught or burden, any waggon, cart, or other wheeled carriage exceeding four feet in width or two hundredweight in weight, to or from any premises fronting, adjoining, or abutting on any street which has become a highway repairable by the inhabitants at large, may, where that provision involves passage across or interference with any such part of the street as comprises a kerbed or paved footway, be allowed by the local authority subject to the following conditions (that is to say):—(a) Every person who intends to provide the new means of access shall give notice in writing of his intention to the local authority, and shall at the same time submit, for the approval of the local authority, a plan showing the position, gradient, and mode of construction of the intended means of access; (b) when the plan, with or without amendment, has been approved by the local authority, the person may, upon receiving notice of their approval, proceed to execute the necessary works, but those works shall be executed under the supervision and to the reasonable satisfaction of the local authority, and in accordance with the plan as approved by the local authority; (c) after the completion of the works the new means of access may be used, subject to the conditions which, in pursuance of any provisions of the law relating to highways, attach to the use for the like purpose of any carriage way forming part of a highway repairable by the inhabitants at large" (s. 18).

As to urgent repairs to private streets.

"(1) Where repairs are required in the case of any street, not being a highway repairable by the inhabitants at large, to obviate or remove danger to any passenger or vehicle in the street, the local authority may give notice in writing to the owners of the lands and premises fronting, adjoining, or abutting on the street, and may require the owners to execute, within a time to be specified in the notice, such repairs as are described in the notice. (2) If, within the time specified in the notice, the repairs described in the notice are not executed, the local authority may execute the repairs, and may recover summarily, as a civil debt, the cost of the repairs so executed from the owners in default, and the amount recoverable from each owner shall be in the proportion which the extent of his lands and premises fronting, adjoining, or abutting on the street, bears to the total extent of all lands and premises so fronting, adjoining, or abutting. (3) Where the name or place of abode of an owner cannot be found by the local authority, a copy of the notice shall be sent by post to or left with the occupier of the lands and premises to which the notice relates, or, if there be no such occupier, shall be affixed upon some conspicuous part of the lands and premises. (4) In every case in which, within the time specified in the notice, the majority in number or rateable value of owners of lands and premises in the street by a notice in writing, require the local authority to proceed, in relation to the street, under s. 28 of the Public Health (Ir.) Act, 1878 . . . the local authority shall so proceed; and where the local authority so proceed they shall, on the completion of the necessary works, forthwith declare the street to be a highway repairable by the inhabitants at large, and on and after the date of the declaration the street shall become a highway so repairable" (s. 19).



"If the footway of any street repairable by the inhabitants at large be injured by or in consequence of any excavations or other works on lands adjoining thereto the local authority may repair or replace the footway so injured, and all damages and expenses of or arising from such injury and repair or replacement shall be paid to the local authority by the owner of the lands on which such excavations or other works have been made, or by the person causing or responsible for the injury." (s. 20).

*Act of 1907*  
*—of limited*  
*application*  
*—see p. 742.*

**Streets and buildings.**

"The local authority may, with the consent of two-thirds in number and value of the ratepayers in any street, alter the name of such street or any part of such street. The local authority may cause the name of any street or of any part of any street to be painted or otherwise marked on a conspicuous part of any building or other erection. Any person who shall wilfully and without the consent of the local authority, obliterate, deface, obscure, remove, or alter any such name, shall be liable to a penalty not exceeding 40s." (s. 21).

Damage to footways by excavations.  
Power to alter names of streets.

"The local authority may require the corner of any building intended to be erected at the corner of two streets to be rounded off or splayed off to the height of the first storey or to the full height of the building, and to such extent otherwise as they may determine, and for any loss which may be sustained through the exercise of the powers by this section conferred upon the local authority they shall pay compensation" (s. 22).

Buildings at corner of streets.

"For the purposes of this Act and the Public Health (Ir.) Acts, 1878 to 1900, and any bye-laws made thereunder, each of the following operations, namely:—(a) The re-erection, wholly or partially, of any building of which an outer wall is pulled down or burnt down to or within ten feet of the surface of the ground adjoining the lowest storey of the building, and of any frame building so far pulled down or burnt down as to leave only the framework of the lowest storey; (b) the conversion into a dwelling-house of any building not originally constructed for human habitation, or the conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only; (c) the re-conversion into a dwelling-house of any building which has been discontinued as or appropriated for any purpose other than that of a dwelling-house; (d) the making of any addition to an existing building by raising any part of the roof, by altering a wall, or making any projection from the building, but so far as regards the addition only; and (e) the roofing or covering over of an open space between walls or buildings; shall be deemed to be the erection of a new building" (s. 23).

What to be deemed new buildings.

"Section 41 of the Public Health (Ir.) Act, 1878, shall be extended so as to empower the local authority to make bye-laws—with respect to the height of chimneys of buildings and with respect to the height of buildings; and with respect to the structure of chimney shafts for the furnaces of steam engines, breweries, distilleries, or manufactories. If any yard in connection with, and exclusively belonging to, a dwelling-house shall not be so formed, flagged, asphalted, or paved, or shall not be provided with such works on, above, or below the surface of the yard, as to allow of the effectual drainage of the subsoil or surface of the yard by safe and suitable means to a proper outfall, the local authority may, by notice in writing, require the owner of the dwelling-house, within twenty-one days after the service of the notice, to execute all such works as are necessary for the effectual drainage of the subsoil or surface of the yard to a proper outfall. If, within the said period of twenty-one days, the owner has failed to complete the execution of the works specified in the notice, the local authority may execute the works, and may recover from the owner in a summary manner as a civil debt the expenses incurred by the local authority in the execution of the works" (s. 25).

Bye-laws as to height of chimneys, &c.

Yards to be paved, &c.

"After the commencement of this section the entrances to any court

*Act of 1907* shall not, except with the consent of the local authority, be closed or  
*--of limited* narrowed or otherwise altered or affected by any permanent structure so  
*application* as to impede the free circulation of air, and the height of any such entrance  
*—see p. 742.* shall not, except with that consent, be lowered. The consent of the local  
**Streets and** authority under this section may be given subject to compliance with  
**buildings.** such conditions as the local authority by their consent prescribe with  
**Entrances to** respect to the formation or provision of any other sufficient opening or  
**courts, &c.,** means of access, or with respect to the provision of other sufficient means  
**not to be** of securing free circulation of air throughout the court. Nothing in this  
**closed.** section shall have effect in relation to any court which by reason of its  
situation, use, architectural features, or other characteristics is, either  
wholly or in part, necessary for or ancillary to the ornament or amenity  
of any lands or premises. Any person offending against this section  
shall be liable to a penalty not exceeding £5. and to a daily penalty not  
exceeding 20s." (s. 26).

**As to tem-** " (1) Before any person erects or sets up a temporary building he  
**porary build-** shall apply to the local authority for permission so to do. The applica-  
**ings.** tion shall be accompanied by a plan and sections of the proposed building  
drawn to a scale of not less than one inch to every eight feet, and a block  
plan, drawn to a convenient scale, showing the intended situation and  
surroundings of the proposed building, together with a specification des-  
cribing the materials proposed to be used in the construction of the  
building, and the purpose for which the building is intended. (2) The  
local authority shall, within one month after the delivery of the plans  
and sections and specification, signify in writing their approval or dis-  
approval of the building to the person proposing to erect or set up the  
building. (3) The local authority may attach to their approval any  
condition which they deem proper with regard to the sanitary arrange-  
ments of the building, the ingress thereto and the egress therefrom,  
protection against fire, and the period during which the building shall be  
allowed to stand. (4) If any such building is begun, erected, or set up  
without such application accompanied by such plan, sections, and spec-  
ification as this section requires, or after the disapproval of the local  
authority or before the expiration of one month without their approval,  
or is in any respect not in conformity with any condition attached by the  
local authority to their approval, the person who began, erected, or set  
up the building, or, if any such building is not removed within the period  
allowed by the local authority, the owner of the building shall for every  
such offence be liable to a penalty not exceeding 40s., and to a daily  
penalty not exceeding the like amount; and the local authority may  
cause the building to be pulled down or removed, and any expense in-  
curred by them in and about the pulling down or removal of the building  
may, at their discretion, be recovered summarily as a civil debt from the  
owner of the building or from the person erecting or setting up the build-  
ing. (5) Where any such building is pulled down or removed by the  
local authority under the powers of this section the local authority may  
sell the materials or any part of the materials, and shall apply the pro-  
ceeds of the sale in or towards payment of the costs and expenses incurred  
by them in relation to the pulling down or removal of the building, and  
shall pay the balance to the owner of the building. (6) The following  
buildings shall be exempt from the operation of this section:—(a) Any  
building expressly exempt from the operation of the Public Health (Ir.)  
Acts, 1878 to 1900, or the bye-laws made under those Acts and in force  
for the time being within the district; (b) any building erected or set up  
for the purpose of protecting or of preventing the acquisition of rights to  
light; (c) any temporary building set up as part of the plant to be used  
in or about or in connection with the construction, alteration, or repair



of any building or other work; but so far as regards only so much of *Act of 1907*  
this section as relates to plans, sections, and specifications" (s. 27). —*of limited*

"The local authority may remove, appropriate, use, and dispose of *application*  
all old materials existing in any street at the time of the execution by the —*see p. 742.*  
local authority of any works in such street unless the owners of buildings **Streets and**  
and lands in such street within forty-eight hours after notice so to do **buildings.**  
served on them by the surveyor remove such materials or their respective **Removal of**  
proportions thereof, and the local authority shall allow such sum as may **materials**  
be the reasonable value thereof to such owners for any materials which **in streets.**  
have been used or removed by the local authority, and in case of dispute  
the amount to be allowed shall be settled in the manner provided by the  
Public Health (Ir.) Act, 1878, with respect to compensation for damage  
sustained by reason of the exercise of any powers of that Act" (s. 28).

"It shall not be lawful for any person without the consent of the local **Deposit of**  
authority in writing first obtained to lay any building materials, rubbish, **building**  
or other thing, or make any excavation on or in any street repairable **materials or**  
by the inhabitants at large, and when with such consent any person lays **excavations**  
any building materials, rubbish, or other thing, or makes any excavation **not to be**  
on or in any street, he shall, at his own expense, cause the same to be **made without**  
sufficiently fenced and a sufficient light to be fixed in a proper place on or **consent.**  
near the same and to be continued every night from sunset to sunrise,  
and shall remove such materials, rubbish, or thing or fill up such excavation  
(as the case may be) when required by the local authority; and, if  
any person fails to comply in any respect with the requirements of this  
enactment, he shall be liable to a penalty not exceeding £5 and to a daily  
penalty not exceeding 40s., and the local authority may remove any such  
materials, rubbish, or thing, or fill up such excavation (as the case may be),  
and recover the expenses from the offender summarily as a civil debt" (s. 29).

"With respect to the repairing or enclosing of dangerous places the **Dangerous**  
following provisions shall have effect (namely):—(1) If in any situation **places to be**  
fronting, adjoining, or abutting on any street or public footpath, any **repaired or**  
building, wall, fence, steps, structure or other thing, or any well, excavation, **enclosed.**  
reservoir, pond, stream, dam or bank is, for want of sufficient repair,  
protection, or enclosure dangerous to the persons lawfully using the  
street or footpath, the local authority may by notice in writing served  
upon the owner, require him, within the period specified in the notice and  
hereinafter in this section referred to as the 'prescribed period,' to repair,  
remove, protect, or enclose the same so as to prevent any danger there-  
from: (2) If, after service of the notice on the owner, he shall neglect  
to comply with the requirements thereof within the prescribed period,  
the local authority may cause such works as they think proper to be done  
for effecting such repair, removal, protection, or enclosure, and the ex-  
penses thereof shall be payable by the owner, and may be recovered  
summarily as a civil debt" (s. 30).

"If any land (other than land forming part of any common) adjoining **Fencing**  
any street is allowed to remain unfenced or if the fences of any such **lands adjoining**  
land are allowed to be or remain out of repair, and such land is, owing to **streets.**  
the absence or inadequate repair of any such fence, a source of danger to  
passengers, or is used for any immoral or indecent purposes, or for any  
purpose causing inconvenience or annoyance to the public, the Local  
Government Board for Ireland on the application of the local authority  
may by order empower the local authority to proceed under this section,  
and, in that case, at any time after the expiration of fourteen days from  
the service upon the owner or occupier of notice in writing by the local  
authority requiring the land to be fenced or any fence of the land to be  
repaired, the local authority may cause the land to be fenced or may cause



*Act of 1907* the fences to be repaired in such manner as they think fit, and the reasonable expenses thereby incurred shall be recoverable from such owner or occupier summarily as a civil debt " (s. 31).  
*—of limited application*  
*—see p. 742.*

**Streets and buildings.**

**Hoardings.**

**Exemption of buildings of railway companies and others.**

" (1) A person shall not use any hoarding or similar structure which is in, or abuts on, or adjoins any street, for any purpose, unless it is securely fixed to the satisfaction of the local authority. (2) If any person acts in contravention of this section he shall be liable, in respect of each offence, to a penalty not exceeding £5 and to a daily penalty not exceeding 20s." (s. 32).

"Nothing in this Part or in any bye-laws to be made under any enactment extended by this Part shall apply to a building (other than a dwelling-house) belonging to a railway company, or to any company or other public body authorised to construct, maintain, or improve a harbour, pier or dock, or to the owners of any canal or inland navigation, and used by the company, public body, or owners as a part of or in connection with their railway, harbour, pier, dock, canal or inland navigation " (s. 33).

### PART III.—SANITARY PROVISIONS.

**Examination on complaint of nuisance, p. 748 ; provisions as to nuisances, p. 748 ; rain-pipe not to be used as soil-pipe, p. 748 ; water-pipe, &c., not to be used as ventilating shaft, p. 748 ; examination of old drains, p. 749 ; provision and conversion of closet accommodation, p. 749 ; payment for works of common benefit, p. 750 ; expenses, p. 750 ; private improvement expenses, p. 750 ; entry on premises, p. 750 ; appeals, p. 750 ; removal, or alteration of urinals, p. 751 ; urinals in refreshment-houses and licensed premises, p. 751 ; testing drain on report of defects, p. 751 ; filling up cesspools, p. 751 ; public conveniences and lavatories, p. 752 ; removal of trade refuse, p. 752 ; sinks and drains for buildings, p. 752 ; declaring business to be offensive, p. 752.**

**Sanitary provisions.**

**Examination on complaint of nuisance.**

"Section 51 of the Public Health (Ir.) Act, 1878, shall have effect as if for the words ' (but not otherwise) ' there were substituted the words ' or where on the report in writing of their surveyor or inspector of nuisances the local authority have reason to suspect that any such drain, water-closet, earth-closet, privy, ashpit, or cesspool is a nuisance or injurious to health " (s. 34).

**As to nuisances.**

"For the purposes of the Public Health (Ir.) Act, 1878 :—(1) Any cistern used for the supply of water for domestic purposes so placed, constructed, or kept as to render the water therein liable to contamination, causing or likely to cause risk to health ; (2) any gutter, drain, shoot, stack-pipe, or down-spout of a building which by reason of its insufficiency or its defective condition shall cause damp in such building or in an adjoining building ; and (3) any deposit of material in or on any building or land which shall cause damp in such building or in an adjoining building so as to be dangerous or injurious to health ; shall be deemed to be a nuisance within the meaning of the said Act " (s. 35).

**Rain-water pipes not to be used as soil-pipes.**

"No pipe used for the carrying off of rain water from any roof shall be used for the purpose of carrying off the soil or drainage from any privy or water-closet. Any person who shall offend against this section shall be liable to a penalty not exceeding £5, and to a daily penalty not exceeding 40s." (s. 36).

**Water or stack pipes not to be used as ventilating shafts.**

"No water-pipe, stack-pipe, or down-spout in existence at the commencement of this section, used for conveying surface water from any premises, shall be used or be permitted to serve or to act as a ventilating shaft to any drain. Any person who shall offend against this section after fourteen days from the service upon him by the local authority of notice of such offence shall be liable to a penalty not exceeding 40s. and to a daily penalty not exceeding 20s." (s. 37).

"Before any drain existing at the commencement of this section

and then not communicating with any sewer of the local authority shall be made to communicate with any sewer of the local authority, the local authority may require the same to be laid open for examination by the surveyor, and no such communication shall be made until the surveyor shall certify that such drain may be properly made to communicate with such sewer" (s. 38).

"In this section unless the context otherwise requires—The expression 'closet accommodation' includes a receptacle for human excreta, together with the structure comprising such receptacle and the fittings and apparatus connected therewith; the expression 'pail-closet' means closet accommodation including a moveable receptacle for human excreta; the expression 'water-closet' means closet accommodation used or adapted or intended to be used in connection with the water carriage system, and comprising provision for the flushing of the receptacle by means of a fresh water supply, and having proper communication with a sewer; the expression 'slop-closet' means closet accommodation used or adapted or intended to be used in connection with the water carriage system, and comprising provision for the flushing of the receptacle by means of slops or waste liquids of the household or rain water, and having proper communication with a sewer; the expression 'a sufficient water supply and sewer' means a water supply and a sewer which are sufficient and reasonably available for use in, or in connection with, the efficient flushing and cleansing of, and the efficient removal of excreta from such number of proper and sufficient water-closets and slop-closets, or from such one or more of either class of closet as, in pursuance of this section, may be required to be provided in any particular case. (2) Within one month after the deposit of any plan by a person intending to erect a new building, the local authority, where there are a sufficient water supply and sewer, may by written notice to that person require the new building to be provided with such number of proper and sufficient water-closets and slop-closets, or with such one or more of either class of closet as the circumstances of the case may render necessary. Any person who fails to comply with any requirement of the local authority under this subsection shall be liable to a penalty not exceeding £5, and to a daily penalty not exceeding 40s. (3) If, on the report of the medical officer or the surveyor or the inspector of nuisances, the local authority are satisfied that sufficient closet accommodation has not been provided at or in connection with a building and the case is not one in which sufficient closet accommodation can be provided by the alteration of any existing closet accommodation in pursuance of this section, the local authority, where there are a sufficient water supply and sewer, may by written notice to the owner or owners of the building require the building to be provided with such number of proper and sufficient water-closets and slop-closets, or with such one or more of either class of closet as the circumstances of the case may render necessary. If the owner or owners of the building fail to comply with any requirement of the local authority under this subsection, the local authority may at the expiration of a time which shall be specified in the notice and shall be not less than fourteen days after the service of the notice, do the work required by the notice, and may recover summarily as a civil debt from the owner or owners the expenses incurred by the local authority in so doing. (4) The local authority, where there are a sufficient water supply and sewer, may by written notice to the owner or owners of a building require any existing closet accommodation (other than a water-closet or a slop-closet) provided at or in connection with the building to be altered, so as to be converted into a water-closet or slop-closet. If the owner or owners of the building fail to comply with any requirement of the local authority under this subsection, the local

*Act of 1907*  
—*of limited*  
*application*  
—*see p. 742.*

**Sanitary provisions.**

Opening old drains for examination.  
Provision and conversion of closet accommodation.



*Act of 1907* authority may, at the expiration of a time which shall be specified in the  
*—of limited* notice and shall not be less than fourteen days after the service of the  
*application* notice, do the work required by the notice. Where in pursuance of this  
*—see p. 742.* subsection any work of alteration is done by the local authority in default  
 Sanitary of the owner or owners in respect of a pail-closet, the expenses of the work  
 provisions. shall be borne by the local authority, and where in pursuance of this sub-  
 section any work of alteration is done by the local authority in default of  
 the owner or owners in respect of any existing closet accommodation  
 other than a pail-closet, one half of the expenses of the work shall be borne  
 by the local authority, and the remainder of the said expenses shall be  
 borne by the owner or owners and shall be recoverable summarily as a  
 civil debt. Every notice in pursuance of this subsection shall state the  
 effect of the subsection. (5) Nothing in this section shall have effect  
 with respect to a slop-closet, unless or until the Local Government Board  
 for Ireland have been satisfied by the local authority, and have by order  
 declared that the circumstances of the district of the local authority are  
 such as to render it necessary or expedient that this section shall have  
 effect with respect to a slop-closet. Any order in pursuance of this sub-  
 section shall be published in such manner as the Local Government Board  
 for Ireland direct" (s. 39).

Payment for " (1) Where under s. 39 of this Act the local authority do any work  
 works of for the common benefit of two or more buildings belonging to different  
 common owners, the expenses which under that section are recoverable by the  
 benefit. local authority from the owners shall be paid by the owners of those  
 buildings in such proportions as shall be determined by the surveyor, or  
 in case of dispute by a court constituted in accordance with the provisions  
 of s. 249 of the Public Health (Ir.) Act, 1878. (2) Any moneys expended  
 by the local authority for the purposes of s. 39 of this Act shall, so far as  
 they are not recoverable from the owner or owners, be part of the ex-  
 penses of the local authority in the execution of the Public Health (Ir.)  
 Act, 1878. (3) The local authority may by order declare any expenses  
 incurred by them under s. 39 of this Act, which are recoverable summarily  
 as a civil debt from the owner or owners, to be expenses to which the pro-  
 visions of s. 255 of the Public Health (Ir.) Act, 1878, shall apply, and  
 thereupon those provisions shall apply, with the necessary modifications,  
 as if they were herein re-enacted and in terms made applicable to the  
 said expenses" (s. 40).

Expenses. Private improvement expenses. " Any person duly authorised in writing by the local authority shall,  
 on production of his authorisation, be admitted into any premises for the  
 purposes of s. 39 of this Act, and the provisions of ss. 118 and 119 of the  
 Public Health (Ir.) Act, 1878, shall, with the necessary modifications,  
 apply to his admission" (s. 41).

Entry on premises. Appeals. " (1) Where any person deems himself aggrieved by any requirement  
 of the local authority under s. 39 of this Act, or objects to the reasonable-  
 ness of any expenses wholly, or partially recoverable from him under that  
 section, that person may, within fourteen days after the service of notice  
 of the requirement or of a demand for payment of the expenses, appeal  
 to a court of summary jurisdiction, and the court may make such order  
 in the matter as to them may seem equitable, and the order so made shall  
 be binding and conclusive on all parties: Provided nevertheless that  
 the right of appeal, subsequent to the service of a demand for payment,  
 shall be restricted to the ground of the reasonableness of the amount of  
 the expenses, and the appellant shall be precluded from raising at that  
 stage any other question. (2) Pending the decision of the court upon  
 the appeal the local authority shall not be empowered to execute any  
 works to which the notice relates, and any proceeding which may have been  
 commenced for the recovery of the expenses shall be stayed" (s. 42).



“(1) If any urinal or other sanitary convenience opening on any street (whether erected before or after the commencement of this section) is so placed or constructed as to be a nuisance or offensive to public decency, the local authority, by notice in writing, may require the owner to remove it within a reasonable time fixed by the local authority. (2) If the owner fails to comply with the notice, he shall be liable to a penalty not exceeding 20s. and to a daily penalty not exceeding 10s.” (s. 43).

“(1) Where any inn, public-house, beer-house, eating-house, refreshment-house, or place of public entertainment, whether built before or after the commencement of this section, has no urinal belonging or attached thereto, the local authority may, by notice in writing, require the owner of the premises to provide and maintain thereon one or more proper and sufficient urinals in a suitable position. (2) If the owner fails within a reasonable time to comply with a notice under this section he shall be liable in respect of each offence to a penalty not exceeding 20s. and to a daily penalty not exceeding 10s.” (s. 44).

“(1) If the medical officer, surveyor, or inspector of nuisances reports to the local authority that he has reasonable grounds for believing that any drains of any building are so defective as to be injurious or dangerous to health, the local authority may authorise their medical officer, surveyor, or inspector of nuisances to apply the smoke or coloured water test, or other similar test (not including a test by water under pressure), to the drains, subject to the condition that either the consent of the owner or occupier of the building must be given to the application of the test, or an order of a court of summary jurisdiction having jurisdiction in the place where the building is situated must be obtained, authorising the application of the test. (2) If on the application of the test the drains are found to be defective, the local authority may, by notice specifying generally the defect, require the owner of the premises to do all works necessary for remedying it within a reasonable time named in the notice, and if the owner fails so to do the work the local authority may themselves do the work, and the expense of so doing the work may either be recovered from the owner of the building summarily as a civil debt or may be declared by the local authority to be private improvement expenses, and may be recoverable accordingly. (3) The owner and occupier of any building shall give all reasonable facilities for the application of any test which has been consented to or authorised in pursuance of this section, and, if the owner or occupier fails to do so, he shall be liable in respect of each offence to a penalty not exceeding 40s. and to a daily penalty not exceeding 20s.” (s. 45).

“If it shall appear to the local authority by the report of the medical officer, surveyor, or inspector of nuisances that any cesspool or other receptacle used or formerly used as a receptacle for excreta or other obnoxious matter, or for the whole or any part of the drainage of a house, or that any ashpit or any well or disused well belonging to any such house or part of a house is prejudicial to health, or otherwise objectionable for sanitary reasons, and that it is desirable that the same should be filled up or removed, or so altered as to remove any such objection as aforesaid, the local authority may, if they think fit, by notice in writing, require the owner or occupier of such house or part of a house within a reasonable time, to be specified in the notice, to cause such cesspool, receptacle, ashpit, or well to be filled up or removed, and any drain communicating therewith to be effectually disconnected, destroyed, or taken away, or to cause such cesspool, receptacle, ashpit, or well to be so altered as to remove any such objection as aforesaid. Where it appears that any such cesspool, receptacle, ashpit, or well is used in common by the occupiers of two or more houses, or parts of houses, the notice for filling

*Act of 1907*  
—*of limited application*  
—*see p. 742.*

**Sanitary provisions.**

Local authority may require removal or alteration of urinals.

Urinals in refreshment-houses and licensed premises.

Testing drains on report of defects.

Provision for filling up cesspools, &c.

*Act of 1907* up or removal of any such cesspool, receptacle, ashpit, or well may be  
*—of limited* served on any one or more of the owners or occupiers of such houses,  
*application* and it shall not be necessary to serve such notice on all such owners or  
*—see p. 742.* occupiers. If default is made in complying with the requisitions of a  
 notice under this section the local authority may themselves carry out  
 the requisitions, and may recover the expenses incurred by them in so  
 doing from the owners or occupiers in default in a summary manner as  
 a civil debt, or, where the owners are the persons liable, as private im-  
 provement expenses are recoverable under the Public Health (Ir.) Acts,  
 1878 to 1900" (s. 46).

**Sanitary  
provisions.**

*Public con-* "The local authority may provide and maintain in proper and con-  
*veniences and* venient situations sanitary conveniences in or under any street repairable  
*lavatories.* by the inhabitants at large, and may provide and maintain in proper  
 and convenient situations lavatories in or under any such street for the  
 use of the public, and may employ and pay attendants and make reason-  
 able charges for the use of any sanitary conveniences (other than a  
 urinal) or of any lavatory so provided. The local authority may make  
 bye-laws for the management of the sanitary conveniences and lavatories,  
 and as to the conduct of persons frequenting the same. The local  
 authority may let any such sanitary conveniences and any such lavatories  
 for such periods, at such rents, and subject to such conditions as to the  
 charges to be made for the use thereof and otherwise, as they think  
 proper" (s. 47).

*Removal of* "If the local authority are required by the owner or occupier of any  
*trade refuse.* premises to remove any trade refuse (other than sludge), the local au-  
 thority shall do so, and the owner or occupier shall pay to them for doing so  
 a reasonable sum, to be settled in case of dispute by order of a court of  
 summary jurisdiction; and if any question arises in any case as to what  
 is to be considered as trade refuse, that question may be decided on the  
 complaint of either party by a court of summary jurisdiction, whose de-  
 cision shall be final" (s. 48).

*Summary* "In addition to all other powers vested in a local authority, the  
*power to* local authority, if it shall appear to them on the report of the surveyor,  
*provide sinks* medical officer, or inspector of nuisances, that any building built before  
*and drains* or after the commencement of this section of this Act is not provided  
*for buildings.* with a proper sink or drain or other necessary appliances for carrying off  
 refuse water from such building, may give notice in writing to the owner  
 or occupier of such building requiring him in the manner and within the  
 time to be specified in such notice, not being less than twenty-eight days,  
 to provide such sink, drain, or other appliances. If the owner or occupier  
 makes default in complying with such requirement to the satisfaction  
 of the local authority within the time specified in such notice he shall be  
 liable to a penalty not exceeding £5 and to a daily penalty not exceeding  
 40s., and in case of default the local authority may, if they think fit,  
 themselves provide such sink, drain, or other appliances, and the expenses  
 incurred by them in so doing shall be repaid to them by such owner or  
 occupier, and may be recovered summarily as a civil debt" (s. 49).

*Power to* "(1) The words 'any other trade, business, or manufacture, which  
*declare a* the local authority declare by order confirmed by the Local Government  
*business to* Board for Ireland, and published in such manner as the Board direct,  
*be an offen-* to be an offensive trade,' shall be substituted for the words 'any other  
*sive business.* noxious or offensive trade, business, or manufacture,' in s. 128 of the  
 Public Health (Ir.) Act, 1878. (2) The local authority may make bye-  
 laws with respect to any trade which is an offensive trade under s. 128  
 of the Public Health (Ir.) Act, 1878, as amended by this Act, whether  
 established before or after the commencement of this Act, in order to  
 prevent or diminish any noxious or injurious effects of the trade" (s. 51).



## PART IV.—INFECTIOUS DISEASES.

*Act of 1907*  
*—of limited*  
*application*  
*—see p. 742.*

Infected person not to carry on occupation, p. 753; dairymen may be required to furnish sources of supply, p. 753; dairymen to notify infectious diseases, p. 753; infected clothes not to be sent to laundry, p. 753; filthy and dangerous articles to be purified, p. 753; child suffering from infectious disease not to be sent to school, p. 754; list of scholars to be furnished where scholar in school is suffering from infectious disease, p. 754; provisions as to library books, p. 754; removal of person from infected premises, p. 754; exposure of infectious persons and things, p. 755; conveyance of infected persons in public vehicles prohibited, p. 755; driver of infected person to give notice, p. 755; removal to hospital, p. 755; cleansing and disinfecting of premises, p. 756; prohibition of wake over infectious body, p. 756.

“(1) If any person knows that he is suffering from an infectious disease, he shall not engage in any occupation or carry on any trade or business unless he can do so without risk of spreading the infectious disease. (2) If any person acts in contravention of this section, he shall be liable in respect of each offence to a penalty not exceeding 40s.” (s. 52).

“(1) If the medical officer certifies to the local authority that any person in the district is suffering from infectious disease which the medical officer has reason to suspect is attributable to milk supplied within the district, the local authority may require the dairyman supplying the milk to furnish to the medical officer within a reasonable time fixed by them a complete list of all the farms, dairies, or places from which his supply of milk is derived or has been derived during the last six weeks, and, if the supply, or any part of it, is obtained through any other dairyman, may make a similar requisition upon that dairyman. (2) The local authority shall pay to the dairyman for every list furnished by him under this section the sum of sixpence, and, if the list contains not less than twenty-five names, a further sum of sixpence for every twenty-five names contained in the list. (3) Every dairyman shall comply with the requisition of the local authority under this section, and, if he fails to do so, shall be liable in respect of each offence to a penalty not exceeding £5 and a daily penalty not exceeding 40s.” (s. 53).

“(1) Every dairyman supplying milk within the district of the local authority from premises whether within or beyond the district aforesaid shall notify to the medical officer all cases of infectious disease among persons engaged in or in connection with his dairy as soon as he becomes aware or has reason to suspect that such infectious disease exists. (2) Any dairyman who shall fail to comply with this section shall for every such offence be liable to a penalty not exceeding 40s.” (s. 54).

“(1) A person shall not take or send to any public washhouse or to any laundry, for the purpose of being washed, any bedding, clothes, or other things which he knows to have been exposed to infection from any infectious disease, unless they have been disinfected by or to the satisfaction of the local authority or their medical officer, or of a legally qualified medical practitioner, or are sent to a laundry with proper precautions for the purpose of disinfection, with notice that they have been exposed to infection. (2) If any person acts in contravention of the foregoing provision of this section he shall be liable in respect of each offence to a penalty not exceeding 40s. (3) The local authority may, on the application of any person, pay the expenses of the disinfection of any such bedding, clothes, or other things, if carried out by them or under their direction” (s. 55).

“Where the local authority on the certificate of the medical officer are satisfied that the cleansing, purification, or destruction of any article in a dwelling-house is, by reason of the filthy condition of the article, necessary to prevent injury or to remove or obviate risk of injury to the health of any person in the dwelling-house, the local authority may cause

**Infectious diseases.**

Infected person not to carry on occupation.

Power to require dairymen to furnish list of sources of supply.

Dairymen to notify infectious diseases existing among their servants.

Infected clothes not to be sent to laundry.

Filthy and dangerous articles to be purified.



*Act of 1907* the article to be cleansed, purified, or destroyed at their expense. Where  
*—of limited* a person sustains damage in consequence of the exercise by the local  
*application* authority of their powers under this section, and the condition of the  
*—see p. 742.* article with respect to which those powers have been exercised is not  
 attributable to his act or default, the local authority shall make reasonable  
 compensation to that person" (s. 56).

**Infectious  
diseases.**

Child suffer-  
ing from  
infectious  
disease not  
to attend  
school.

"(1) No person being the parent or having the care or charge of a child within the district of the local authority who is or has been suffering from infectious disease or has been exposed to infection shall, after a notice from the medical officer that the child is not to be sent to school, permit such child to attend school without having procured from the medical officer a certificate (which shall be granted free of charge upon application) that in his opinion such child may attend without undue risk of communicating such disease to others. (2) Any person who shall offend against this section shall for every such offence be liable to a penalty not exceeding 40s." (s. 57).

List of  
scholars to  
be furnished  
where scholar  
in a school is  
suffering  
from an  
infectious  
disease.

"(1) The principal of a school in which any scholar is suffering from an infectious disease shall, if required by the local authority, furnish to them within a reasonable time fixed by them a complete list of the names and addresses of the scholars in or attending at the school or any specified department thereof other than boarders. (2) The local authority of the district shall pay to the principal of the school for every list furnished by him under this section the sum of sixpence, and, if the list contains not less than twenty-five names, a further sum of sixpence for every twenty-five names contained in the list. (3) If the principal of a school fails to comply with any of the provisions of this section he shall be liable in respect of each offence to a penalty not exceeding 40s. (4) In this section the expression 'the principal' used in relation to a school means the person in charge of the school, and includes, where the school is divided into departments and there is no single person at the head of the whole school, as respects each department the head of that department" (s. 58).

Provisions as  
to library  
books.

"(1) If any person knows that he is suffering from an infectious disease he shall not take any book or use or cause any book to be taken for his use from any public or circulating library. (2) A person shall not permit any book which has been taken from a public or circulating library, and is under his control, to be used by any person whom he knows to be suffering from an infectious disease. (3) A person shall not return to any public or circulating library any book which he knows to have been exposed to infection from any infectious disease, or permit any such book which is under his control to be so returned, but shall give notice to the local authority that the book has been so exposed to infection, and the local authority shall cause the book to be disinfected and returned to the library, or to be destroyed. (4) The local authority shall pay to the proprietor of the library from which the book is procured the value of any book destroyed under the power given by this section. (5) If any person acts in contravention of or fails to comply with this section, he shall be liable in respect of each offence to a penalty not exceeding 40s." (s. 59).

Removal of  
person from  
infected  
premises.

"(1) The local authority may exercise the powers of s. 15 of the Infectious Disease (Prevention) Act, 1890.<sup>1</sup> whether that section has or has not been adopted in the district, and, where the local authority so determine, those powers may be exercised for providing temporary

<sup>1</sup> That section is as follows: "The local authority shall from time to time provide, free of charge, temporary shelter or house accommodation with any necessary attendants for the members of any family in which any infectious disease has appeared who have been compelled to leave their dwellings for the purpose of enabling such dwellings to be disinfected by the local authority."

shelter or house accommodation with any necessary attendants for any person who, in any case to which this section applies, leaves a house after any infectious disease has appeared therein, and the local authority may borrow, subject to the provisions of the Public Health (Ir.) Acts, 1878 to 1900, for the purpose of providing shelter or house accommodation under s. 15 of the Infectious Disease (Prevention) Act, 1890, or under this section. Where the local authority in pursuance of the aforesaid powers have provided a temporary shelter or house accommodation, they may, on the appearance of any infectious disease in a house, and on the certificate of the medical officer, cause any person who is not himself sick and who consents to leave the house, or whose parent or guardian (where the person is a child) consents to his leaving the house, to be removed therefrom to any such temporary shelter or house accommodation, and in the like case on the like certificate may cause any such person who does not consent to leave the house to be removed therefrom to any such temporary shelter or house accommodation, where two justices, on the application of the local authority and on being satisfied of the necessity of the removal, make an order for the removal, subject to such conditions (if any) as are imposed by the order. The local authority shall in every case cause the removal to be effected and the conditions of any order to be satisfied without charge to the person removed or to the parent or guardian of that person. (2) Any person who wilfully disobeys or obstructs the execution of an order under this section, shall be liable to a penalty not exceeding £5. (3) For the purpose of this section the word 'house' includes any tent, van, shed, or similar structure used for human habitation or any boat lying in any canal or other water within the district of the local authority and used for the like purpose" (s. 61).

*Act of 1907*  
—of limited  
application  
—see p. 742.

Infectious  
diseases.

"Paragraph two of s. 142 of the Public Health (Ir.) Act, 1878 (which imposes a penalty on the exposure of infected persons and things), shall be read as if the words 'or causes or permits such sufferer to be so exposed' were added after the word 'sufferer'" (s. 62).

Exposure of  
infectious  
persons and  
things.

"The owner or driver of a public vehicle within the district of the local authority used for the carrying of passengers at separate fares shall not knowingly convey or any other person shall not knowingly place in any such public vehicle a person suffering from any infectious disease, or a person suffering from any such disease shall not enter any such vehicle, and every person who shall offend against this section shall for every such offence be liable to a penalty not exceeding 40s." (s. 63).

Prohibiting  
conveyance  
of infected  
persons in  
public  
vehicles.

"(1) If any person suffering from any infectious disease is conveyed in any public vehicle within the district of the local authority the owner or driver thereof as soon as it comes to his knowledge shall give notice to the medical officer, and shall cause such vehicle to be disinfected, and, if he fails so to do, he shall be liable to a penalty not exceeding £5, and the owner or driver of such vehicle shall be entitled to recover in a summary manner from the person so conveyed, or from the person causing that person to be so conveyed, a sufficient sum to cover any loss and expense incurred by him in connection with such disinfection. (2) It shall be the duty of the local authority when so requested by the owner or driver of such public vehicle to provide for the disinfection of the same free of charge, except in cases where the owner or driver conveyed a person knowing that he was suffering from infectious disease" (s. 64).

Driver, &c.,  
of infected  
person to  
give notice.

"Section 141 of the Public Health (Ir.) Act, 1878, shall extend and apply to all cases of persons suffering from any dangerous infectious disease, and being in or upon any house or premises where such persons cannot be effectually isolated so as to prevent the spread of the disease" (s. 65).

Removal to  
hospital.

*Act of 1907*  
—of limited  
application  
—see p. 742.

**Infectious  
diseases.**

Cleansing  
and disin-  
fecting of  
premises, &c.

"(1) If the medical officer, or any other legally qualified medical practitioner certifies that the cleansing and disinfecting of any house, or part of a house, and of any articles therein likely to retain infection, or the destruction of those articles would tend to prevent or check any dangerous infectious disease, the local authority shall serve notice on the master, or, where the house or part is unoccupied, on the owner of the house or part, that the house or part, and any such articles therein, will be cleansed and disinfected or (as regards the articles) destroyed, by the local authority unless he informs the local authority within twenty-four hours from the receipt of the notice that he will cleanse and disinfect the house or part and any such articles, or destroy the articles to the satisfaction of the medical officer or of any other legally qualified medical practitioner within a time fixed in the notice. (2) If either—(a) within twenty-four hours from the receipt of the notice the person on whom the notice is served does not inform the local authority as aforesaid; or (b) having so informed the local authority, he fails to have the house or part thereof and any such articles disinfected, or the articles destroyed as aforesaid, within the time fixed in the notice; or (c) the master or owner without any such notice gives his consent; the house or part and articles shall be cleansed and disinfected, or the articles destroyed by the officers and at the cost of the local authority under the superintendence of the medical officer. (3) For the purpose of carrying into effect this section the local authority may enter by day on any premises. (4) When the local authority have disinfected any house, part of a house, or article, under the provisions of this section, they shall compensate the master or owner of the house, or part of a house, or the owner of the article, for any unnecessary damage thereby caused to the house, part of a house, or article; and when the local authority destroy any article under this section they shall compensate the owner thereof, and the amount of any such compensation shall be recoverable in a summary manner. (5) The expression 'master' means the person in occupation of or having the charge, management, or control of the house or part of a house, and where the house is wholly let out in separate tenements, or is a lodging-house wholly let to lodgers, includes the person receiving the rent payable by the tenants or lodgers either on his own account, or as the agent of another person; and the expression 'by day' means during the period between six o'clock in the morning and the succeeding nine o'clock in the evening" (s. 66).

Wake not to  
be held over  
body of  
person dying  
of infectious  
disease.

"It shall not be lawful to hold any wake over the body of any person who has died of infectious disease, and the occupier of any house or premises or part of a house or premises who permits or suffers any such wake to take place in such house or premises, or part of a house or premises, and every person who attends to take part in such wake shall be liable to a penalty not exceeding 40s." (s. 68).

#### PART V.—COMMON LODGING-HOUSES.

Registration, p. 756; obligations of keeper, p. 757; deputy lodging-house keepers, p. 757; cancelling registration on conviction, p. 757; unregistered lodging-house keepers, p. 757; sanitary convenience, p. 757; notice of commencement of Part V., p. 757.

**Common  
lodging-  
houses.**

Registration.

"(1) The local authority may, at their discretion, refuse to register any person as a common lodging-house keeper, unless they are satisfied of his character and of his fitness for the position. (2) The registration of a person as a common lodging-house keeper shall, if that person is newly registered after the commencement of this section, remain in force



only for such time not exceeding one year as may be fixed by the local authority, but may be renewed from time to time by the local authority" (s. 69). *Act of 1907 —of limited application —see p. 742.*

"(1) Either the keeper of a common lodging-house or a deputy registered under this Act shall manage and control the lodging-house and exercise supervision over those using it, and either the keeper or the deputy so registered shall be and remain at the lodging-house between the hours of nine in the evening and six in the morning of the following day. (2) If any provision of this section is not complied with in the case of any common lodging-house, the keeper of the house shall, unless he shows to the court that there was a reasonable excuse for the non-compliance, be liable in respect of each offence to a penalty not exceeding 40s., and to a daily penalty not exceeding 20s." (s. 70). *Common lodging-houses. Control of.*

"(1) The local authority shall keep a register for the purposes of this section, and shall enter therein the name of any person whose name is submitted to them by a common lodging-house keeper as his deputy, and who is approved by them for the purpose. (2) The local authority may register more than one deputy for any common lodging-house keeper. (3) The local authority, if at any time they are of opinion that any person registered as a deputy of a common lodging-house keeper is not a fit person for the purpose, may cancel the registration" (s. 71). *Deputy lodging-house keepers.*

"Where the keeper of a common lodging-house is convicted of any offence against any provision of the Public Health (Ir.) Acts, 1878 to 1900, or this Act relating to common lodging-houses, or of any bye-law made thereunder, the court before whom he is convicted may cancel his registration as a common lodging-house keeper, and he shall cease to be registered accordingly" (s. 72). *Cancelling registration on conviction.*

"If a person keeps a common lodging-house he shall, although he is not registered as a common lodging-house keeper under s. 88 of the Public Health (Ir.) Act, 1878, be liable to the penalties imposed under s. 97 of that Act for the offences named therein" (s. 73). *Unregistered lodging-house keepers.*

"(1) Every common lodging-house, whether registered before or after the commencement of this section, shall be provided—(a) with sufficient and suitable sanitary conveniences, having regard to the number of persons who may be received in that house, and also, where persons of both sexes are received in the common lodging-house, with proper separate accommodation for persons of each sex; and (b) with a water supply laid on sufficient for flushing any water-closets or urinals which are used in the house. (2) If it appears to the local authority that, in the case of any common lodging-house, default is made in any respect in complying with the provisions of this section, the local authority may, by notice in writing specifying the default, require the keeper of the common lodging-house to remedy the default. (3) If within twenty-eight days of the notice being served the default is not remedied to the satisfaction of the local authority, they may themselves do the work required to be done; and may recover in a summary manner from the keeper of the common lodging-house the expenses incurred by them in so doing, or may by order declare these expenses to be private improvement expenses" (s. 74). *Sanitary conveniences.*

"(1) At a time not less than one month before the commencement of this Part of this Act the local authority shall give notice of the fact to the keeper of every common lodging-house in their district. (2) On and after the commencement of this Part of this Act s. 89 from the words 'and the local<sup>1</sup> authority may' to the end of the section, and s. 99 of the Public Health (Ir.) Act, 1878, shall be repealed as far as relates to the district" (s. 75). *Notice of commencement of Part V. and repeal.*

<sup>1</sup> The word in the Irish section is "sanitary."

*Act of 1907*  
*—of limited*  
*application*  
*—see p. 742.*

**Recreation  
grounds.**

Powers as to  
parks and  
pleasure  
gardens.

PART VI.—RECREATION GROUNDS.

" (1) The Local Government Board, for the purposes of this section, may make rules prescribing restrictions or conditions subject to which any powers conferred by the section shall with respect to any area in a public park or pleasure ground be exercisable in relation to the enclosure or setting apart of the area or in relation to the use of the area as the site of a building or convenience. Subject to the restrictions or conditions prescribed by rules made under this section, the local authority shall, in addition to any powers under any general Act, have the following powers with respect to any public park or pleasure ground provided by them or under their management and control, namely, powers—(a) To enclose during time of frost any part of the park or ground for the purpose of protecting ice for skating, and charge admission to the part enclosed, but only on condition that at least three-quarters of the ice available for the purpose of skating is open to the use of the public free of charge; (b) to set apart any such part of the park or ground as may be fixed by the local authority, and may be described in a notice board affixed or set up in some conspicuous position in the park or ground, for the purpose of cricket, football, or any other game or recreation, and to exclude the public from the part set apart while it is in actual use for that purpose; (c) to provide any apparatus for games and recreations, and charge for the use thereof, or let the right of providing any such apparatus for any term not exceeding three years to any person; (d) to provide or contribute towards the expenses of any band of music to perform in the park or ground; (e) to enclose any part of the park or ground, not exceeding one acre, for the convenience of persons listening to any band of music, and charge admission thereto; (f) to place, or authorise any person to place, chairs or seats in any such park or ground, and charge for, or authorise any person to charge for, the use of the chairs so provided; (g) to provide and maintain any reading rooms, pavilions, or other buildings and conveniences, and to charge for admission thereto, subject in the case of reading rooms to the limitation that such a charge shall not be made on more than twelve days in any one year, nor on more than four consecutive days; (h) to let any pavilion or other building so provided by them to any person for the purpose of entertainments, and authorise that person to charge for admission thereto; (i) to provide and maintain refreshment rooms in any such park, and either manage them themselves, or, if they think fit, let them to any person for any term not exceeding three years. (2) Any expenses of the local authority incurred in the exercise of the powers given to them by this section shall be defrayed out of the fund or rate out of which the expenses of the park or ground as to which the powers are exercised are payable, and any receipts arising from the exercise of any such powers shall be carried to the credit of the same fund or rate. (3) The expenses incurred by the council in the exercise of their power under this section to provide or contribute to a band shall not in any one year exceed an amount equal to that which would be produced by a rate of an amount which shall be approved by the Local Government Board and shall not exceed a penny on the property liable to be assessed for the purpose of the rate out of which the expenses of the park or ground are payable, as assessed for the time being for the purposes of that rate. (4) No power given by this section shall be exercised in such a manner as to contravene any covenant or condition subject to which a gift or lease of a public park or pleasure ground has been accepted or made, without the consent of the donor, grantor, lessor, or other person or persons entitled in law to the benefit of such covenant or condition " (s. 76).



## PART VII.—POLICE.

*Act of 1907*

Regulations as to street traffic, p. 759; dangerous riding and driving, p. 759; leading and driving animals, p. 759; "public place," "public street," p. 759; bye-laws as to seashore, p. 760; bye-laws as to promenades, p. 760; licences to porters, p. 760; registries for servants, p. 760; registration of marine store dealers, p. 761.

*—of limited application*  
*—see p. 742.*

"The local authority may from time to time make regulations with respect to such streets, to be specified in the regulations, as are specially liable to be obstructed by reason of the amount and nature of the traffic :— (a) Prescribing the line to be kept at any street crossing by all persons riding or driving; (b) requiring the drivers of heavy and slow-moving vehicles to keep their vehicles to a particular portion of the street. All regulations under this section shall be subject to the approval of the Chief Secretary. Any person who shall contravene any such regulation after warning given by word or signal by a police constable stationed in the street to direct the traffic shall be liable to a penalty not exceeding 40s." (s. 78).

**Police.**  
Regulations as to street traffic.

"Every person who shall ride or drive so as to endanger the life or limb of any person or to the common danger of the passengers in any thoroughfare shall be liable to a penalty not exceeding 40s., and may be arrested without warrant by any constable who witnesses the offence" (s. 79).

Dangerous riding and driving.

"The local authority may, by order, prescribe the streets in which, and the manner according to which, the leading or driving of animals shall be permitted within their district, provided that the route or routes which it shall be lawful for the local authority so to prescribe shall not be such as would prevent the passage of cattle between any market on the one hand, and any railway station or landing wharf in the district, or any place beyond the district, on the other hand, when such animals are merely passing between such market and railway station, landing wharf, or other place aforesaid, and the local authority shall be bound to allow at all times a reasonably short and efficient route or routes for the passage of such animals. Provided also that any such order shall only operate between the hours of nine in the morning and nine in the evening, and shall not prevent the owner of any animals driving the same to or from his own premises, and nothing in this enactment contained shall authorise the local authority to interfere with the leading or driving of any animals to any duly licensed slaughter-house" (s. 80).

As to leading or driving animals.

"Any place of public resort or recreation ground belonging to, or under the control of the local authority, and any unfenced ground adjoining or abutting upon any street in an urban district shall for the purpose of the Vagrancy Act, 1824,<sup>1</sup> and of any Act for the time being in force altering or amending the same, be deemed to be an open and public place, and shall be deemed to be a street for the purposes of s. 29 of the Town Police Clauses Act, 1847,<sup>2</sup> and also for the purposes of so much of s. 28 of that Act and of s. 72<sup>2</sup> of Towns Improvement (Ir.) Act, 1854, as relates to the following offences :—Every person who suffers to be at large any unmuzzled ferocious dog, or urges any dog or other animal to attack, worry, or put in fear any person or animal: Every person who rides or drives furiously any horse or carriage, or drives furiously any cattle: Every common prostitute or night walker loitering and importuning passengers for the purpose of prostitution: Every person who wilfully and indecently exposes his person: Every person who publicly offers for sale or distribution, or exhibits to public view,

Extending definition of public place and street for certain purposes.  
5 Geo. 4, c. 83.  
10 & 11 Vict. c. 89.

<sup>1</sup> Sec. 4 of the Vagrancy Act, 1824, was extended to Ireland by the Prevention of Crimes Act, 1871, s. 15. See PREVENTION OF CRIME.

<sup>2</sup> See TOWNS IMPROVEMENT.



*Act of 1907*<sup>1</sup> any profane, indecent, or obscene book, paper, print, drawing, painting, —of limited or representation, or sings any profane or obscene song or ballad, or uses application any profane or obscene language: Every person who wantonly discharges any firearm or discharges any missile or makes any bonfire: —see p. 742. Every person who throws or lays any dirt, litter, ashes, or night soil, or any carrion, fish, offal, or rubbish, on any street" (s. 81).

Bye-laws as to seashore. "The local authority for the prevention of danger, obstruction, or annoyance to persons using the seashore may make and enforce bye-laws to—(1) Regulate the erection or placing on the seashore, or on such part or parts thereof as may be prescribed by such bye-laws, of any booths, tents, sheds, stands, and stalls (whether fixed or movable), or vehicles for the sale or exposure of any article or thing, or any shows, exhibitions, performances, swings, roundabouts, or other erections, vans, photographic carts, or other vehicles, whether drawn or propelled by animals, persons, or any mechanical power, and the playing of any games on the seashore, and generally regulate the user of the seashore for such purposes as shall be prescribed by such bye-laws; (2) regulate the user of the seashore for riding and driving; (3) regulate the selling and hawking of any article, commodity, or thing on the seashore; (4) provide for the preservation of order and good conduct among persons using the seashore. Provided that no bye-laws affecting the foreshore below high-water mark shall come into operation until the consent of the Board of Trade has been obtained" (s. 82); but for them as well as for all other bye-laws under the section confirmation by the Chief Secretary is required (s. 9).

Bye-laws as to promenades. "The local authority may, for the prevention of danger, obstruction, or annoyance to persons using the esplanades or promenades within the district, make bye-laws prescribing the nature of the traffic for which they may be used, regulating the selling and hawking of any article, commodity, or thing thereon, and for the preservation of order and good conduct among the persons using the same" (s. 83). Such bye-laws must be confirmed by the Chief Secretary (s. 9).

Licences to porters. "(1) The local authority may from time to time grant to any person whom they think fit a licence to carry on the calling of a luggage porter, light porter, public messenger, or commissionaire, and may charge a fee of one shilling for any such licence. (2) The local authority may from time to time make bye-laws for regulating the conduct of any persons so licensed and for fixing the charges to be made by them. (5) If any person while unlicensed represents himself to be licensed, or wears any badge for the purpose of representing himself as licensed to carry on any of the callings specified in this section, he shall be liable to a penalty not exceeding 20s." (s. 84). Bye-laws made under this section must be confirmed by the Chief Secretary (s. 9).

Registries for servants. "(1) Every person who shall carry on for the purpose of private gain the trade or business of keeper of a female domestic servants' registry shall register his name and place of abode, and also the premises in which such trade or business is carried on, in a book to be kept at the offices of the local authority for the purpose. (2) The local authority may make bye-laws prescribing the books to be kept and the entries to be made therein, and any other matter which the local authority may deem necessary for the prevention of fraud or immorality in the conduct of such trade or business and for regulating any premises used for the purposes of or in connection with such trade or business. (3) The person registered shall keep a copy of the bye-laws made by the local authority under this section hung up in a conspicuous place in the registered premises. (4) Any officer of the local authority or other person duly authorised in writing in that behalf by the local authority, and if so

required exhibiting his authority, shall at all reasonable times be afforded by the person registered full and free power of entry into the registered premises for the purpose of inspecting the registered premises and the books required to be kept by such person. (5) Any person carrying on such trade or business as aforesaid whose name, place of abode, and premises in which such trade or business is carried on have not been registered in accordance with sub-s. 1 of this section, or whose registration has been cancelled or suspended as hereinafter provided, or acting in contravention of any of the provisions of this section or of any bye-law made thereunder, shall be liable to a penalty not exceeding £5 and to a daily penalty not exceeding 40s., and the court may (in lieu of or in addition to imposing a penalty) order the suspension or cancellation of the registration. (6) The local authority shall give public notice of the provisions of this section by advertisement in two newspapers circulating in the district, and by handbills and otherwise in such manner as they think sufficient" (s. 85). Bye-laws made under this section must be confirmed by the Chief Secretary (s. 9).

"(1) Every person who shall carry on business as a dealer in old metal or as a marine store dealer shall register his name and place of abode and every place of business, warehouse, store, and place of deposit occupied or used by him for the purpose of such business, in a book to be kept for the purpose at the offices of the local authority. (2) Every person carrying on business as aforesaid shall correctly enter in a book to be kept by him for that purpose the description and price of all articles purchased or otherwise acquired by him, and the name, address, and occupation of the person from whom the same were purchased or otherwise acquired. (3) Every person who shall carry on such business without having so registered or without keeping such book and making such entries as required by this section shall be liable to a penalty not exceeding £5 and to a daily penalty not exceeding 40s. (4) Any officer of the local authority or other person duly authorised in writing in that behalf by the local authority, and if so required exhibiting his authority, shall have free access at all reasonable times to every such place of business, warehouse, store, and place of deposit, to inspect the same and the books by this section required to be kept, and every person who shall prevent, hinder, or obstruct any officer or person so authorised in the execution of his duty under this subsection shall be liable to a penalty not exceeding £5. (5) The local authority shall give public notice of the provisions of this section by advertisement in two newspapers circulating in the district, and by handbills and otherwise in such manner as they think sufficient" (s. 86).

*Act of 1907  
—of limited  
application  
—see p 742.*

*As to dealers  
in old metal  
and marine  
stores.*

#### PART VIII.—FIRE BRIGADE.

"Any police constable acting under the orders of his superior officer, and any member of the fire brigade of the local authority being on duty, and any officer of the local authority, may enter and if necessary break into any building in the district being or reasonably supposed to be on fire, or any building or land adjoining or near thereto, without the consent of the owner or occupier thereof respectively, and may do all such acts and things as they may deem necessary for extinguishing fire in any such building or for protecting the same or rescuing any person or property therein from fire" (s. 87).

*Fire brigade.*

*Power to  
police con-  
stable to  
enter and  
break open  
premises in  
case of fire.*

"The officer in charge of the police at any fire in the district shall have power to stop or regulate the traffic in any street whenever in his opinion it is necessary or desirable to stop or regulate such traffic for the purpose of extinguishing the fire or for the safety or protection of life

*Power to  
police officer  
to control  
street traffic  
at fires.*



*Act of 1907* or property, and any person who wilfully disobeys any order given by  
*—of limited* such officer in pursuance of this section shall be liable to a penalty not  
*application* exceeding £5" (s. 88).

*—see p. 742.*

**Fire brigade.**

Control of  
 operations.

"The captain or superintendent of the fire brigade of the local authority or other officer of such fire brigade for the time being in charge of the engine or other apparatus for extinguishing fires attending at any fire within the district shall from the time of his arrival and during his presence thereat have the sole charge and control of all operations for the putting out of such fire, whether by the fire brigade of the local authority or any other fire brigade, including the fixing of the positions of fire engines and apparatus, the attaching of hose to any water pipes or water supply, and the selection of the parts of the building on fire or of adjoining buildings against which the water is to be directed" (s. 89).

#### PART IX.—SKY SIGNS.

**Sky signs.**

"(1) (a) It shall not be lawful to erect or fix to, upon, or in connection with any building or erection any sky sign, and it shall not be lawful to retain any existing sky sign so erected or fixed for a longer period than three years after the commencement of this section, nor during that period except with the licence of the local authority, and in the event of such licence being granted then only for such period not exceeding three years from the commencement of this section and under and subject to such terms and conditions as shall be therein prescribed. (b) Provided that in any of the following cases a licence of the local authority under this subsection shall become void (namely):—(i.) If any addition to any sky sign be made except for the purpose of making it secure under the direction of the surveyor: (ii.) if any change be made in the sky sign or any part thereof: (iii.) if the sky sign or any part thereof fall either through accident, decay, or any other cause; (iv.) if any addition or alteration be made to or in the house, building, or structure on, over, or to which any sky sign is placed or attached if such addition or alteration involves the disturbance of the sky sign or any part thereof; or (v.) if the house, building, or structure over, on, or to which the sky sign is placed or attached become unoccupied or be demolished or destroyed.

"(c) Provided also that if any sky sign be erected or retained contrary to the provisions of this Act, or after the licence for the erection, maintenance, or retention thereof for any period shall have expired or become void, it shall be lawful for the local authority to take proceedings for the taking down and removal of the sky sign in the same manner and with the same consequence as to recovery of expenses and otherwise in all respects as if it were an obstruction within the meaning of s. 69 (future projections of houses, &c., to be removed on notice) of the Towns Improvement Clauses Act, 1847, 10 & 11 Vict. c. 34."

"(2) Any person acting in contravention of any of the provisions of this section, or of the terms and conditions (if any) of any approval, licence, or consent under this section, shall be liable to a penalty not exceeding £5 and to a daily penalty not exceeding 20s. (3) For the purposes of this section—'Sky sign' means—Any word, letter, model, sign, device, or representation in the nature of an advertisement, announcement, or direction supported on or attached to any post, pole, standard, frame-work, or other support wholly or in part upon, over, or above any house, building or structure which or any part of which sky sign shall be visible against the sky from some point in any street or public way, and includes all and every part of any such post, pole, standard, frame-work, or other support; the expression 'sky sign' shall also



include—Any balloon, parachute, or other similar device employed wholly or in part for the purposes of any advertisement or announcement on, over, or above any house, building, structure, or erection of any kind, or on or over any street or public way; but shall not include—(a) any flagstaff, pole, vane, or weathercock unless adapted or used wholly or in part for the purpose of any advertisement or announcement; (b) any sign or any board, frame, or other contrivance securely fixed to or on the top of the wall or parapet of any building, or on the cornice or blocking course of any wall, or to the ridge of a roof: Provided that such board, frame, or other contrivance be of one continuous face and not open work, and do not extend in height more than three feet above any part of the wall or parapet or ridge to, against, or on which it is fixed or supported; (c) any word, letter, model, sign, device, or representation as aforesaid relating exclusively to the business of a railway or canal company, and placed wholly upon or over any railway, canal, railway station, wharf, quay, yard, platform, or station or wharf or quay approach belonging to a railway or canal company, and so placed that it cannot fall into any street or public place” (s. 91).

#### PART X.—MISCELLANEOUS.

Bye-laws as to bathing, p. 763; life-saving apparatus, p. 763; licensing pleasure boat, p. 763; power to purchase lands, p. 764.

“The local authority—(a) may make bye-laws with regard to any public bathing, whether from bathing machines or not, for any of the purposes mentioned in s. 69 of the Town Police Clauses Act, 1847, and also for the purpose of regulating the hours of bathing and enforcing the provision and maintenance of any life-saving apparatus or other means of protecting bathers from danger by persons providing accommodation for public bathing: and (b) may, if they think fit, provide and maintain on or at any place within their district which abuts on the sea or any river, bathing-sheds or other conveniences with all necessary appliances, and may charge for the use thereof” (s. 92). Bye-laws made under this section must be confirmed by the Chief Secretary (s. 9).

“The local authority of any district may provide and maintain life-saving appliances at any place in their district where they think those appliances are likely to be of use” (s. 93).

“(1) The local authority may grant upon such terms and conditions as they may think fit licences for pleasure boats<sup>1</sup> and pleasure vessels to be let for hire or to be used for carrying passengers for hire, and to the boatmen or persons assisting in the charge or navigation of such boats and vessels, and may charge annual fees for such licences, for a boat or vessel a fee not exceeding the sum of five shillings, and for a boatman or other person a fee not exceeding the sum of one shilling. (2) Any such licence may be granted for such period as the local authority may think fit, and may be suspended or revoked by the local authority whenever they shall deem such suspension or revocation to be necessary or desirable in the interests of the public: Provided that the existence of the power to suspend or revoke the licence shall be plainly set forth in the licence itself. (3) No person shall let for hire any pleasure boat or pleasure vessel not so licensed or at any time during the suspension of the licence for the boat or vessel, nor shall any person carry or permit to be carried passengers for hire in any pleasure boat or vessel not so licensed or at any time during the suspension of the licence for the boat or vessel.

<sup>1</sup> As to what is a pleasure boat, form of summons, evidence as to district, see *Featoun v. Warrenpoint U.D.C.* (1910), 44 I.L.T.R. 265.

Miscellaneous.  
Bathing places.

Provision of life-saving appliances.

Power to license pleasure boats.

*Act of 1907* (4) A licence under this section shall not be required for any boat or — *of limited* vessel duly licensed by or under any regulations of the Board of Trade.  
*application* (5) No person shall carry or permit to be carried in any pleasure boat  
 — *see p. 742.* or pleasure vessel a greater number of passengers for hire than shall be

Miscellaneous.

specified in the licence applying to such boat or vessel, and every owner of any such boat or vessel shall, before permitting the same to be used for carrying passengers for hire, paint or cause to be painted, in letters and figures not less than one inch in height and three-quarters of an inch in breadth, on a conspicuous part of the said boat or vessel, his own name and also the number of persons which it is licensed to carry, in the form 'Licensed to carry persons.' (6) Every person who shall act in contravention of the provisions of this section shall for each offence be liable to a penalty not exceeding 40s. (7) Any person deeming himself aggrieved by the withholding, suspension, or revocation of any licence under the provisions of this section may appeal to a petty sessional court held after the expiration of two clear days after such withholding, suspension, or revocation: Provided that the person so aggrieved shall give twenty-four hours' written notice of such appeal, and the ground thereof, to the clerk, and the court shall have power to make such order as they see fit and to award costs, such costs to be recoverable summarily as a civil debt" (s. 94).

Power to purchase lands.

"The powers of a local authority under ss. 202 and 203 of the Public Health (Ir.) Act, 1878, shall extend to highway purposes, and notwithstanding anything in s. 175 of the Public Health (Ir.) Act, 1878, or any general provision in any local Act, any lands acquired by a local authority and not required for the purposes for which those lands have been acquired may be appropriated for any purpose approved by the Local Government Board for Ireland, subject, nevertheless, to any special covenant or condition affecting the use of the lands attached thereto at the time of the purchase by the local authority, or to any special provision affecting the use of the lands contained in any local Act: Provided that the local authority shall not, on any lands so appropriated, create or permit any nuisance; and that the local authority shall not, on any such lands, sink any well for the public supply of water, or construct any cemetery, burial ground, destructor, station for generating electricity, sewage farm, or hospital for infectious disease, unless after local inquiry and consideration of any objections made by persons affected, the Local Government Board for Ireland, subject to such conditions as they think fit, authorise the work or construction.

"Nothing in this section shall affect any rights acquired before the commencement of this section under any judgment or order of a court of competent jurisdiction, or under any agreement in writing, but if a dispute, one of the parties to which is a local authority, arises under such an agreement as to any such right, the dispute shall, if either party so require, be settled by the Local Government Board for Ireland as if it were a doubt or difference within the meaning of s. 304 of the Public Health (Ir.) Act, 1878, and the Local Government Board may for that purpose deal by Order with any matters which may be dealt with by an Order or Provisional Order under the said section" (s. 95).

#### FORMS.

(As set out in Schedule C of the Public Health (Ir.) Act, 1878.)

*Notice requiring abatement of nuisance.*

(Under s. 110 of the Public Health (Ir.) Act, 1878: see p. 708.)

To [person causing the nuisance, or owner or occupier of the premises whereon the nuisance exists, as the case may be].

Take notice that under the provisions of the Public Health (Ireland) Act, 1878, the [describe the sanitary authority], being satisfied of the existence of a nuisance at [describe premises or place where the nuisance exists], arising from [describe the cause of nuisance, for instance, want of a privy or drain; or for instance, a ditch or drain so foul as to be a nuisance or injurious to health; or for further instance, swine kept so as to be a nuisance or injurious to health], do hereby require you within from the service of this notice to abate the same, and for that purpose to [state any things required to be done or works to be executed].

If you make default in complying with the requisitions of this notice, or if the said nuisance, though abated, is likely to recur, a summons will be issued requiring your attendance to answer a complaint which will be made to a court of summary jurisdiction for enforcing the abatement of the nuisance, and prohibiting a recurrence thereof, and for recovering the costs and penalties that may be incurred thereby.

Dated this day of 18 .

Signature of officer of }  
sanitary authority }

Summons.

(Under s. 111 of the Public Health (Ir.) Act, 1878; see p. 708.)

To the owner or occupier of [describe premises], situated at [insert such a description as may be sufficient to identify the premises], or to A. B of

County of [or  
borough of, &c.,  
or district of  
or as the case  
may be] to wit. } You are required to appear before [describe the court of  
summary jurisdiction], at the petty sessions [or court] holden  
at on the day of  
next, at the hour of in the noon,  
to answer the complaint this day made to me by that  
in or on the premises above mentioned [or in or on certain premises situated  
at No. in the street in the parish of or such other  
description or reference as may be sufficient to identify the premises], in the district,  
under the Public Health Act (Ireland), 1878, of [describe the sanitary authority],  
the following nuisance exists [describing it, as the case may be], and that the said  
nuisance is caused by the act or default of the occupier [or owner] of the said  
premises, or by you A. B. [or in case the nuisance be discontinued, but likely to be  
repeated, say, there existed recently, to wit, on or about the day of  
on the premises, the following nuisance [describe the  
nuisance], and that the said nuisance was caused [d.c.], and although the same  
has since the said last mentioned day been abated or discontinued, there is  
reasonable ground to consider that the same or the like nuisance is likely to  
recur on the said premises].

this day of 18 .

(Signed)

Justice.

Order for abatement or prohibition of nuisance.

(Under s. 112 of the Public Health (Ir.) Act, 1878; see p. 709.)

To the owner [or occupier] of [describe the premises], situated [give such description as may be sufficient to identify the premises], or to A. B. of

County of [or  
borough of, &c.,  
or district of  
or as the case  
may be]. { WHEREAS on the day of  
complaint was made before Esquire, one  
of Her Majesty's justices of the peace acting in and for the  
county [or other jurisdiction] stated in the margin, [or as the  
case may be,] by that in or on certain  
premises situated at in the district under the Public  
Health Act (Ireland), 1878, of [describe the sanitary authority] the following  
nuisance then existed [describing it]; and that the said nuisance was caused by  
the act or default of the owner [or occupier] of the said premises [or was caused  
by A. B.] [If the nuisance have been removed, say, the following nuisance existed



on or about [*the day the nuisance was ascertained to exist*], and that the said nuisance was caused, &c., and although the same is now removed, the same or the like nuisance is likely to recur on the same premises.]

And whereas the owner [*or occupier*] within the meaning of the said Public Health Act (Ireland), 1878, [*or the said A. B.,*] hath this day appeared before us [*(or me) describing the court*], to answer the matter of the said complaint [*or in case the party charged do not appear, say, and whereas it hath been this day proved to our (or my) satisfaction, that a true copy of a summons requiring the owner [or occupier] of the said premises [or the said A. B.] to appear this day before us [or me]*] hath been duly served according to the said Act.

Now on proof here had before us [*or me*] that the nuisance so complained of doth exist on the said premises, and that the same is caused by the act or default of the owner [*or occupier*] of the said premises [*or by the said A. B.,*] we [*or I*], in pursuance of the said Act, do order the said owner [*or occupier or A. B.*] within [*specify the time*] from the service of this order or a true copy thereof according to the said Act [*here specify any things required to be done or works to be executed, as, for instance, to provide for the cleanly and wholesome keeping of, or, to remove the animal kept so as to be a nuisance or injurious to health; or, for further instance, to cleanse, whitewash, purify, and disinfect the said dwelling-house; or, for further instance, to construct a privy or drain, &c.; or, for further instance, to cleanse or to cover or to fill up the said cesspool, &c.*], so that the same shall no longer be a nuisance or injurious to health as aforesaid.

[*And if it appear to the court that the nuisance is likely to recur on the premises, say, [And we] [or I] being satisfied that, notwithstanding the said cause or causes of nuisances may be removed under this order, the same is or are likely to recur, do therefore prohibit the said owner [or occupier or A. B.] from [here insert the matter of the prohibition, as, for instance] from using the said house or building for human habitation until the same, in our [or my] judgment, is rendered fit for that purpose.*]

*In case the nuisance were removed before complaint, say,* Now, on proof here had before us [*or me*] that at or recently before the time of making the said complaint, to wit, on as aforesaid, the cause of nuisance complained of did exist on the said premises, but that the same hath since been removed, yet, notwithstanding such removal we [*or I*], being satisfied that it is likely that the same or the like nuisance will recur on the said premises, do hereby prohibit [*order of prohibition*]; and if this order of prohibition be infringed, then we [*or I*] [*order on sanitary authority to do works*].

Given under the hands of us [*or the hand of me, describing the court*].

This day of 18 .

J. S.  
J. P.

*Order for abatement of nuisance by sanitary authority.*

(Under s. 116 of the Public Health (Ir.) Act, 1878 : see p. 710.)

To the Town Council, &c., as the case may be.

County, &c., { WHEREAS [*recite complaint of nuisance as in last form*].  
to wit.

And whereas it hath been now proved to our [*or my*] satisfaction that such nuisance exists, but that no owner or occupier of the premises, or person causing the nuisance, is known or can be found [*as the case may be*]; Now we [*or I*], in pursuance of the said Act, do order the said [*sanitary authority naming it*] forthwith to [*here specify the works to be done*].

Given, &c. (*as in last form*).

*Order to permit execution of works by owner.*

(Under s. 272 of the Public Health (Ir.) Act, 1878 : see p. 732.)

County of { WHEREAS complaint hath been made to me, E. F., Esquire,  
[or borough, &c.] { one of Her Majesty's justices of the peace in and for the  
to wit. county [or other jurisdiction, &c.] of by A. B.,  
owner within the meaning of the Public Health Act (Ireland), 1878, of certain  
premises [*describe situation of premises so as to identify them*], that C. D., the

occupier of the said premises, doth prevent the said *A. B.* from obeying and carrying into effect the provisions of the said Act in this, to wit, that he the said *C. D.* doth prevent the said *A. B.* from [here describe the works generally, according to circumstances, for instance, thus: constructing and laying down, in connection with the said house, a covered drain, so as to communicate with a sewer, which the sanitary authority under the said Act of the district of \_\_\_\_\_ are entitled to use, such sewer being within one hundred feet of the said premises]: And whereas the said *C. D.*, having been duly summoned to answer the said complaint, and not having shown sufficient cause against the same, and it appearing to me that the said works are necessary for the purpose of enabling the said *A. B.* to obey and carry into effect the provisions of the said Act, I do hereby order that the said *C. D.* do permit the said *A. B.* to execute the same in the manner required by the said Act.

Given under my hand, this

day of

18 .

*J. S.*

*Order of justice for admission of officer of sanitary authority.*

(Under ss. 118, 271 of the Public Health (Ir.) Act, 1878: see pp. 710, 731.) \_

WHEREAS [describe the sanitary authority] have by their officer [naming him] made application to me, *A. B.*, one of Her Majesty's justices of the peace having jurisdiction in and for [describe the place], and the said officer has made oath to me that demand has been made pursuant to the provisions of the Public Health Act (Ireland), 1878, for admission to [describe situation of premises so as to identify them], for the purpose of [describe the purpose, as the case may be], and that such demand has been refused.

Now, therefore, I the said *A. B.* do hereby require you [name the person having custody of the premises] to admit the said [name the sanitary authority], [or the officer of the said sanitary authority], to the said premises, for the purpose aforesaid.

Given, &c. (as in last form).

## PUBLIC MEETINGS.

"(1) Any person who at a lawful public meeting acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together shall be guilty of an offence, and if the offence is committed at a political meeting held in any parliamentary constituency between the date of the issue of a writ for the return of a member of parliament for such constituency, and the date at which a return to such writ is made, he shall be guilty of an illegal practice within the meaning of the Corrupt and Illegal Practices Prevention Act, 1883, and in any other case shall on summary conviction be liable to a fine not exceeding £5 or to imprisonment not exceeding one month. (2) Any person who incites others to commit an offence under this section shall be guilty of a like offence" (*Public Meeting Act*, 1908, 8 Edw. 7, c. 66, s. 1). As to punishment for illegal practices, see ELECTION OFFENCES, p. 431.

A public meeting is not necessarily unlawful by reason of being held upon the highway (*Burden v. Rigler* (1911), 1 K.B. 337).

As to obstruction by public meeting, see HIGHWAY.

As to meetings illegal by force of the Criminal Law and Procedure (Ir.) Act, 1887, see that statute, APPENDIX OF STATUTES.

As to meetings illegal at common law, see INDICTABLE OFFENCES.

Disturbing  
public  
meeting.

## RAILWAYS.

	PAGE		PAGE
Offences by passengers . . . . .	768	Miscellaneous offences ( <i>continued</i> )—	
False declaration as to goods . . . . .	769	Sending dangerous goods . . . . .	771
Offences by railway servants . . . . .	769	Offences by company—	
Miscellaneous offences—		Level crossings . . . . .	771
Trespass . . . . .	770	Locomotives . . . . .	771
Obstruction . . . . .	770	Prize-fights . . . . .	771
Injuring notice-boards . . . . .	770	Passenger tickets . . . . .	771
Omitting to shut gate . . . . .	770	Bye-laws . . . . .	771
Communication cord . . . . .	771	Procedure . . . . .	772

**Offences by passengers.****Refusal to leave carriage.<sup>a</sup>****Production of ticket.****Detention of passenger.****Frauds by passengers.**

If any person knowingly and wilfully refuse or neglect, on arriving at the point to which he has paid his fare, to quit a railway carriage—*Forfeiture* to the company, not exceeding 40s. (*Railway Clauses Consolidation Act, 1845, 8 & 9 Vict. c. 20, s. 103*).

“(1) Every passenger by a railway shall, on request by an officer or servant of a railway company, either produce, and if so requested, deliver up, a ticket showing that his fare is paid, or pay his fare from the place whence he started, or give the officer or servant his name and address; and in case of default shall be liable on summary conviction to a fine not exceeding 40s. (2) If a passenger having failed either to produce, or if requested, to deliver up, a ticket showing that his fare is paid, or to pay his fare, refuses, on request by an officer or servant of a railway company, to give his name and address, any officer of the company or any constable may detain him until he can be conveniently brought before some justice or otherwise discharged by due course of law. (3) If any person (a) travels or attempts to travel on a railway without having previously paid his fare, and with intent to avoid payment thereof; or (b) having paid his fare for a certain distance, knowingly and wilfully proceeds by train beyond that distance, without previously paying the additional fare, for the additional distance, and with intent to avoid payment thereof; or (c) having failed to pay his fare, gives in reply to a request by an officer of a railway company a false name or address, he shall be liable on summary conviction to a fine not exceeding 40s., or in the case of a second or subsequent offence, either to a fine not exceeding £20, or in the discretion of the court to imprisonment for a term not exceeding one month. (4) The liability of an offender to punishment under this section shall not prejudice the recovery of any fare payable by him” (*Regulation of Railways Act, 1889, 52 & 53 Vict. c. 57, s. 5*).

The word “ticket” throughout this section includes a season ticket (*Woodard v. E.C. Ry. Co. (1861), 4 L.T. 336*). The detention of a passenger who has neither produced his ticket nor paid his fare, but who has given his correct name and address, even though his conduct was such when giving his name and address as to give reasonable and probable cause for believing such name and address to be false, is not legal under subsection 3 (*Knights v. L.C. & D. Ry. Co. (1893), 62 L.J.Q.B. 378*), nor is the removal of a passenger who has not produced his ticket, but who has in fact paid his fare and who has given his correct name and address (*Butler v. M.S. & L. Ry. Co. (1888), 21 Q.B.D. 207*).

To constitute an offence under subsection 3 there must be an intent to defraud. Thus a person who buys from the original purchaser and travels upon the return half of a return ticket marked “not transferable” commits an offence under the section (*Langdon v. Howells (1879), 4 Q.B.D. 337*); so also does a person who, upon a ticket for any given class, travels by a superior class with intent to defraud (*Gillingham v. Walker (1881), 44 L.T. 715*); but a person who so travels without intent to defraud, does not commit an offence under the section (*Bentham v. Hoyle (1878), 3 Q.B.D. 289*). Even where there is in fact an intent to defraud, an



offence within the terms of the section must be strictly proved, and accordingly where a man attempted fraudulently to leave a railway station without delivering up his "workman's ticket," which was undated and capable of being used again if retained, it was held that he could not be convicted under the section (*Caledonian Railway v. Raper* (1908), S.C. (J.) 69, Ct. of Just.).

A contract by a railway company to carry a passenger from one station to another does not, in the absence of special terms, entitle the passenger to break the journey at an intermediate station (*Ashton v. L. & Y.R. Co.* (1904), 2 K.B. 313), and consequently a bye-law imposing a penalty on a passenger so doing is valid.

Every person being the owner or having the care of any carriage or goods passing or being on a railway shall on demand, give to the collector of tolls for the railway an exact account in writing signed by him of the number or quantity of goods conveyed by any such carriage and of the point on the railway from which such carriage or goods have set out or are about to set out and at what point the same are intended to be unloaded or taken off the railway; and, if such goods be liable to different tolls, then such person shall specify the numbers and quantities thereof liable to different tolls (*Railway Clauses Consolidation Act*, 1845, 8 & 9 Vict. c. 20, s. 98), and any such person failing so to do, or to produce his way-bill or bill of lading to such collector or other servant of the company demanding the same, or giving a false account, or unloading, with intent to avoid payment of any tolls, any part of such goods at any place other than that mentioned in such account—*Forfeiture* to company of sum not exceeding £10 for every ton of goods, or for any parcel not exceeding one hundredweight, and so on in proportion for any less quantity of goods than one ton, or for any parcel exceeding one hundredweight (s. 99).

These sections apply to cases where the railway company themselves act as carriers; the collector of tolls includes the railway official who receives goods for carriage at the rates charged by the company; the word tolls means such rates; and the course of business under which a railway company will receive goods for carriage only when accompanied by a consignment note containing an exact account of such goods is to be taken as implying a demand by the company, whenever goods are delivered to it, for an account within the meaning of these sections (*Barr v. L. & N.W.R.* (1905), 2 K.B. 113).

Any officer or attendant of a railway company or any special constable duly appointed, and all such persons as they may call to their assistance, may seize or detain any engine driver, guard, porter, or other servant in the employ of such company, or employed by any other person or company in conducting traffic on the railway belonging to the said company, or in repairing and maintaining the works of the said railway, who shall be found drunk while so employed upon the said railway or commit any offence against any bye-laws, rules, or regulations of such company, or shall wilfully, maliciously, or negligently do or omit to do any act whereby the life or limb of any person passing along, or being upon the railway belonging to such company, or the works thereof respectively, shall be or might be injured or endangered, or whereby the passage of any of the engines, carriages, or trains shall be, or might be obstructed or impeded, and to convey such person before a justice of the peace; and every person so offending, and every person counselling, aiding, or assisting therein shall on conviction before such justice<sup>1</sup> be liable to imprisonment with

False  
declaration  
as to goods.

Offences by  
railway  
servants.

<sup>1</sup> The power of one justice to convict out of sessions is now, however, taken away by s. 8 (2) of the Petty Sessions (Ir.) Act, 1851, and even two justices can so convict only if the accused is unable to give bail.

or without hard labour for any term not exceeding two calendar months, or shall forfeit to the Crown a sum not exceeding £10 (*Regulation of Railways Act, 1840, 3 & 4 Vict. c. 97, s. 13; Regulation of Railways Act, 1842, 5 & 6 Vict. c. 55, s. 17*).

**Miscellaneous offences.**

**Trespassing on railway.**

“If any person shall be or pass upon any railway, except for the purpose of crossing the same at any authorised crossing, after having once received warning<sup>1</sup> by the company which works such railway, or by any of their agents or servants, not to go or pass thereon; every person so offending shall forfeit and pay any sum not exceeding 40s. for every such offence” (*Regulation of Railways Act, 1868, 31 & 32 Vict. c. 119, s. 23, as amended by Regulation of Railways Act, 1871, 34 & 35 Vict. c. 78, s. 14*). This section does not make it an offence to pass across or along a railway along a right-of-way existing before the construction of the railway and not extinguished by the special Act under which the railway was constructed (*Cole v. Miles* (1889), 60 L.T. 145). A trespasser cannot be convicted under this section of trespassing elsewhere than upon the actual railway track (*Thomson v. Great N. of S. Ry. Co.* (1899), 37 Sc.L.R.). A trespasser elsewhere can, however, be convicted under s. 16 of the Act of 1845, *infra*.

Any person wilfully trespassing upon any railway station, or premises and refusing to quit the same upon the request of any officer or agent of the company may be seized and detained until he can conveniently be brought before a justice—*Penalty*, payable to the Crown, not exceeding £5<sup>2</sup> (*Regulation of Railways Act, 1840, 3 & 4 Vict. c. 97, s. 16*). Where the complainants charged the defendant at petty sessions with trespassing on their yard and premises at Dundalk, and for refusing to leave when requested to do so, and the justices refused to convict, on the ground that the complainants had no legal right to exclude him and dismissed the charge on the merits. *Held*, on a case stated, that the magistrates must convict (*G.N.R. Co. v. Gonnolly* (1902), 2 N.I.J.R. 63). This case was decided upon the authority of *Perth General Station Committee v. Ross* (1897), A.C. 479). A cabman who refuses to leave because other cabmen are allowed to remain can be convicted under this section (*Foulger v. Steadman* (1872), L.R. 8 Q.B. 65; see also *L.B. & S.C. Ry. Co. v. Fairbrother* (1900), 16 T.L.R. 167), and justices cannot dismiss a charge against a car-driver under this section, if such driver is excluded whilst others are admitted, on the ground that such exclusion constitutes an undue preference within the meaning of the Railway and Canal Traffic Acts, the remedy for any such undue preference being an application to the Railway Commissioners (*Hole v. Digby* (1879), 27 W.R. 884). But as to such claim of right as will oust the jurisdiction of justices, see *Wilkinson v. Goffin* (1876), 33 L.T. 824.

**Obstruction.**

Any person wilfully obstructing or impeding an officer or agent of any railway company in the execution of his duty upon any railway or in or upon any premises connected therewith, may be seized and detained until he can be conveniently brought before a justice—*Penalty*, payable to the Crown, not exceeding £5 (*Regulation of Railways Act, 1840, 3 & 4 Vict. c. 97, s. 16*).

**Injuring notice-boards.**

Pulling down, injuring, or defacing boards on which bye-laws or penalties are published—*Penalty*, not exceeding £5, with payment of expenses (*Railway Clauses Consolidation Act, 1845, 8 & 9 Vict. c. 20, s. 144*). Pulling down, defacing, or destroying toll boards or mile-stones—*Penalty*, not exceeding £5 (s. 95).

**Omitting to shut gates.**

“If any person omit to shut and fasten any gate set up at either side of the railway for the accommodation of the owners or occupiers of the ad-

<sup>1</sup> Under many private railway Acts warning is not necessary.

<sup>2</sup> See note to s. 13 on p. 769.

joining lands, as soon as he and the carriage, cattle, or other animals under his care have passed through the same"—*Penalty*, not exceeding 40s. (*Railway Clauses Consolidation Act*, 1845, 8 & 9 Vict. c. 20, s. 75).

"Every company shall provide, and maintain in good working order, in every train worked by it which carries passengers, and travels more than twenty miles without stopping, such efficient means of communication between the passengers and the servants of the company in charge of the train as the Board of Trade may approve"—*Penalty* on default, not exceeding £10 for each case of default (*Regulation of Railways Act*, 1868, 31 & 32 Vict. c. 119, s. 22). "Any passenger who makes use of the said means of communication without reasonable and sufficient cause"—*Penalty*, not exceeding £5 (*ib.*).

Sending by railway any *aqua fortis*, oil of vitriol, gunpowder, lucifer matches, or other goods of dangerous nature, without distinctly marking their nature on the outside of the package, or otherwise giving notice in writing to the book-keeper or other servant of the company—*Penalty*, forfeiture of £20 to company (*Railway Clauses Consolidation Act*, 1845, 8 & 9 Vict. c. 20, s. 105).<sup>1</sup> Guilty knowledge is necessary to support a conviction for sending dangerous goods (*Hearne v. Garton* (1859), 2 El. & El. 66).

Where a railway crosses a public carriage road on the level the company must provide gates to be kept shut across such road except traffic on such road requires them to be opened (unless the Board of Trade directs them to be kept shut across the railway except when the passage of railway traffic requires them to be opened), and must provide gate-keeper to open and shut such gates—*Penalty* on gate-keeper for non-observance, not exceeding 40s. (*Railway Clauses Consolidation Act*, 1845, 8 & 9 Vict. c. 20, s. 47).

Locomotives using coal or other fuel emitting smoke, to be constructed on the principle of consuming and so as to consume their own smoke—*Penalty* on company for non-observance, £5 a day for each locomotive (s. 114).

Railway companies are subject to a penalty, recoverable summarily, not exceeding £500 nor less than £200, if they run trains to facilitate prize-fighting (*Regulation of Railways Act*, 1868, 31 & 32 Vict. c. 119, s. 21).

From and after a date to be fixed by order of the Board of Trade,<sup>2</sup> and subject to such exceptions, if any, as may be allowed by such order, every passenger ticket<sup>3</sup> issued by any railway company in the United Kingdom to have fare printed or written upon its face—*Penalty*, not exceeding 40s. for every ticket issued in contravention of this section (*Regulation of Railways Act*, 1889, 52 & 53 Vict. c. 57, s. 6).

A railway company may make (subject to disallowance by the Board of Trade under the Railway Regulation Act, 1840, ss. 7-9) bye-laws, not repugnant to the general law, for the prevention of nuisances in or upon its carriages, stations, or premises and generally for regulating the travelling upon or using and working of the railway (*Railway Clauses Consolidation Act*, 1845, 8 & 9 Vict. c. 20, ss. 108, 109), and also for maintaining order in, and regulating the approach to railway stations, and the approaches thereto (*Regulation of Railways Act*, 1889, 52 & 53 Vict. c. 57, s. 7), such bye-laws to be published on boards at every wharf or station (*Railway Clauses Consolidation Act*, 1845, s. 110). It is sufficient

<sup>1</sup> Railway and canal companies are empowered to make, subject to the approval of the Board of Trade, bye-laws as to the conveyance, loading, &c., of gunpowder (*Explosive Substances Act*, 1875, 38 & 39 Vict. c. 17, s. 35) and other explosives (s. 39). See EXPLOSIVES.

<sup>2</sup> Fixed as Jan. 1, 1891, by order of the same date (St. R. & O., Rev. 1904, XI., Railways).

<sup>3</sup> The order of exemption made under this section includes excursion tickets.



proof of publication that a printed paper or painted board, containing a copy of the bye-laws, was affixed and continued in the manner prescribed, and in case of its being displaced or damaged, then that such paper or board was replaced as soon as conveniently might be (s. 111)—*Penalty* for breach of such bye-law, not exceeding £5 (s. 109). Such bye-laws are provable by examined and certified copies (*Motteram v. E.C. Ry. Co.* (1859), 7 C.B., N.S., 58. See also p. 279).

#### Procedure.

In proceedings under the Regulation of Railways Act, 1840, 3 & 4 Vict. c. 97, only one justice is required, as will be seen from the wording of the various sections by which the offences under that Act above set forth are created, and the Petty Sessions Act—see p. 41—entirely governs the procedure.

In proceedings under the Railway Clauses Consolidation Act, 1845, 8 & 9 Vict. c. 20, or under the special Act of any company, or under any bye-law made in pursuance thereof, two justices (s. 145) are required, and the Petty Sessions Act—see again p. 41—governs the proceedings, except that, where the application of any penalty or forfeiture is not otherwise provided for,<sup>1</sup> the justices may award not more than one half thereof to the informer,<sup>2</sup> “and *shall* award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor rate of such parish” (s. 150); but it is submitted that this enactment as to the remainder of the penalty or forfeiture cannot be given effect to in Ireland.

Penalties under the Regulation of Railways Act, 1868, 31 & 32 Vict. c. 119, are (s. 40) to be recovered and applied in like manner as penalties under the Railway Clauses Consolidation Act, 1845, as to which see *supra*. Proceedings under the Regulation of Railways Act, 1889, which (except as regards s. 4) is silent as to procedure, are governed by the Petty Sessions Act in manner set out at p. 41, to which reference should be made, and only one justice is required in cases under ss. 5 and 6, as to which see pp. 768, 771.

As to indictable offences, see CATALOGUE OF INDICTABLE OFFENCES, under RAILWAYS.

As to matters in which justices have a civil jurisdiction regarding railways, see pp. 183–185.

#### Refreshment houses.

### REFRESHMENT HOUSES.

Any house, room, shop, or building left open for public refreshment, resort, and entertainment at any time between 10 P.M. and 7 A.M. (and not being duly licensed for the sale of beer, cider, wine, or spirits) is deemed a refreshment house, and a refreshment house licence is necessary therefor (*Refreshment Houses (Ir.) Act*, 1860, 23 & 24 Vict. c. 107, s. 9). A temperance hotel kept open after 10 o'clock and supplying refreshments to the public (*Kelleway v. MacDougal* (1880), 45 J.P. 207), a small shop in which ginger-beer and lemonade are sold during the hours aforesaid (*Howes v. Board of Inland Revenue* (1876), 1 Ex. D. 385), are refreshment houses within the section.

Keeping a refreshment house without a licence—*Penalty*, £20 (*Refreshment Houses (Ir.) Act*, 1860, s. 9).

A wine retailer's licence is very frequently taken out by the keepers of refreshment houses; see, for offences relating thereto, INTOXICATING LIQUORS.

<sup>1</sup> No provision is made in s. 109 for penalties for breaches of bye-laws, or in ss. 75, 114, 144, for offences against those sections.

<sup>2</sup> That is, the person who prosecutes (*Powell v. Castletown* (1891), 30 L.R.I. 93).

## REGISTRATION OF BIRTHS AND DEATHS.

	PAGE		PAGE
Officials, districts, &c. . . . .	773	Registration of deaths ( <i>continued</i> )—	
Registration of births—		Registrar to ascertain and	
Particulars to be given to		register deaths . . . . .	774
registrar . . . . .	773	Registration twelve months	
Registrar may call for par-		after death . . . . .	774
ticulars . . . . .	773	Burials—	
Deserted infants . . . . .	773	Without coroner's order or	
Registration three months		registrar's certificate . . . . .	775
after birth . . . . .	774	Of deceased child as still-	
Registration in district other		born . . . . .	775
than that in which birth		Of still-born child . . . . .	775
took place . . . . .	774	Of more than one body in	
Notification of Births Act, 1907 .	774	one coffin . . . . .	775
Registration of deaths—		Non-delivery of medical certi-	
Where death occurs in a		cate of death . . . . .	775
house . . . . .	774	False statement as to births or	
Where death occurs else-		deaths . . . . .	775
where . . . . .	774	Certificates evidence . . . . .	775
Where medical certificate is		No penalty where default not	
given . . . . .	774	wilful . . . . .	776
Registrar may call for par-		Procedure . . . . .	776
ticulars . . . . .	774	Births and deaths at sea . . . . .	776

The registration of births and deaths is provided for in Ireland by the Registration of Births and Deaths (Ir.) Act, 1863, 26 & 27 Vict. c. 11, and the Births and Deaths Registration (Ir.) Act, 1880, 43 & 44 Vict. c. 13, which Acts are to be construed together (*Act of 1880, s. 42*).

The Act of 1863 provides for the appointment of a Registrar-General of Births and Deaths (s. 4); for the creation of superintendent registrars' districts, which consist of the several poor law unions (s. 17), and of registrars' districts, which, except where a dispensary district is subdivided, consist of the several dispensary districts (s. 18); and for the appointment of superintendent registrars (s. 22) and of registrars (s. 23).

The Acts of 1836 and 1880 provide for the appointment of assistants to superintendent registrars and registrars respectively, and for the appointment of interim superintendent registrars and registrars respectively (*Act of 1863, s. 26; Act of 1880, ss. 21, 22*).

Certain persons specified in s. 1 of the Act of 1880 are to give to the registrar, within forty-two days next after the birth of any child born, the particulars relating to such birth required by that section, and to sign the register, under a penalty for non-compliance not exceeding £2 (*Act of 1880, ss. 1, 7, 29*). The persons so specified are:—the father and mother of the child, and in default of the father and mother, the occupier of the house in which to his knowledge the child is born, and each person present at the birth, and the person having charge of the child.

If such particulars be not given within such period, the registrar may, by notice in writing, require any such person to give him information regarding such birth; and such person, if he fail to give such information within the time specified in such notice, pursuant to s. 2 of the Act of 1880, and to sign the register, is liable to a penalty not exceeding £2 (*Act of 1880, ss. 2 and 29*).

Any person finding or having charge of any new-born living child that has been found exposed is to give to the registrar, within seven days after the finding of such child, any information that he possesses as to the birth—*Penalty* for non-compliance, not exceeding £2 (ss. 3 and 29).

The registrar is to inform himself of every birth that takes place in his district, and to register such birth within three months after the birth

**Registration of births.** occurs or a deserted child is found (*Act of 1880, s. 4*). Any person registering or procuring the registration of any birth more than three months after such birth shall have taken place is liable, unless such registration be made subject to the conditions specified in s. 5 of the Act of 1880, to a penalty not exceeding £10 (s. 5).

Registration more than three months after birth. District other than that in which birth takes place. Notification of births under Act of 1907. A person required under the Act to register a birth, who has removed after the birth to another district, may, by declaration made pursuant to s. 5 of the Act of 1880, register the birth in such other district (s. 6).

In places where the Notification of Births Act, 1907, 7 Edw. 7, c. 40, has been put in force, either by the local authority with the consent of the Local Government Board, or by the Local Government Board alone, notification of every birth, including still-born births, must be made, within thirty-six hours of the same taking place, to the local medical officer of health by the persons and in the manner prescribed by that Act under a penalty, on summary conviction, not exceeding £1 (*Notification of Births Act, 1907*).

**Registration of deaths.** Where a death occurs in a house, certain persons specified in s. 10 of the Act of 1880 are, within the five days next following such death, to give to the registrar the particulars relating thereto required by that section and to sign the register, under a penalty not exceeding £2 (*Act of 1880, ss. 10, 16, 29*). The persons so specified are:—the nearest relatives of the deceased present at the death, or in attendance during the last illness; or in default of such relatives, every other relative dwelling or being in the same district as the deceased; and in default, each person present at the death, and the occupier of the house in which, to his knowledge, the death took place; in default of the foregoing, each inmate of the house and the person causing the body to be buried. Where a death occurs or a dead body is found elsewhere than in a house, certain persons specified in s. 11 of the same Act are, within the five days next after such death or finding, to give to the registrar the particulars relating thereto required by that section (ss. 11, 16, 29). The persons specified in s. 11 are:—every relative having knowledge of the particulars required, and in default of such relative every person present at the death, and any person finding, and any person taking charge of the body, and the person causing the body to be buried. Where written notice of the occurrence of a death, accompanied by a medical certificate of the cause of death, as prescribed in s. 20 of the Act of 1880, is given to the registrar, the particulars specified in ss. 10 and 11 may be given within the fourteen days next after the death (s. 12).

Where death occurs in a house. Deaths elsewhere. Deaths as to which a medical certificate is given. Registrar may call for particulars. Where the particulars of a death have not been given, the registrar may, not less than fourteen days or more than twelve months after a death occurs or a body is found elsewhere than in a house, by notice in writing, require any person who under ss. 10 or 11 of the Act of 1880 is required to give particulars, to give him such particulars; and such person, if he fail to comply with such notice within the time specified therein in accordance with s. 13 of the Act of 1880, is liable to a penalty not exceeding £2 (ss. 13, 29).

The registrar is to inform himself of every death that happens in his district, and to register every such death within twelve months after such death occurs or a dead body is found (s. 14).

After the expiration of the twelve months next following any death or the finding of a body elsewhere than in a house, any person registering or procuring the registration of such death is liable, unless such registration is made subject to the conditions specified in s. 14 of the Act of 1880, to a penalty not exceeding £10 (s. 15).

**Burials.** Any person who buries, or performs any funeral or religious service for the burial of any dead body in respect of which there has not been

Registration more than twelve months after death.



delivered to him a coroner's order or registrar's certificate for burial (respectively given pursuant to s. 17 of the Act of 1880), and who does not, except in the case specially excepted in that section, within seven days after the burial, give notice in writing of such non-delivery to the registrar or the Registrar-General, is liable to a penalty not exceeding £10 (s. 17). Any person wilfully burying, or procuring to be buried, any deceased child as if such child were still-born, or any person who has control over, or ordinarily buries bodies in, any burial ground, permitting such child to be so buried therein, or burying or permitting to be buried therein any still-born child before delivery to him of either such medical certificate, such declaration, or such coroner's order as is specified in s. 18 of the Act of 1880, is liable to a penalty not exceeding £10 (s. 18). The undertaker or other person in charge of any coffin brought for burial which contains the body of more than one person, or the body of a still-born child, failing to deliver to the person who buries or performs any funeral or religious service for the burial of such bodies or body, notice in writing, signed by such undertaker, &c., containing the particulars specified in s. 19 of the Act of 1880, or any person to whom such notice is delivered, and who fails within five days from the day of burial to forward the same to the registrar or the Registrar-General, as the Local Government Board may from time to time direct, is liable to a penalty not exceeding £10 (s. 19).

**Burials.**

Burial without coroner's order or registrar's certificate.

Burial of deceased child as still-born.

Burial of still-born child.

More than one body in one coffin.

Any person who under ss. 10 or 11 of the Act of 1880 is bound to give information as to a death, and who fails, within five days of the receipt from any registered medical practitioner who has attended the deceased person in his last illness of a medical certificate as to the cause of death, to deliver such certificate to the registrar, is liable to a penalty not exceeding £2 (s. 20); and any such medical practitioner failing to give such certificate is liable to the like penalty (ss. 20, 29).

**Non-delivery of medical certificate as to death.**

"Any person who commits any of the following offences, that is to say: (1) wilfully makes any false answer to any question put to him by a registrar relating to the particulars required to be registered concerning any birth or death, or wilfully gives to a registrar any false information concerning any birth or death, or the cause of any death; or (2) wilfully makes any false certificate or declaration under or for the purposes of this Act, or forges or falsifies any such certificate or declaration, or any order under this Act, or, knowing any such certificate, declaration, or order to be false or forged, uses the same as true, or gives or sends the same as true, to any person; or (3) wilfully makes, gives, or uses any false statement or representation as to a child born alive having been still-born, or as to the body of a deceased person or a still-born child in any coffin, or falsely pretends that any child born alive was still-born; or (4) makes any false statement with intent to have the same entered in any register of births or deaths, shall for each offence be liable, on summary conviction, to a penalty not exceeding £10, and on conviction on indictment to fine," or to imprisonment, with or without hard labour, for a term not exceeding two years, or to penal servitude for a term not exceeding seven years and not less than three years (s. 30, as modified by the *Penal Servitude Act*, 1891, 54 & 55 Vict. c. 69, s. 1).

**False statement, &c., as to births or deaths.**

"All certified copies of entries purporting to be sealed or stamped with the seal of the General Register Office (which seal it shall not be necessary to prove), shall be admissible as evidence in all parts of Her Majesty's dominions of the birth or death to which the same relates, without any further or other proofs of such entry, and no certified copy purporting to be given in the said office shall be of any force or effect which is not sealed or stamped as aforesaid" (*Act of 1863*, s. 5).

**Certificates evidence.**

No penalty in respect of any failure to comply with the provisions

No penalty where failure is not wilful.  
Procedure.

Births and deaths at sea.

of either the Act of 1863 or the Act of 1880 is to be imposed if it appear to the court that such failure was not wilful (*Act of 1863*, s. 64).

Proceedings must be commenced within three months (*Act of 1880*, s. 36). The Summary Jurisdiction Acts<sup>1</sup> are applicable (*Act of 1880*, s. 35; *Act of 1863*, s. 65).

As to registration of births and deaths at sea, see Merchant Shipping Act, 1894, ss. 254, 339.

### REGISTRATION OF MARRIAGES.

	PAGE		PAGE
Marriages not solemnised by Roman Catholic priest—		Marriages solemnised by Roman Catholic priest—	
Acts as to registration of . . .	776	Certificate of such marriage . . .	777
Registration by person before whom solemnised . . .	776	Registration by registrar of births, deaths, and marriages . . .	778
Registration by husband . . .	777	Returns by registrar . . .	778
Injury to register . . .	777	Injury to register . . .	778
Duty of registrar of births, deaths, and marriages . . .	777	Procedure . . .	778
Procedure generally . . .	777	Correction of errors in register . . .	778

Marriages not solemnised by Roman Catholic priest.

Acts as to registration of.

The only offences in connection with marriages in respect of which justices have any summary jurisdiction are those relating to registration. The registration of all marriages solemnised in Ireland otherwise than by a Roman Catholic priest is provided for by the Marriages (Ir.) Act, 1844, 7 & 8 Vict. c. 81; the Marriages Law (Ir.) Amendment Act, 1863, 26 & 27 Vict. c. 27; the Matrimonial Causes and Marriage Law (Ir.) Act, 1870, 33 & 34 Vict. c. 109; the Matrimonial Causes and Marriage Law (Ir.) Amendment Act, 1871, 34 & 35 Vict. c. 49; and the Marriage Law (Ir.) Amendment Act, 1873, 36 & 37 Vict. c. 16, all which Acts are to be construed as one (*Act of 1873*, s. 3).

Registration by person before whom solemnised.

Every registering officer of the Society of Friends, as defined in the Act of 1844, must register in manner required by s. 64 of that Act every marriage solemnised according to the usages of the Society of Friends in the district of which he is registering officer; every marriage between two Jews must be registered by the Secretary of the Synagogue, as defined in that Act, to which the husband belongs; every registrar of marriages appointed in pursuance of that Act must register in manner provided by that Act every marriage solemnised before him in his office pursuant to that Act; every Presbyterian minister must register every marriage solemnised by him pursuant to that Act in manner provided by that Act; and every clergyman of any Protestant Episcopal Church, as defined in the Act of 1870, must register every marriage solemnised by him pursuant to the Acts of 1844, 1863, and 1870 in manner provided by the Act of 1844 (*Act of 1844*, s. 64). Any person who refuses, or without reasonable cause omits, to register any marriage that he is so required to register is liable to a penalty not exceeding £50 (*Act of 1844*, s. 74).

Every minister of any religious community other than the Society of Friends, the Jews, the Presbyterian Church, any Protestant Episcopal Church, or the Roman Catholic Church,<sup>2</sup> whether such community does or does not describe itself as Protestant, is to register every marriage

<sup>1</sup> As to meaning of which, see p. 335.

<sup>2</sup> Roman Catholic clergymen are not obliged by law to register marriages solemnised by them. As to the obligation of the husband to notify every such marriage, see a subsequent paragraph of this article.



solemnised by him pursuant to the Acts of 1844 and 1863 in manner provided by the Act of 1863 under a penalty for non-compliance not exceeding £40, for which any one may sue (s. 10 of the *Act of 1863*).

When any marriage is to be solemnised under a special licence granted pursuant to s. 36 of the Act of 1870 by a bishop of the Church of Ireland, or under a special licence granted pursuant to s. 37 of the same Act by any licensing authority, as therein described, of the various Presbyterian, Congregational, Methodist, and Baptist communities, therein described, or of the Society of Friends, the parties about to contract any such marriage must produce to the clergyman or minister celebrating the same, or, in case the parties are members of the Society of Friends, to the registering officer of that Society for the district in which the marriage is to be solemnised, the certificate specified in s. 22 of the Act of 1871 (which the person to whom the same is so produced is required, though not under any penalty, to fill up), and must forward the same (signed by such clergyman, minister, or registering officer, and by the parties and by two witnesses) by post within three days thereafter to the Registrar-General of Marriages appointed in pursuance of the Act of 1844; a penalty for non-compliance not exceeding £10 is imposed on the husband, such penalty to be recovered in like manner as penalties under the Registration of Marriages (Ir.) Act, 1863<sup>1</sup> (*Act of 1871*, s. 22).

**Marriages not solemnised by Roman Catholic priest.**

Registration by husband.

Every person having the custody of any register-book issued pursuant to the Act of 1844 or the Acts to be read as one therewith, in which marriages other than those solemnised by a Roman Catholic priest are registered, or of a certified copy thereof, or of any part thereof, who carelessly loses or injures the same, or carelessly allows the same to be injured whilst in his keeping, is to forfeit for every such offence a sum not exceeding £50 (*Act of 1844*, s. 74).

Careless injury to register of such marriages.

Pursuant to the Act of 1844 and s. 2 of the Act of 1863, a notice, in the form set forth in the last-named section, of every intended marriage, other than one to be solemnised by a Roman Catholic priest, is to be sent to the registrar (appointed under the Act of 1844) who is concerned, and he is to take such steps with regard to such notice as are specified in s. 3 of the Act of 1863, as amended by s. 41 of the Act of 1870, under a penalty for non-compliance not exceeding £40 (*Act of 1863*, s. 3; *Act of 1870*, s. 41). All the penalties mentioned in the preceding part of this article are recoverable (*Act of 1844*, s. 77) before two or more justices of the peace. As the result of the application of the Petty Sessions (Ir.) Act, 1851 (see p. 41), procedure in all other respects is governed by that Act subject to such modifications as to imprisonment in default of payment of penalties as are made in the Petty Sessions Act (see p. 64) by the Small Penalties (Ir.) Act, 1873, 36 & 37 Vict. c. 82.

Duty of registrar of births, deaths, and marriages.

Procedure generally.

The registration of marriages not provided for by the Act of 1844 and the Acts to be read as one therewith, that is to say, of marriages solemnised by a Roman Catholic priest, is provided for by the Registration of Marriages (Ir.) Act, 1863, 26 & 27 Vict. c. 90.

**Marriages solemnised by Roman Catholic priest.**

The parties about to contract any such marriage must produce to the clergyman celebrating the same the certificate<sup>2</sup> specified in s. 11 of the Registration of Marriages (Ir.) Act, 1863, which is to be signed by the parties contracting the marriage and by two witnesses and by the clergyman, and the husband; if such certificate be not within three days thereafter delivered or sent by post to the registrar of marriages appointed under the Act for the district wherein the marriage has been solemnised, the husband is liable to a penalty not exceeding £10 (s. 11). Every such registrar, on receipt of such certificate, is to register the

Certificate of such marriage.

<sup>1</sup> For which see a subsequent paragraph of this article.

<sup>2</sup> The certificate is a form of certificate of the marriage.



Marriages  
solemnised  
by Roman  
Catholic  
priest.

Registration  
by registrar.  
Returns by  
registrar.

Injury to  
register of  
Roman  
Catholic  
marriages.  
Procedure.  
Correction of  
errors in  
register.

particulars thereof in the register for such marriages, and, if he refuses, or without reasonable cause omits, either so to do or to fill up any such certificate for the parties about to contract such marriage, he is liable to a penalty not exceeding £10 (ss. 13, 24).

Any such registrar failing to send to his superintendent-registrar (for whose appointment see the Act) every quarter a certified copy of such marriages registered by him during the preceding quarter and the register-books of such marriages when filled, or any superintendent-registrar failing to send to the Registrar-General every quarter all such certified copies received by him from his registrars in respect of the preceding quarter, is liable to a penalty not exceeding £10 (ss. 14, 15, 25). Any person having the custody of any register of such marriages who carelessly loses or injures the same, or allows the same to be injured, is liable to a penalty not exceeding £10 (s. 24). Penalties under this Act are recoverable subject and according to the provisions of the Summary Jurisdiction (Ir.) Acts<sup>1</sup> (s. 26).

Any justice or justices sitting in petty sessions, or in the Dublin metropolitan police district, a divisional justice, may order the registrar to correct errors made in the entry of Roman Catholic marriages in the register thereof (s. 13).

### RIOT.

The offence of riot or unlawful assembly is punishable summarily by imprisonment, with or without hard labour, not exceeding six months under the Criminal Law and Procedure (Ir.) Act, 1887, 50 & 51 Vict. c. 20, ss 2 (3), 11. The offence is, however, cognisable only by a court of summary jurisdiction constituted under the Act, and the procedure is now rarely availed of. See STATUTE, APPENDIX of STATUTES.

As to RIOT and UNLAWFUL ASSEMBLY, see under those heads in CATALOGUE OF INDICTABLE OFFENCES.

### ROYAL ARMS.

See PATENTS.

### SECRET SOCIETIES.

	PAGE		PAGE
Societies that are unlawful in		Criminal Law and Procedure (Ir.)	
Ireland . . . . .	778	Act, 1887 . . . . .	779
Penalties . . . . .	779	Indictable offences . . . . .	780
Permitting unlawful meetings in			
house . . . . .	779		

Societies that  
are unlawful  
in Ireland.

“Any and every society, association, brotherhood, committee, lodge, club, or confederacy whatsoever, now established or hereafter to be established in Ireland, of the nature hereinafter described, shall be and be deemed and taken to be and is hereby declared to be an unlawful combination and confederacy; that is to say, any and every society, association, brotherhood, committee, lodge, club, or confederacy, the members whereof shall, according to the rules thereof or to any provision or agree-

<sup>1</sup> As to which, see p. 335.

ment for that purpose, be required or admitted or permitted to take any oath or engagement which shall be an unlawful oath or engagement within the intent and meaning of the said recited Act of the fiftieth year of his late Majesty's reign,<sup>1</sup> or to take any oath not required or authorized by law; and any and every society, association, brotherhood, committee, lodge, club, or confederacy, the members whereof or any of them shall take or in any manner bind themselves by any such oath or engagement upon becoming or in consequence of being members of such society, association, brotherhood, committee, lodge, club, or confederacy; and any and every society, association, brotherhood, lodge, club, or confederacy, the members whereof shall take, subscribe, or assent to any test or declaration not required by law; and any and every society, association, brotherhood, lodge, club, or confederacy, of which the names of the members, or any of them shall be kept secret from the society at large, or which shall have any committee or select body chosen or appointed in such manner that the members constituting the same may not be known by the society at large to be members of such committee or select body, or which shall have any president, treasurer, secretary, delegate, or other officer, chosen or appointed in such manner that the election or appointment of such persons to such offices may not be known to the society at large, or of which the names of all the members and of all committees or select bodies of members, and of all presidents, treasurers, secretaries, delegates, and other officers shall not be entered in a book or books to be kept for that purpose and to be open to the inspection of all the members of such society; and all such societies, associations, brotherhoods, committees, lodges, clubs, and confederacies as aforesaid are hereby declared to be unlawful combinations and confederacies; and every person who shall become a member of any such society, association, brotherhood, committee, lodge, club, or confederacy as aforesaid, and every person who shall directly or indirectly maintain correspondence or intercourse with any such society, association, brotherhood, committee, lodge, club, or confederacy, or with any division, branch, lodge, committee, or other select body, president, treasurer, secretary, delegate, or other officer or member thereof as such, or who shall by contribution of money or otherwise, aid, abet, or support any such society, association, brotherhood, committee, lodge, club, or confederacy, or any member or officer thereof as such, shall be deemed guilty of an unlawful combination and confederacy" (*Unlawful Oaths (Ir.) Act, 1823, 4 Geo. 4, c. 87, s. 1*).

Societies that are unlawful in Ireland.

The Act shall not extend to declarations of societies if approved of by two justices, and registered with the Clerk of the Peace (s. 2).

Offenders against s. 1 may be proceeded against before two justices or by indictment. Persons convicted before justices may be imprisoned for three months or fined £20 (s. 3). Justices may reduce the period of imprisonment or the fine to not less than one-third (s. 4).

Penalties

One moiety of any penalty imposed is to be paid to the informer<sup>2</sup> (s. 8).

Offenders may be indicted under previous Acts that apply if not prosecuted under this Act (s. 6).

Persons permitting meetings of unlawful societies in their houses are liable to a penalty, for a first offence, of £5, and for any subsequent offence to the penalties provided by ss. 3 and 4 (s. 7).

Permitting unlawful meetings in house.

The Criminal Law and Procedure (Ir.) Act, 1887, 50 & 51 Vict. c. 20, also provides for a proclamation by the Lord-Lieutenant putting in

<sup>1</sup> The preamble recites 50 Geo. 3, c. 102.

<sup>2</sup> That is to say, to the person in whose name the prosecution is brought (*Powell v. Castletown* (1891), 30 L.R.I. 93).

force the provisions of that Act relating to dangerous associations. See that statute, **APPENDIX OF STATUTES.**

**Indictable offences.**

As to indictable offences relating to secret societies, see **CATALOGUE OF INDICTABLE OFFENCES.**

### SHERIFFS.

Sheriff or sub-sheriff not to act as justice of the peace in the same county where he is sheriff or sub-sheriff during the tenure of his office—*Penalty*, £20 (7 Wm. 3, c. 13 (Ir.), s. 3).<sup>1</sup> Sheriff, bailiff, &c., demanding or receiving from any person on or in respect of the execution of any decree any money or gratuity other than the poundage fees legally payable—*Penalty*, not exceeding £20, payable to any person who may sue for the same by civil bill (*Civil Bill Courts Procedure Amendment (Ir.) Act*, 1864, 27 & 28 Vict. c. 99, s. 17).

### SHIPS.

	PAGE		PAGE
Miscellaneous offences under Merchant Shipping Acts . . .	780	Timber and grain . . .	781
Deserters, stowaways, discipline .	781	Procedure under Merchant Shipping Acts . . .	781
Sending dangerous goods . . .	781	Offences by master of ship . . .	781

**Miscellaneous offences under Merchant Shipping Acts.**

**Draught.**

The Merchant Shipping Acts, 1894, 1906, and 1907 (all of which are to be construed as one Act—see s. 86 of the Act of 1906 and s. 4. of the Act of 1907), enact penalties recoverable summarily in respect of the following offences.

Where under s. 436 (1) ships' draught is required to be marked, marking such draught inaccurately on bow or stern, or altering correct marking, &c.—*Penalty*, not exceeding £100 (*Merchant Shipping Act*, 1894, 57 & 58 Vict. c. 60, s. 442).

**False certificate by builder.**

**Improperly retaining certificate.**

Willfully making a false statement in a builder's certificate given pursuant to s. 10—*Penalty*, not exceeding £100 (s. 10 (3)). Refusing in contravention of s. 15 to deliver up a certificate of registry issued pursuant to s. 14—*Penalty*, not exceeding £100 (s. 15). Failing to deliver up as required by s. 18 provisional certificate granted under that section—*Penalty*, not exceeding £50 (s. 18). Master failing to deliver up certificate to registrar on ship changing owners—*Penalty*, not exceeding £50 (s. 20 (4)). Owner or master failing to deliver up certificate of ship lost or ceasing to be British owned—*Penalty*, not exceeding £100 (s. 21). Changing name of ship without permission of Board of Trade—*Penalty*, not exceeding £100 (s. 47). Non-compliance with requirements as to registration of name and address of ship's commanding officer, owner or manager—*Penalty* each time the ship leaves port, not exceeding £100 (s. 59).

**Unauthorised change of name.**

**Registration of name of ship and of master.**

**Non-registration of altered ship.**

Owner making default in registering anew a ship that has been altered so as not to correspond with particulars already registered, or in registering alteration—*Penalty*, not exceeding £100, and £5 for each day of continuance of default after conviction (s. 48, as amended by the *Merchant Shipping Act*, 1906, 6 Edw. 7, c. 48, s. 53).

**Failure to send notices as to alteration of ship to master.**

Managing owner failing to transmit notice of alteration in ship already registered, and of particulars of alteration of register of such ship to master, or master failing to produce same to registrar of port where he first arrives after receipt of notice—*Penalty*, not exceeding £50 (*Merchant*

<sup>1</sup> It would seem that this penalty is only recoverable by action.



*Shipping Act, 1907, 7 Edw. 7, c. 52, s. 3*; which Act is to be construed as one with the Act of 1894).

The Act of 1894 provides that fraudulent alteration of the register book, dealer's certificate, surveyor's certificate, certificate of registry, declaration, bill of sale, instruments of mortgage or certificate of mortgage or sale under Part I. of the Act or of any entry or indorsement in any of these documents shall be a felony (s. 66), and that making a false declaration in presence of, &c., registrar (s. 67), or the forging, &c., of certificate of competency (s. 104), shall be misdemeanours.

Fraudulent alteration of documents, &c.

Desertion—*Penalty*, forfeiture of wages, and, except in the United Kingdom, imprisonment not exceeding twelve weeks with or without hard labour (*Merchant Shipping Act, 1894, s. 221 (a)*). Failing to join ship, or absence without leave—*Penalty*, forfeiture of two days' pay for every twenty-four hours' absence, and also (except in the United Kingdom) imprisonment not exceeding ten weeks with or without hard labour (s. 221 (b)). Provisions as to arrest, &c., of deserters (ss. 222–224). General offences against discipline (s. 225). False statement by seaman as to name or as to last ship—*Penalty*, not exceeding £5 (s. 227).

Deserters, stowaways, discipline.

Failure to join ship or desertion by seaman who has been lawfully engaged and has received under his agreement an advance note—*Penalty*, not exceeding £5 or twenty-one days' imprisonment, and Board of Trade have power to direct the withholding of offender's certificates of discharge (*Merchant Shipping Act, 1906, 6 Edw. 7, c. 48, s. 65*).

Enticing seamen to desert ship—*Penalty*, not exceeding £10; harbouring deserter—*Penalty*, not exceeding £20 (*Merchant Shipping Act, 1894, s. 236*). Stowaway—*Penalty*, not exceeding £20 or four weeks' imprisonment with or without hard labour and to be subject to ship's discipline (s. 237). Harboursing deserters from ships of foreign country to which the section has been applied by Order in Council—*Penalty*, not exceeding £10 (s. 238). Misconduct endangering life or limb or ship; misdemeanour (*Merchant Shipping Act, 1894, s. 220*).

Carriage of explosives or dangerous cargo in emigrant ship forbidden, under penalty of £300 (*Merchant Shipping Act, 1894, s. 301*). Sending or attempting to send dangerous goods in British or foreign vessel without marking same as prescribed—*Penalty*, not exceeding £100 (s. 446). Misdescription of dangerous goods—*Penalty*, not exceeding £500 (s. 447). Sections 448 and 449 are concerned with power to open goods suspected of being dangerous, and forfeiture of goods improperly carried.

Sending dangerous goods.

For regulations as to loading of timber see the *Merchant Shipping Act, 1906, s. 10*; and for regulations as to grain, see the Act of 1894, ss. 452–456, and the Act of 1906, ss. 3, 6, 11.

Timber and grain.

All the foregoing penalties are recoverable under the Summary Jurisdiction Acts<sup>1</sup> (*Merchant Shipping Act, 1894, 57 & 58 Vict. c. 60, s. 681 (1)*), with, it is submitted, such right of appeal as is given by the Petty Sessions (Ir.) Act, 1851.

Procedure under Merchant Shipping Acts.

Person, whether master,<sup>2</sup> or pilot, in charge of any ship which on arrival at any port does not proceed direct to proper place of mooring, or does not bring to at the Custom House boarding place, or which without authority from the Customs removes from the proper place of mooring to any other place—*Forfeiture* of £20 (*Revenue Act, 1883, 46 & 47 Vict. c. 55, s. 5*).

Offences by master of ship.

Master of any ship who fails to provide sleeping accommodation for

<sup>1</sup> For the meaning of which term, see p. 335, *ante*.

<sup>2</sup> "Master" means the person having or taking charge or command (*Customs Consolidation Act, 1876, s. 284*).

<sup>3</sup> This Act is to be construed as one with the Customs Consolidation Act, 1876 (s. 11).

**Offences by  
master of  
ship.**

Customs officer stationed on board, or on whose ship any Customs seals, &c., affixed on her arrival in port are broken, or from whose ship whilst in port any stores sealed by the Customs are secretly taken away—*Forfeiture* of £20 (*ib.*, ss. 6, 7). Master of any ship failing to make, or making falsely, required report on arrival in port—*Forfeiture* of £100 (*Customs Consolidation Act*, 1876, 39 & 40 Vict. c. 36, s. 50, modified by the *Revenue Act*, 1898, 61 & 62 Vict. c. 46, s. 2).

Master of any ship arriving from abroad failing to answer truly questions put by Customs or having broken bulk or altered stowage, &c., after coming within four leagues of coast of United Kingdom except for cause allowed as satisfactory by Customs—*Forfeiture* of £100 (*Revenue Act*, 1883, 46 & 47 Vict. c. 55, s. 5). Master of ship bound foreign with goods failing to comply with required provisions as to delivery of certificate of last voyage inwards or coastwise, or of entry outwards, &c.—*Forfeiture* of £100 (*Customs Consolidation Act*, 1876, 39 & 40 Vict. c. 36, s. 101). Master of ship bound foreign in ballast departing without being duly cleared—*Forfeiture* of £100 (*Customs and Inland Revenue Act*, 1878, 41 & 42 Vict. c. 15, s. 6). If seals put by Customs, on goods taken without duty being paid as stores for ship foreign bound be wilfully broken, &c., or such goods removed from ship before such ship finally departs, master to forfeit £20 (*Customs Consolidation Act*, 1876, 39 & 40 Vict. c. 36, s. 135). Any ship leaving port not bringing to at Customs station—*Forfeiture* by master of £20 (s. 136). Any such ship carrying off Customs officer, &c., without his consent—*Forfeiture* by master of £100 (*ib.*). Coasting ships not confining themselves to coasting—*Forfeiture* of £100 by master (s. 142). Coasting ships unshipping or shipping goods except at specified times and places; forfeiture of goods and forfeiture of £50 by master (*Customs and Inland Revenue Act*, 1881, 44 & 45 Vict. c. 12, s. 10). Master of coasting ship not duly keeping cargo book—*Forfeiture* of £20 by master (*Customs and Inland Revenue Act*, 1879, 42 & 43 Vict. c. 21, s. 9). Unlading goods from coasting ships in contravention of the section, forfeiture of £20 by master and forfeiture of goods (*Customs Consolidation Act*, 1876, 39 & 40 Vict. c. 36, s. 146). As to the manner in which forfeitures are to be recovered and procedure generally, see p. 80.

**SHOP CLUBS.**

See Shop Clubs Act, 1902, 2 Edw. 7, c. 21, APPENDIX OF STATUTES.

**SHOPS.**

N.B.—At the time when this portion of the volume is going to press, a Bill is before Parliament making radical changes in the law relating to shop assistants. In its present form, the Bill (*inter alia*) repeals the Shop Hours Act, 1892, and the Shop Hours Act, 1895, except so far as they relate to persons who are not shop assistants within the meaning of the Bill. It also entirely repeals the Seats for Shop Assistants Act, 1899, and the Shop Hours Act, 1904. Therefore the reader, before relying upon this article, should consult the Appendix of Statutes, which will contain the Act if it has become law before publication.

	PAGE		PAGE
Shop Hours Acts, 1892 and 1895—		Shop Hours Act, 1904—	
Hours of employment in shops	783	Closing order by local authority	784
Exemption of members of same family . . . . .	783	Contents and effects of closing order . . . . .	784
Notice of hours to be exhibited . . . . .	783	Penalty	785
Penalty . . . . .	783	Definition of "local authority," "central authority," "shop" . . . . .	785
Exemption of occupier on conviction of actual offender .	784	Procedure for making closing order . . . . .	785
Procedure . . . . .	784	Revocation of closing order .	785
Seats for Shop Assistants Act, 1899—		Local inquiry . . . . .	785
Seats to be provided for female assistants . . . .	784	Regulations by central authority . . . . .	785
Penalty . . . . .	784		
Procedure . . . . .	784		

"(1) No young person shall be employed in or about a shop for a longer period than seventy-four hours, including meal times, in any one week. (2) No young person shall, to the knowledge of his employer, be employed in or about a shop having been previously on the same day employed in any factory or workshop as defined by the Factory and Workshop Act, 1878,<sup>1</sup> for the number of hours permitted by the said Act, or for a longer period than will, together with the time during which he has been so previously employed, complete such number of hours" (*Shop Hours Act*, 1892, 55 & 56 Vict. c. 62, s. 3).

"Shop" means retail and wholesale shops, markets, stalls, and ware-houses in which assistants are employed for hire, and includes licensed public-houses and refreshment houses of any kind. "Young person" means a person under the age of eighteen years" (s. 9). A building which is used solely as a hotel and restaurant, and which has no bar, and is not in the ordinary sense of the term a public-house, is a "shop" (*Savoy Hotel Co. v. London C.C.* (1900), 1 Q.B. 665; cf. *Smith v. Kyle* (1902), 1 K.B. 286, *infra*).

"Nothing in this Act shall apply to a shop where the only persons employed are members of the same family, dwelling in the building of which the shop forms part or to which the shop is attached, or to members of the employer's family so dwelling, or to any person wholly employed as a domestic servant" (*Shop Hours Act*, 1892, s. 10). A page-boy in a hotel, who sleeps on the premises, and who is principally employed as a messenger, but partly also in assisting to dust the reception rooms, is not a "domestic servant" (*Savoy Hotel Co. v. London C.C.* (1900), 1 K.B. 665).

"In every shop in which a young person is employed a notice shall be kept exhibited by the employer in a conspicuous place referring to the provisions of this Act, and stating the number of hours in the week during which a young person may lawfully be employed in that shop" (s. 4)—*Penalty*, not exceeding 40s. (*Shop Hours Act*, 1895, 58 & 59 Vict. c. 5, s. 1).

A railway bookstall, formed with a board and trestles, and put up each morning, was held not to be a shop within s. 4 of the *Shop Hours Act*, 1892 (*Smith v. Kyle* (1902), 1 K.B. 286). "I think, subject to any argument that might be addressed to me upon the point, that the structure would be clearly a stall and a shop for the purpose of s. 3, which limits the hours of employment of young persons in or about shops" (*ib.*, per Lord Alverstone, C.J.).

"Where any young person is employed in or about a shop contrary to the provisions of this Act, the employer shall be liable to a fine not exceeding £1 for each person so employed" (*Shop Hours Act*, 1892, s. 5).

<sup>1</sup> This will now mean the Factory and Workshop Act, 1901 (see *Interpretation Act*, 1889, s. 38).



**Shop Hours  
Acts, 1892  
and 1895.**

A newsagent, occupying a shop for the purposes of his business, employed a boy whose work was done partly inside the shop, and partly away from the shop fetching newspapers and delivering them to the customers. *Held.* that the whole employment was "in or about" the shop within the Act (*Collman v. Roberts* (1896), 1 Q.B. 457).

**Exemption of  
occupier on  
conviction  
of actual  
offender.**

"Where the employer of any young person is charged with an offence against this Act, he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the said employer proves to the satisfaction of the court that he has used due diligence to enforce the execution of the Act, and that the said other person has committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the occupier<sup>1</sup> shall be exempt from any fine" (*Shop Hours Act, 1892*, s. 6).

**Procedure.**

Offences are to be prosecuted and penalties recovered in accordance with ss. 143-146 (as applied to Ireland by s. 160) of the Factory and Workshop Act, 1901, 1 Edw. 7, c. 22; and so much of s. 147 of that statute as relates to evidence of age applies (s. 7; *Interpretation Act, 1889*, 52 & 53 Vict. c. 63, s. 88).

**Seats for  
Shop Assist-  
ants Act,  
1889.**

"In all rooms of a shop, or other premises where goods are actually retailed to the public, and where female assistants are employed for the retailing of goods to the public, the employer carrying on business in such premises shall provide seats behind the counter, or in such other position as may be suitable for the purpose, and such seats shall be in the proportion of not less than one seat to every three female assistants employed in each room" (*Seats for Shop Assistants Act, 1889*, 62 & 63 Vict. c. 21, s. 1).

**Seats for  
female  
assistants.****Penalty.**

"Any person failing to comply with the provisions of this Act"—*Penalty*, not exceeding, first offence, £3; subsequent offence, not less than £1 and not exceeding £5 (s. 2).

**Procedure.**

The Act is to be construed as one with the Shop Hours Act, 1892 (s. 4); and the procedure under it is consequently the same as the procedure under that Act.

**Shop Hours  
Act, 1904.****Closing order  
by local  
authority.**

"An order (in this Act referred to as a 'closing order') made by a local authority and confirmed by the central authority, in manner provided by this Act, may fix the hours on the several days of the week at which, either throughout the area of the local authority or in any specified part thereof, all shops or shops of any specified class are to be closed for serving customers" (*Shop Hours Act, 1904*, 4 Edw. 7, c. 31, s. 1).

The closing order may relate to one or more days in the week without affecting the other days (*A.G. v. Brighton Corporation* (1908), 77 L.J. (Ch.) 603).

**Contents and  
effect of  
order.**

"(1) The hour fixed by a closing order (in this Act referred to as 'the closing hour') shall not be earlier than seven o'clock in the evening on any day of the week, except that on one specified day in the week it may be an hour not earlier than one o'clock in the afternoon. (2) A closing order may prohibit, either absolutely, or subject to such exemptions and conditions as may be contained in the order, the carrying on of any retail trade after the closing hour in any place, not being a shop, within the area to which the order applies, for the carrying on of which it would be unlawful to keep a shop open after that hour. (3) The order may (a) define the shops and trades to which the order applies; and (b) authorise sales after the closing hour in cases of emergency, and in such other circumstances as may be specified or indicated in the order; and

<sup>1</sup> *Sic.* The word "occupier" must be read as meaning employer.

(c) contain any incidental, supplemental, or consequential provisions which may appear necessary or proper. (4) Nothing in a closing order shall apply to any fair lawfully held or a bazaar for charitable purposes, nor to any shop where the only trade or business carried on is one or more of the trades or businesses mentioned in the schedule to this Act.<sup>1</sup> (5) Where several trades and businesses are carried on in the same shop, and any of those trades or businesses are of such a nature that if they were the only trades or businesses carried on in the shop the closing order would not apply to the shop, the shop may be kept open after the closing hour for the purposes of those trades and businesses alone, but on such terms and under such conditions as may be specified in the order: Provided that the terms and conditions as respects post-office business shall be subject to the approval of the Postmaster-General" (*Shop Hours Act, 1904*, s. 2).

"If any person contravenes the provisions of a closing order he shall be liable on conviction under the Summary Jurisdiction Acts<sup>2</sup> to a fine not exceeding in the case of a first offence £1, in the case of a second offence £5, and in the case of a third or subsequent offence £20, provided that nothing in this Act or in any order shall render a person liable to any penalty for serving after the closing hour any customer who was in the shop before the closing hour" (*Shop Hours Act, 1904*, s. 5).

The "local authority" means the council of any municipal borough, or the commissioners of any town or township (see s. 8 (1)). The "central authority" is the Lord-Lieutenant (s. 8 (2)). "Shop" includes any premises or place where retail trade (including the business of a barber) is carried on (s. 8 (3)).

When a local authority are satisfied that a *prima facie* case is made out for making a closing order, they shall give public notice, in the prescribed manner, &c., of their intention to make the order, and if they are satisfied that it is expedient to make the order and that the occupiers of at least two-thirds in number of the shops to be affected approve of the order, they may make the order, which must be confirmed by the central authority (s. 3).

The central authority may, on the application of a local authority, revoke the order either absolutely or so far as it affects any particular class of shops, and if at any time it is made to appear to the satisfaction of the local authority that the occupiers of a majority of any class of shops to which a closing order applies are opposed to the continuance of the order, the local authority *shall* apply to the central authority to revoke the order so far as it affects that class of shops, but any such revocation shall be without prejudice to the making of any new closing order (s. 4).

The central authority, &c., may cause a local inquiry to be held (s. 6).

The central authority may prescribe regulations generally for carrying into effect the provisions of the Act (s. 7).

<sup>1</sup> That is, post-office business; sale of medicines and medical and surgical appliances; sale by retail of intoxicating liquors for consumption on or off the premises; sale of refreshments for consumption on the premises; sale of tobacco and other smokers' requisites; sale of newspapers; the business carried on at a railway bookstall or at a railway refreshment room.

<sup>2</sup> As to which, see p. 335.

## SMUGGLING.

	PAGE		PAGE
Procedure . . . . .	786	Rescuing goods . . . . .	787
Boats to be marked with name of ship, &c. . . . .	786	Rescuing persons . . . . .	787
Dutiable goods—		Assaulting or obstructing Customs officers . . . . .	787
Illegal unshipment . . . . .	786	Searching suspected smugglers . . . . .	787
Illegal removal from warehouse . . . . .	786	Improperly searching . . . . .	787
Illegal shipment . . . . .	786	Denying possession of smuggled goods . . . . .	787
Concealment of . . . . .	786	Illegal importation of goods . . . . .	788
Burthen of proof . . . . .	786	Assembling to run goods . . . . .	788
Smuggling vessels . . . . .	786	Pretending that goods are smuggled, &c. . . . .	788
Persons on smuggling vessels . . . . .	787	Deficiency of dutiable goods on ship . . . . .	788
Innocent persons on smuggling vessels . . . . .	787	Indictable offences . . . . .	788
Ships not bringing to . . . . .	787		

## Procedure.

The principal enactments as to smuggling are contained in the Customs Consolidation Act, 1876, 39 & 40 Vict. c. 36. As the provisions of the Petty Sessions Act, 1851, do not apply to prosecutions for offences against the Customs or Revenue (*Petty Sessions Act*, s. 42), prosecutions with regard to smuggling and kindred offences are governed by the law relating to the Customs, as to which see p. 80, *ante*.

The following is a brief summary of the most important sections with which justices are concerned: for the full text of the statutes, see Highmore's "CUSTOMS LAWS."

All summonses under the Customs Acts may be served on the defendant either personally or by leaving the same at the last known place of abode in the United Kingdom or on board any ship or vessel to which he may belong or may have lately belonged (*Customs Consolidation Act*, 1876, 39 & 40 Vict. c. 36, s. 227).

## Boats to be marked with name of ship.

All boats if belonging to a ship are to have thereon the name of the vessel, port, and master (s. 175), and if not belonging to a ship are to have the name of the owner and port thereon—*Penalty*, forfeiture of such boat (s. 176); but the latter section is not to apply to any fishing boat entered in the fishing boat register (*Merchant Shipping Act*, 1894, 57 & 58 Vict. c. 60, s. 373). All goods liable to the payment of duties, if removed from any ship, quay, wharf, or other place previous to examination by Customs officer; and all warehoused goods which have been illegally removed; and all goods the exportation of which is prohibited, if put on board any ship or boat with intent to be laden or shipped for exportation, or if brought to any quay, wharf, or other place in order to be put on board any ship for the purpose of being exported; and all dutiable goods and goods prohibited from being imported which are concealed on board any vessel within the limits of any port, and which shall be found either before or after landing to have been so concealed; are to be forfeited together with any goods which have been packed with or used in concealing them (*Customs Consolidation Act*, 1876, 39 & 40 Vict. c. 36, s. 177). All goods the importation of which is in any way restricted, which are of a description admissible to duty, and which shall be found or seized under the Customs Acts, shall be deemed to be goods liable to, and unshipped without payment of, duties unless the contrary is found (*ib.*, s. 178). Any vessel<sup>1</sup> being within three leagues of the coast if belonging wholly or in part to British subjects or having half the persons on board subjects of His Majesty, or within one league if not British, having on board any secret or disguised place adapted for concealing goods or any hole, tube,

## Dutiable goods:

## Illegal unshipment.

## Illegal removal from warehouse.

## Illegal shipment.

## Concealment of.

## Burthen of proof.

## Smuggling vessels.

<sup>1</sup> Under 250 tons (*Customs Consolidation Act*, 1890, 53 & 54 Vict. c. 56, s. 1).



or device adapted for running goods, or having on board, or in any manner attached thereto, or conveying or having conveyed any spirits, tobacco, or snuff in packages of any size and character in which they are prohibited to be imported, or any spirits, tobacco, or snuff imported contrary to the Customs Acts, or any tobacco stalks, tobacco stalk flour, or snuff work, which shall be found or which shall be discovered to have been within three leagues of any part of the coast and from which any goods shall have been thrown overboard, or staved or destroyed to prevent seizure—*Penalty*, forfeiture of vessel and goods and packages containing same, and everything packed therein, and cordage for slinging small casks, and casks, containing less than twenty gallons, of the description used for smuggling spirits : and every person found or discovered to have been on board any vessel liable to forfeiture as aforesaid, within three leagues if a British subject, within one league if a foreigner, or on board any vessel in His Majesty's service, or on board any foreign post-office packet employed in carrying mails between any foreign country and the United Kingdom having on board any spirits or tobacco in such packages as aforesaid, or any tobacco stalks, tobacco stalk flour, or snuff work, shall forfeit a sum not exceeding £100, and every such person may be detained and taken before a justice (*Customs Consolidation Act*, 1876, 39 & 40 Vict. c. 36, s. 179). If the vessel is over 250 tons different provisions apply, for which see the Customs Consolidation Act, 1890, 53 & 54 Vict. c. 56, s. 2. No person shall be liable to conviction under s. 179 of the Act of 1876 unless there shall be reasonable cause to believe that such person was concerned in, or privy to, the illegal act or thing proved to have been committed (*Customs Consolidation Act*, 1890, s. 1). Ships belonging wholly or in part to His Majesty's subjects, or having one half of the persons on board subjects of His Majesty, not bringing to when required by signal from any vessel in the service of His Majesty or of the revenue, or if any person on board shall throw overboard during chase or before such vessel any part of her lading or destroy or stave any goods—*Penalty*, forfeiture of ship (*Customs Consolidation Act*, 1876, 39 & 40 Vict. c. 36, s. 180). If any ship or boat liable to examination under Customs Act does not bring to when required master shall forfeit £20 (s. 181). Staving, breaking, or destroying any goods to prevent seizure or securing of goods seized, rescuing any person liable to apprehension or preventing the apprehension of any such person, assaulting or obstructing any officer of Customs or other person employed for the preventing of smuggling in the execution of his duty, or abetting, or attempting, or causing any of the above offences—*Penalty*, not exceeding £100 (*Customs and Inland Revenue Act*, 1881, 44 & 45 Vict. c. 12, s. 12). It is not necessary to prove that the officer was known to the defendant to be in the execution of his duty; it is enough that he actually was in the execution of his duty (*R. v. Forbes* (1865), 10 Cox 362). Before any person shall be searched he may require to be taken before a justice or superior officer of Customs, who shall, if he shall see no reasonable cause for search, discharge such person, but if otherwise direct that he shall be searched, and if a female only by a female; if any officer shall cause any person to be searched without reasonable ground, he shall forfeit and pay a sum not exceeding £10; if any person on being questioned by a person duly employed for the prevention of smuggling denies that he has any foreign goods upon his possession or in his baggage, and such goods are afterwards discovered in his possession or in his baggage, such goods shall be forfeited and such person shall forfeit £100 or treble the value of the goods at the election of the Commissioners of Customs (*Customs Consolidation Act*, 1876, 39 & 40 Vict. c. 36, s. 185).

**Smuggling vessels.**

**Persons on smuggling vessels.**

**Innocent persons on smuggling vessels.**

**Ships not bringing to when required by H.M. ships.**

**Rescuing goods.**

**Rescuing persons.**

**Assaulting or obstructing Customs officers.**

**Searching suspected smugglers.**

**Improperly so doing.**

**Denying possession of smuggled goods.**

Illegally importing any prohibited goods or goods the importation of

**Illegal importation of goods.**

which is restricted, whether unshipped or not, or unshipping or removing goods from quay before examination by Customs officer, or carrying goods into warehouse without authority, or harbouring such goods, or being in any way knowingly concerned in dealing with any such goods with intent to defraud His Majesty of any duties due thereon, or to evade any prohibition or restriction applicable to such goods—*Penalty*, treble value of goods including duty thereon,<sup>1</sup> or £100 at the election of the Commissioners of Customs (s. 186). Assembling to the number of three or more for the purpose of unshipping, landing, carrying, or concealing any prohibited, restricted, or uncustomed goods<sup>2</sup>—*Penalty*, not exceeding £500 nor less than £100 (*Customs and Inland Revenue Act*, 1879, 42 & 43 Vict. c. 21, s. 10).

**Assembling to run goods.**

Cutting adrift or injuring any boat or buoy belonging to the Customs—*Penalty*, £10 (*Customs Consolidation Act*, 1876, 39 & 40 Vict. c. 36, s. 195).

**Pretending that goods are prohibited or smuggled.**

Offering for sale any goods under pretence that the same are prohibited, or that the same have been smuggled—*Penalty*, even though such goods are neither prohibited nor smuggled, forfeiture of such goods and also of treble their value<sup>1</sup> (s. 201).

**Deficiency of dutiable goods on ship.**

If a ship that cleared foreign with dutiable goods returns to the United Kingdom with a deficiency therein in excess of the quantity that, in the opinion of the Commissioners of Customs, might fairly have consumed on the voyage, the master shall forfeit the amount of the duty that would have been charged on the deficiency on importation, and also a penalty not exceeding £20 (*Customs and Inland Revenue Act*, 1878, 41 & 42 Vict. c. 15, s. 4).

**Indictable offences.**

As to indictable offences relating to smuggling, see "SMUGGLING" in INDICTABLE OFFENCES.

### SOLICITOR.

**Pretending to be solicitor, &c.**

"Any person who wilfully and falsely pretends to be, or takes or uses any name, title, addition, or description implying that he is duly qualified to act as a solicitor, or that he is recognised by law as so qualified, shall be guilty of an offence under this Act"—*Penalty*, not exceeding £10 for each offence. Any offence under this section may be prosecuted before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts<sup>3</sup> (s. 53).

An unqualified person was convicted upon complaint of the Incorporated Law Society before justices. *Held*, the fact that one of the justices was a member of the Society did not disqualify him from acting as justice (*R. v. Burton* (1897), 2 Q.B. 468).

The above is the only summary procedure applicable to persons wrongfully acting as solicitors. The following penalties are recoverable by action: practising without certificate or making false statement on application for certificate—*Penalty*, £50 (*Stamp Act*, 1891, 54 & 55 Vict. c. 39, s. 43); unqualified persons preparing instruments for or in expectation of fee, gain, or reward—*Penalty*, £50 (*ib.*, s. 44), recoverable by information in the name of the Attorney-General (*ib.*, s. 121). Solicitor not to act as agent for person not duly qualified, &c., and may be committed by judge of the High Court for a term not exceeding one year

<sup>1</sup> This means three times the value of the goods without duty, and three times the amount of the duty thereon (s. 214).

<sup>2</sup> There must be a deliberate assembling (*R. v. Hutchinson* (1784), 1 Leach 339).

<sup>3</sup> As to the meaning of which, see p. 335, *ante*.

(*Solicitors (Ir.) Act*, 1898, 61 & 62 Vict. c. 17, s. 51). Acting as solicitor without being admitted and enrolled—*Penalty*, payable to the Incorporated Law Society, £50, recoverable with full costs of suit by action brought with the sanction of the Attorney-General in the name of the Incorporated Law Society in the High Court or in any county court (s. 52).

### STAMPS.

“(1) If any person (a) fraudulently removes or causes to be removed from any instrument any adhesive stamp, or affixes to any other instrument or uses for any postal purpose any adhesive stamp which has been so removed, with intent that the stamp may be used again; or (b) sells or offers for sale, or utters, any adhesive stamp which has been so removed, or utters any instrument having thereon any adhesive stamp which has to his knowledge been so removed as aforesaid; he shall, in addition to any other fine or penalty to which he may be liable, incur a fine of £50. (2) The expression ‘instrument’ in this section includes any post letter as defined by the Post Office Protection Act, 1884,<sup>1</sup> and the cover of any post letter” (*Stamp Act*, 1891, 54 & 55 Vict. c. 39, s. 9).

Frauds in relation to adhesive stamps.

The fine provided by this section is recoverable summarily. See p. 80, *ante*.

### STEAM WHISTLES.

Using or employing in any manufactory or any other place any steam whistle or steam trumpet for the purpose of summoning or dismissing workmen without sanction of the sanitary authority—*Penalty*, not exceeding £5, and 40s. for each day during which offence continues (*Factories Steam Whistles Act*, 1872, 35 & 36 Vict. c. 61, s. 2).

The expression steam whistle or steam trumpet means a whistle or trumpet from which a sound is produced by the passage through it, not merely of steam, but of anything such as compressed air, or, it would seem, the exhaust from an internal combustion engine (*Herbert v. Leigh Mills Co.* (1889), 53 J.P. 679).

The expression sanitary authority is defined by s. 3 of the Act to mean the authority at the time being empowered to execute the Nuisance Removal Acts, as defined and extended by the Sanitary Act, 1866. The Nuisance Removal Acts have been repealed as regards Ireland by s. 294 of the Public Health (Ir.) Act, 1878, 41 & 42 Vict. c. 52; and, for the reasons given at p. 488 of Vanston's “PUBLIC HEALTH,” it would seem that the expression “sanitary authority” must be taken now to mean the sanitary authority within the meaning of the Public Health (Ir.) Act, 1878.

### STOLEN GOODS, RESTITUTION OF

“It shall be lawful for the justices by whom any person is convicted under this Act to order restitution of the property stolen, taken, or obtained by false pretences in those cases in which the court before whom the person convicted would have been tried but for this Act may be by

Criminal Justice Act, 1855.

<sup>1</sup> In s. 19. That section is now repealed by the Post Office Act, 1908, 8 Edw. 7, c. 48, s. 92, sch. 2; and s. 74 of the Post Office Act, 1908, which defines “post letter,” now takes the place of s. 19 of the Act of 1884 (*Interpretation Act*, 1889, 52 & 53 Vict. c. 63, s. 38).



law authorized to order restitution" (*Criminal Justice Act, 1855, 18 & 19 Vict. c. 126, s. 8*).

**Larceny Act,  
1868.**

"All the provisions of the Criminal Justice Act, 1855, shall extend and be applicable to the offence of embezzlement by clerks or servants, or persons employed for the purpose or in the capacity of clerks or servants, and the said Act shall henceforth be read as if the said offence of embezzlement had been included therein" (*Larceny Act, 1868, 31 & 32 Vict. c. 116, s. 2*).

**Larceny Act,  
1861.**

"If any person guilty of any such felony or misdemeanour as is mentioned in this Act, in stealing, taking, obtaining, extorting, embezzling, converting, or disposing of, or in knowingly receiving, any chattel, money, valuable security, or other property whatsoever, shall be indicted for such offence by or on the behalf of the owner of the property, or his executor or administrator, and convicted thereof, in such case the property shall be restored to the owner or his representative; and in every case in this section aforesaid the court before whom any person shall be tried for any such felony or misdemeanour shall have power . . . to order the restitution thereof in a summary manner; Provided that if it shall appear before any . . . order made that any valuable security shall have been *bona fide* paid or discharged by some person or body corporate liable to the payment thereof, or being a negotiable instrument shall have been *bona fide* taken or received by transfer or delivery, by some person or body corporate, for a just and valuable consideration, without any notice or without any reasonable cause to suspect that the same had by any felony or misdemeanour been stolen, taken, obtained, extorted, embezzled, converted, or disposed of, in such case the court shall not . . . order the restitution of such security; Provided also, that nothing in this section contained shall apply to the case of any prosecution of any trustee, banker, merchant, attorney, factor, broker, or other agent intrusted with the possession of goods or documents of title to goods for any misdemeanour against this Act" (*Larceny Act, 1861, 24 & 25 Vict. c. 96, s. 100*). The order for restitution under this section may be either of the property or the proceeds thereof (*R. v. London Co. JJ. (1908), 72 J.P. 513*).

For the cases of larceny or embezzlement, which but for the Criminal Justice Act, 1855, and the Larceny Act, 1868, would be triable only on indictment, but in which justices by virtue of those two Acts can now convict summarily, see LARCENY, pp. 585-6.

**Summary  
Jurisdiction  
(Ir.) Act,  
1851.**

As to the power of justices to order restitution in the case of persons not over fourteen convicted summarily of larceny or any offence punishable as simple larceny, see the Summary Jurisdiction (Ir.) Act, 1851, 14 & 15 Vict. c. 92, s. 6, in APPENDIX OF STATUTES.

**Police (Pro-  
perty) Act,  
1897.**

"(1) Where any property has come into the possession of the police in connection with any criminal charge or under section 103 of the Larceny Act, 1861<sup>1</sup> . . . a court of summary jurisdiction may, on application, either by an officer of police, or by a claimant of the property, make an order for the delivery of the property to the person appearing to the magistrate or court to be the owner thereof, or, if the owner cannot be ascertained, make such order with respect to the property as to the magistrate or court may seem meet" (*Police (Property) Act, 1897, 60 & 61 Vict. c. 30, s. 1*). See the statute, APPENDIX OF STATUTES.

**Shipwrecked  
goods.**

Under s. 65 of the Larceny Act, 1861, 24 & 25 Vict. c. 96, a justice has power to order that any goods, from a vessel wrecked or stranded, &c., which are found in the possession of any person brought or summoned before such justice and unable to satisfy such justice that he came honestly by such goods, be delivered to the rightful owner.

**Stolen goods  
pawned.**

As to the power of justices in Dublin and Belfast to order the restitution of stolen goods that have been pledged with pawnbrokers, see p. 663.

<sup>1</sup> As to which, see p. 589.

## SUICIDE.

Summary jurisdiction is given in Dublin in cases of attempted suicide by the Summary Jurisdiction (Ir.) Amendment Act, 1871, 34 & 35 Vict. c. 76, *verbatim* APPENDIX OF STATUTES. Elsewhere, the offence is not triable summarily. See CATALOGUE OF INDICTABLE OFFENCES.

## SUNDAY.

	PAGE		PAGE
Prohibition of certain callings on Sunday . . . .	791-3	Committal of dangerous lunatic	794
Legal process . . . .	793-4	Computation of time . . . .	794
		Christmas Day . . . .	795

N.B.—*The Shops Bill, at present before Parliament, contains provisions altering the law as to carrying on businesses on Sunday, and amending the Sunday Observance Act, 1895. Therefore, before relying on that portion of this article “Prohibition of certain callings on Sunday,” the reader should consult the APPENDIX OF STATUTES, where the Act will be found, if it becomes law before publication.*

“No tradesman, artificer, workman, labourer, or other person whatsoever, shall do or exercise any worldly labour, business, or work of their ordinary callings upon the Lord’s day or any part thereof, works of necessity and charity only excepted: and every person being of the age of fourteen years or upwards offending in the premises, shall, for every such offence, forfeit the sum of 5s.; and no person or persons whatsoever shall publicly cry, show forth, or expose to sale, any wares, merchandises, fruit, herbs, goods, or chattels whatsoever, upon the Lord’s day or any part thereof, upon pain that every person so offending shall forfeit the same goods so cried, or showed forth, or exposed to sale” (*Sunday Observance Act, 1795, 7 Wm. 3, c. 17 (Ir.), s. 1*). The English Act, 29 Chas. 2, c. 7, contains similar provisions. The offences mentioned have reference to acts done in the ordinary pursuit of the offender’s ordinary calling. A sale made upon Sunday but not made in the exercise of the ordinary calling of the vendor is not avoided at common law or under the Act (*Drury v. Defontaine* (1808), 1 Taunt. 131); but a horse-dealer cannot sue for warranty of a horse under a contract made upon Sunday, such contract being in the exercise of his ordinary calling (*Fenell v. Ridler* (1826), 5 B. & C. 406).

**Prohibition of certain callings, &c., on Sunday.**

Ordinary callings.

The word “tradesman” means a person carrying on a trade, buying and selling; an “artificer” means a person who makes something; a “workman” or “labourer” means persons in employment (*per* Channel, J., in *Palmer v. Snow* (1900), 1 Q.B. 725, at p. 727). The words “or other person” must be applied to persons *ejusdem generis* with those specifically enumerated in the preceding part of the section (*R. v. Silvester* (1864), 33 L.J.M.C. (N.S.) 79). When general words follow particular the rule is to construe them as applying to persons *ejusdem generis* (*per* Lord Tenterden in *Sandiman v. Breach* (1827), 7 B. & C. 96, at p. 100). A barber (*Palmer v. Snow, supra*) or a farmer (*R. v. Silvester, supra*) is not within the section. Query, does the Act apply to an agricultural labourer (*per* Mellor, J., in *R. v. Silvester, supra*)? A person licensed under s. 6, but not under s. 7, of the Refreshment Houses Act, 1860, 23 & 24 Vict. c. 27,<sup>1</sup> who sold confectionery for consumption off his

<sup>1</sup> These sections are respectively re-enacted *verbatim* in ss. 6 and 7 of the Refreshment Houses (Ir.) Act, 1860, 23 & 24 Vict. c. 107.

**Prohibition of certain callings, &c., on Sunday.** premises was held within the English Act of Charles 2 (*Duffell v. Curtis* (1877), 35 L.T. 853). A married woman carried on business in selling sweets in a shop, which, with the business thereof, was the property of her husband, but in which the business was always carried on by the wife in the absence of her husband, who managed a similar business in a shop in another street. *Held*, that the woman had committed an offence against the English Act of Charles 2 (*Billingham v. Mehinick* (1909), 73 J.P. 384). An information and summons under the section need not allege that the defendant was fourteen years of age, or that the alleged labour, &c., was within the defendant's ordinary calling (*Connor v. Quest* (1907), 71 J.P. 62). It has been held by justices at Brighton that the crying out of newspapers by a boy was an offence against s. 2. and an order was made for the forfeiture of the papers (*Law Journal. Notes* (1890), p. 292).

A soldier can enlist on Sunday (*Wolton v. Gavin* (1850). 16 Q.B. 48).

A person can commit but one offence on the same day by exercising his ordinary calling on a Sunday no matter how many sales are effected (*Crepps v. Durden* (1776), 2 Cowp. 640).

**Carriers, &c.** "No drover, horse courser, waggoner, carrier, butcher, higler, their or any of their servants shall travel or come into his or their inn or lodging upon the Lord's Day or any part thereof"—*Penalty*, £1 (Ir.) (*Sunday Observance Act*, 1695, 7 Wm. 3, c. 17 (Ir.), s. 2). The Act does not apply to stage-coaches (*Sandiman v. Breach* (1827), 7 B. & C. 96, at p. 100), but van-drivers, being carriers, are included in the section (*Ex parte Middleton* (1824), 3 B. & C. 164).

**Games.** "No person or persons whatsoever shall play, use, or exercise any hurling, commoning, football playing, cudgels, wrestling, or any other games, pastimes, or sports on the Lord's Day or any part thereof"—*Penalty*, 12d. (Ir.) for every such offence; levy by distress (*Sunday Observance Act*, 1695, s. 3). It is submitted that as the preamble to the section declares the enactment to be for the prevention of breaches of the peace and disorders arising from tumultuous and disorderly meetings under pretence of hurling, &c., any "other game or pastime" must be *ejusdem generis* and calculated to bring together a tumultuous crowd. This effect of the preamble would probably exclude golf from the operation of the statute.

It is to be noted that the penalty here provided is for each offence. It would therefore seem that an offender could under this section be fined for several offences committed on the same day (see, however, *Crepps v. Durden* (1877), Cowp. 640).

**Exemptions.** "Provided that nothing in this Act contained shall extend to the prohibiting of dressing meat in families, or dressing or selling of meat in inns, cooks shops, or victualling houses for such as otherwise cannot be provided; nor the crying or selling of milk or fish before 10 o'clock A.M., or after 4 P.M., nor to the using of hackney coaches in or about the city of Dublin" (*Sunday Observance Act*, 1695, 7 Wm. 3, c. 17 (Ir.), s. 3). Baking provisions or the like on Sundays is not an offence under the Act of 29 Car. 2, c. 7. the English Act containing similar provisions and exceptions (*R. v. Cox* (1759), 2 Burr. 786, followed in *R. v. Younger* (1793), 5 T.R. 449). But see special provisions as to bread, p. 388, *ante*. A chipped potato dealer who cuts up, cooks, and fries potatoes and sells the same warm, sometimes alone and sometimes with fish, to the poor working classes for consumption on or off premises, is dressing or selling meat in a "cooks shop" for such as cannot be otherwise provided and therefore within the exemption<sup>1</sup> (*Bullen v. Ward* (1905), 21 T.L.R. 753). A

<sup>1</sup> "The Sabbath would be much more generally observed by a baker staying at home to bake the dinners of a number of families than by his going to church and those families or their servants staying at home to dress dinners for themselves" (*per* Lord Mansfield in *R. v. Cox*, *supra*).



police constable finding a milkman selling milk during prohibited hours called upon him to desist. The milkman refused, under orders from his employer. The constable seized the milk without the milkman's permission. The justices convicted the milkman and issued a warrant to seize and sell the milk. The Queen's Bench Division upheld the conviction (*Fuller v. Jackson*, reported in *Times* newspaper, 8th December 1896).

Prohibition of certain callings, &c., on Sunday.

"No person . . . shall be impeached, prosecuted, or molested for any offence before mentioned in this Act, unless he . . . be prosecuted for the same within ten days after the offence committed" (*Sunday Observance Act*, 1695. 7 Wm. 3. c. 17 (Ir.), s. 4). But query whether this enactment is not replaced by s. 10 (4) of the Petty Sessions Act, as to which see p. 51. *ante*.

Procedure.

By an old statute. 27 Hy. 6, c. 5, still in force, the holding of fairs is prohibited on Sundays (except the four Sundays in harvest), Ascension Thursday, Corpus Christi, the Feast of the Assumption, All Saints' Day, and Good Friday—*Penalty*, forfeiture of goods.

Fairs.

Apart from statute, judicial acts cannot be done on Sunday, but ministerial acts may be (*Mackalley's case* (1611), 9 Co. Rep. 65, b). For instance, justices cannot hear a case of summary jurisdiction on Sunday.

Legal process.

Judicial acts.

" . . . No person or persons upon the Lord's Day, commonly called Sunday, shall serve, or execute, or cause to be served or executed, any writ, process, warrant, order, judgment, or decree (except in cases of treason, felony, or breach of the peace); but that the service of every such writ, process, warrant, order, judgment, or decree, shall be void to all intents and purposes whatsoever; and the person and persons so serving or executing the same shall be as liable to the suit of the party grieved, and to answer damage to him for doing thereof, as if he or they had done the same without any writ, process, warrant, order, judgment, or decree at all" (*Sunday Observance (Ir.) Act*, 1695, 7 Wm. 3, c. 17 (Ir.), s. 7).<sup>1</sup>

7 Wm. 3, c. 17.

A warrant to enforce appearance in the case of any indictable offence may be issued or executed on Sunday (*Petty Sessions Act*, 1851, 14 & 15 Vict. c. 93, s. 11). And it follows that the preliminary hearing of any indictable offence may take place on that day, and the prisoner remanded or admitted to bail (see *Rawlins v. Ellis* (1849), 16 M. & W. 172).

Warrant to enforce appearance and preliminary hearing of indictable offence.

In the cases mentioned in 7 Wm. 3, c. 17 (Ir.)—treason, felony, and breach of the peace—a warrant of commitment in execution may be executed on Sunday (see *Rawlins v. Ellis* (1849), 16 M. & W. 172). It seems to be considered that a contempt of court is a breach of the peace within the section (Nun and Walsh, 2nd ed., p. 100 n. (a); *Anon.* (1744), Willes, 459; *Ex parte Whitchurch* (1749), 1 Atk. 55). The prohibition in 7 Wm. 3, c. 17 (Ir.), will apply only to an original taking, so that a party who has wrongfully escaped from custody may be re-taken on a Sunday, under an escape warrant (*Sir W. Moore's case* (1704), 2 Ld. Raym. 1028), or without any warrant (*ib.*; *Atkinson v. Jameson* (1792), 5 T.R. 25; *Featherstonehaugh v. Atkinson* (1736), Barnes 373).

Warrants in execution.

(1) *Treason, felony, breach of peace.*

But a warrant of commitment for default of payment of a penalty (*R. v. Myers* (1786), 1 T.R. 265; *Taylor v. Freeman* (1757), Sel. N.P., 13th ed., p. 850; *Re Ramsden* (1846), 3 D. & L. 748; *Ex parte Eggington* (1853), 2 E. & B. 717), or, it is submitted, in any cases save those mentioned above, cannot be executed on Sunday.

(2) *Other cases.*

In the absence of express statutory provision, search warrants cannot be issued or executed on Sunday.<sup>2</sup>

Search warrants.

In cases of treason, felony, or breach of the peace, where arrest without warrant is permissible at common law (see p. 146, *ante*), such arrest may be made on Sunday, having regard to the exception in 7 Wm. 3, c. 17 (Ir.), s. 7; and under the various statutes, all passed since the Act of

Arrest without warrant.

<sup>1</sup> The English section, 29 Car. 2, c. 7, s. 6, is identical in terms.

<sup>2</sup> For instances of such special statutory provisions, see p. 145, *ante*.

**Legal process.**

Sureties of the peace or for good behaviour.

Wm. 3, that are enumerated at pp. 147-9, an arrest without warrant can be made as well on Sunday as on any other day.

"The plaintiff being complained of to a justice of peace, he makes a warrant to the defendant to take the plaintiff, and to find sureties for the good behaviour; the defendant, being constable, executes the warrant upon a Sunday, and whether good within the late statute which says, that all process executed upon a Sunday other than for the peace shall be void. Resolved for the defendant, that a warrant for the good behaviour is a warrant for the peace and more; and this statute is to be favourably extended for the peace. This judgment<sup>1</sup> was affirmed in a writ of error in B.R. Trin., 32 Car. 2" (*Johnson v. Colston* (1678), Sir T. Raym. 250).<sup>2</sup> The defendant was arrested under a warrant, brought before a magistrate and ordered to give sureties for good behaviour, or, in default, to be imprisoned. The defendant refused, and a warrant was made out, under which he was committed to prison till he should find the sureties. All these proceedings took place on Sunday, and the warrant and entry in the sessions book bore date of that day. *Held*, that although the arrest might be good, the taking sureties and committal in default was a judicial act, and therefore void as being done on Sunday (*R. v. Ramsay* (1867), 16 W.R. 191).

**Committal of dangerous lunatic.**

A private person may, without a warrant, confine a person disordered in his mind, who seems disposed to do mischief to himself, or to any other person (Bac. Abr. Tit. Trespass, D. 3, p. 664). The Lunacy (Ir.) Act, 1867, 30 & 31 Vict. c. 118, ss. 10 and 11, giving power to justices to order the committal of a dangerous lunatic, contains no express power as to Sunday, but it is submitted that, inasmuch as the paramount object of the sections would appear to be the speedy seclusion<sup>3</sup> of a person dangerous to himself and to the community, this Act can be put into operation on Sunday.

**Computation of time.**

The general rule is that Sunday is to be included in the computation of the number of days, if nothing is said about its exclusion (*per Blackburn, J.*, in *Ex parte Simpkin* (1860), 7 E. & E. 392). Instances of the rule are—Sunday counts in the three days within which an appellant is to transmit a case stated to the High Court (*Pennell v. Uxbridge Overseers* (1862), 5 L.T. 685), and in the three days for the application to justices to state a case (*Peacock v. R.* (1858), 4 C.B. (N.S.) 264); and in the two days allowed to an appellant under the Nuisances Removal Act (England), 18 & 19 Vict. c. 121, to enter into recognisances (see also *Rouberry v. Morgan* (1854), 9 Ex. 730).

But where the act is to be done by the court, and not by the party, *e.g.* the sealing of a writ, and the last day falls on Sunday, the act may be done on the following Monday.

As to notice of appeal, a recent English case seems contrary to the accepted opinion in Ireland. By s. 8 of the Mayor's Court of London Procedure Act, 1857, 20 & 21 Vict. (Local and Personal Acts) c. clvii., notice of appeal is to be given within "two days after such determination or direction." In a case under this section, where the two days expired on Sunday, a notice of appeal, served on the following Monday, was held

<sup>1</sup> For defendant, in an action of trespass and battery.

<sup>2</sup> The above report is *verbatim*. It does not appear when the order to find sureties was made; the only fact being clear is that the execution of the warrant to enforce it, a merely ministerial act, took place on Sunday.

<sup>3</sup> See observations of Field, J., in *White v. Redfern* (1879), 5 Q.B.D. 15, at p. 18, a case in reference to the destruction of unsound meat. It may also be questioned whether putting such an Act into operation is not quasi-ministerial (see *Thomas v. Van Os* (1900), 2 Q.B. 448; but see *Hodson v. Pare* (1899), 1 Q.B. 455). The committal would not, it is submitted, be "process" within 7 Wm. 3, c. 17 (Ir.), s. 7.

well served (*Milch v. Frankau* (1909), 2 K.B. 100). The decision seems to have been based upon the ground that, as service was "process" within 29 Car. 2, c. 7, s. 6 (identical with the Irish 7 Wm. 3, c. 17, s. 7), and therefore was prohibited on Sunday, such statutory prohibition prolonged the period for another day (see also *R. v. Middlesex JJ.* (1848), 17 L.J.M.C. 111; but see, *contra*, *R. v. Middlesex JJ.* (1843), 12 L.J.M.C. 59). The decision, however, is opposed to the Irish case of *Blue v. Fullerton* (1876), I.R. 10 C.L. 233, and cannot be safely relied on.

Christmas Day, apart from statute, is in the same category as any other day, so far as the execution of legal process is concerned; and there are no statutes as to Christmas Day which in any way affect the subject of this work. Accordingly, where the petty sessions fall on Christmas Day, it seems that the clerk should attend and adjourn the court. The same remarks apply to bank and other like holidays.

Christmas  
Day.

### SWEARING.

"If any person or persons shall . . . profanely swear and curse in the presence or hearing of any justice of peace of the county, division, or of the mayor or other head officer or justice of peace for any city, or town corporate where such offence is or shall be committed or that shall be thereof convicted by the oath of one witness, or by the confession of the party offending before any justice of the peace of the county or mayor, or bailiff, or other chief officer, or justice of the peace of such city or town corporate where the said offence shall be committed"—*Penalty*, every servant, day labourer, common soldier, and common seaman, 1s.;<sup>1</sup> every other person, 2s.;<sup>1</sup> second offence, double fine; third offence, treble fine (7 Wm. 3, c. 9 (Ir.), s. 1).

Profane  
swearing.

"If any justice of the peace or chief magistrate shall wilfully and willingly omit the performance of his duty in the execution of this Act"—*Penalty*, forfeiture of £5 (Ir.) (s. 3).

Section 5 provides a special time limit of ten days for prosecution of the offence; but *quære*, whether the time limit run is not that fixed by the Petty Sessions Act; see p. 51, *ante*.

A conviction under 19 Geo. 2, c. 21, s. 1, charged that the defendant did "profanely curse one profane curse" (setting it out) "twenty several times repeated," and adjudged him "for his said offence" to forfeit the sum of £2, being a cumulative penalty at the rate of 2s. for each repetition of the oath. *Held*, that the conviction was for one offence only, but that the justices were entitled to impose cumulative penalties under the statute, and that the conviction was therefore good (*R. v. Scott* (1863), 4 B. & S. 368).

See further, TOWNS IMPROVEMENT, p. 800, *post*.

<sup>1</sup> Irish currency.



## TELEGRAPHS.

	PAGE		PAGE
Malicious injury to telegraphs . . . . .	796	Forging telegrams . . . . .	797
Obstructing telegrams . . . . .	796	Miscellaneous . . . . .	797
Obstructing Postmaster-General . . . . .	796	Wireless telegraphy . . . . .	797
Contravening privilege of Postmaster-General . . . . .	796	Wireless telegraphy on foreign ships . . . . .	797
Misconduct of servants . . . . .	796	Procedure . . . . .	798

## Malicious injury to telegraphs.

Maliciously injuring any thing used or employed in or about any electric or magnetic telegraph<sup>1</sup> or in the working thereof. Misdemeanour, punishable on indictment; or, at the option of the justices, summarily, with a penalty not exceeding £10 or three months' imprisonment with or without hard labour (*Malicious Damage Act*, 1861, 24 & 25 Vict. c. 97, s. 37). Attempt to injure, like penalty (s. 38). Injuring telegraphic line of Postmaster-General; payment of expenses of making injury good (not recoverable summarily), and if the telegraphic communication is carelessly or wilfully interrupted, on summary conviction, daily penalty not exceeding £20, or at the option of the Postmaster-General, a fine not exceeding £50 in lieu of the daily penalty (*Telegraph Act*, 1878, 41 & 42 Vict. c. 76, ss. 8, 10).

## Obstructing telegrams.

Maliciously preventing or obstructing the sending, conveyance, or delivery of any communication by telegraph; misdemeanour, punishable on indictment; or, at option of justices, summarily, with imprisonment with or without hard labour not exceeding three months or fine not exceeding £10 (*Malicious Damage Act*, 24 & 25 Vict. c. 97, s. 37). Attempt to so obstruct, like penalty (s. 38).

## Obstructing Postmaster-General.

Obstructing Postmaster-General or his agents in repairing, &c., telegraph line—*Penalty*, on summary conviction, not exceeding £10 for every act of obstruction and daily penalty of £10 (*Telegraph Act*, 1878, 41 & 42 Vict. c. 76, ss. 9, 10).

## Contravening privilege of Postmaster-General.

Transmitting, receiving, &c., "a communication or message by telegraph" in contravention of the exclusive privilege conferred on the Postmaster-General—*Penalty*, on summary conviction, not exceeding £5, and, where the person offending against the section is a servant or hired to do the act complained of, master or employer to be subject to the like penalty (*Telegraph Act*, 1869, 32 & 33 Vict. c. 73, s. 6). A telephone message is a "communication or message by telegraph" within the meaning of this section (*Attorney-General v. Edison Telephone Co., London* (1880), 6 Q.B.D. 244). A private telephone wire between a merchant's office and his private house is, under s. 5 of the *Telegraph Act*, 1869, excepted from the exclusive privilege of the Postmaster-General, but a telephone line connecting two or more separate and distinct persons or businesses is not, and the use of such last-mentioned line is an offence under s. 6 (*Postmaster-General v. National Telephone Co., Ltd.* (1909), A.C. 269).

## Misconduct of servants.

Any person employed by a company authorised by special Act to construct and maintain telegraphs, delaying, &c., message or improperly divulging message—*Penalty*, on summary conviction, at the prosecution of the Postmaster-General, not exceeding £20 (*Telegraph Act*, 1863, 26 & 27 Vict. c. 112, s. 45; *Telegraph Act*, 1878, 41 & 42 Vict. ss. 2, 10).

Any person employed by the Post Office improperly intercepting or divulging telegraphic message—indictable offence, punishable with im-

<sup>1</sup> The word telegraph covers any instrument which employs electricity transmitted by a wire as a means of communication, and therefore includes telephones (*A.-G. v. Edison Telephone Co.* (1880), 6 Q.B.D. 244).

prisonment not exceeding twelve months (*Telegraph Act, 1868, 31 & Misconduct of servants. 32 Vict. c. 110, s. 20*).

Any person employed by a telegraph company (*i.e.* a company carrying on the business of sending telegrams for the public) improperly divulging purport of telegram—*Penalty*, on summary conviction, not exceeding £20<sup>1</sup> (*Post Office (Protection) Act, 1884, 47 & 48 Vict. c. 76, s. 11*).

It would appear that s. 45 of the Telegraph Act, 1863, *supra*, does not apply to telephone companies registered under the Companies Act, 1862, and not authorised by special Acts to carry on business (*Wandsworth B.W. v. United Telephone Co. (1884), 13 Q.B.D. 904*); but s. 20 of the Telegraph Act, 1868, and s. 11 of the Post Office Protection Act, 1884, *supra*, would, it is submitted, apply to telephone messages under the decision in *Attorney-General v. Edison Telephone Co., London (1880), 6 Q.B.D. 244, supra*.

Forging or altering, &c., a telegram, whether offender had or had not an intent to defraud, misdemeanour—*Penalty*, on summary conviction, not exceeding £10<sup>1</sup> (*Post Office (Protection) Act, 1884, 47 & 48 Vict. c. 76, s. 11*). In order to constitute the offence under this section, there must be an intention to deceive the recipient. It would seem that if a telegram is sent in a false name with intent to deceive the recipient, it is immaterial whether the contents are true or false (*R. v. Horner (1910), 74 J.P. 216*).

The term "postal packet," as used in the Post Office Act, 1908, 8 Edw. 7, c. 48, includes (s. 89) a telegram; and the various offences set out under "POST OFFICE" with regard to "postal packets," are therefore offences when committed in respect of telegrams.

The Wireless Telegraphy Act, 1904,<sup>2</sup> forbids the establishment, without licence of the Postmaster-General, of a wireless telegraph station in any place or on board a British ship, under a penalty on summary conviction under the Summary Jurisdiction Acts<sup>3</sup> not exceeding £10, or on conviction on indictment fine not exceeding £100 or imprisonment with or without hard labour not exceeding twelve months, with, in either case, forfeiture of apparatus; no proceedings to be taken against any person under this Act except by order of the Postmaster-General, the Admiralty, the Army Council, or the Board of Trade (*Wireless Telegraphy Act, 1904, 4 Edw. 7, c. 24, s. 1*). A warrant may be granted by a justice of the peace to enter and seize any apparatus used, or intended to be used, for wireless telegraphy, without a licence (*ib.*).

The working of any apparatus for wireless telegraphy installed on a foreign ship whilst that ship is in territorial waters, otherwise than in accordance with regulations made in that behalf by the Postmaster-General, is forbidden; and the Postmaster-General may, by any such regulations, impose penalties not exceeding £10 for each offence, recoverable summarily, for the breach of any such regulations, and may provide for the forfeiture of apparatus used in breach of such regulations. Save as aforesaid nothing in the Act shall apply to the working apparatus for wireless telegraphy installed on any foreign ship (s. 3).

By the Wireless Telegraphy (Foreign Ships) Regulations, 1908 (June 20, 1908), made in pursuance of the Act, the following regulations are made as regards wireless telegraphy on foreign ships: (1) Communications by wireless telegraphy between a foreign ship in territorial waters and a British station to be made under the rules of the station. (2) The apparatus for wireless telegraphy on board a foreign ship in territorial waters to be

<sup>1</sup> This offence is also indictable.

<sup>2</sup> By the Expiring Laws Continuance Act, 1910, 10 Edw. 7 and 1 Geo. 5, this Act has been continued until Dec. 31, 1911.

<sup>3</sup> As to the meaning of which term, see p. 335.

Wireless  
telegraphy  
on foreign  
ships.

worked so as not to interfere with naval signalling or the working of any wireless telegraphy station lawfully established in the British Islands or the territorial waters abutting on the coast thereof, or messages between wireless telegraphy stations and ships at sea. (3) No wireless telegraphy to be worked on board a foreign ship other than a ship of war in any harbour<sup>1</sup> of the British Islands without written permission of the Postmaster-General; and the use of wireless telegraphy on board a foreign warship in such a harbour to be subject to Admiralty regulations—*Penalty*, for breach of these regulations (on summary conviction), not exceeding £10. with or without forfeiture of the apparatus installed or worked (6 (1)). For the purposes of any proceedings under these regulations the master or person appearing to be in command or charge of any foreign ship shall be deemed to have authorised and to be responsible for the use and working of any apparatus on board such ship (6 (2)). Any summons or other document in any proceedings under these regulations shall be deemed to have been duly served on the person to whom the same is addressed by being left on board the ship on which the offence is charged to have been committed with the person being or appearing to be in command or charge of the ship (6 (3)). These regulations do not apply to signals of distress (7).

Procedure.

All fines and penalties under any of the Telegraph Acts (which expression includes, *inter alia*, the Acts of 1863, 1869, 1878, that are mentioned in this Article; see Act of 1878, s. 2), may be recovered by the Postmaster-General in manner provided by the Summary Jurisdiction Acts<sup>2</sup> before a court of summary jurisdiction, and for the purpose of this Act . . . court of summary jurisdiction means as respects Ireland any justice or justices or other magistrate, by whatever name called, having jurisdiction under the Summary Jurisdiction Acts.<sup>3</sup> All fines and penalties recovered in pursuance of any of the Telegraph Acts shall be paid into the Exchequer (*Telegraph Act*, 1878, 41 & 42 Vict. c. 76, s. 10).

As to indictable offences relating to telegrams, see CATALOGUE OF INDICTABLE OFFENCES, under "POST OFFICE."

## THEATRES.

Theatres in Dublin, Belfast, and Cork are subject to the provisions of the following statutes:—26 Geo. 3, c. 57 (1); 8 & 9 Vict. c. cxlii. ss. 167, 242; 31 & 32 Vict. c. xxxiii. s. 172. Elsewhere a theatre<sup>3</sup> is not subject to any statutory restrictions, and no licence is required therefor whether as to structure or otherwise.

As to licences for theatres in Dublin, Belfast, and Cork, see p. 117, *ante*.

As to licences for the sale of intoxicating liquor in theatres or other places of public entertainment, see p. 117.

As to Cinematographs, see Cinematograph Act, 1909, in APPENDIX OF STATUTES.

<sup>1</sup> Harbour, besides harbours proper, includes natural and artificial estuaries, navigable waters, piers, jetties, and other works in or at which ships can obtain shelter and unship goods or passengers (*ib.*, 1).

<sup>2</sup> As to the meaning of which term, see p. 335.

<sup>3</sup> With few exceptions, *e.g.* obligation to supply urinals, if required by the local authority (*Public Health Acts Amendment Act*, 1907, 7 Edw. 7, c. 53, s. 44), and the provisions as to dangerous and other performances by children.



**TIMBER.**

The proprietor of any holding for the purchase of which the Land Commission have after 3rd December 1909 made any advance under the Land Purchase Acts, shall not without the consent in writing in the prescribed form of the Department of Agriculture and Technical Instruction for Ireland, cut down or uproot, or permit to be cut down or uprooted, any tree (other than a fruit tree or osier) upon the holding which is necessary for the ornament or shelter of the holding, and if any such tree is cut down or uprooted in violation of this condition, the proprietor shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding £5 for each tree so cut down or uprooted, unless he satisfies the court that he received the prescribed consent (*Irish Land Act, 1909, 9 Edw. 7, c. 42, s. 32*).

**Timber on holdings purchased under Land Purchase Acts.**

Where after the 3rd December 1909 a tenant enters into an agreement for the purchase of his holding under the said Acts, the foregoing condition with respect to the cutting and uprooting of trees shall, as from the date of the agreement, apply to the holding in like manner as if the advance had been made, unless and until the application for an advance is refused or withdrawn (s. 32 (2)).

**TOBACCO.**

The Finance Act, 1908, 8 Edw. 7, c. 16, s. 3, enables tobacco to be grown and cured in Ireland, upon licence granted for the purpose.

**Growing tobacco in Ireland.**

“(1) If any manufacturer of tobacco has in his custody or possession fit for sale or tender for drawback, or if any dealer in or retailer of tobacco has in his custody or possession any tobacco containing a greater proportion of oil than 4 per cent., he shall incur an excise penalty of £50 and the tobacco shall be forfeited. (2) In calculating the proportion of oil for the purposes of this section any fatty or oily substance which is naturally present in the tobacco shall be included as oil. (3) In the section the expression fit for sale has the meaning assigned to it by s. 4 of the Customs and Inland Revenue Act, 1887” (*Oil in Tobacco Act, 1900, 63 & 64 Vict. c. 35, s. 1*).

**Oil in tobacco.**

## TOWNS IMPROVEMENT.

	PAGE		PAGE
Scope of Towns Improvement (Ir.) Act, 1854 . . . . .	800	Towns Improvements Act, 1854—	
Chairman of town commissioners . . . . .	801	Offences in streets ( <i>continued</i> )—	
Procedure . . . . .	801	(8) Leaving goods in street . . . . .	808
Incorporation of Towns Improvement Clauses Act . . . . .	802	(9) Placing lines across street . . . . .	808
Names and numbers of streets . . . . .	802	(10) Prostitutes . . . . .	808
Doors . . . . .	803	(11) Indecency . . . . .	808
Projections on houses . . . . .	803	(12) Obscene literature . . . . .	808
Cellar doors . . . . .	803	(13) Discharging firearms . . . . .	808
Ruinous or dangerous buildings . . . . .	803	(14) Ringing door bells . . . . .	808
Precautions during repairs . . . . .	804	(15) Flying kites : cleansing casks : laying stones, &c. . . . .	809
Hoardings . . . . .	804	(16) Shaking rugs : window boxes : throwing rubbish in streets . . . . .	809
Building materials and excavations . . . . .	804	(17) Leaving openings unguarded . . . . .	809
Sale of gunpowder . . . . .	805	(18) Laying dirt . . . . .	809
Slaughter-houses . . . . .	805	(19) Pig-styes . . . . .	809
Towns Improvement Act, 1854—		(20) Drunkenness and indecency . . . . .	809
Offensive trades . . . . .	805	Harbouring constables . . . . .	809
Obstructions to streets during public processions . . . . .	805	Harbouring prostitutes or thieves . . . . .	809
Straying cattle . . . . .	805	Baiting animals . . . . .	810
Offences in streets—		Swindlers . . . . .	810
(1) Exposing for sale : public shows . . . . .	807	Hackney carriages . . . . .	810
(2) Dangerous dogs . . . . .	807	Towns Police Clauses Acts, 1847 and 1889 . . . . .	810
(3) Slaughtering animals . . . . .	807	Constables . . . . .	810
(4) Offences as to driving . . . . .	807	Traffic regulations . . . . .	810
(5) Obstruction by vehicles . . . . .	807	Procedure . . . . .	810
(6) Timber on carts . . . . .	808		
(7) Leading or driving cart or horse on footway . . . . .	808		

## Scope of the Towns Improvement Act, 1854.

The Towns Improvement (Ir.) Act, 1854, 17 & 18 Vict. c. 103, though a public and general statute, affects only towns in which the provisions of the Act have been applied by the Local Government Board for Ireland. There are at present one hundred and five towns under the Act, namely : Antrim, Ardee, Arklow, *Armagh*, *Athlone*, *Athy*, *Aughnacloy*, *Bagenalstown*, *Balbriggan*, *Ballina*, *Ballinasloe*, *Ballybay*, *Ballyclare*, *Ballymena*, *Ballymoney*, *Ballyshannon*, *Banbridge*, *Bandon*, *Bangor*, *Bantry*, *Belturbet*, *Birr*, *Boyle*, *Callan*, *Carlow*, *Carrickfergus*, *Carrickmacross*, *Carrick-on-Suir*, *Cashel*, *Castlebar*, *Castleblayney*, *Cavan*, *Clonakilty*, *Clones*, *Coleraine*, *Cookstown*, *Cootehill*, *Donaghadee*, *Downpatrick*, *Dromore*, *Dundalk*, *Dungannon*, *Dungarvan*, *Edenderry*, *Ennis*, *Enniscorthy*, *Fermoy*, *Fethard*, *Gilford*, *Gorey*, *Granard*, *Holywood*, *Keady*, *Kells*, *Killarney*, *Killiney* and *Ballybrack*, *Kilkee*, *Kilrush*, *Kinsale*, *Larne*, *Letterkenny*, *Limavady*, *Lisburn*, *Lismore*, *Listowel*, *Longford*, *Loughrea*, *Lurgan*, *Macroon*, *Mallow*, *Maryborough*, *Middleton*, *Monaghan*, *Mountmellick*, *Mullingar*, *Naas*, *Navan*, *Nenagh*, *Newbridge*, *Newcastle (Limerick)*, *Newcastle (Down)*, *New Ross*, *Newtownards*, *Omagh*, *Portadown*, *Portrush*, *Queenstown*, *Rathkeale*, *Roscommon*, *Skibbereen*, *Strabane*, *Tanderagee*, *Templemore*, *Thurles*, *Tipperary*, *Tralee*, *Trim*, *Tuam*, *Tullamore*, *Tullow*, *Warrenpoint*, *Westport*, *Wexford*, *Wicklow*, *Youghal*. Those towns italicised are urban districts. The Act does not apply to Dublin, Cork, Limerick, Londonderry, or Belfast. The Act can only be applied to a town as defined by s. 1, that is, "a city, town corporate, borough, market-town, or other town in Ireland containing a population of 1500 inhabitants or upwards" according to the last census. A district comprising four or five rural townlands and a few hundred acres of slob lands and having a scattered population of 1108 inhabitants is not a town to which the Act can be

applied (*R. (Dixon) v. Local Government Board* (1878), 2 L.R.I. 316). The provision as to a population of 1500 only applies to a town which is not a town corporate, or a borough or market-town (*ib.*, per Fitzgerald, B., at p. 318).

The chairman of the town commissioners is *ex officio* a justice of the peace for the town during his term of office (*Local Government (Ir.) Act*, 1898, s. 26). Chairman of town commissioners.

His jurisdiction, however, is confined to offences against s. 72 of the Act and to charges of drunkenness (see p. 2, *ante*); and the law advisers in 1876 advised that a justice under the Act "cannot take declarations or do any magisterial act not necessary for the purposes of that Act."

The following is an epitome of the provisions as to procedure contained in ss. 90, 91, 92, 95 of the Towns Improvement (Ir.) Act, 1854. Procedure.

Any damages, costs, or expenses directed by the Act to be ascertained or recovered summarily, may be ascertained or recovered before one or more justices, together with such costs of proceedings as the justice or justices may think proper, and on default in payment of the sums adjudged, the same may be levied by distress and sale on warrant under the hands and seals of the justices making the adjudication. Any penalty imposed by the Act or any bye-law thereunder, the recovery of which is not otherwise provided for, may be recovered before one or more justices with such costs as the justices may think proper, and if the sums so adjudged be not paid, the same may be levied by distress and sale under warrant under the hands and seals of the justices making the adjudication. The justice or justices may order an offender convicted as last aforesaid to be detained in custody until return can be made to the warrant, unless he give security by way of recognisance or otherwise for appearance on the day appointed for return, such day not being more than eight days from the taking of the security. If before issue of the warrant, or on return thereto, the justices are satisfied that no sufficient distress can be had within their jurisdiction, the offender may be committed to gaol under warrant, to remain without bail for a term not exceeding three months unless such penalty and costs be sooner paid (*Towns Improvement (Ir.) Act*, 1854, s. 90). The term of imprisonment is, however, now subject to the Small Penalties (Ir.) Act, 1873, noted p. 64, *ante*, and *verbatim* in APPENDIX OF STATUTES.

Damages, and recovery of penalties.  
Recovery of penalties, &c.  
Distress.  
Imprisonment in default.

Where no mode of procedure is specially prescribed by the Act any one justice may summon the party charged to appear. Upon appearance or proof of service of the summons either personally or by leaving a copy at the defendant's last known place of abode or business, the matter is to be heard and determined, parties and witnesses to be examined on oath. Costs are in the discretion of the justices. Convictions drawn up in the form provided by the Act, or to the like effect, to be valid and effectual. Commissioners who are justices may exercise the jurisdiction given to justices by the Act (*Towns Improvement (Ir.) Act*, 1854, s. 91).

No person other than the party grieved or the commissioners shall take proceedings to recover penalties under the Act without the consent of the Attorney-General. Proceedings to be taken within six months from the commission of the offence. One half of the penalty to go to the informer and the other to the commissioners, save where the latter are informers, when the whole penalty goes to them. Notwithstanding liability to penalty under the Act, a person shall not be relieved from any liability to which he would have been subject if the Act had not been passed (s. 92).

The expression "party grieved" is not a legal term, but a term in popular language. "The party grieved must be a person who has sustained a legal loss or liability by an act done in respect of which the

Party grieved.



**Procedure.**

penalty is given" (*per* Lush, L.J., in *Robinson v. Currey* (1881), 7 Q.B.D. 465, at p. 475). There must be some private and particular grief (*Boyce v. Higgins* (1853), 14 C.B. 1; *Hollis v. Marshall* (1857), 2 H. & N. 755). There cannot be a "grief" where the party assents to the act complained of (*Harrop v. Bayley* (1856), 6 El. & Bl. 218).

**Drunkenness.**

But, having regard to s. 51 of the Licensing Act, 1872 (noted p. 579, *ante*; see also p. 44), a constable can prosecute in a charge of drunkenness as a common informer, though the consent of the Attorney-General has not been obtained (*Cassidy v. Moore* (1876), I.R. 10 C.L. 216; *Stevenson v. O'Neill* (1877), I.R. 11 C.L. 134; *Coulter v. Martin* (1879), I.R. 11 C.L. 477). Where a constable so prosecutes, half the penalty is payable to him as informer, and the other half to the commissioners (*ib.*).

**Summons, stamps, and service.**

When a case is brought to the town court, the use of petty sessions stamps is not required; the summons must be served by the summons server, and not by the police (*Circular, No. 99*).

**Appeal.**

Any person thinking himself aggrieved, where the penalty imposed or sum adjudged exceeds £1, may appeal to the next quarter sessions of the division, giving notice within fourteen days to the clerk of the commissioners and to the justice or justices appealed from, stating the intention to appeal, and the ground of appeal. The court of appeal may award costs against either party, and its decision is to be final and conclusive. Where there is no time to give the requisite notice for the next ensuing quarter sessions, notice is to be given for the next sessions but one. No grounds of appeal, other than those set out in the notice, can be gone into on appeal (s. 93).

There is no appeal from an acquittal (*R. (Kane) v. Tyrone JJ.* (1906), 40 I.L.T.R. 181; *R. v. London JJ.* (1890), 25 Q.B.D. 357; *Stokes v. Mitcheson* (1902), 1 K.B. 857). The time for appealing runs from the date at which the decision was pronounced (*R. v. Barnett* (1876), 1 Q.B.D. 558). The party appealed against is the real party interested, and not the justices, against whom costs cannot be given by the court of quarter sessions (*R. v. Hants JJ.* (1830), 1 B. & Ad. 654; *R. v. Davidson* (1871), 24 L.T. 22; *R. v. Goodall* (1874), L.R. 9 Q.B. 557).<sup>1</sup>

**Evidence of adoption of Act.**

It has been held that it is not necessary in prosecutions under the Towns Improvement (Ir.) Act, 1854, s. 50, to produce a copy of the Dublin Gazette containing a notice of the adoption of the Act in the district, and that the justices may act upon the petty sessions book containing records of previous convictions under the statute (*Leahy v. Reddy* (1895), 1 I.W.L.R. 139).

**Incorporation of Towns Improvement Clauses Act, 1847.**

The Towns Improvement (Ir.) Act, 1854, by ss. 38, 39 incorporates ss. 64-74 and 75-83 of the Towns Improvement Clauses Act, 1847, 10 & 11 Vict. c. 34.

**Names and numbers of streets.**

Destroying or altering name of street—*Penalty*, not exceeding 40s. (*Towns Improvement Clauses Act*, 1847, s. 64). For the same offence there is a like penalty under the Public Health Acts Amendment Act, 1907, 7 Edw. 7, c. 53, s. 21 (p. 745, *ante*). Occupiers of houses and buildings in streets required to number houses. Failure to comply within one week from notice by the commissioners—*Penalty*, not exceeding 40s. (*Towns Improvement Clauses Act*, 1847, s. 65).

In *Anderson v. Mayor of Dublin* (1885), 15 L.R.I. 410, it was held that the local authority could not, arbitrarily, at all events, change the name of an existing street. Now, by the Public Health Acts Amendment Act, 1907, 7 Edw. 7, c. 53, s. 21 (noted *ante*, p. 745), the local authority<sup>2</sup>

<sup>1</sup> This paragraph applies to appeals generally as well as to those under the Towns Improvement (Ir.) Act, 1854.

<sup>2</sup> Meaning an urban sanitary authority, an urban district council, or a rural district council

may, with the consent of two-thirds in number and value of the rate-payers in any street, alter the name of such street or any part of said street. Where a landlord had laid out a new street and called it by a certain name and the local authority shortly afterwards put up a different name on the street which was defaced by the landlord, the latter was held rightly convicted under s. 64 of the Towns Improvement Clauses Act, 1847 (*Collins v. Hornsey Urban Council* (1901), 1 K.B. 180).

**Incorporation of Towns Improvement Clauses Act, 1847.**

Doors not to open outwards, except in the case of public buildings when allowed by the commissioners—*Penalty*, for neglect to alter within eight days of notice, not exceeding 40s., commissioners to make alteration and recover expenses (*Towns Improvement Clauses Act*, 1847, s. 71).

**Doors.**

Commissioners may give notice to occupier of building to remove or alter obstruction or projection erected after the passing of the special Act against or in front of any house or building within the limits of the special Act<sup>1</sup> and which is an obstruction to the safe and convenient passage along the street—*Penalty*, on failure to remove within fourteen days, not exceeding 40s. (s. 69).

**Projections on houses.**

Under a local Act forbidding projections to be made over or upon the pavement of any street except for shop fronts or for doorways, an oriel window of stone work, 14 or 15 feet above the footway, not interfering with the free use of the footway, was held not to be a projection to which the enactment applied (*Goldstraw v. Duckworth* (1880), 5 Q.B.D. 275). "The magistrate was right in thinking that the section is not intended to secure the free passage of light and air, but to secure the free passage of the public along the pavement" (*ib.*, per Lush, J.; see also *Pigott v. Goldstraw* (1901), 19 Cox 621). Actual obstruction, however, need not be shown if the projection is calculated to obstruct safe and convenient passage (see *Dawson v. Mackay* (1904), 38 I.L.T.R. 163).

As to the words "against or in front of," see *Le Neve v. Mile End Vestry* (1857), 27 L.J.Q.B. 208, and *Wilson v. Cunliffe* (1876), 38 J.P. 251. As to the meaning of the word "street," see notes to s. 72 of the Towns Improvement (Ir.) Act, 1854 (*post*, p. 805).

The justices are not bound to accept the opinions of witnesses who are called to prove they have not been inconvenienced (*Read v. Perrett* (1876), 1 Ex. D. 349; see also *Gabriel v. Vestry of St. James* (1859), 23 J.P. 372).

Occupier of vault or cellar to make and maintain door or covering over same—*Penalty*, not exceeding £5 (*Towns Improvement Clauses Act*, 1847, s. 73).

**Cellar doors.**

Buildings that are ruinous or dangerous to passengers or occupiers of neighbouring buildings to be taken down or secured, upon notice to the owner, if he be known and resident within the limits of the special Act,<sup>1</sup> otherwise upon notice to be posted on the premises or given to the occupier; on failure justices may order the owner or, in his default, the occupier, to take down, rebuild, repair, or otherwise secure the dangerous structure to the satisfaction of the surveyor within a time fixed; if order not complied with, or no owner or occupier can be found, commissioners may do the work, and expenses shall be paid by owner (*Towns Improvement Clauses Act*, 1847, s. 75), and may be levied by distress on warrant (s. 76); but if the owner cannot be found within the limits, or distress cannot be made, the commissioners, within twenty-eight days from the posting of a notice on the building, and provided the expenses be not tendered within the twenty-eight days, may take the building or land, making compensation to the owner under the Land Clauses Consolidation Act, 1845, after deducting the expenses from the compensation (ss. 77, 78).

**Ruinous or dangerous buildings.**

Under s. 75 an order may be made against the owner of a building which, though not dangerous to persons actually in a neighbouring

**"Dangerous."**

<sup>1</sup> That is to say, the Towns Improvement (Ir.) Act, 1854.



**Incorporation of Towns Improvement Clauses Act, 1847.** building, is dangerous to persons who may be in the garden, &c., of a neighbouring building (*Mellor v. Warden* (1896), 40 S.J. 567).

**"Owner."** "Owner" is defined by s. 1 of the Towns Improvement (Ir.) Act, 1854, as "the person for the time being entitled to receive, or who, if the lands and premises were let to a tenant at a rack rent, would be entitled to receive, the rack rent from the occupier thereof"; and "rack rent" is defined as "rent which is not less than two-thirds of the full net annual value of the property out of which the rent arises"; and "the full net annual value" (save as regards any valuation for poor rates or valuation for assessments under the Act) is "to be taken to be the rent at which the property ought reasonably to be expected to let from year to year free from all quit rent, head rent, ground rent, and usual tenant's rates and taxes and deducting therefrom the probable annual cost of the repairs, insurance, and other expenses (if any) necessary to maintain the same in a state to command such rent." It would seem that the incumbent of a church is not an "owner," so as to make him liable under this section (*R. v. Lee* (1878), 4 Q.B.D. 75).

**Precautions during repairs.** The commissioners, during the construction or repair of any of the streets vested in them . . . and of any sewers or drains, shall cause . . . bars or chains to be fixed across or in any of the streets . . . and shall cause any sewer or drain or other works during the construction or repair thereof by them to be lighted and guarded during the night so as to prevent accidents—*Penalty*, for removing bars or chains or extinguishing lights, not exceeding £5 (*Towns Improvement Clauses Act*, 1847, s. 79).

**Hoardings.** Where any street or footway will be obstructed or rendered inconvenient by building or repairing, a hoarding is to be put up and maintained with a convenient platform or rail, if there be room enough, to serve as a footway for passengers, during such time as the public safety or convenience requires, and shall, where necessary, be sufficiently lighted during the night—*Penalty*, for default under these provisions, or for failure to remove hoarding within reasonable time, not exceeding £5, and daily penalty not exceeding 40s. (*Towns Improvement Clauses Act*, 1847, s. 80).

Where Part III. of the Public Health Acts Amendment Act, 1890, 53 & 54 Vict. c. 59, applies (as to which see p. 733, *ante*), the provisions of s. 34 of the latter Act, noted p. 738, *ante*, replace the provisions of s. 80 of the Towns Improvement Clauses Act, 1847.<sup>1</sup>

**Fencing of building materials and excavations.** When building materials, &c., are laid, or any hole is made in any street, whether by order of the commissioners or not, the person causing

<sup>1</sup> "Where, under any power vested in them by any local or general Act, any corporation, board, vestry, urban sanitary or other authority shall grant a licence for the temporary erection of any hoard, gantry, scaffold, or other structure upon or over any part of any public highway, or upon or over any lands or hereditaments the property of such corporation, board, vestry, sanitary or other authority, such corporation, board, vestry, sanitary or other authority may include in such licence a condition or conditions prohibiting the affixing of any advertisement to any such hoard, gantry, scaffold, or other structure, or sanctioning the affixing of advertisements thereto upon payment of such sum and on such conditions as the corporation, board, vestry, sanitary or other authority granting the licence may determine. And any person using any such hoard, gantry, scaffold, or other structure otherwise than as permitted by such licence shall for every offence be liable to a penalty not exceeding £5, and a further sum not exceeding 40s. for every day during which such offence shall be continued after notice in writing to discontinue such use shall have been given to such person by such corporation, board, vestry, sanitary or other authority, which penalties may be recovered in a summary way by such corporation, board, vestry, sanitary or other authority" (*Advertising Stations (Rating) Act*, 1889, 52 & 53 Vict. c. 27, s. 5). This statute provides for the rating of lands used for advertisements.



such materials or other things to be so laid or such hole to be made shall cause same to be lighted, fenced, and enclosed—*Penalty*, not exceeding £5, and daily penalty not exceeding 40s. (*Towns Improvement Clauses Act*, 1847, s. 81). Building materials, &c., not to remain for unnecessary time—*Penalty*, not exceeding £5, and daily penalty not exceeding 40s. (s. 82). Commissioners to fence buildings and holes near a street which are dangerous to passengers (s. 83). As to civil liability, see *Wilson v. Mayor of Halifax* (1868), L.R. 3 Ex. 114.

**Incorporation of Towns Improvement Clauses Act. 1847.**

As to sale of gunpowder, see **EXPLOSIVES**.

Sections 125–131, relating to slaughter-houses, of the Towns Improvement Clauses Act, 1847, 10 & 11 Vict. c. 34, which are incorporated by the Towns Improvement (Ir.) Act, 1854, 17 & 18 Vict. c. 105, s. 47, are also incorporated with the Public Health (Ir.) Act, 1878. See **PUBLIC HEALTH**, p. 718, *ante*. See also ss. 29, 30, 31 of the Public Health Acts Amendment Act, 1890, noted *ante*, p. 737, and which are applicable where that statute has been applied (as to which, see p. 733, *ante*).

Sale of gunpowder. Slaughter-houses.

The business of a blood boiler, bone boiler, slaughterer of cattle, horses or animals of any description, soap boiler, tallow melter, tripe boiler, or other noxious or offensive business, trade or manufacture, shall not be newly established in any building or place within the town without the consent of the commissioners—*Penalty*, not exceeding £20, and daily penalty not exceeding 40s. (*Towns Improvement (Ir.) Act*, 1854, s. 50). Power to commissioners to make bye-laws (*ib.*). As to what are offensive trades, see **PUBLIC HEALTH**, p. 722, *ante*.

**Towns Improvement Act, 1854.** Offensive trades.

The commissioners may from time to time make orders for the route to be observed by all carts, carriages, horses, and persons, and for preventing obstruction of the streets of the town, in all times of public processions, rejoicing, or illuminations, and in any case when the streets are thronged or liable to be obstructed, and may also give directions to the constables and officers of the constabulary force for keeping order and preventing any obstruction of the streets in the neighbourhood of theatres and other places of public resort—*Penalty*, for wilful breach of any such order, not exceeding 40s. (*Towns Improvement (Ir.) Act*, 1854, s. 70).

Obstructions to streets during public processions.

As to straying cattle, see **CATTLE STRAYING OR TRESPASSING**, p. 392, *ante*.

Straying cattle.

Section 72 of the Towns Improvement (Ir.) Act, 1854, deals with a large number of offences and nuisances. The governing clause of the section and the several offences comprised in the section are separately treated below. The offences are epitomised from the Act, as the section is somewhat lengthy.

Street offences under s. 72.

“Every person who in any street, to the obstruction, annoyance, or danger of the residents or passengers, commits any of the following offences shall be liable to a penalty for each offence as hereinafter mentioned, and any constable or other officer appointed by virtue of this Act shall take into custody without warrant and forthwith convey before a justice or justices any person who within his view commits any such offence” (*Towns Improvement (Ir.) Act*, 1854, s. 72).

Section 72.

This section is similar to s. 28 of the Towns Police Clauses Act, 1847, 10 & 11 Vict. c. 89, decisions on which are included in the authorities given in this note and the succeeding notes on the section.

The opening clause of s. 72 governs and controls every subsequent part of it (*Stevenson v. O'Neill* (1877), I.R. 11 C.L. 134, at p. 140, *per* Palles, C.B.), so that it is essential that the offence should be committed in a “street” and done to the obstruction, annoyance, or danger of residents or passengers (*Stevenson v. O'Neill*, *supra*; *Nixon v. Rodgers* (1869), I.R. 3 C.L. 614, *per* FitzGerald, B., at p. 619).

*General operation of s. 72.*

“Street” is defined by s. 1 of the Towns Improvement (Ir.) Act, “Street.”

Towns  
Improvement  
Act, 1854.  
Street  
offences  
under s. 72.

1854, as extending to and including "any road, bridge, lane, square, court, alley, and thoroughfare or public passage."<sup>1</sup> "An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular, and natural sense whenever that would be properly applicable" (*Robinson v. Barton Local Board* (1883), 8 A.C. 798, *per* Lord Selborne, at p. 801). "Street" in its ordinary sense refers to a roadway with buildings on either side (*ib.*: *Mayor of Portsmouth v. Smith* (1885), 10 A.C. 364, at p. 368, *per* Lord Blackburn), or with houses on one side (*Taylor v. Corporation of Oldham* (1876), 4 C.D. 395, *per* Jessel, M.R., at p. 408), or sites for houses (*Mayor of Portsmouth v. Smith, supra*), but there must be some contiguity (*ib.*: *R. v. Fullford* (1864), 9 Cox 453). A "street" does not embrace any place over which the public have no right of passage<sup>2</sup> (*Curtis v. Embery* (1872), L.R. 7 Ex. 369). In *Hitchman v. Watt* (1894), 58 J.P. 720, where under a statutory power a space was added to the footway in the rebuilding of houses fronting the street, it was held that the added portion was not part of the street; and in *R. v. Wigan J.J.* (1879), 43 J.P. 220, where a shopkeeper had for a lengthy period used for exposing his wares a cobbled strip lying between the shop front and the footway bounding the carriage road, it was held that the cobbled strip did not form portion of the highway. In *Vestry of Chelsea v. Stoddart* (1879), 43 J.P. 782 (a case decided on the Metropolitan Management Act, 1855), it was held that a mews in which the public had a right of passage for the purpose of using it as a mews, was not a "street" within the meaning of the Act. But an open square in front of, and let with, a hotel, over which the public passed freely for years except when the hotel proprietors' carriages stopped there, was held to be a street within the Town Police Clauses Act, 1847 (*Marks v. Ford* (1881), 45 J.P. 157). *Cf.* HIGHWAY, p. 524, *ante*.

Where Part IX. of the Public Health Acts Amendment Act, 1907, has been applied (as to which see p. 742), a place of public resort or recreation ground belonging to, or under the control of, the local authority, and any unfenced ground adjoining or abutting upon any street in an urban district, shall be deemed to be a street for the purposes of so much of s. 72 of the Towns Improvement (Ir.) Act, 1854, as relates to the offences mentioned in s. 81 of the Public Health Acts Amendment Act, 1907.<sup>3</sup>

"Obstruction,  
annoyance, or  
danger."

The offence must be to the obstruction, annoyance, or danger of residents or passengers and must be averred so to be in the summons and conviction (*R. (Bunting) v. Antrim J.J.* (1905), 39 I.L.T.R. 82). It is not necessary to show actual obstruction, &c., if the matters complained of are calculated to obstruct, &c. (see *R. (Collins) v. Fermanagh J.J.* (1883), 14 L.R.I. 50, in which goods were placed on a footpath; *M-Kee v. Magrath* (1892), 30 L.R.I. 41, in which the obstruction consisted of riding a bicycle on a footpath, both decided on the construction of s. 3 of the Summary Jurisdiction (Ir.) Act, 1851). Where a shopkeeper used a signboard projecting into the street and was summoned under the Metropolitan Police Act, 1839, 2 & 3 Vict. c. 47, s. 60 (which forbids obstructions by projections from shop fronts), and the existence of the projection was not denied, the conviction was upheld, although the magistrate refused to hear witnesses to prove that they personally had not been incommoded (*Read v. Perrett* (1876), 1 Ex. D. 349).

A defendant was held rightly convicted of using obscene language to the annoyance of the inhabitants or passengers, though the words were

<sup>1</sup> This definition is the same as that given by the Towns Police Clauses Act, 1847, s. 3, except that in the latter Act the words "bridge" and "lane" are omitted.

<sup>2</sup> It is otherwise under the Public Health (Ir.) Act, 1878. See s. 2 of that Act under PUBLIC HEALTH, noted p. 700, *ante*.

<sup>3</sup> Noted *ante*, p. 759.



spoken in the defendant's house, the door being open, and there was no evidence of annoyance save that of two constables in the street (*Brabham v. Wookey* (1901), 18 T.L.R. 99; see also *Woolley v. Corbishley* (1860), 24 J.P. 773). Under a bye-law which prohibited the making of any noise to the annoyance of inhabitants, a conviction was upheld though there was evidence of annoyance only to one person (*Innes v. Newman* (1894), 2 Q.B. 292). In *Allen v. Baldock* (1867), 31 J.P. 311, where the defendant was summoned for cleaning a car to the annoyance of passengers contrary to the provisions of 2 & 3 Vict. c. 47, s. 54, Cockburn, C.J., held it was necessary to prove some annoyance in fact or something necessarily calculated to be an annoyance. In *Strickland v. Hayes* (1896), 1 Q.B. 290, Lindley, J., held that a bye-law which prohibited the saying or reciting of profane or obscene ballads, was bad, as it did not provide that the acts should be done so as to cause annoyance; but this case was adversely commented on in *Mantle v. Jordan* (1897), 1 Q.B. 248 (see also *Kruse v. Johnson* (1898), 2 Q.B. 91, and other cases noted, p. 337 *et seq.*, *ante*).

**Towns Improvement Act, 1854.**  
Street offences under s. 72.

The following are the offences in the street mentioned in s. 72 of the Towns Improvement (Ir.) Act, 1854.

Every person who exposes for show, hire, or sale (except in a market, or market-place, or fair lawfully appointed for that purpose) any horse or other animal; or exhibits in a caravan or otherwise any show or public entertainment; or shoes, bleeds, or farries any horse or animal (except in cases of accident); or cleans, dresses, trains, or breaks, or turns loose any horse or animal; or makes or repairs any part of any cart or carriage (except in cases of accident where repair on the spot is necessary)—*Penalty*, not exceeding 10s.

*Exposing for sale: public shows.*

As to dangerous dogs, see Dogs, p. 422.

Every person who slaughters or dresses any cattle, except in the case of any cattle overdriven which may have met with any accident, and which for the public safety, &c., ought to be killed on the spot—*Penalty*, not exceeding 10s.<sup>1</sup>

*Dangerous dogs.*  
*Slaughtering animals.*

Every person having the care of any waggon, cart, or carriage, who rides on the shafts; or who, without having and holding reins, rides upon such waggon, cart, or carriage, or on the animal drawing the same; or who is at such a distance as not to have due control over every animal drawing the same; or who does not keep to the left or near side; or who in passing any other carriage does not keep to the right or off side of the road (except in cases of actual necessity or some sufficient reason for deviation); or who, by obstructing the street, wilfully prevents any person or carriage from passing him—*Penalty*, not exceeding 10s.

*Offences as to driving.*

Every person who at one time drives more than two carts, and every person driving two carts or waggons, who has not the halter of the horse in the last cart or waggon securely fastened to the back of the first cart or waggon, or has such halter of a greater length than four feet from such fastening to the horse's head—*Penalty*, not exceeding 10s.

Every person who rides or drives furiously any horse, carriage,<sup>2</sup> or cattle—*Penalty*, not exceeding 20s.

Every person who causes any public carriage, barrow, &c., or any beast of burden, to stand longer than is necessary for loading or unloading goods, or for taking up or setting down passengers; and every person who, by means of any cart, or barrow, or any animal or other

*Obstruction by vehicles.*

<sup>1</sup> See also the Injured Animals Act, 1894, 57 & 58 Vict. c. 22, under ANIMALS, CRUELTY TO, p. 363, *ante*.

<sup>2</sup> A bicycle is a carriage (*Taylor v. Goodwin* (1879), 4 Q.B.D. 228; *M'Kee v. Magrath* (1892), 30 L.R.I. 41).



**Towns Improvement Act, 1854.**

Street offences under s. 72.

*Timber on carts.*

*Leading or riding horse or cart on footway.*

*Leaving goods in street.*

means, wilfully interrupts any public crossing or other public thoroughfare—*Penalty*, not exceeding 20s.<sup>1</sup>

Every person who causes any tree or timber, or iron beam, to be drawn in or upon any carriage, without having sufficient means of safely guiding the same—*Penalty*, not exceeding 20s.

Every person who leads or rides any horse or other animal, or draws or drives any cart, or barrow, &c., upon any footway of any street, or fastens any horse or other animal so that it stands across or upon any footway—*Penalty*, not exceeding 20s.

Every person who places or leaves any furniture, goods, wares, or merchandise, or any cask, tub, basket, pail or bucket, or places or uses any standing place, store, bench, stall, or showboard on any footway, or who places any blind, shade, covering, awning, or other projection over and along such footway, unless such blind, &c., is 8 feet in height at least in every part from the ground—*Penalty*, not exceeding 20s. Every person who places, hangs up,<sup>2</sup> or otherwise exposes to sale any goods, wares, merchandise, matter, or thing whatsoever so that the same projects into or over the footway, or beyond the line of any house, shop, or building at which the same are so exposed, so as to obstruct or incommode the passage of any person over or along such footway—*Penalty*, not exceeding 20s.

Every person who rolls or carries any cask, tub, hoop, or wheel, or any ladder, plant, pole, timber, or log of wood upon any footway, except for the purpose of loading or unloading any cart or carriage or of crossing the footway<sup>3</sup>—*Penalty*, not exceeding 20s.

*Placing lines across street.*

Every person who places any line, cord, or pole across any street or hangs or places any clothes thereon—*Penalty*, not exceeding 20s.

*Prostitutes.*

Every common prostitute or night walker loitering and importuning passengers for the purpose of prostitution or being otherwise offensive—*Penalty*, not exceeding 40s.<sup>4</sup>

*Indecency.*

Every person who wilfully and indecently exposes his person or who commits any act contrary to public decency—*Penalty*, not exceeding 40s.

*Obscene literature.*

Every person who publicly offers for sale or distributes or exhibits to the public view any profane, indecent, or obscene book, paper, print, drawing, painting or representation, or sings any profane or obscene song or ballad—*Penalty*, not exceeding 40s. See also ADVERTISEMENTS, p. 352, *ante*.

*Discharging firearms.*

Every person who wantonly discharges any firearm, or throws or discharges any stone or other missile, or makes any bonfire, or throws or sets fire to any firework—*Penalty*, not exceeding 10s.

*Ring door bell: extinguishing lamp.*

Every person who wilfully and wantonly disturbs any inhabitant by pulling or ringing any door bell or knocking at any door, or who wilfully and unlawfully extinguishes the light of any lamp<sup>5</sup>—*Penalty*, not exceeding 40s.

Every person who flies any kite or makes or uses any slide upon ice or snow. Every person who cleanses, hoops, fixes, washes, or scalds any

<sup>1</sup> Attracting a crowd by selling goods by auction from a hawker's caravan in a market-place about three feet from the paved street is not an offence within this section (*Ball v. Ward* (1876), 33 L.T. 170), nor is standing or walking abreast on the footway so that passengers are forced to go off the footway into the road necessarily an offence under the section (*R. v. Long* (1888), 16 Cox 442; *R. v. Williams* (1891), 55 J.P. 406), but those acts would be obstructions to the highway. As to what is a reasonable use of the highway, see p. 525.

<sup>2</sup> Similar words in s. 65 of the Metropolitan Paving Act, 1817, 37 Geo. 3, c. xxix., have been held to refer only to things temporarily hung out and removable (*Winsborrow v. London Joint Stock Bank* (1903), 20 Cox 478).

<sup>3</sup> As to obstructing highway, see cases noted HIGHWAYS, p. 525.

<sup>4</sup> See also VAGRANCY.

<sup>5</sup> The knocking must be wanton, *i.e.* without due cause. The mere fact of being employed to deliver papers at a house is no excuse for knocking there at unreasonable hours (*Clarke v. Hoggins* (1862), 11 C.B. (N.S.) 545).

cask or tub, or hews, saws, bores, or cuts any timber or stone, or slacks, sifts, or screens any lime. Every person who throws or lays down any stones, coals, slate, shells, lime, bricks, timber, iron, or other materials (except building materials) so enclosed as to prevent mischief to passengers—*Penalty*, not exceeding 10s.

Every person who beats or shakes any carpet, rug, or mat (except rugs or mats beaten or shaken before 9 A.M.); every person who fixes or places any flower-pot or box or other heavy article in any window without sufficiently guarding the same against being blown down; every person who throws down from the roof or any part of the house or other building any slate, brick, wood, rubbish, or other thing, except snow thrown down so as not to fall on any passenger—*Penalty*, not exceeding 10s.

Every person who leaves open any vault or cellar, or the entrance from any street to any cellar or room underground, without sufficient fence or handrail, or leaves defective the covering of any vault, cellar, or area, or does not sufficiently fence or light after sunset any area, pit, or sewer left open—*Penalty*, not exceeding 10s.

Every person who throws or lays any dirt, dung, litter, ashes, night soil, carrion, fish, offal, or rubbish in any street, sea-beach, or strand within the boundaries of the town, or causes any offensive matter to run from any manufactory, brewery, slaughter-house, butcher's shop, or dunghill into any street—*Penalty*, not exceeding 10s. Laying sand in streets during frost to prevent accidents, or litter in case of sickness, is excepted from this provision.

Every person who keeps to the front of any street any pig-stye not shut out from such street by a sufficient wall or fence, or who keeps swine in or near any street so as to be a common nuisance—*Penalty*, not exceeding 40s.

Every person drunk in any street or guilty of any riotous or indecent behaviour in any street, police office, or petty sessions court or any police station-house within the town—*Penalty*, not exceeding 40s., or imprisonment not exceeding seven days.<sup>1</sup>

In *Nixon v. Rodgers* (1869), I.R. 3 C.L. 614, it was held (FitzGerald, B., *diss.*) that words alone do not constitute "behaviour" under this section; but in *Re Hogan* (1879), 13 I.L.T.R. 96, a conviction under this section for using indecent words of the complainant before his house was upheld. It is doubtful whether the word "bloody" is of such a character that a person using it abusively is guilty of indecent behaviour (*Russon v. Dutton* (No. 1) (1911), 27 T.L.R. 197).

Every victualler or keeper of any public house or person licensed to sell fermented or distilled liquors by retail to be drunk or consumed on the premises within the town who harbours or entertains in his public house or place of business any constable being on duty unless for the purpose of quelling any disturbance or restoring order—*Penalty*, not exceeding 20s. (*Towns Improvement (Ir.) Act*, 1854, s. 74).

Every person keeping any place of public resort within the town for the sale or consumption of refreshments of any kind who knowingly suffers common prostitutes or reputed thieves to assemble and continue in his premises—*Penalty*, not exceeding £5 (*ib.*).

In *Murphy v. Ahern* (1869), I.R. 3 C.L. 586, decided on similar words in the Dublin Police Act, 5 Vict. c. 24, s. 7, it was held that the magistrate must find as a fact that the prostitutes were on the premises in the course of their vocation as prostitutes, or in furtherance of it, and that it was not sufficient to show that the women were prostitutes, and remained

**Towns Improvement Act, 1854.**

Street offences under s. 72.

*Flying kites: cleansing casks: laying stones, &c.*

*Shaking rugs: dangerous window boxes: throwing rubbish into streets.*

*Leaving openings in streets unguarded.*

*Laying dirt in streets.*

*Pig-styes.*

*Drunkenness and indecency.*

*Harbouring constables.*

*Harbouring prostitutes or thieves.*

<sup>1</sup> See 37 & 38 Vict. c. 69, s. 30, by which jurisdiction over offences under s. 12 of the Licensing Act, 1872. 35 & 36 Vict. c. 92, is given to the persons empowered to act as justices by the Towns Improvement (Ir.) Act, 1854, or any Act incorporating the same, and see INTOXICATING LIQUORS.



- Towns Improvement Act, 1854.** longer than was necessary for the consumption of refreshment, and that such assembly was likely to result in breaches of morality.  
See also INTOXICATING LIQUORS, p. 555, and PREVENTION OF CRIME.
- Baiting animals.** As to s. 75, dealing with the baiting of animals, of the Towns Improvement (Ir.) Act, 1854, see ANIMALS, CRUELTY TO, p. 360, *ante*.
- Swindlers.** "All thimblers, loaded-dice players, and other swindlers of that or any similar description who shall be found in possession of implements or articles for practising games of hazard, or who shall exhibit such implements or articles in order to induce or who shall induce any person to play at any game of hazard or who by any fraudulent art or device shall cozen, cheat, or attempt to cozen or cheat any person"—*Penalty*, imprisonment not exceeding thirty days and restoration of money or property obtained by means of any such offence, and in default of such restoration a further term not exceeding thirty days (*Towns Improvement (Ir.) Act, 1854, s. 76*).
- Hackney carriages.** "Every wheeled carriage, whatever may be its form or construction, used in standing or plying for hire in any street within four miles from the post office of the town, and every carriage standing upon any street within such distance having thereon any numbered plate required by this Act to be fixed upon a hackney carriage, or having thereon any plate resembling or intended to resemble any such plate as aforesaid, shall be deemed to be a hackney carriage within the meaning of this Act. . . . Provided that no stage coach used for the purpose of standing or plying for passengers to be carried for hire at separate fares and duly licensed for that purpose and having thereon the proper numbered plates required by law . . . shall be deemed to be a hackney carriage within the meaning of this Act" (*Towns Improvement (Ir.) Act, 1854, s. 78*).
- As to licences, plying for hire without licence, misbehaviour of drivers, offences by passengers, &c., dealt with under the above section, see HIGHWAYS, *ante*, p. 528, where the authorities are collected.
- Towns Police Clauses Acts.** The Towns Police Clauses Act, 1847, which is amended by the Towns Police Clauses Act, 1889. 52 & 53 Vict. c. 14, applies only to towns where it has been applied by a special Act. The greater number of offences punishable on summary conviction under the Towns Police Clauses Acts are dealt with by corresponding sections of the Towns Improvement (Ir.) Act, 1854, and therefore only the following offences under the Act of 1847 need be referred to.
- Constables.** Unlawful possession of accoutrements, or assumption of dress, name, or character, of a town constable for any unlawful purpose—*Penalty*, not exceeding £10: the penalty to be in addition to any other punishment to which the offender is liable (*Towns Police Clauses Act, 1847, 10 & 11 Vict. c. 89, s. 12*). Neglect or violation of duty as a town constable—*Penalty*, not exceeding £10 (s. 16). Assaulting, or resisting, or aiding in assaulting or resisting a town constable in execution of his duty—*Penalty*, not exceeding £5, or imprisonment with or without hard labour not exceeding one month (s. 20).
- Regulation of traffic.** Commissioners are empowered to make orders for regulating traffic during processions or times when the streets are liable to be crowded and in neighbourhood of places of public resort, and also for regulating route of carriages or cattle, or the manner of driving the same, in the neighbourhood of places of worship on Sunday, Christmas Day, Good Friday, or other fast or feast day—*Penalty*, not exceeding 40s. for a wilful breach of the order (ss. 21, 22).
- Procedure.** The clauses of the Railway Clauses Consolidation Act, 1845, with respect to the recovery of damages not specially provided for and penalties, and to the determination of any matter referred to justices, are incorporated (s. 73). As to those clauses, see RAILWAYS, p. 772, *ante*.



## TRADE BOARDS.

See the Trade Boards Act, 1909, 9 Edw. 7. c. 22, in APPENDIX OF STATUTES.

## TRADE UNIONS.

	PAGE		PAGE
Trade Union Acts . . . . .	811	Offences as to trade unions ( <i>contd.</i> )—	
Trade union, definition of . . . . .	811	Failure to furnish returns, &c. . . . .	813
Trade union not unlawful . . . . .	811	Circulating false rules . . . . .	813
Agreements, when enforceable . . . . .	811	Failure to give prescribed notice . . . . .	813
Registration and trustees . . . . .	812	Procedure . . . . .	813
Rules and offices . . . . .	812	Appeal . . . . .	813
Annual returns . . . . .	812	Justices who are disqualified . . . . .	814
Offences as to trade unions—		Trades Disputes Act, 1906 . . . . .	814
Officials withholding money . . . . .	812	Child insurance . . . . .	814
Non-establishment of office . . . . .	813		

The Acts as to trade unions are the Trade Union Act, 1871, 34 & 35 Vict. c. 31, which by the Act of 1876, s. 1, is entitled the principal Act, the Trade Union Amendment Act, 1876, 39 & 40 Vict. c. 22, which two Acts are to be construed as one (*Act of 1876, s. 1*), and the Trades Disputes Act, 1906, 6 Edw. 7, c. 47, the three Acts being collectively entitled the Trade Union Acts, 1871 to 1906 (*Act of 1906, s. 5 (1)*).

“The term ‘trade union’ means any combination whether temporary or permanent, for regulating the relations between workmen and masters or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not if the principal Act had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade” (*Act of 1876, 39 & 40 Vict. c. 22, s. 16*). This definition includes combinations between employers as well as between workmen, and also combinations between manufacturers to keep up prices (*Urmston v. Whitelegg* (1890), 63 L.T. 455; *Mineral Water Bottle Exchange v. Booth* (1887), 36 C.D. 465). But the Acts do “not affect:—(1) Any agreement between partners as to their own business; (2) any agreement between an employer and those employed by him as to such employment; (3) any agreement in consideration of the sale of the good-will of a business or of instruction in any profession, trade, or handicraft” (*Act of 1871, 34 & 35 Vict. c. 31, s. 23*).

The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful so as to render any member of such union liable to any criminal prosecution (*Act of 1876, 39 & 40 Vict. c. 22, s. 2*) or so as to render void or voidable any agreement or trust (*ib.*, s. 3), including the rules of such union (*Strick v. Swansea Tinplate Co.* (1887), 36 C.D. 558).

Nothing in the Acts shall enable any court to entertain any legal proceeding, which before the passing of the Act they could not have entertained, that is, instituted with the object of directly enforcing or recovering damages for the breach of (1) agreements between the members of a trade union as such, concerning the conditions on which any members, as such, shall or shall not sell their goods, transact business, employ or be employed; (2) agreements to pay a subscription or penalty to a trade union; (3) agreements to apply trade union funds (*a*) to

**Trade Union Acts.**

**Definition of trade union.**

**Trade union not unlawful.**

**Trade union agreements, how far enforceable.**

**Trade union agreements, how far enforceable.**

providing benefits for members. or (b) in furnishing contributions to an employer or workman in consideration of his conforming with its rules or resolutions, or (c) in paying a fine imposed on any person by any court; (4) agreements between one trade union and another; or (5) any bond to secure the performance of any of the foregoing agreements; none of which are, however, made unlawful by the section (*Act of 1871*, s. 4). The provisions of this section, it will be noted, apply only to agreements by or with a union which, as being in restraint of trade, would have been an unlawful combination but for the passing of the Act of 1871.

"It is a common mistake to suppose that every trade union is, apart from the Act of 1871, an unlawful combination" (*per* Cozens-Hardy, M.R., in *Gozney v. Bristol Trade, &c., Society* (1909), 1 K.B. (C.A.) 901. at p. 914). In the case of a trade union amongst whose objects the restraint of trade, or any other illegal or criminal object, is in no way directly or indirectly included—if such a trade union there be—it is beyond question that agreements by or with it can be enforced at law (*ib.*, at pp. 906, 917). But if the general objects of a union are legal, the fact that some of its rules are illegal as being in restraint of trade does not make the union an illegal society or prevent a member from recovering a sum of money payable to him under a rule which is not illegal<sup>1</sup> (*Suaine v. Wilson* (1889), 24 Q.B.D. 252; *Gozney v. Bristol Trade, &c., Society*, *supra*).

**Registration and trustees.**

Sections 6 and 13 of the Act of 1871 provide for the registration of unions; s. 8 (as amended by s. 3 of the Act of 1876) provides for the vesting of the property of the union in trustees; and s. 9 that such trustees may, as such, sue or be sued in any proceeding relating to such property.

**Rules and offices.**

Section 14 and the first schedule of the Act of 1871 provide for the making of rules by a registered union, and s. 15 for the establishment, within seven days of the union being in operation, of a registered office and for the notification of its situation to the registrar, who (see s. 17) is the registrar of friendly societies.

**Annual returns.**

Annual balance sheet of union is to be furnished to registrar and to every member and depositor before June 1; and with it is to be furnished to the registrar copies of all additions to or alterations in the rules made during the year, the names of all new officers and a copy of the existing rules (s. 16).

**Offences.****Union officials, &c., withholding money, &c.**

"If any officer, member, or other person being or representing himself to be a member of a trade union registered under this Act, or the nominee, executor, administrator, or assignee of a member thereof, or any person whatsoever, by false representation or imposition obtain possession of any moneys, securities, books, papers, or other effects of such trade union, or, having the same in his possession, wilfully withhold or fraudulently misapply the same, or wilfully apply any part of the same to purposes other than those expressed or directed in the rules of such trade union, or any part thereof, the court of summary jurisdiction for the place in which the registered office of the trade union is situate, upon a complaint made by any person on behalf of such trade union . . . may, by summary order, order such officer, member, or other person to deliver up all such moneys, securities, books, papers, or other effects to the trade union, or to repay the amount of money applied improperly, and to pay, if the court think fit, a further sum of money not exceeding

<sup>1</sup> There is nothing illegal in a strike, unless attended with circumstances, such as breach of contract or intimidation, making it illegal (*Lyons v. Wilkins* (1896), 1 Ch. 811, 822, 828); nor is there anything illegal in contributing for the support of strikers (*Denaby v. Cadeby Main Collieries Co., Ltd. v. Yorkshire Miners' Association* (1906), A.C. 384, 393, 406; *Gozney v. Bristol Trade, &c., Society*, *supra*, 916, 922).

£20, together with costs not exceeding 20s.; and, in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs as aforesaid, the said court may order the said person so convicted to be imprisoned, with or without hard labour, for any time not exceeding three months: Provided that nothing herein contained shall prevent the said trade union . . . from proceeding by indictment against the said party: Provided also that no person shall be proceeded against by indictment if a conviction shall have been previously obtained for the same offence under the provisions of this Act" (*Act of 1871, 34 & 35 Vict. c. 31, s. 12*).<sup>1</sup>

Failure to establish or notify situation of office in compliance with s. 15—*Penalty*, not exceeding £5 on union and every officer thereof for every day during which such failure continues (s. 15). Every union and every officer of a union failing to furnish returns and rules as required by s. 16—*Penalty*, not exceeding £5. Falsification of such returns or rules—*Penalty*, on person falsifying, not exceeding £50.

The circulation of false copies of rules, or of any rules falsely purporting to be the rules, of a registered union; misdemeanour, punishable with fine or imprisonment, or both (s. 18).

"A trade union which fails to give any notice or send any document which it is required by this Act to give or send, and every officer or other person bound by the rules thereof to give or send the same, or, if there be no such officer, then every member of the committee of management of the union, unless proved to have been ignorant of, or to have attempted to prevent the omission to give or send the same, is liable to a penalty of not less than £1 and not more than £5, recoverable at the suit of the chief or any assistant registrar of Friendly Societies or of any person aggrieved, and to an additional penalty of the like amount for each week during which the omission continues" (*Act of 1876, 39 & 40 Vict. c. 22, s. 15*). The chief notices required by the Act are: written notice of change of name signed by seven members and countersigned by the secretary with a statutory declaration that the provisions of the Act have been complied with (s. 13); written notice of amalgamation signed by seven members and countersigned by the secretary with a similar declaration (*ib.*); notice of dissolution signed by the secretary and seven members (s. 14).

All offences and penalties may be prosecuted and recovered in the manner provided by the Summary Jurisdiction Acts. Summary orders may be made and enforced on complaint before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts; the court of summary jurisdiction hearing and determining the information or complaint shall be constituted in the police district of the Dublin Metropolis of a divisional magistrate and elsewhere of a Resident Magistrate; the description of an offence in the words of the statute is sufficient; any exception, exemption proviso, excuse, or qualification, whether accompanying the description of the offence or not, may be proved by the defendant and need not be specified or negatived in the information, but if so specified or negatived no proofs thereof shall be required on the part of the informer or prosecutor (*Act of 1871, 34 & 35 Vict. c. 31, s. 19*).

The jurisdiction conferred under the Act of 1871, s. 12, on the court of summary jurisdiction for the place in which the registered office of the trade union is situate may be exercised by that court or by a court of summary jurisdiction for the place in which the offence is committed (*Act of 1876, 39 & 40 Vict. c. 22, s. 5*).

A party aggrieved by an order or conviction of a court of summary Appeal.

Non-establishment of office. Failure to furnish annual returns, and copies of alterations and rules. Circulating false copies of rules. Failure to give prescribed notice.

Procedure.

<sup>1</sup> As to form of order under the section, see *R. v. Truscott* (1899), 19 Cox 379).



**Offences.**

jurisdiction under the Acts may appeal to the quarter sessions for the county or place in which the cause of appeal has arisen holden not less than fifteen days from the decision of the court appealed from. The appellant within seven days from the accrual of the cause of appeal must give notice to the other party and to the justices, with a statement of the grounds of the appeal, and enter into recognisances before a justice in the sum of £10 with two sureties in the sum of £10 conditioned personally to prosecute the appeal and abide the decision thereon and pay the costs if awarded against him. Quarter sessions may adjourn the appeal, and on the hearing may confirm, reverse, or modify the decision of the court below, or remit the decision with its opinion thereon or make any other order and award costs (*Act of 1871, s. 20*).

**Justices who are disqualified.**

A person who is a master or father, son, or brother of a master, in the manufacture, trade, or business in connection with which the offence has arisen, cannot sit as a member of the court of appeal or of summary jurisdiction (*Act of 1871, s. 22*). As to cases on bias, see p. 215.

**Trades Disputes Act, 1906.**

Justices as such are not concerned with the Trades Disputes Act, 1906. 6 Edw. 7. c. 47, except in so far as it amends the Conspiracy and Protection of Property Act, 1875, 38 & 39 Vict. c. 86, as to which see p. 612.

**Child insurance.**

The Friendly Societies Act, 1896, 59 & 60 Vict. c. 25, s. 84 (*j*), provides that it shall be an offence under that Act if any society, whether registered or unregistered, pays money on the death of a child under ten years of age otherwise than is provided by that Act. Any society or any officer or member thereof committing such offence is liable to a penalty not exceeding £5 (s. 89). Payment of any sum exceeding, along with any sum in which the child may be insured in any other society, £6 in the case of a child under five and £10 in the case of a child under ten (s. 62), or payment of such sum to any one except the parent or personal representative of the parent upon production of a certificate of death containing certain specified particulars (ss. 63, 64) is an offence punishable with fine not exceeding £5 (s. 89), except in the case of payment to a person having an insurable interest in the life of the child (s. 67). Any parent or personal representative of the parent of an insured child who in any way attempts to defeat the provisions of the Act as to payments on the death of children is liable to the like penalty (ss. 84 (*g*), 89).

The above penalties are recoverable by the registrar or any assistant registrar of friendly societies before a court of summary jurisdiction<sup>1</sup> (s. 91) sitting either at the place where the offence was committed, or in the case of a registered society or branch or an officer thereof at the place where the registered office of the society or branch is situated, or as regards prosecution against any other person at the place where such person resides when the prosecution is instituted (s. 92), and the proceedings are governed by the Summary Jurisdiction Acts<sup>1</sup> (*ib.*).

<sup>1</sup> As to the meaning of which term, see p. 335.

## TRAMWAYS.

	PAGE		PAGE
Tramways made under special Acts	815	Tramways, &c. ( <i>continued</i> )—	
Bye-laws of such tramways	815	Application to such tramways of certain railway Acts	816
Such tramways and rule of the road	815	Steam tramways	816
Tramways made under the Tramways Acts	816	Whistling, steam, and lights	816
		Speed	817
		Procedure	817

## I. TRAMWAYS MADE UNDER SPECIAL ACTS.

Tramways in Ireland consist of two classes. The first class consists of those constructed otherwise than under the Tramways (Ir.) Acts—that is to say, of those constructed under special Acts. In this class are included the lines of the Dublin United Tramways Company, the Hill of Howth Tramway, and the tramways in the cities of Belfast, Cork, Galway, and Londonderry. The Act under which any such tramway is constructed usually contains sections creating offences in relation to such tramway (to which reference must be made in the case of each such tramway) and also in every case sections giving the owners power to make bye-laws with penalties, recoverable summarily, for any breach thereof.

The following decisions apply to such bye-laws:—

A bye-law requiring every passenger to deliver up (*Heap v. Day* (1886), 51 J.P. 213), or produce (*Hanks v. Bridgman* (1896), 1 Q.B. 253; *Lowe v. Volp.* (1896), 1 Q.B. 256) his ticket on demand, or else to pay the fare for the distance travelled by him is reasonable. The fact that the ticket has been lost affords no defence (*Hunt v. Green* (1907), 21 Cox 333). Where the appellant paid his fare, but declined to accept a ticket upon the ground that it bore an indorsement purporting to limit the liability of the tramway owners in case of accident or injury to passengers, and when the ticket inspector asked for it, pointed it out upon the floor of the tram-car, but refused to touch or pick it up, or to pay his fare a second time. *Held*, that the appellant could not be convicted under a bye-law requiring such passenger to deliver up his ticket when requested, or pay his fare, on the ground that there had been no refusal to deliver up the ticket (*Wilson v. Fearnley* (1905), 92 L.T. 647). A passenger has not the right to break the journey, and his alighting determines the contract, so that he is obliged to pay the legal fare a second time to continue the journey on another car (*Bastable v. Metcalfe* (1906), 2 K.B. 288). A passenger, where there is a bye-law requiring payment of fare on demand, is not entitled to withhold payment until he has completed the journey (*Egginton v. Pearl* (1875), 33 L.T. 428). Where the carrying of more than a specified number of passengers is prohibited under a bye-law imposing a penalty on the conductor for any breach, any person may prosecute for non-observance (*Badcock v. Sankey* (1890), 54 J.P. 564).

In the case of a single tram line which in parts of its route passes so near the kerb that there is no room for an ordinary vehicle to pass on its proper side, the drivers of both ordinary vehicles and tram-cars must act reasonably, drivers of ordinary vehicles, on the one hand, having no absolute right to insist upon keeping to their proper side at that particular part of the line, and thus put all tram-cars to great inconvenience; and tram-car drivers, on the other hand, having no absolute right to insist upon all other vehicles getting out of their way at whatever inconvenience (*Hartley v. Chadwick* (1904), 68 J.P. 512, *per* Lord Alverstone, L.C.J.).

Tramways  
made under  
special Acts.

Bye-laws of  
such tram-  
ways.

Such tram-  
ways and rule  
of the road.

## II. TRAMWAYS MADE UNDER THE TRAMWAYS (IR.) ACTS.

Tramways  
made under  
the Tram-  
ways Acts.

Application  
of certain  
Railway Acts.

The other class of tramways in Ireland consists of those constructed under Orders in Council made pursuant to the Tramways (Ir.) Acts (for a list of which Acts see Vanston, "LOCAL GOVERNMENT," p. 767). This class includes such lines as the Dublin and Lucan Tramway, the Dublin and Blessington Steam Tramway, as well as many steam tramways and light railways.<sup>1</sup> Where, as is generally the case, the promoters of any such tramway desire that a joint-stock company shall be constituted for the purpose of constructing and carrying it on, the Order contains provisions as to the constitution of such company (*Tramways (Ir.) Act*, 1860, 23 & 24 Vict. c. 152, ss. 15-18); and a company incorporated in accordance with such provisions is known for the purposes of the Tramways (Ir.) Acts as a "tramway company" (s. 19). The Railway Clauses Consolidation Act, 1845,<sup>2</sup> 8 & 9 Vict. c. 20, applies to every tramway company, subject to the other provisions of the Tramways (Ir.) Act, 1860 (*ib.*); and s. 2 of the Tramways (Ir.) Amendment Act, 1871, 34 & 35 Vict. c. 114 (which, as appears from s. 5, is to be read as one with the Act of 1860), enacts that "the Regulation of Railways Acts, 1840-1871, so far as circumstances will admit, and subject to the provisions of this Act, shall apply to every tramway<sup>3</sup> to be worked by a locomotive engine or other mechanical power, as if such tramway were a railway; and, in the construction of the said Acts for the purpose of this Act, the term 'company' in the said Acts shall include the owner of such tramway." All tramways in Ireland made under the Tramways (Ir.) Acts are now worked by mechanical power: and the result of the application to such tramways of the Railway Acts above mentioned is that the acts, &c., specified in ss. 75, 98, 99, 103, 105, and 114 of the Railway Clauses Consolidation Act, 1845,<sup>4</sup> 8 & 9 Vict. c. 20, in the Regulation of Railways Act, 1840, 3 & 4 Vict. c. 97, ss. 13 (as amended by the Regulation of Railways Act, 1842, 5 & 6 Vict. c. 55, s. 17) and 16,<sup>4</sup> and in the Regulation of Railways Act, 1868, 31 & 32 Vict. c. 119, ss. 21, 23<sup>4</sup> (as amended in the case of s. 23<sup>5</sup> by the Regulation of Railways Act, 1871, 34 & 35 Vict. c. 78, s. 14), are offences when done, &c., in connection with such tramways as, and with the same penalties as, when done, &c., in connection with railways,<sup>6</sup> and that such "tramway company" has the same powers of making bye-laws as railway companies have under the Railway Clauses Consolidation Act, 1845. 8 & 9 Vict. c. 20, ss. 108, 109 (as extended by the Regulation of Railways Act, 1889, 52 & 53 Vict. c. 57, s. 7). 110, and 111.

Steam  
tramways.

Whistling,  
escaping  
steam, and  
head-lights.

"Every locomotive propelled by steam on any tramway in Ireland under the authority of this Act shall be worked according to the following rules and regulations, viz.: (1) The whistle of such locomotive shall not be sounded for any purpose whatever; nor shall the cylinder taps be opened within sight of any person riding, driving, leading, or in charge of a horse upon the road; nor shall the steam be allowed to attain a pressure such as to exceed the limit fixed by the safety-valve, so that no steam

<sup>1</sup> For the purposes of the Tramways (Ir.) Acts, the word "tramway" includes a light railway (*Tramways and Public Companies (Ir.) Act*, 1883, 46 & 47 Vict. c. 43, s. 25).

<sup>2</sup> The Tramways (Ir.) Order, 1883, made pursuant to the Tramways (Ir.) Acts, by Art. 38 (for which see Vanston, "LOCAL GOVERNMENT," p. 1301) exempts, *inter alia*, s. 47 of this Act out of this application (*Gorman v. Waterford and Limerick Ry. Co.* (1900), 2 I.R. 341).

<sup>3</sup> That is to say, every tramway made under the Tramways (Ir.) Acts.

<sup>4</sup> As to which sections, see RAILWAYS.

<sup>5</sup> This section obviously applies to a tramway only as regards such portions as completely diverge from the high-road and pass along a track constructed across country.

<sup>6</sup> As to such offences, see RAILWAYS.



shall blow off when the locomotive is upon the tramway. (2) Every **Steam tramways.** person in charge of such locomotive shall provide two efficient lights, to be affixed conspicuously one at each side on the front of the same, between the hours of one hour after sunset and one hour before sunrise"—*Penalty*, on the owner or owners of such locomotive for any non-observance, not exceeding £5, recoverable before two justices (*Tramways (Ir.) Amendment Act, 1871, 34 & 35 Vict. c. 114, s. 3*). There is no statutory limit to the speed of a steam-tram whilst being driven at a greater distance than 30 feet from the centre of a public road (*Tramways and Public Companies (Ir.) Act, 1883, 46 & 47 Vict. c. 43, s. 23 (6)*). The Board of Trade may, by order, authorise such tram to travel at a speed not exceeding twelve miles an hour, elsewhere than through a town or village (*ib.*). The Lord-Lieutenant, the county council, or other authority empowered under the Tramway Acts to grant permission for the construction of a tramway, may give permission for the running of a steam-tram at a speed not greater than ten, or, through a town or village, six, miles an hour (*Tramways (Ir.) Amendment Act, 1881, 44 & 45 Vict. c. 17, s. 5*). In any other case the driving of steam-tram at a greater speed than six, or through a town or village, three, miles an hour is punishable with a penalty, on the person driving, not exceeding £10, recoverable before one justice (*Tramways (Ir.) Amendment Act, 1871, 34 & 35 Vict. c. 114, s. 4*), and the same penalty is incurred by driving in excess of the speed allowed by any such order or permission as is above mentioned (*ib.*; *Tramways and Public Companies (Ir.) Act, 1883, 46 & 47 Vict. c. 43, s. 23 (6)*; *Tramways (Ir.) Amendment Act, 1881, 44 & 45 Vict. c. 17, s. 5*). Speed of locomotive.

As to the procedure under the railway Acts that are, as above stated, **Procedure.** applied to tramways, see RAILWAYS. As the result of that application, in every case where a penalty would be payable to a railway company, if the offence were committed in connection with a railway, then any such penalty is payable to the tramway company when the offence is committed in respect of a tramway.

### TRESPASS.

"... (1) Any person who shall wilfully trespass in any field, garden, pleasure ground, wood, plantation, or other place, and shall neglect or refuse to leave any such place after he shall have been warned to do so by the owner, or by the caretaker or servant of the owner, or by any person authorised in that behalf by the owner. (2) Any person who shall again trespass in any such place within three months from the time when such warning shall have been so given to him"—*Penalty*, not exceeding 10s., and in default of payment imprisonment not exceeding one week. "Provided always that nothing herein contained shall extend to any case where the party trespassing acted under a fair and reasonable supposition that he had a right to go into or upon any such place, nor to any trespass (not being wilful or malicious) committed in hunting, fishing, or the pursuit of game,<sup>1</sup> but nothing herein contained shall prevent any person from maintaining any civil action or suit for any such trespass, instead of proceeding under this Act" (*Summary Jurisdiction (Ir.) Act, 1851, 14 & 15 Vict. c. 92, s. 8*).

There must be a warning to leave, followed by a refusal. The posting of a notice by the owner of land warning off trespassers is not sufficient notice to sustain a conviction under the Summary Jurisdiction Act.<sup>2</sup>

<sup>1</sup> For trespass in pursuit of game, see "GAME LAWS."

<sup>2</sup> The notice "Trespassers will be prosecuted" has been well called "a wooden falsehood." See article 25 I.L.T. & S.J. 435.

**Trespass.**

To oust the jurisdiction of justices on the ground that the alleged trespass was made under a *bona-fide* question of title it is sufficient to show that the act complained of was done in the exercise of a supposed right which the alleged trespasser fairly and reasonably believed he possessed (*Mathews v. Carpenter* (1885), 16 L.R.I. 420). The justices should try whether the defendant entertained an honest and reasonable belief that he had a right to act as he did and not take upon themselves to decide the question of right, irrespective of the defendant's belief (*per* Dowse, B., *ib.*). Where the defendant was summoned for trespass to the complainant's fence and the complainant proved that he had been in possession of the ground in dispute for several years and the defendant had made no claim until about a year before the trespass, the Queen's Bench Division held that the magistrates were right in determining on the evidence before them that the defendant had no ground for believing that he had any claim to the ground, and the conviction was upheld (*R. (Kealy) v. Louth JJ.* (1901). 35 I.L.T.R. 43). The law as to ouster of jurisdiction under this section is discussed at p. 207, to which reference should be made.

The seashore is not a place within the meaning of s. 8 of the Summary Jurisdiction (Ir.) Act, 1851 (*R. (Sweeny) v. Cork JJ.* (1890), 24 I.L.T. & S.J. 586). Where an assault and trespass were alleged to have taken place partly on the foreshore and partly on other land, and on the evidence the justices found as a fact that the assault and trespass took place on the other lands, the conviction was upheld (*R. (Mahony) v. Cork JJ.* (1908), 42 I.L.T.R. 237). Appellant was summoned for wilful trespass on a wall running from the end of Sligo quay some four miles into the sea marking the edge of the channel, and which was completely covered at high tide. *Held*, that the wall was not a place within the meaning of s. 8 (*McGowan v. Sligo Harbour Commissioners* (1899), 5 I.W.L.R. 26).

**TRUCK ACTS.**

	PAGE		PAGE
Truck Acts, 1831 to 1896 . . .	818	Deductions ( <i>continued</i> )—	
Illegal contracts or payments—		For sharpening tools . . .	821
Penalty . . .	819	Fines . . .	821
What are illegal contracts . . .	819	For damaged goods . . .	822
Recovery of wages illegally		For materials . . .	822
deducted . . .	819	Audit of deductions . . .	823
No action in respect of goods		Liability of actual offender . . .	823
illegally given as wages . . .	819	Offences against Acts of 1887 and	
Examples . . .	819	1896 . . .	823
Advance of wages . . .	820	Production of contract . . .	823
Agricultural labourers . . .	820	Procedure under Truck Acts . . .	824
Artificer to be paid in cash . . .	820	Hosiery manufacture . . .	824
Deductions—		Payment by county con-	
Miscellaneous permissible de-		tractor . . .	824
ductions . . .	821		

**Truck Acts.**

The object of the Truck Acts is to prevent the payment of workmen's wages otherwise than in money. The Truck Acts 1831 to 1896 are The Truck Act, 1831,<sup>1</sup> 1 & 2 Wm. 4, c. 37 (the "principal Act"), the Truck Act Amendment Act, 1887, 50 & 51 Vict. c. 46, the Truck Act, 1896, 59 & 60 Vict. c. 44, all of which are (s. 12 of the Act of 1896) to be construed as one.

"Any employer of any artificer who shall by himself or by the agency

<sup>1</sup> This Act (see s. 27) did not originally apply to Ireland, but by s. 18 of the Act of 1887 it was, subject to the enactments as to procedure noted at p. 824, applied to Ireland.

of any other person or persons directly or indirectly enter into any contract or make any payment hereby declared illegal"—*Penalty*, first offence not exceeding £10 or less than £5, second offence not exceeding £20 or less than £10, third offence misdemeanour punishable by fine, *Penalty*. fines not to exceed £100 (*Truck Act*, 1831, 1 & 2 Wm. 4, c. 37, s. 9).

All contracts for the payment of wages otherwise than in coin<sup>1</sup> in certain enumerated trades, were made illegal by s. 1 of the Act of 1831, and now any such contract is illegal in the case of "any workmen as defined by the Employers and Workmen Act, 1875, s. 10" (*Act of 1887*, s. 2). All contracts as to the place or manner of expending wages are illegal (*Act of 1831*, s. 2; *Act of 1887*, s. 6). Sections 4 and 5 of the Act of 1831, and s. 5 of the Act of 1887, provide that a workman shall be entitled to recover, as servants' wages are recovered, the whole or any such portion of his wages as shall not have been paid in current coin; and in any proceeding for recovery of wages due the employer shall not be entitled to a set off for goods supplied by his or any shop in which he is interested, nor for goods supplied under any order or direction given by himself or his agent; and neither the employer nor any agent of the employer nor any person supplying goods by order of such employer or agent shall have a right of action in respect of goods so supplied on account of wages.

All masters, bailiffs, foremen, managers, clerks, and other persons engaged in hiring, employing, or superintending labour, are deemed to be "employers"; money or other thing paid or contracted to be paid, delivered or given as a recompense, reward, or remuneration for any labour done, or to be done, whether within a certain time and a certain amount or within a time and to an amount uncertain, shall be deemed to be "wages"; any agreement, device, contrivance, collusion, or arrangement on the subject of wages, written or oral, direct or indirect, to which the employer and artificer are parties or assent, or by which they are mutually bound to each other, or whereby either of them shall have endeavoured to impose an obligation on the other, shall be deemed to be a "contract" (*Act of 1831*, 1 & 2 Wm. 4, c. 37, s. 25).

"The expression 'workman' does not include a domestic or menial servant, but save as aforesaid means any person who being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner or otherwise engaged in manual labour whether under the age of twenty-one years or above that age has entered into or works under a contract with an employer whether the contract be made before or after the passing of this Act, be express or implied oral or in writing and be a contract of service or a contract personally to execute any work or labour" (*Employers and Workmen Act*, 1875, 38 & 39 Vict. c. 90, s. 10). The test of whether a person in any employment is or is not "engaged in manual labour" within the meaning of this section is:—is such labour the real and substantial part of his employment, or is it merely incidental or accessory to such employment (*Bound v. Lawrence* (1892), 1 Q.B. 226).

#### *Held to be offences under s. 9 of the Act of 1831.*

A workman engaged under a written agreement at a fixed rate of wages made a contemporaneous verbal agreement under which part of the wages was to be paid in cider (*Jones v. Wasley* (1902), 18 T.L.R. 418). Payment of wages by orders on a shop (*Athersmith v. Drury* (1852), 1 E. & E. 46). The illegal payment need not be made under a contract; the mere illegal payment is sufficient to constitute the offence, and the offence is not purged by subsequent payment in money whether made voluntarily or not (*Wilson v. Cookson* (1863), 13 C.B. (N.S.) 496). A workman

<sup>1</sup> Payment in bank-notes or by drafts where consented to by the workman are not illegal (s. 8).

Illegal contract or payments.

What are illegal contracts.

Recovery of wages illegally deducted. No action in respect of goods illegally given as wages.

"Employer";

"wages";

"contract";

"workman."

Examples.  
(1) Offences.



**Illegal  
contracts or  
payments.**

negligently damaged a piece of cloth, which the employer then delivered to him in payment of wages to the amount of its value (*Smith v. Walton* (1877), 3 C.P.D. 109). A brickmaker, who was also a licensed victualler, employed G. and two others as labourers in the brickyard; he supplied the men with liquor on credit to the extent of 3s. 10d., entering the supply to each in a book; in the evening of the first day he handed to one of the men 4s. for all of the men; the 4s. was handed back to the brickmaker, who thereupon returned 2d. as change; and next day the brickmaker paid the men in coin, less 4s., for two days' work (*Gould v. Haynes* (1889), 16 Cox 732). A deduction by an employer of a sum ordered by a court of summary jurisdiction to be paid by the workman for breaches of contract is an offence (*Williams v. Norths Navigation Collieries* (1906), A.C. 136). An agreement whereby portion of the wages was to be applied in payment of shares in the defendant company is void under the Truck Acts (*Glasgow v. Independent Printing Co.* (1901), 2 I.R. 305).

**(2) Not  
offences.**

*Held not to be offences under s. 9 of the Act of 1831.*

A contract by which it was agreed that the workman be paid according to the work done subject to certain deductions for standing room, the services of an assistant, and the use of tools and machines, is not a contract to pay part of the wages otherwise than in current coin; for the whole wage payable is the sum which remains after the deductions;<sup>1</sup> and the contract merely provides a mode for ascertaining that wage (*Chawner v. Cummins* (1846), 8 Q.B. 311; see also *Archer v. James* (1862), 2 B. & S. 61; and *Hughes v. Bonella* (1894), 10 T.L.R. 197). The deduction<sup>1</sup> of fines for spoilt work is mere non-payment, and is no offence (*Redgrave v. Kelly* (1890), 5 T.L.R. 477). B, engaged as overlooker in a factory, by the rules forfeited £1 if he employed a child before the child's name was registered. The employers deducted £1 for breach of the regulations. *Held*, there was nothing in the Truck Acts to prevent the deduction,<sup>1</sup> as the forfeiture was not a penalty but liquidated damages (*Beetham v. Crewdson* (1891), 55 J.P. 55). An employer who paid his workmen wages in full and handed them slips indicating sums at 2d. in the £1 of the wages, which sums were handed back to the employer's cashier as premiums for insurance under the Workmen's Compensation Act (*Owner v. Hooper* (1903), 20 Cox 518).

**Advance of  
wages.**

"Whenever by agreement, custom, or otherwise a workman is entitled to receive in anticipation of the regular period of the payment of his wages an advance as part or on account thereof, it shall not be lawful for the employer to withhold such advance or make any deduction in respect of such advance on account of poundage, discount, or interest, or any similar charge" (*Truck Act Amendment Act*, 1887, 50 & 51 Vict. c. 46, s. 3).

**Agricultural  
labourers.**

"Nothing in the principal Act or this Act shall render illegal a contract with a servant in husbandry for giving him food, drink, not being intoxicating, a cottage, or other allowances or privileges in addition to money wages as a remuneration for his services" (*Truck Act Amendment Act*, 1887, 50 & 51 Vict. c. 46, s. 4).

**Artificer to  
be paid in  
cash.**

"Where articles are made by a person at his own home or otherwise, without the employment of any person under him except a member of his own family, the principal Act and this Act shall apply as if he were a workman, and the shopkeeper, dealer, trader, or other person buying the articles in the way of trade were his employer, and the provisions of this Act with respect to the payment of wages shall apply as if the price of an article were wages earned during the seven days next preceding the date at which any article is received from the workman by the

<sup>1</sup> But as to the conditions under which, since the passing of the Act of 1896, such deductions are now legal, see ss. 1-3 of that Act at p. 822.

employer. This section shall apply only to articles under the value of five pounds knitted or otherwise manufactured of wool, worsted, yarn, stuff, jersey, linen, fustian, cloth, serge, cotton, leather, fur, hemp, flax, mohair, or silk, or of any combination thereof, or made or prepared of bone, thread, silk, or cotton lace, or of lace made of any mixed materials" (*Truck Act Amendment Act*, 1887, 50 & 51 Vict. c. 46, s. 10).<sup>1</sup>

The following are permissible deductions :—

(1) Deductions for medicine or medical attendance, or fuel, or materials, tools, or implements to be used by the workman in his trade or occupation, if such workman be employed in mining, or any hay, corn, or other provender to be consumed by any beast of burden employed by the workman in his trade and occupation, or the rent of any tenement demised to the workman, or victuals prepared under the roof of the employer and there consumed by the workman, or money advanced to the workman for such purpose, provided that such stoppage or deduction shall not exceed the true value of the things supplied and shall not be in any case made from the wages of the workman unless the agreement or contract for such stoppage or deduction shall be in writing and signed by the workman (*Truck Act*, 1831, 1 & 2 Wm. 4, c. 31, s. 23). Nothing in the Act shall prevent any employer from advancing to any workman any money to be by him contributed to any friendly society or savings bank, nor from advancing to any workman any money for his relief in sickness or for the education of any of his children, nor from deducting or contracting to deduct any sums of money from the wages of any workman for the education of any of his children (s. 24; see also *Act of 1887*, s. 7, as to equal treatment of all workmen in respect of deductions for education).

Deductions, made under a contract in writing, for contributions to a sick fund, paid to the treasurer of the fund by the employer, were held permissible (*Hewlett v. Allen* (1894), A.C. 383; see also *Lamb v. G.N.R. Co.* (1891), 2 Q.B. 281). It was held that under a contract in writing allowing stoppages to be made for medicine and medical attendance, the mine owner might legally deduct a weekly sum which by the practice of the mine was paid towards a club kept by the owner for providing such medicine and medical attendance as the miners required (*Cutts v. Ward* (1867), L.R. 2 Q.B. 357). An employer stopped part of the wages of an artificer as a contribution to funds established by him to provide medicine and medical aid to the artificers and education for their children. There was no written agreement. *Held*, that the artificer was entitled to recover the whole of the deduction (*Pillar v. Llynvi Coal and Iron Co.* (1869), L.R. 4 C.P. 752). Deductions made, not under a contract in writing, for a doctor's fund by an employer who became bankrupt, had not been paid over before bankruptcy. *Held*, that the amount deducted was payable to the workman (*Ex parte Cooper* (1884), 26 C.D. 693). A workwoman was entitled to 8s. a week wages with a 2s. bonus for full attendance. Under rules which were posted in the factory and read by the workwoman it was provided that the bonus should be deducted where there was absence from work without reason. *Held*, that a deduction made under the rules was not an offence under the Truck Acts (*Deane v. Wilson* (1906), 2 I.R. 405).

"No deduction shall be made from a workman's wages for sharpening or repairing tools, except by agreement not forming part of the condition of hiring" (*Act of 1887*, 50 & 51 Vict. c. 46, s. 8).

(1) An employer shall not make any contract with any workman for any deduction from the sum contracted to be paid by the employer to the workman, or for any payment to the employer by the workman.

<sup>1</sup> The operation of the section in a particular locality may be suspended by order in council (s. 10).



**Deductions.** for or in respect of any fine, unless :—(a) the terms of the contract are contained in a notice kept constantly affixed at such place or places open to the workmen and in such a position that it may be easily seen, read, and copied by any person whom it affects; or the contract is in writing, signed by the workman; and (b) the contract specifies the acts or omissions in respect of which the fine may be imposed, and the amount of the fine or the particulars from which that amount may be ascertained; and (c) the fine imposed under the contract is in respect of some act or omission which causes or is likely to cause damage or loss to the employer, or interruption or hindrance to his business; and (d) the amount of the fine is fair and reasonable having regard to all the circumstances of the case. (2) An employer shall not make any such deduction or receive any such payment, unless :—(a) the deduction or payment is made in pursuance of, or in accordance with, such a contract as aforesaid; and (b) particulars in writing showing the acts or omissions in respect of which the fine is imposed and the amount thereof are supplied to the workman on each occasion when a deduction or payment is made. (3) This section shall apply to the case of a shop assistant<sup>1</sup> in like manner as it applies to the case of a workman” (*Truck Act*, 1896, 59 & 60 Vict. c. 44, s. 1). One of the rules of a factory provided that “all workers shall observe good order and decorum in the factory and shall not do anything which may interfere with the proper and orderly conduct of the business thereof” and imposed fines not exceeding 6d. A fine of 2d. was imposed for an act interfering with the proper and orderly conduct of the business. *Held*, that the acts in respect of which the fine was to be imposed were sufficiently specified in the rule (*Squire v. Bayer* (1901), 2 K.B. 299).

**Damaged goods.**

“(1) An employer shall not make any contract with any workman for any deduction from the sum contracted to be paid by the employer to the workman, or for any payment to the employer by the workman for or in respect of bad or negligent work or injury to the materials or other property of the employer, unless :—(a) the terms of the contract are contained in a notice kept constantly affixed at such place or places open to the workmen and in such a position that it may be easily seen, read, and copied by any person whom it affects; or the contract is in writing, signed by the workman; and (b) the deduction or payment to be made under the contract does not exceed the actual or estimated damage or loss occasioned to the employer by the act or omission of the workman, or of some person over whom he has control, or for whom he has by the contract agreed to be responsible; and (c) the amount of the deduction or payment is fair and reasonable, having regard to all the circumstances of the case. (2) An employer shall not make any such deduction or receive any such payment unless :—(a) the deduction or payment is made in pursuance of, or in accordance with, such a contract as aforesaid; and (b) particulars in writing showing the acts or omissions in respect of which the deduction or payment is made and the amount thereof are supplied to the workman on each occasion when a deduction or payment is made” (*Act of 1896*, 59 & 60 Vict. c. 44, s. 2). This section applies only to persons coming within the definition of the term “workman” given in s. 10 of the Employers and Workmen Act, 1875, as to which see p. 158 (*Squire v. Midland Lace Co.* (1905), 1 K.B. 448).

**Materials.**

“(1) An employer shall not make any contract with any workman for any deduction from the sum contracted to be paid by the employer to the workman, or for any payment to the employer by the workman for or in respect of the use or supply of materials, tools, or machines, standing

<sup>1</sup> The Truck Acts, except as regards this section, do not apply to shop assistants; see *Bond v. Lawrence* (1892), 1 Q.B. 226.



room, light, heat, or for or in respect of any other thing to be done or provided by the employer in relation to the work or labour of the workman unless :—(a) the terms of the contract are contained in a notice kept constantly affixed at such place or places open to workmen, and in such a position that it may be easily seen, read, and copied by any person whom it affects ; or the contract is in writing, signed by the workman ; and (b) the sum to be paid or deducted under the contract in respect of materials, tools, or machines, standing room, light, heat, or any other thing, does not exceed, in the case of materials or tools supplied to the workman, the actual or estimated cost thereof to the employer, or in the case of the use of machinery, light, heat, or any other thing in this section mentioned, a fair and reasonable rent or charge, having regard to all the circumstances of the case. (2) An employer shall not make any such deduction or receive any such payment unless :—(a) the deduction or payment is made in pursuance of, and in accordance with, such a contract as aforesaid ; and (b) particulars in writing showing the things in respect of which the deduction or payment is made and the amount thereof are supplied to the workman on each occasion when a deduction or payment is made” (*Act of 1896, 59 & 60 Vict. c. 44, s. 3*).

“Where deductions are made from the wages of any workmen for the education of children or in respect of medicine, medical attendance, or tools, once at least in every year the employer shall, by himself or his agent, make out a correct account of the receipts and expenditure in respect of such deductions, and submit the same to be audited by two auditors appointed by the said workmen, and shall produce to the auditors all such books, vouchers, and documents, and afford them all such other facilities as are required for such audit” (*Act of 1887, 50 & 51 Vict. c. 46, s. 9*).

“(1) Where an offence for which an employer is, by virtue of the principal Act or this Act, liable to a penalty has in fact been committed by some agent of the employer or other person, such agent or other person shall be liable to the same penalty as if he were the employer. (2) Where an employer is charged with an offence against the principal Act or this Act he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court that he had used due diligence to enforce the execution of the said Acts, and that the said other person had committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the employer shall be exempt from any penalty. When it is made to appear to the satisfaction of an inspector of factories or mines, . . . at the time of discovering the offence, that the employer had used due diligence to enforce the execution of the said Acts, and also by what person such offence had been committed, and also that it had been committed without the knowledge, consent, or connivance of the employer, then the inspector . . . shall proceed against the person whom he believes to be the actual offender in the first instance without first proceeding against the employer” (*Act of 1887, 50 & 51 Vict. c. 46, s. 12*).

Any infringement of the foregoing provisions of the Acts of 1887 and 1896 is punishable as an offence against s. 9 of the Act of 1831 (*Act of 1887, s. 11 ; Act of 1896, s. 4*).

“(1) Every employer who has made any contract purporting or intending to operate as a contract under this Act, shall, on demand in writing by one of His Majesty’s inspectors of factories or of mines, produce

Deductions.

Audit of deductions.

Liability of actual offender.

Offences against Act of 1887 and 1896.

Production of contract.

**Production  
of contract.**

the contract or a true copy thereof at any convenient time and place to be named by the inspector, and the inspector shall be at liberty to take a copy of the same or of any part thereof, and the employer of any workman or shop assistant who is party to any such contract shall at the time of making the contract give the workman or shop assistant a copy of the contract or of the notice containing its terms. (2) A workman or shop assistant who is party to any such contract shall be entitled, on request, to obtain from his employer free of charge a copy of the contract or of the notice containing its terms. (3) Every employer who has made any contract purporting or intending to operate as a contract under s. 1 of this Act shall keep a register of deductions or payments, and shall enter therein every deduction or payment for or in respect of any fine purporting to be made under any such contract, specifying the amount and the nature of the act or omission in respect of which the fine was imposed, and this register shall be at all times open to inspection by one of His Majesty's Inspectors of Factories or of Mines"—*Penalty*, not exceeding 40s. (*Act of 1896*, 59 & 60 Vict. c. 44, s. 6).

**Procedure.**

The procedure under the Truck Acts is regulated by the Summary Jurisdiction Acts (as to meaning of which expression see p. 355), so that, however, no penalty exceeding that prescribed for a second offence shall be imposed summarily (*Act of 1887*, 50 & 51 Vict. c. 46, s. 13). No person shall be punished as for a second or any subsequent offence unless ten days at least shall have intervened between the conviction of such person for the last offence and the commission by such person of the second or any subsequent offence; each separate offence committed by such person before the expiration of the ten days is punishable by a separate penalty as if the same were the offence (first, second, or third as the case may be) of which the accused was last convicted; offences subsequent to a third offence are punishable as a third offence; if the person or persons preferring the information do not produce evidence of previous conviction or convictions, the offender shall be punished for each offence by a separate and distinct penalty as if each offence were a first or second offence as the case may be; no proceedings for a second or third offence are to be taken more than two years after the conviction for the last preceding offence (*Truck Act*, 1831, 1 & 2 Wm. 4, c. 37, s. 10).

**Hosiery  
manufacture.**

By the Hosiery Manufacture Wages Act, 1874, 37 & 38 Vict. c. 48, ss. 2 and 3, in the hosiery trade wages are to be paid in current coin and all contracts to stop wages, and for frame rents and charges, are illegal and void.

**Payment  
by county  
contractor.**

"Every contractor for the execution of any county work shall pay his labourers or artificers in money, and at intervals of not more than fourteen days; and if any contractor shall directly or indirectly attempt to persuade or induce any labourer in the employment of such contractor to take goods in lieu of such wages, or to expend his wages in any particular shop or for any particular purpose, he shall be liable to be summoned before the justices assembled at any petty sessions, on complaint of the party aggrieved, or any other person, and such justices are hereby authorised to hear such complaint and adjudicate thereon; and if such contractor shall be convicted thereof he shall forfeit and pay such sum not exceeding £5 as to such justices shall seem fit; and if any contractor shall neglect to pay any labourer in his employment, at intervals of not more than fourteen days, all wages that may be due to him, save and except the wages of one whole week, he shall be liable to be summoned before the justices assembled at any petty sessions, on complaint of the party aggrieved, for recovery of any wages or money payable to any person employed by him in the execution of such works, so as the sum demanded shall not exceed £6, and such justices assembled as aforesaid



are hereby authorised and required to hear such complaint and adjudicate thereon, and it shall be no defence to such complaint that such contractor has not himself received any payment on foot of his contract, and the decision of such justices shall be final; and the sum adjudged to be due shall be levied by warrant of distress, under hand and seal of any two such justices, off the goods and chattels of such contractor" (*County Works (Ir.) Act, 1846, 9 & 10 Vict. c. 2, s. 20*).

### TUBERCULOSIS PREVENTION.

The following is a summary of the chief offences under the Tuberculosis (Ir.) Prevention Act, 1908, 8 Edw. 7, c. 56 :—

"If a medical practitioner attending on any person within any district to which" Part I. of the "Act extends,<sup>1</sup> becomes aware that that person is suffering in any prescribed circumstances<sup>2</sup> from tuberculosis of any prescribed form, or any prescribed stage, the medical practitioner shall, within seven days after he becomes aware of the fact, send to the medical officer of health a certificate in the prescribed form, and containing the prescribed particulars" (s. 1 (1)), and on failure so to do, he shall be liable on summary conviction to a penalty not exceeding 40s. (s. 1 (4)).

**Failure of medical practitioner to notify tuberculosis.**

Obstructing or impeding any medical officer of health or other person duly authorised by the sanitary authority to take sample of milk or milk products—*Penalty*, not exceeding, first offence, £20; subsequent offence, £50 (s. 16).

**Hindering the taking of samples of milk.**

Obstructing or impeding officers acting in the destruction, &c., pursuant to the Act, of cow affected with tuberculosis—*Penalty*, not exceeding, first offence, £20; subsequent offence, £50 (s. 18).

**Hindering the destruction of tuberculous cows.**

All penalties to be recovered before a court of summary jurisdiction constituted in manner provided by s. 249 of the Public Health (Ir.) Act, 1877,<sup>3</sup> s. 21.

**Procedure.**

### TURF, STEALING OR DAMAGING.

"Any person who shall steal, or damage with intent to steal, . . . any turf or peat manufactured or partly manufactured for fuel, in case the value of such article or articles stolen or the amount of the injury done shall not exceed 40s."—*Penalty*, payment of value to party aggrieved and fine not exceeding £5 (*Summary Jurisdiction (Ir.) Act, 1862, 25 & 26 Vict. c. 50, s. 5*).

Where a tenant persists in cutting turf upon land which forms no part of his holding and to which he has no right, he can be convicted for malicious injury under the Malicious Damage Act, 1861, 24 & 25 Vict. c. 97, s. 52 (*R. (M-Elgun) v. Fermanagh JJ.* (1883), 17 I.L.T.R. 105), but not if the act was done under a fair and reasonable supposition of a right (*Magee v. Montgomery* (1883), 17 I.L.T.R. 92). It would be difficult to sustain a conviction for malicious injury against a tenant who wrongfully cut turf on his own holding (*Magee v. Montgomery, supra*).

<sup>1</sup> That is, to any urban or rural sanitary district, after the adoption of Part I. (s. 3).

<sup>2</sup> That is, as prescribed by the Local Government Board (s. 1 (2)).

<sup>3</sup> That is to say, before two or more justices at petty sessions or some magistrate or officer for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace sitting at some court or other place appointed for the administration of justice.



## UNIFORMS.

Civilian wearing British military or naval uniform or dress having the appearance thereof without permission—*Penalty*, not exceeding £5 (*Uniforms Act*, 1894, 57 & 58 Vict. c. 45, s. 2). Not to extend to theatricals (*ib.*). Civilian wearing such naval or military uniform or dress having the appearance thereof in such a manner and under such circumstances as to be likely to bring contempt on such uniform, or employing another so to do—*Penalty*, not exceeding £10, or one month's imprisonment (s. 3).

## VACCINATION.

	PAGE		PAGE
Vaccination (Ir.) Acts . . . . .	826	Production of child . . . . .	829
Child to be vaccinated within three months of birth . . . . .	826	Unlawful production of smallpox . . . . .	829
Failure to have child vaccinated or inspected . . . . .	827	Neglect to transmit certificate . . . . .	829
Proceedings by guardians to compel vaccination . . . . .	827	False certificate . . . . .	829
Certificate of exemption . . . . .	828	Duties of registrar . . . . .	829
Testing success of vaccination . . . . .	828	Neglect to vaccinate after regis- trar's notice . . . . .	829
Certificate of successful vaccina- tion . . . . .	828	Procedure—	
Preventing the taking of lymph . . . . .	829	Under the Vaccination (Ir.) Acts . . . . .	830
		Under the Public Health (Ir.) Act . . . . .	830

Vaccination  
(Ir.) Acts.

The law as to vaccination in Ireland, except such of it as is contained in the Public Health (Ir.) Act, 1878, as to which see *post*, is to be found in the Vaccination (Ir.) Act, 1858, 21 & 22 Vict. c. 64, the Vaccination (Ir.) Act, 1863, 26 & 27 Vict. c. 52, the Vaccination Amendment (Ir.) Act, 1868, 31 & 32 Vict. c. 87, and the Vaccination Amendment (Ir.) Act, 1879, 42 & 43 Vict. c. 70, which Acts are collectively entitled the Vaccination (Ir.) Acts (*Act of 1879*, s. 12). The Act of 1868 is to be read as one with the Act of 1863 (*Act of 1868*, s. 2), and the Acts of 1863 and 1868 are to be read as one with the Act of 1879, which (see *R. (Vint) v. Donegal JJ.* (1904), 2 I.R. 1) is merely an Act to amend the Act of 1863.

Child to be  
vaccinated  
within three  
months of  
birth.

“The father or mother of every child born in Ireland, or in the event of the death, illness, absence, or inability of the father and mother, then the person who shall have the care, nurture, or custody of the said child, shall, within three months after the birth of such child, or as soon afterwards as may be practicable, take or cause to be taken the said child to the medical officer of the dispensary district in which the said child is resident for the purpose of being vaccinated,<sup>1</sup> unless he shall have been previously vaccinated by some duly qualified medical practitioner, and the vaccination duly certified; and the said medical officer shall, and he is hereby required thereupon, or as soon after as it may conveniently and properly be done, to vaccinate the said child: Provided that in the vaccination of children who are inmates of the workhouse or other public or charitable institution the master, matron, or chief officer of the workhouse or other such institution shall take the steps required to be taken under the provisions of this Act by the father or mother of the child, or other person having the care, nurture, or custody thereof. The father or mother or other person having the care, nurture, or custody of any child born elsewhere than in Ireland, but brought into Ireland after

<sup>1</sup> Vaccination is the putting into the body of a child lymph that has been derived from a cow or other animal of the cow class (*Belfast Union v. Walker* (1905), 39 I.L.T.R. 102).

the passing of this Act without having been vaccinated shall be under the same obligation to have such child vaccinated as if the child had been born in Ireland on the day on which he was brought into Ireland" (*Vaccination Amendment (Ir.) Act*, 1879, 42 & 43 Vict. c. 70, s. 3).

"Every parent or person having the custody of a child, who neglects to take such child or to cause it to be taken to be vaccinated or after vaccination to be inspected according to the provisions of the Vaccination (Ir.) Acts, and does not render a reasonable excuse for his neglect," shall be liable to a penalty not exceeding 20s. (*Act of 1879*, s. 7). The "reasonable excuse" is to be rendered to the magistrates on the hearing of the case, and consequently the summons should contain the words "without having a reasonable excuse therefor" and not "and had not rendered a reasonable excuse therefor" (*Belfast Union v. Walker* (1905), 39 I.L.T.R. 102). This section does not create a new substantive offence, but merely amends s. 8<sup>1</sup> of the Vaccination (Ir.) Act, 1863. Where a person has been convicted under s. 8 of the Act of 1863 for not causing his child to be vaccinated, he cannot in respect of a continued failure to have it vaccinated be again prosecuted under that section, though repeated prosecutions for continued neglect can be brought by the sanitary authority, under the Public Health (Ir.) Act, 1878, 41 & 42 Vict. c. 52, s. 147 (*R. (Vint) v. Donegal J.J.* (1904), 2 I.R.L.).

Failure to have child vaccinated or inspected.

"If any registrar, or any officer appointed by the guardians to enforce the provisions of the Acts relating to vaccination in Ireland, shall give information in writing to a justice of the peace that he has reason to believe that any child under the age of fourteen years, being within the union or district for which the informant acts, has not been successfully vaccinated, and that he has given notice<sup>2</sup> to the father or mother of the said child, or to the person having the care, nurture, or custody of such child, to procure its being vaccinated, and that this notice has been disregarded, the justice may summon such father or mother or person to appear with the child<sup>3</sup> before him at a certain time and place, and upon the appearance,<sup>4</sup> if the justice<sup>5</sup> shall find after such examination as he shall deem necessary, that the child has not been<sup>6</sup> vaccinated, nor has already had the smallpox, he may, if he see fit, make an order under his hand and seal directing such child to be vaccinated within a certain time; and if at the expiration of such time the child shall not have been so vaccinated, or shall not be shown to be then unfit to be vaccinated, or to be insusceptible of vaccination, the person upon whom such order shall have been made shall be proceeded against summarily, and unless he can show some reasonable ground<sup>7</sup> for his omission to carry the order into effect, shall be liable to a penalty not exceeding 20s.: Provided that if the justice shall be of opinion that the person is improperly brought

Proceedings by guardians to compel vaccination.

<sup>1</sup> As to which, see p. 829.

<sup>2</sup> The notice must be in print or writing (s. 266); as to method of service, see s. 267 (see also *Holloway v. Coster* (1897), 1 Q.B. 346, decided on 30 & 31 Vict. 84, s. 31).

<sup>3</sup> It would seem from *Dutton v. Atkins* (1871), L.R. 6 Q.B. 373, decided upon precisely the same words in s. 31 of the English statute 30 & 31 Vict. c. 84, that if the child is not produced the justices may adjudicate and make an order upon such evidence as is adduced. As to the penalty incurred by the person who fails to produce the child, see p. 829.

<sup>4</sup> If the person served with the summons does not appear, the justices may, upon proof of service of the summons, make an order, if evidence to warrant their so doing is adduced (*R. (Crawford) v. Cinque Ports J.J.* (1886), 17 Q.B.D. 191).

<sup>5</sup> This need not be the justice who signed the summons (*Southcombe v. Yeovil Guardians* (1897), 1 Q.B. 343).

<sup>6</sup> This, it is submitted, means successfully vaccinated.

<sup>7</sup> An objection on general grounds to vaccination is not a reasonable ground, but a belief reasonably entertained that vaccination would be injurious to a particular child is a reasonable ground (*Rutter v. Norton* (1893), 57 J.P. 8).

before him, and shall refuse to make any order for the vaccination of the child, he may order the informant to pay to such person such sum of money as he shall consider to be a fair compensation for his expenses and loss of time in attending before the justice" (*Public Health (Ir.) Act, 1878*, 41 & 42 Vict. c. 52, s. 147). Under this section the vaccination of a child may be enforced by repeated convictions for non-compliance with repeated orders (*R. (Vint) v. Donegal JJ.* (1904), 2 I.R. 1). Although only one justice is required to make the order for vaccination (which, it should be noted, must, according to the section, be under seal, but as to the effect of making which otherwise than under seal, see p. 77. n.<sup>8</sup>), two justices are required for the summary proceedings for the recovery of the penalty (s. 249). The guardians of the union are the proper persons to direct proceedings; the medical officer of the district may be required to attend, and is entitled, in addition to his actual expenses, to such sum not exceeding one guinea a day as the court shall certify (*Vaccination Amendment (Ir.) Act, 1879*, s. 10).

**Certificate  
of exemption.**

If any medical officer or practitioner<sup>1</sup> shall be of opinion that any child is not in a fit and proper state to be successfully vaccinated, he shall thereupon deliver free to the father or mother or person having the care, nurture, or custody of such child a certificate to that effect in the form provided, and such certificate shall remain in force for two calendar months from such delivery. The child must be taken to the medical officer or practitioner within, or at the termination of, such period, who is to vaccinate it forthwith or deliver a fresh certificate, to be in force for another two months and so on. The production of the certificate shall be a sufficient defence to proceedings for failure to vaccinate (*Vaccination (Ir.) Act, 1863*, 26 & 27 Vict. c. 52, s. 4). If a medical practitioner is of opinion that any child that has been vaccinated by him is insusceptible of the vaccine disease, he shall deliver to the father or mother or person having the care, nurture, or custody of such child a certificate to that effect according to the form in the Act, and the production of such certificate shall be a sufficient defence against any complaint for non-compliance with provisions as to vaccination (s. 6).

**Testing  
success of  
vaccination.**

"Upon the same day of the week following the day on which any child has been vaccinated as aforesaid, the father or mother or other person having the care, nurture, or custody of the said child shall again take or cause to be taken the said child to the medical officer by whom the operation was performed, in order that such medical officer may ascertain by inspection the result of such operation, and if he see fit, take from such child lymph for the performance of other vaccinations; and in the event of the vaccination being unsuccessful, such parent or other person shall, if the medical officer so direct, cause the child to be forthwith again vaccinated and inspected as on the previous occasion" (*Vaccination Amendment (Ir.) Act, 1879*, s. 4).

**Certificate of  
successful  
vaccination.**

Immediately on the successful vaccination of a child, the medical officer or practitioner who shall have performed the operation shall deliver to the father or mother or person having the care, nurture, or custody of the child a certificate of successful vaccination, in the form prescribed by the Act, and transmit a duplicate to the Registrar of Births of the district where the child was registered, or, if after due inquiry such district is not known, or if the birth of the child has not been registered, to the registrar of the district where the operation has been performed, but if the medical officer of any dispensary district is also the Registrar of Births of the district it shall be sufficient to sign one certificate to be delivered to the parent or other person as aforesaid and to register the

<sup>1</sup> This means a registered practitioner (*Cromack v. Brennard* (1873), 37 J.P. 276).



fact of such vaccination (*Vaccination Amendment (Ir.) Act*, 1879, 42 & 43 Vict. c. 70, s. 5). Such certificate shall, without further proof, be admissible as evidence of the facts therein stated (*ib.*).

Every person who prevents any dispensary medical officer from taking from any child lymph, as provided by s. 4 of the Act,<sup>1</sup> shall be liable on summary conviction to a penalty not exceeding 20s. (*Vaccination Amendment (Ir.) Act*, 1879, 42 & 43 Vict. c. 70, s. 7). Preventing the taking of lymph.

Any parent or person having the custody of a child who fails to produce such child when required to do so by any summons under the Vaccination (Ir.) Acts shall be liable on summary conviction to a penalty not exceeding 20s. (*ib.*). Production of child.

"Any person who shall produce or attempt to produce in any person by inoculation with variolous matter or by wilful exposure to variolous matter, or to any matter, article, or thing impregnated with variolous matter, or wilfully by any other means whatsoever produce the disease of smallpox in any person, shall be guilty of an offence and shall be liable to be proceeded against summarily before two or more justices of the peace in petty sessions assembled, and upon conviction to be imprisoned for any term not exceeding six months" (*Vaccination Amendment (Ir.) Act*, 1868, 31 & 32 Vict. c. 87, s. 4). Unlawful production of smallpox.

"Every medical officer, parent, or person, as the case shall require, who shall neglect to transmit any certificate required of him by the provisions of the Vaccination (Ir.) Acts, completely filled up and legibly written, to the registrar within the time specified by the said Acts, and every medical officer who shall refuse to deliver the duplicate to the parent or other person, on request, or who shall refuse to fill up and sign the certificate of successful vaccination, shall be liable . . . to a penalty not exceeding 20s.; and every person who shall wilfully sign a false certificate or duplicate under this Act shall be guilty of a misdemeanour and punishable accordingly" (*Vaccination Amendment (Ir.) Act*, 1879, 42 & 43 Vict. c. 70, s. 8). Neglect to transmit certificate.  
False certificate.

"The Registrar of Births and Deaths in the district in which the operation has been performed shall register the same in a register which he shall keep of the persons of whose successful vaccination a certificate shall have been transmitted to him . . . and of the persons whom he himself has successfully vaccinated" (*Vaccination (Ir.) Act*, 1863, 26 & 27 Vict. c. 52, s. 7); and "every registrar who shall fail to register as aforesaid the vaccination of any child successfully vaccinated, and duly certified to him to have been so vaccinated within his district, or who shall register the vaccination of any child which shall not have been successfully vaccinated, or certified to him to have been so vaccinated, shall forfeit a sum not exceeding 20s." (s. 10). Duties of registrar.

The registrar, immediately after the registration of the birth of any child who shall not have been certified to him as having been vaccinated within six months from birth, shall give notice to the father or mother, or in the event of their death, illness, absence, or inability from sickness or otherwise, then to the person upon whom the care, nurture, or custody of such child shall have devolved, requiring them in the form prescribed by the Act to have the child vaccinated, and shall together with such notice deliver another notice of the days, hours, and places within the district at which the medical officer will attend for the purpose of vaccination, and shall enter in a book a minute of his having duly given such notice; and if after such notice the parent or person having custody, &c., of the child shall not cause such child to be vaccinated or shall not on the eighth day after vaccination take or cause to be taken such child for inspection without reasonable excuse, then such father or mother or person Neglect to vaccinate after notice from registrar.

<sup>1</sup> As to which, see *supra*.

having the care, &c., of such child shall forfeit a sum not exceeding 10s. (*Vaccination (Ir.) Act*, 1863, s. 8).

**Procedure :**  
Under the  
Vaccination  
(Ir.) Acts.

Penalties under the Vaccination (Ir.) Acts are recoverable summarily in manner provided by the Summary Jurisdiction (Ir.) Acts <sup>1</sup> (*Vaccination (Ir.) Act*, 1863, 26 & 27 Vict. c. 52, s. 12). In any prosecution under those Acts for neglect to procure the vaccination of a child, it shall not be necessary in support thereof to prove that the defendant had received notice from the registrar or any other officer of the requirements of the law in that respect, and on any such prosecution a certificate, or the entry in the register, of successful vaccination is a sufficient defence <sup>2</sup> (*Vaccination Amendment (Ir.) Act*, 1879, 42 & 43 Vict. c. 70, s. 9).

Under the  
Public Health  
(Ir.) Act,  
1878.

"The defendant in any proceedings under the Vaccination (Ir.) Acts may appear by any member of his family or any other person authorised by him in this behalf" (s. 7). Two justices are requisite in proceedings to recover a penalty under the Public Health (Ir.) Act, 1878, and any such penalty is recoverable in manner provided by the Summary Jurisdiction (Ir.) Acts <sup>3</sup> (*Public Health (Ir.) Act*, 1878, 41 & 42 Vict. c. 52, s. 249).

### VAGRANTS.

Vagrancy,  
begging, &c.

"Every person wandering abroad and begging or placing himself in any public place, street, highway, court, or passage, to beg or gather alms, or causing or procuring or encouraging any child or children so to do, and every person, who having been resident in any union in Ireland, shall go from such union to some other union, or from one electoral or relief district to another electoral or relief district in Ireland, for the purpose of obtaining relief in such last-mentioned union or district, shall on conviction . . . if the justice think fit, be committed" for any time not exceeding one calendar month with hard labour (*Vagrancy (Ir.) Act*, 1847, 10 & 11 Vict. c. 84, s. 3).

Persons  
punishable  
as rogues and  
vagrabonds.

"Every person committing any of the offences hereinbefore mentioned after having been convicted as an idle and disorderly person ; <sup>4</sup> every person pretending or professing to tell fortunes, or using any subtle craft, means, or device by palmistry or otherwise, to deceive and impose on any of His Majesty's subjects ; every person wandering abroad and lodging in any barn or outhouse, or in any deserted or unoccupied building, or in the open air, or under a tent, or in any cart or waggon, not having any visible means of subsistence, and not giving a good account of himself or herself ; every person wilfully exposing to view, in any street, road, highway, or public place, any obscene print, picture, or other indecent exhibition ; every person wilfully, openly, lewdly, and obscenely exposing his person in any street, road, or public highway, or in the view thereof, or in any place of public resort with intent to insult any female ; every

<sup>1</sup> As to which, see p. 335.

<sup>2</sup> See also s. 4 of the Act of 1863, p. 828.

<sup>3</sup> For the meaning of which expression, see p. 335.

<sup>4</sup> That is to say, convicted under s. 3, which enacts that every person being able to maintain himself and wilfully refusing or neglecting to do so, whereby he or she or any of his or her family become chargeable to any place, every pedlar wandering abroad and trading without being duly licensed, every common prostitute wandering in any place of public resort and behaving in a riotous or indecent manner, and every person placing himself on any public place to beg or gather alms or causing or encouraging any child so to do, shall be deemed an idle and disorderly person ; but s. 3, unlike s. 4, has not been extended to Ireland, and consequently the words in italics are of no effect in Ireland.



person wandering abroad and endeavouring by the exposure of wounds or deformities to obtain or gather alms; every person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence; every person running away and leaving his wife, or his or her child or children, chargeable, or whereby she or they or any of them shall become chargeable, to any parish, township, or place; every person playing or betting in any street, road, highway, or other open and public place, at or with any table or instrument of gaming, at any game or pretended game of chance; every person having in his or her custody or possession any picklock key, crow, jack, bit, or other implement, with intent feloniously to break into any dwelling-house, warehouse, coach-house, stable or outbuilding, or being armed with any gun, pistol, hanger, cutlass, bludgeon or other offensive weapon, or having upon him or her any instrument, with intent to commit any felonious act; every person being found in or upon any dwelling-house, warehouse, coach-house, stable or outhouse, or in any enclosed yard, garden, or area for any unlawful purpose; every suspected person or reputed thief, frequenting [or loitering about or in]<sup>1</sup> any river, canal, or navigable stream, dock, or basin, or any quay, wharf, or warehouse, near or adjoining thereto, or any street, highway, or avenue leading thereto, or any street [or any highway or any place adjacent to a street or highway]<sup>2</sup> with intent to commit felony; *and every person apprehended as an idle and disorderly person, and violently resisting any constable, or other peace officer so apprehending him or her, and being subsequently convicted of the offence for which he or she shall have been so apprehended*; <sup>3</sup> shall be deemed a rogue and vagabond . . . ; and it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by the confession of such offender or by the evidence on oath of one or more credible witness or witnesses) to the house of correction, there to be kept to hard labour for any time not exceeding three calendar months; and every such picklock key, crow, jack, bit, and other implement, and every such gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon, and every such instrument as aforesaid shall by the conviction of such offender become forfeited to the King's Majesty" (*Vagrancy Act, 1824*. 5 Geo. 4, c. 83, s. 4).

Persons punishable as rogues and vagabonds.

This section has been applied to Ireland by the Prevention of Crimes Act, 1871, s. 15, which also enacts as follows:—"In proving the intent to commit a felony it shall not be necessary to show that the person suspected was guilty of any particular act or acts tending to show his purpose or intent, and he may be convicted if from the circumstances of the case, and from his known character, as proved to the justice of the peace or court before whom or which he is brought, it appears to such justice or court that his intent was to commit a felony" (*Prevention of Crimes Act, 1871*, 34 & 35 Vict. c. 112, s. 15).

As to penalty on vagrants wandering about and taking children with them, so that such children do not receive efficient education, see the Children Act, 1908, 8 Edw. 7, c. 67, s. 118, APPENDIX OF STATUTES.

Vagrancy offences are triable out of sessions (*Petty Sessions Act, 1851*, Procedure. s. 8 (2)).

<sup>1</sup> The effect of the Penal Servitude Act, 1891, 54 & 55 Vict. c. 69, s. 7, is that s. 4 of the Vagrancy Act, 1824, is to be read as if the words in brackets had been inserted in it.

<sup>2</sup> The words in brackets are substituted for the words "highway or place adjacent" (which formed part of the section as originally enacted) by the Prevention of Crimes Act, 1871, 34 & 35 Vict. c. 112, s. 15.

<sup>3</sup> The words in italics are of no effect in Ireland. See p. 830, n.<sup>4</sup>



VETERINARY SURGEONS.<sup>1</sup>

	PAGE		PAGE
Statutes . . . . .	832	Obtaining registration by false representation . . . . .	833
Falsely pretending to be F.R.C.V.S. or M.R.C.V.S. . . . .	832	Wilful falsification of register . . . . .	833
Falsely pretending to be a veterinary surgeon . . . . .	832	Procedure . . . . .	833

**Statutes.**

The Acts relating to veterinary surgeons are the Veterinary Surgeons Act, 1881, 44 & 45 Vict. c. 62, and the Veterinary Surgeons Amendment Act, 1900, 63 & 64 Vict. c. 24, which (see s. 1 of the later Act) are to be read together.

**Falsely pretending to be F.R.C.V.S. or M.R.C.V.S.**

"If any person, not being a Fellow or a Member of the Royal College of Veterinary Surgeons, takes or uses any name, title, addition, or description, by means of initials or letters placed after his name, or otherwise, stating or implying that he is a Fellow or a Member of the Royal College of Veterinary Surgeons, he shall be liable to a fine not exceeding £20" (*Act of 1881, 44 & 45 Vict. c. 62, s. 16*).

**Falsely pretending to be a veterinary surgeon.**

"If any person, other than a person who for the time being is on the register<sup>2</sup> of veterinary surgeons, or who at the time of the passing of this Act, held the veterinary certificate of the Highland and Agricultural Society of Scotland (*and who has not been deprived, pursuant to s. 2 of the Act of 1900, of the right to style himself a member of the veterinary profession*),<sup>3</sup> takes or uses the title of Veterinary Surgeon, or Veterinary Practitioner, or any name, title, addition, or description stating that he is a Veterinary Surgeon, or a Practitioner of Veterinary Surgery or of any branch thereof, or is specially qualified to practise the same, he shall be liable to a fine not exceeding £20" (*s. 17 (1)*).

The words "specially qualified" must now be taken to mean "possessing a special diploma or qualification," and not merely possession of skill or capacity (*Bellerby v. Heyworth* (1910), A.C. 377, noted p. 416).<sup>4</sup>

An unqualified person who described himself as a "pharmaceutical and veterinary chemist" was held to have committed no offence (*College of Veterinary Surgeons v. Groves* (1893), 57 J.P. 505).

The defendant company was incorporated with the object of carrying on business as, *inter alia*, veterinary surgeons. It was a one man company, the defendant C., who was not registered under the Veterinary Surgeons Act, 1881, being the sole director. On the front of the defendant company's business was the following statement: "Churchill's Veterinary Sanatorium, Limited. Dogs and Cats Boarded. Jas. Churchill, M.D., U.S.A., Specialist, Managing Director." In an action at the relation of the Royal College of Veterinary Surgeons to restrain the defendants from

<sup>1</sup> The veterinary art includes the study of the anatomical structure of horses, cattle, sheep, dogs, and other domesticated animals, the diseases to which they are subject, and the remedies proper to be applied. See s. 20 of the Act of 1881, the charters granted to the Royal College of Veterinary Surgeons in 1875 and 1877, and *R.C.V.S. v. Collinson* (1908), 2 K.B. 248.

<sup>2</sup> The register includes members of the Royal College of Veterinary Surgeons and also "existing practitioners"—that is, persons who procured registration by reason of having practised veterinary surgery for upwards of five years before the passing of the Act, but such persons are not deemed to be members of the Royal College of Veterinary Surgeons (*Act of 1881, s. 15*), though they can recover fees (*s. 17*).

<sup>3</sup> The words in italics show the effect of s. 2 of the Act of 1900.

<sup>4</sup> The cases of *Veterinary College v. Robinson* (1892), 1 Q.B. 557, where the defendant was held rightly convicted for describing his place of business as a "Veterinary Forge," and *Veterinary College v. Collinson* (1908), 2 K.B. 248, where the conviction of a defendant who described himself as "Canine Specialist: Dogs and Cats Treated for all Diseases," was upheld, must now be treated as over-ruled.

taking or using any name, title, addition, or description implying that they were specially qualified to practise the art of veterinary surgery or from holding out the said company as being qualified or being conducted by persons who were qualified to practise the said art. *Held*, that there was a representation by the defendants that C. was a practitioner of a branch of veterinary surgery, that he was described in a way which was contrary to the provisions of s. 17 of the Veterinary Surgeons Act, 1881, and that an injunction must be granted to restrain such representation being made (*Attorney-General v. Churchill's Veterinary Sanatorium (Limited) and James Churchill* (1910), 26 T.L.R. 630).

Wilfully procuring or attempting to procure registration by false certificate or representation, either in writing or otherwise, misdemeanour—*Obtaining registration by false representation.*  
*Penalty*, on summary conviction, fine not exceeding £50 or twelve months' imprisonment with or without hard labour (*Act of 1881, s. 11*).

Wilful falsification of register by registrar, misdemeanour—*Penalty*, on summary conviction, fine not exceeding £50 or twelve months' imprisonment with or without hard labour (s. 12). *Wilful falsification of register.*

Fines and imprisonment under the Act may be recovered and imposed summarily in Ireland within the Dublin metropolitan police district according to the Dublin Police Acts; elsewhere in manner directed by the Petty Sessions Act, 1851 (s. 19). Prosecutions may be instituted by the Council of the Royal College of Veterinary Surgeons, but shall not be instituted by a private person without the written consent of the Council (*ib.*). Copies of the register published by the registrar pursuant to s. 3, are *prima facie* evidence that the persons named therein are on the register and that persons not therein named are not on the register; the registrar may give a certified copy of the entry of the name of a person on the register, which shall be evidence that such person is on the register (s. 9). *Procedure.*

## WASTE TO LANDS.

Under s. 35 of the Landlord and Tenant (Ir.) Act, 1860, 23 & 24 Vict. c. 154, a justice of the peace may issue a precept to restrain a tenant, servant, or caretaker from committing or permitting waste, or from burning or breaking up any part of the soil, or removing same, or cutting down trees, &c. (see the section at p. 192, *ante*).

"If any person shall, after the service or posting of such precept, in disobedience thereto, without such leave and authority as aforesaid,<sup>1</sup> proceed with or continue to do the act prohibited by such precept, or wilfully aid, abet, or assist in so doing, he shall, on conviction thereof before two or more justices of the peace at petty sessions, be liable to be imprisoned for a period not exceeding one calendar month; and all the provisions of the Petty Sessions (Ir.) Act, 1851, respecting summary convictions before justices at petty sessions and respecting appeals therefrom, shall be applicable to every conviction under this section" (*Landlord and Tenant (Ir.) Act, 1860, 23 & 24 Vict. c. 154, s. 36*).

It is submitted that a right of appeal lies against every order for imprisonment under the section, even though such imprisonment does not exceed one month.

<sup>1</sup> That is, of the justice issuing the precept.

## WATER.

By the Public Health (Ir.) Act, 1878, 41 & 42 Vict. c. 52, s. 67, certain sections of the Waterworks Clauses Act, 1847, 10 & 11 Vict. c. 17, and the whole of the Waterworks Clauses Act, 1863, 26 & 27 Vict. c. 93, are incorporated. As to the offences under the sections so incorporated, see PUBLIC HEALTH at p. 715.

## Procedure.

The foregoing penalties are to be recovered in manner provided by ss. 249–261 of the Public Health (Ir.) Act, 1878, 41 & 42 Vict. c. 52 (*Public Health (Ir.) Act*, 1878, s. 278, as to which see p. 694).

As to recovery of water rates and rents for water meters, see CIVIL JURISDICTION, pp. 165–167.

As to larceny of water from pipes of persons supplying it for payment, see LARCENY.

## WEEDS AND AGRICULTURAL SEEDS.

The Department of Agriculture and Technical Instruction for Ireland have certain powers in reference to noxious weeds and taking samples of agricultural seeds under the Weeds and Agricultural Seeds (Ir.) Act, 1909, 9 Edw. 7, c. 31, printed *verbatim*, APPENDIX OF STATUTES.

## WEIGHTS AND MEASURES.

	PAGE		PAGE
Statutes . . . . .	834	Sale of coal ( <i>continued</i> )—	
Use in trade of weights and measures other than imperial standards . . . . .	835	Weighing instruments . . . . .	844
Price lists to be in imperial standards . . . . .	836	Power to require vehicle to be weighed . . . . .	845
Use and possession of unauthorised weights, measures, and weighing instruments . . . . .	836	Power to weigh coal in vehicle, &c. . . . .	845
Unjust weights . . . . .	837	False weight . . . . .	845
Fraud in use of weights, &c. . . . .	839	Obstructing inspector . . . . .	846
Manufacture or sale of false weights or measures . . . . .	839	Bye-laws and penalties . . . . .	846
Stamping and verification—		Offences intentionally fraudulent . . . . .	847
Necessity for . . . . .	839	Application of Acts to mines . . . . .	847
Use of unstamped weights and measures . . . . .	840	Application of Acts to factories . . . . .	847
Pewter and lead weights . . . . .	840	Procedure . . . . .	847
Weights for coin . . . . .	840	Appeal . . . . .	848
Forgery and alteration of stamps or weights, &c. . . . .	840	Offences as to market brands, &c.—	
No deductions for tret, &c. . . . .	841	Counterfeiting market brands, &c. . . . .	848
Inspectors . . . . .	841	Fraudulently increasing weight of butter . . . . .	848
Examination of weights, &c. . . . .	841	Fraudulently increasing weight of wool . . . . .	848
Stamping weights in district of another inspector . . . . .	842	Procedure . . . . .	848
Misconduct of inspectors . . . . .	842	Weighing of cattle at markets and fairs—	
Wrongfully acting as inspector . . . . .	843	Accommodation to be provided . . . . .	848
Sale of coal—		Cattle to be weighed . . . . .	848
By weight only . . . . .	843	Refusal to weigh cattle or give ticket . . . . .	848
Weight ticket, when required . . . . .	843	Fraud . . . . .	849
Neglect to deliver ticket . . . . .	843	Tolls . . . . .	849
Tare weight of vehicle . . . . .	844	Returns by market authority . . . . .	849
Fraud by driver . . . . .	844	Auction marts . . . . .	849
Deficiency in weight on small sales . . . . .	844		

## Statutes.

The law as to weights and measures is consolidated by the Weights and Measures Act, 1878, 41 & 42 Vict. c. 49, which has itself been amended



by the Weights and Measures Act, 1889, 52 & 53 Vict. c. 21, the Weights and Measures Act, 1893, 56 & 57 Vict. c. 19, the Weights and Measures Act, 1897, 60 & 61 Vict. c. 46, and the Weights and Measures Act, 1904, 4 Edw. 7, c. 28, as well as by an Act of 1892 which does not apply to Ireland. It is provided by the Acts of 1889, 1893, 1897, and 1904 that those Acts are to be read as one with the Act of 1878, which by the Act of 1889 is entitled "the principal Act"; and by the Act of 1904 the Acts of 1878, 1889, 1893, 1897, and 1904, as well as the Act of 1892, are collectively entitled the "Weights and Measures Acts, 1878 to 1904."

"No local or customary measures, nor the use of the heaped measure, shall be lawful. Any person who sells by any denomination of weight or measure other than one of the imperial weights or measures,<sup>1</sup> or some multiple or part thereof"—*Penalty*, not exceeding £2 for every such sale (*Weights and Measures Act*, 1878, 41 & 42 Vict. c. 49, s. 19).

Using weights and measures other than imperial standards.

"All articles sold by weight shall be sold by avoirdupois weight, except that (1) gold and silver, and articles made thereof, including gold and silver thread, lace, or fringe, also platinum, diamonds, and other precious metals or stones, may be sold by the ounce troy or by any decimal parts of such ounce . . . (2) drugs when sold by retail may be sold by apothecaries weight"—*Penalty*, for contravention of section, not exceeding £5 (*Weights and Measures Act*, 1878, 41 & 42 Vict. c. 49, s. 20).

"Nothing in this Act shall prevent the sale, or subject a person to a fine under this Act for the sale, of an article in any vessel, where such vessel is not represented as containing any amount of imperial measure, nor subject a person to a fine under this Act for the possession of a vessel where it is shown that such vessel is not used nor intended for use as a measure" (41 & 42 Vict. c. 49, s. 22).

The weights and measures dealt with by the above sections must be in use for "trade," which by s. 19 is defined as any "contract, bargain, sale, or dealing made or had in the United Kingdom for any work, goods, wares, merchandise or other thing which has been or is to be done, sold, delivered, carried, or agreed for by weight or measure." Any such "trade" transaction, if by weight or measure, shall be deemed to be made according to imperial weight or measure, and if made according to any other weight or measure<sup>2</sup> shall be void (s. 19). All tolls and duties charged or collected according to weight or measure must be charged and collected according to imperial weight and measure<sup>2</sup> (s. 19). The Acts therefore do not apply where the sale or other transaction is not upon the basis of weight or measure. A manufacturer and smelter of lead used a pair of beam scales for checking the weight of the "pigs" of lead produced by the works. The weights were entered in a book kept at the works, and when lead was delivered to purchasers, invoices were sent specifying the weight and, when the railway was used for forwarding the lead consignment, notes specifying the weight were sent. *Held*, the beam scales were used for trade (*Crick v. Theobald* (1895), 72 L.T. 807). Similarly in *Horder v. Roberts* (1880), 44 J.P. 256, a weighing machine used by iron foundries for checking the weight of iron delivered by consignees was held by quarter sessions to be "used for trade." Where vessels, not of imperial measure, are used to supply goods, but in fact the vessels are not used for measured quantities, no offence is committed. An alehouse keeper who used for trade a measure marked " $\frac{1}{3}$ rd of a gill" used it for selling threepence worth of spirits. *Held*, the vessel was not used as a measure under the Acts (*Bellamy v. Pow* (1896), 12 T.L.R. 527). So in *Craig v. McPhee* (1883), 10 Sess. Cas. (Just.), 4th Series, 51, it was held that no offence was committed where a licensed dealer ordinarily used

Use "in trade."

Use as measure.

<sup>1</sup> Including metric weights and measures (*Act of 1897*, s. 1).

<sup>2</sup> The use of metric weights and measures is legalised by the *Act of 1897*, s. 1.

Using weights and measures other than imperial standards.

glass vessels, not of imperial measure, of three sizes to supply three, six, and twelve pence worth of liquor, and no other quantity, such as two or four pence worth, was supplied in the vessels. In *Robinson v. Golding* (1910), 103 L.T. 248, a milk carrier, in the course of delivering milk at certain houses, took a can, which was an ordinary can with a lid used for delivering milk, and filled it from the tap of the churn. He then left the can containing the milk on the doorstep of a house where it had apparently been ordered by a purchaser. He was thereupon asked by an inspector what he had delivered to the purchaser, and he replied, "A pint of milk." The can was not stamped as a measure, but was of the correct capacity (a pint) when the lid was not closed. It was not completely filled when the inspector measured the milk, which was deficient by half an ounce. *Held*, that the can was being used as a measure for trade.

Multiple of standard.

The use of customary measures is forbidden, but it would seem that a customary denomination which is in fact a multiple of the standard unit is a legal measure. Thus, it was held under the similar provisions of repealed Acts that a sale by weight by the Welsh "nobbitt" was legal, the "nobbitt" being equal to 168 lbs. (*Hughes v. Humphreys* (1854), 3 E. & B. 954; see also *Jones v. Giles* (1854), 10 Ex. 119 (decided under 5 & 6 Wm. 4, c. 63, and 5 Geo. 4, c. 74), affirmed 11 Ex. 393).

Price lists to be in imperial standards.

"Any person who prints, and any clerk of a market or other person who makes, any return, price list, price current, or any journal or other paper containing price list or price current, in which the denomination of weights and measures quoted or referred to denotes or implies a greater or less weight or measure than is denoted or implied by the same denomination of the imperial weights and measures under this Act"<sup>1</sup>—*Penalty*, not exceeding 10s. for every copy published (*Act of 1878*, 41 & 42 Vict. c. 49, s. 23).

Use and possession of unauthorised weights, measures, and weighing instruments.

"Every person who uses or has in his possession for use for trade a weight or measure which is not of the denomination of some Board of Trade standard"—*Penalty*, not exceeding, first offence, £5; second offence, £10; weight or measure may be forfeited (*Act of 1878*, 41 & 42 Vict. c. 49, s. 24).<sup>2</sup>

"Every person who uses or has in his possession for use for trade<sup>3</sup> any measure or weight not stamped as required by this section"—*Penalty*, not exceeding, first offence, £5; second offence, £10; weight or measure may be forfeited (41 & 42 Vict. c. 49, s. 29).

"Every person who uses or has in his possession for use for trade<sup>3</sup> any weighing instrument not stamped as required by this Act"—*Penalty*, not exceeding, first offence, £2; second offence, £5 (*Act of 1889*, 52 & 53 Vict. c. 21, s. 1 (2)).

The stamp required under the Acts of 1878 and 1889 is a stamp of verification stamped by an inspector (*Act of 1878*, s. 29; *Act of 1889*, s. 1 (1)). If a weight, measure, or weighing instrument has been properly stamped and the stamp has become obliterated in the course of use, the person having such weight or instrument in his possession is not guilty of an offence if the weight, measure, or instrument is otherwise just (*Starr v. Stringer* (1872), L.R. 7 C.P. 383). An incorrect statement as to weight or measure of goods applied to the goods may be a false trade description within the meaning of the Merchandise Marks Act, 1887 (see **MERCHANDISE MARKS**).

"Every person who uses or has in his possession for use for trade any

<sup>1</sup> Or of metric weights and measures (*Act of 1897*, s. 1).

<sup>2</sup> A prosecution for an offence under this section by a police constable as inspector is a constabulary prosecution and the summons can be served by the police (*R. (Lawlor) v. King's Co. JJ.* (1907), 41 I.L.T.R. 77).

<sup>3</sup> For definition of "trade," see *Act of 1878*, s. 19, p. 835, *ante*.



weight, measure, scale, balance, steelyard, or weighing machine, which is **Unjust** false or unjust"—*Penalty*, not exceeding, first offence, £5, and forfeiture of **weights.** unjust weight, &c. (*Act of 1878*, 41 & 42 Vict. c. 49, s. 25); second offence, not exceeding £20 and like forfeiture (*Act of 1889*, s. 3).

"If any person exercising or carrying on a trade or business under or subject to any law of excise and required to keep scales or weights or measures:—(a) in the weighing of his stock or any goods, uses or suffers to be used, any false, unjust, or insufficient scales or weight or measure with intent to defraud His Majesty of any duty of excise"—*Penalty*, £100, and forfeiture of scales, &c.<sup>1</sup> (*Revenue Act, 1889*, 52 & 53 Vict. c. 42, s. 29).

G. was charged with having in his possession unjust weights. *Use for trade.* The facts proved were that G. had in his barn a pair of scales and two weights which were light. The inspector saw no produce in the place, and could not prove that G. kept or exposed for sale or weighed for conveyance or carriage any goods. *Held*, that there was no evidence to support the conviction (*Griffiths v. Place* (1869), 20 L.T. 484). Where coals were weighed and delivered out of a police station to the constables as part of their allowances and pay and the weights were false. *Held*, that the coals were not kept for sale nor weighed for conveyance under the repealed Act, 5 & 6 Wm. 4, c. 63, ss. 21, 28 (*Wray v. Reynolds* (1858), 1 E. & E. 165). Under the same Act earthenware vessels unstamped, but ordinarily used as containing a certain quantity according to imperial measures, were held to be measures within the Act and the user was held subject to penalties where the same were unjust<sup>2</sup> (*R. (Burton) v. Aulton* (1861), 3 E. & E. 568; *Washington v. Young* (1850), 5 Ex. 403). Churns used for conveying milk having gauges upon them indicating the quantity of milk in each are measures used for trade (*Harris v. London County Council* (1895), 1 Q.B. 240); but where a dairy company supplied churns to a farmer for sending the milk to their dairy and the churns were marked with discs intended to denote, but inaccurately denoting, "barn" gallons, and the farmer gave evidence that he used the discs as the basis of his bills, whilst the secretary of the company stated that he did not use the discs for measuring the quantity received, the refusal of the justices to convict the company for using unjust measures was upheld (*Bellamy v. G.W. and Metropolitan Dairies* (1908), 72 J.P. 284).

The term "barrel" in the beer trade means a cask of thirty-six "Barrel." gallons, and an invoice describing as a barrel a cask which contains less than thirty-six gallons is a false trade description within the Merchandise Marks Act, 1887, 50 & 51 Vict. c. 28, s. 2 (1) (d) (*Budd v. Lucas* (1891), 1 Q.B. 408).

Whether a weighing machine is or is not unjust is a question of fact "Unjust" (*R. v. Baxendale* (1880), 44 J.P. 763). A weighing machine is unjust if it does not hang true when there is nothing in either scale or when equal weights are put into the goods scale on one side and into the weights scale on the other side (*London County Council v. Payne* (2) (1905), 1 K.B. 410, at p. 416). Where wholesale tea merchants, in order to supply retailers who desired to have packets of tea of certain weights, the weight to include the bag, used scales for weighing tea for such orders specially adjusted either by placing in or under the goods scale a paper bag, or by affixing to the goods scale a metal disc of the same weight as the bag, it was held that such scales were unjust under s. 25 of the Act of 1878 (*London County Council v. Payne* (1) (1904), 1 K.B. 194; *London County Council v. Payne*, No. 2 (1905), 1 K.B. 410; and see *Lane v. Rendall* (1899), 2 Q.B. 673). But when honest scales are used with an adjust-

<sup>1</sup> By summary proceeding before two justices (7 & 8 Geo. 4, c. 53, ss. 3, 65; 51 & 52 Vict. c. 8, s. 8). See pp. 79-80.

<sup>2</sup> See *Bellamy v. Pow*, and *Craig v. McPhee* (*ante*, p. 835).



**Unjust weights.**

ment of weights in the pans for a particular weighing process the scales are not unjust. Thus, where a coal merchant used in weighing coals an honest machine and for convenience of removal placed a barrow and sack weighing together seven pounds in the goods scale and an equivalent seven pounds weight in the weight scale the scales were held just (*Withall v. Francis* (1878), 42 J.P. 612). A weigh-bridge which required adjustment before use, and which was in fact always adjusted before use, is not an incorrect weighing instrument under 5 & 6 Wm. 4, c. 63, s. 28, though found untrue by an inspector who did not adjust it before use (*L.N.W. Ry. v. Richards* (1862), 2 B. & S. 326), but a machine, not normally requiring such adjustment, which has through use become inaccurate, is an unjust instrument (*G.W. Ry. v. Bailie* (1865), 5 B. & S. 928).

**Use in government department.**

A postmaster who carried on the business of a baker upon the post office premises was supplied by the Post Office with a pair of scales, the property of the Post Office, for use only in the business of the Post Office. The scales were untrue. *Held*, that the justices had no jurisdiction to hear an information under s. 25, the Act having no application to scales the property of a government department (*R. v. Kent JJ. or Bromley JJ.* (1889), 24 Q.B.D. 181).

**Fraud of servant.**

Where a servant in the course of an ingenious system of fraud used an unjust measure for purposes of his own, and not in the interest of his employers, and without their knowledge, it was held that the possession of the servant was not the possession of the employers<sup>1</sup> (*Anglo-American Oil Co. v. Manning* (1908), 1 K.B. 536).

The following cases relating to weights have been decided under ss. 2 (1) and 3 (a) of the Merchandise Marks Act, 1887:<sup>2</sup> 50 & 51 Vict. c. 28.

**When a false trade description.**

The appellant asked for two half pounds of tea, and was supplied with two packets each containing less than half a pound, but in each case weighing more than half a pound including the wrapper, on which in each case there was printed a notice that the weight, including the wrapper, was half a pound. *Held*, that there was no "application" to the goods of a false trade description (*Langley v. Bombay Tea Co.* (1900), 2 Q.B. 460). The respondent bought from the appellants a quarter of a pound of tea. The packet was ready made up in silver paper and tied up with string. The shopman put a ticket under the string, wrapped up the packet in brown paper, and delivered it to the respondent. On the silver paper was printed "Star Tea Co.'s Blend—Quarter pound gross weight." On one side of the ticket was printed "Star Tea Co. Ltd. Quarter pound 2s. 8d. tea ticket," and on the other side a notice to the effect that every purchaser of a quarter of a pound of tea and upwards was given some useful article or a check. The respondent was not shown the silver paper, nor was it handed to him to read. There were only three and three-quarter ounces of tea in the packet. *Held*, that the ticket was a "false trade description" within the meaning of the Merchandise Marks Act, 1887, s. 2 (1) (d) (*Star Tea Co. v. Whitworth* (1904), 20 Cox 658). The respondent ordered from the appellants a kilderkin of ale, and received a cask of ale together with an invoice which purported to be for a kilderkin. The cask contained only 17 gallons, 1 quart, and 1 pint, whereas a kilderkin should contain 18 gallons. The K.B. upheld a conviction under s. 2 (1) (d) of the Merchandise Marks Act, 1887 (*N.E. Breweries Ltd. v. Gibson* (1904), 20 Cox 706). The provisions of s. 2 (2) of the Merchandise Marks Act, 1887, make a master criminally liable for acts done by his servants in contravention of that section when acting within the general scope of their employment, although contrary

<sup>1</sup> The court, however, said (*per* Channel, J., at p. 545) that this decision was not to govern any similar case. For a fuller note of the case, see p. 297.

<sup>2</sup> As to which, see **MERCHANDISE MARKS**.

to the orders of their master, unless the master can show he acted in good faith and did all that was reasonably possible to prevent the commission of offences by his servants (*Coppen v. Moore* (2) (1898), 2 Q.B. 306).

"Where any fraud is wilfully committed in the using of any weight, measure, scale, balance, steelyard, or weighing machine"—*Penalty*, not exceeding, first offence, £5; second offence, £20, with liability to forfeiture of weight, &c. (*Weights and Measures Act*, 1878, 41 & 42 Vict. c. 49, s. 26; *Weights and Measures Act*, 1889, 52 & 53 Vict. c. 21, s. 3).

Fraud in the use of weighing instruments, weights, and measures.

A. bought sugar, tea, and currants by weight from a grocer, and a paper bag was weighed with each article, the total deficiency being 46 drams. A. knew of the practice and did not complain. *Held*, that the grocer was wrongly convicted under s. 26 of the Act of 1878 (*Harris v. Allwood* (1893), 57 J.P. 7). A purchaser, acting on behalf of the inspector of weights and measures, entered a grocer's shop and asked for four ounces of tea. The grocer's assistant in the presence of the purchaser put tea into a paper wrapper, weighed the tea and the wrapper together, and handed both to the purchaser. The net weight of the tea was three drams less than four ounces. The scales were just and accurate. The grocer admitted that when the tea was made up in packets ready for sale and marked "Tea, net weight without the paper," the weight of the paper was not included, and that when tea was sold otherwise than in packets so marked, he had instructed his assistants to weigh the paper along with the tea. The justices refused to admit evidence that it was customary in the trade to weigh the paper with the tea. *Held*, that the weighing of tea and paper in the presence of the customer, in such a way that he knew that he was getting, in tea and paper, the weight for which he had asked, did not by itself constitute a wilful commission of fraud; *held*, also, that the evidence rejected was material to the question of fraud and should have been admitted (*King v. Spencer* (1904), 20 Cox 692). A grocer made up a number of packets of sugar; each packet was weighed by him or his assistants; and each contained one pound of combined sugar and paper. The scales were accurate. *Held*, no offence under s. 26 of the Act of 1878 (*Stone v. Tyler* (1905), 1 K.B. 290). In order to constitute a fraud under s. 26 there must be some fraud in connection with the use of the scales (*per* Lord Alverstone, C.J., in *Stone v. Tyler, supra*).

"A person shall not wilfully or knowingly make or sell, or cause to be made or sold, any false or unjust weight, measure, scale, balance, steelyard, or weighing machine"—*Penalty*, not exceeding, first offence, £10; second offence, £50 (*Weights and Measures Act*, 1878, 41 & 42 Vict. c. 49, s. 27).

Manufacture or sale of false weights or measures.

A. bought a pair of scales from C. The scales appeared to be accurate when bought, but when tested they were found inaccurate under certain conditions. A. returned the scales to B. and received another pair guaranteed by B.'s shopman. The second pair had the same defect. *Held*, that there was some evidence to support a conviction of B. for an offence under the section (*Henton v. Radford* (1881), 45 J.P. 224).

Section 28 of the Weights and Measures Act, 1878, requires every weight, where its size admits, to be stamped upon the top or side in legible figures or letters with the denomination and (as amended by s. 13 (1) of the Act of 1904) requires every measure of length or capacity to be similarly stamped on the outside; s. 29 of the Act of 1878 requires every measure and weight used for trade to be verified and stamped by an inspector with a stamp of verification, under that Act; and s. 1 (1) of the Act of 1889 requires every weighing machine used for trade to be similarly verified and stamped under that Act.

Stamping and verification.

Necessity for.

"Every person who uses, or has in his possession for use for trade, any



**Stamping and verification.** measure or weight not stamped as required by this section"—*Penalty*, not exceeding, first offence, £5; second offence, £10; measure or weight may be forfeited (*Weights and Measures Act*, 1878, 41 & 42 Vict. c. 49, s. 29).

Use of unstamped weights, &c.

"Every person who uses, or has in his possession for use for trade, any weighing instrument not stamped as required by this Act"—*Penalty*, not exceeding, first offence, £2; second offence, £5 (*Weights and Measures Act*, 1889, 52 & 53 Vict. c. 21, s. 1 (2)).

Where weights and measures have once been duly stamped or sealed and the stamp or seal has become obliterated, the person using the weight, if the same is otherwise unobjectionable, is not liable to penalties under the Act (*Starr v. Stringer* (1872), L.R. 7 C.P. 383). Under s. 44 of the Act of 1878 the local authority is required to fix times and places at which inspectors are to attend to verify or stamp weights and measures. A local authority<sup>1</sup> are not precluded from prosecuting under s. 29 of the Act of 1878 a person for using an unstamped measure by reason of their having failed to fix times or places for verification and stamping under s. 44 of that Act (*Hayley v. Taylor* (1900), 19 Cox 538).

Pewter and lead weights.

"A weight made of lead or pewter, or of any mixture thereof, shall not be stamped with a stamp of verification or used for trade, unless it be wholly and substantially cased with brass, copper, or iron, and legibly stamped or marked 'cased.' Provided, that nothing in this section shall prevent the insertion into a weight of such a plug of lead or pewter as is *bona fide* necessary for the purpose of adjusting it and of affixing thereon the stamp of verification"—*Penalty*, not exceeding, first offence, £5; second offence, £10 (*Weights and Measures Act*, 1878, 41 & 42 Vict. c. 49, s. 30).

Weights for coin.

"Every coin weight, not less in weight than the weight of the lightest coin for the time being current, shall be verified and stamped by the Board of Trade with a mark of verification under this Act, and otherwise shall not be deemed a just weight for determining the weight of gold and silver coin of the realm"—*Penalty*, not exceeding £50 (41 & 42 Vict. c. 49, s. 31).

Forgery and alteration of stamps or weights, measures, and weighing instruments.

"If any person forges or counterfeits any stamp used for the stamping under this Act of any measure or weight, or used before the commencement of this Act for the stamping of any measure or weight, under any enactment repealed by this Act, or wilfully increases or diminishes a weight so stamped"—*Penalty*, not exceeding £50 (41 & 42 Vict. c. 49, s. 32).

"Any person who knowingly uses, sells, utters, disposes of, or exposes for sale any measure or weight with such forged or counterfeit stamp thereon or a weight so increased or diminished"—*Penalty*, not exceeding £10; measures, &c., to be forfeited (*ib.*). The above section is applied to weighing instruments by s. 1 (4) of the Act of 1889.

"(1) Any person who removes a stamp from any weight, or measure, or weighing or measuring instrument,<sup>2</sup> and inserts the same into another

<sup>1</sup> This means, as regards counties, the county council, as regards boroughs, the town council, and as regards such portion of the police district of Dublin metropolis as is outside the borough of Dublin, the commissioners of the D.M.P. (*Act of 1878*, Sch. IV., and *Adaptation of Irish Enactments Order*, dated Jan. 30, 1899).

<sup>2</sup> "Weighing instrument" is defined by s. 35 of the *Weights and Measures Act*, 1889 (as amended by s. 16 of the *Weights and Measures Act*, 1904), as including scales, with the weights belonging thereto, scale-beams, balances, spring balances, steelyards, weighing machines and other instruments for weighing, and also weighing instruments constructed to also calculate and indicate the price in money. "Measuring instrument" includes any instrument for the measurement of length, capacity, volume, temperature, pressure, or gravity, or for the measurement and determination of electrical quantities (*Act of 1889*, s. 35).



weight, or measure, or weighing or measuring instrument, shall be deemed to forge or counterfeit a stamp within the meaning of s. 32 of the principal Act.<sup>1</sup> (2) Such of the provisions of the said section as impose penalties on any person, who wilfully increases or diminishes a weight after it has been stamped, or who knowingly uses, sells, utters, disposes of, or exposes for sale a weight so increased or diminished, shall apply to measures in like manner as they apply to weights" (*Act of 1904*, 4 Edw. 7. c. 28, s. 10).

"In Ireland every article sold by weight shall, if weighed, be weighed in full net standing beam, and for the purposes of every contract, bargain, sale or dealing, the weight so ascertained shall be deemed the true weight of the article, and no deduction or allowance for tret or beamage, or on any other account or under any other name whatsoever, the weight of any sack, vessel, or other covering in which such article may be contained alone excepted, shall be claimed or made by any purchaser on any pretext whatever"—*Penalty*, not exceeding £5 (*Act of 1878*, 41 & 42 Vict. c. 49, s. 77).

No deduction for tret, &c.

By a local custom in the south of Ireland a deduction of four pounds was made from all live pigs sold by weight to represent wastage and a four pound weight was attached to the weight end of the balance to adjust the scales for the purpose of such deduction. *Held*, that the scales were unjust (*Collins v. Denny* (1897), 31 I.L.T.R. 167). The deductions prohibited are from weight and not from price (*Megarry v. McCullagh* (1863), 14 I.C.L.R. 151, which was decided upon s. 13 (practically identical with s. 77 of the *Act of 1878*) of the 25 & 26 Vict. c. 76).

Inspectors of weights and measures in Ireland are not appointed by the local authority,<sup>2</sup> except by the local authority<sup>2</sup> of the borough of Dublin (*Act of 1878*, s. 81). In the townships of Blackrock, Dalkey, Kingstown, Pembroke, and Rathmines and Rathgar such inspectors are appointed by the respective Township Commissioners (*Act of 1878*, 41 & 42 Vict. c. 49, s. 81, and *Act of 1889*, s. 19 (1)). Elsewhere in Ireland head or other constables in each petty sessions district, selected by the Inspector-General with the approval of the Lord-Lieutenant, are *ex officio* inspectors of weights and measures under the Act, and perform their duties as such under the direction of the justices of the petty sessions; the justices have power within one month from the date of selection to signify disapproval of the constable selected and, if they so do, another selection must be made (*Act of 1878*, s. 81). An *ex officio* inspector may exercise without any authority from a justice of the peace the powers given to an inspector of weights and measures having such authority (*ib.*). In any part of the D.M.P. district not included in the city of Dublin or the townships of Blackrock, Dalkey, Kingstown, Pembroke, and Rathmines and Rathgar, such of the superintendents, inspectors, or sergeants of the said police as may be selected by the local authority<sup>2</sup> with the approval of the Lord-Lieutenant are *ex officio* inspectors of weights and measures within that district (*Act of 1878*, s. 81, as amended by the *Act of 1889*, s. 19).

Inspectors.

"Every inspector under this Act authorised in writing under the hand of a justice of the peace,<sup>3</sup> also every justice of the peace, may at all reasonable times inspect all weights, measures, scales, balances, steelyards, and weighing machines within his jurisdiction which are used or in the possession of any person or on any premises for use for trade, and may compare every such weight and measure with some local standard, and may seize and detain any weight, measure, scale, balance, or steelyard,

Examination of weights. &c.

<sup>1</sup> That is, the Act of 1878.

<sup>2</sup> As to the meaning of which term, see p. 840, n.<sup>1</sup>.

<sup>3</sup> A general authority is sufficient (*Hutchings v. Reeves* (1842), 9 M. & W. 747).

Examination  
of weights,  
&c.

which is liable to be forfeited in pursuance of this Act, and may for the purpose of such inspection enter any place, whether a building or in the open air, whether open or enclosed, where he has reasonable cause to believe that there is any weight, measure, scale, balance, steelyard, or weighing machine, which he is authorised by this Act to inspect. Any person who neglects or refuses to produce for such inspection all weights, measures, scales, balances, steelyards, and weighing machines, in his possession or on his premises, or refuses to permit the justice or inspector to examine the same or any of them, or obstructs the entry of the justice or inspector under this section or otherwise obstructs or hinders a justice or inspector acting under this section"—*Penalty*, not exceeding, first offence, £5; second offence, £10 (*Act of 1878*, 41 & 42 Vict. c. 49, s. 48). The written authority is not necessary in the case of an *ex officio* inspector (*Act of 1878*, s. 81).

A servant left temporarily in charge of his master's premises and business during his master's absence is not liable to conviction under this section for neglecting to produce to an inspector weights and measures belonging to his master and on his master's premises (*Smith v. Webb* (1896), 12 T.L.R. 45).

Stamping  
weights in  
district of  
another  
inspector.

"An inspector appointed by the local authority for a county may enter a place within the district of an inspector appointed by any other local authority,<sup>1</sup> and there verify and stamp the weights and measures of any person residing within his own district, but if he knowingly stamp a weight or measure of any person residing in the district of an inspector legally appointed by another local authority"—*Penalty*, not exceeding £1 for every weight or measure so stamped (*Weights and Measures Act*, 1878, 41 & 42 Vict. c. 49, s. 44).

Section 48 of the Act of 1878 gives inspectors power to seize unjust weights, &c.

Misconduct  
of inspectors.

"If an inspector under this Act stamps a weight or measure in contravention of any provision of this Act, or without duly verifying the same by comparison with a local standard,<sup>2</sup> or is guilty of a breach of any duty imposed on him by this Act, or otherwise misconducts himself in the execution of his office<sup>3</sup> [or refuses or wilfully neglects to act in compliance with the Board of Trade regulations]"<sup>4</sup>—*Penalty*, not exceeding £5 for each offence (*Act of 1878*, 41 & 42 Vict. c. 49, s. 49).

A coal carman was stopped by an inspector of weights and measures in order to weigh the coal carried in the van. The inspector noted that the weighing machine carried in the car gave variations. The inspector tried the weights carried by the carman with his official scale beam and found two half hundredweights defective; he informed the carman that he rejected the weights and, in exercise of powers given by local regulations made pursuant to s. 9 of the Act of 1889, defaced the official stamp on the light weights; but he did not seize the weights. *Held*, that there was no misconduct under this section by the inspector (*Wedderburn v. Smith*, No. 1 (1905), 20 Cox 355). The inspector then tested a weighing machine carried in the coal van with the half hundredweights that he had already tested and with nine small standard weights, found it to be unjust, and seized it. *Held*, no misconduct under the same section by the inspector (*Wedderburn v. Smith*, No. 2 (1905), 20 Cox 355).

"If any person not being an inspector duly appointed under the

<sup>1</sup> See p. 840, n.<sup>1</sup>.

<sup>2</sup> Provided by the local authority under s. 40 of the Act of 1878, s. 7 of the Act of 1889, and s. 13 (4) of the Act of 1904.

<sup>3</sup> Words in brackets are in effect inserted by the Weights and Measures Act, 1904, s. 5 (4).

<sup>4</sup> Made pursuant to ss. 5 and 6 of the Act of 1901.



Weights and Measures Acts as such inspector, or if any person having **Wrongfully acting as inspector.** been appointed an inspector after the commencement of the Act of 1889, acts as an inspector without having obtained a certificate either under s. 11 of that Act or under this section"—*Penalty*, not exceeding, first offence, £10; second offence, £20 (*Act of 1904*, 4 Edw. 7, c. 28, s. 8 (3)).

"All coal shall be sold by weight only, except where, by the written **Sale of coal.** consent of the purchaser, it is sold by boat load, or by waggons or tubs **By weight** delivered from the colliery into the works of the purchaser"—*Penalty*, only, not exceeding £5 (*Act of 1889*, 52 & 53 Vict. c. 21, s. 20).

In *Fletcher v. Fields* (1891), 1 Q.B. 790, it was held that "coke" was not "coal" within the meaning of s. 15 of the Metropolitan Streets Act, 1867, which prohibits the loading or unloading of "coal" across a footway.

"(1) Where any quantity of coal exceeding two hundredweight is **Weight ticket on delivery of over two hundred-weight.** delivered by means of any vehicle to a purchaser, the seller of the coal shall therewith deliver, or cause to be delivered or to be sent by post or otherwise, to the purchaser or to his servant, before any part of the coal is unloaded, a ticket or note according to the form in the Third Schedule to this Act, or according to a form to the like effect. (2) If default is made in complying with the requirements of this section with respect to the delivery or sending of a ticket or note, or if the quantity of coal delivered is less than the quantity expressed in the ticket or note"—*Penalty*, not exceeding £5 (*Act of 1889*, 52 & 53 Vict. c. 21, s. 21).

"(3) If any person attending on any such vehicle, having received any such ticket or note for delivery to the purchaser, refuses or neglects to deliver it, as required by this section, or, on being requested so to do, to exhibit it to any inspector of weights and measures, or other officer appointed for the purpose by the local authority"—*Penalty*, on seller of the coal, not exceeding £5 (*Act of 1889*, 52 & 53 Vict. c. 21, s. 21). **Neglect of carter to deliver ticket.**

The form of ticket in the schedule sets out the names of purchaser and vendor, the amount of coal, the separate weight of each sack, the aggregate weight of coal and vehicle, the tare weight of vehicle, and the net weight of coal. In the absence of fraud the requirements of the section are sufficiently complied with where the name inserted in the ticket is the trade name of the seller (*Cameron v. Tyler* (1899), 2 Q.B. 94). It is a sufficient compliance with the section if the ticket is filled up by the purchaser's servant on the purchaser's premises before any part of the coal is unloaded and the weight ascertained inserted at the purchaser's premises (*Edwards v. Purnell* (1899), 1 Q.B. 449). On a summons under the section, it appeared that the complainants, having ordered five tons of coal from the defendants, the carters of the latter came to the complainants' door with three cartloads, and handed in a weight ticket requesting the complainants to receive five tons best Wigan coal, which was in eighty sacks each purporting to contain one and a quarter hundredweight. The complainants' porter, however, demanded that the coal should be weighed, and accompanied the carters to the bridge of the local authority, where it appeared that the weight was short by seven and a half hundredweight. The carters brought back the coal to the complainants' house, and again tendered delivery, which the porter refused to accept. *Held*, on a case stated, that there was only constructive delivery or an attempt at delivery and that such was insufficient to bring the case within the section (*Royal College of Surgeons v. Wallace Bros. Ltd.* (1901), 35 I.L.T.R. 209). A truck load of coal was purchased by the ton, and was delivered by three carts, each taking two journeys. A ticket was delivered at the end of the second journey giving the weight of the truck load but not the weight of any of the cart loads. *Held*, that such ticket did not comply with the section (*Stangoe v. Slatter* (1896), 12 T.L.R. 335). But



**Sale of coal.** where coal is sold by weight and delivered under an order in several loads the vendor need not deliver a separate ticket for each load, the sending, with the first load, of one ticket for the whole quantity sold being sufficient (*Kyle v. Dunsdon* (1908), 2 K.B. 293). A ticket delivered by a coal dealer informed the purchaser that he was to receive therewith two tons of small coals in twenty sacks of two hundredweight each. After eleven sacks had been delivered an inspector weighed the nine as yet undelivered, and found seven deficient and two overweight. The magistrate found as a fact that two tons had been delivered, and dismissed the charge of delivering coal in less quantity than that expressed in the ticket: and the decision was upheld (*Godfrey v. Radford* (1896), 18 Cox 417). The vendor is responsible for the failure of his servant to comply with this section (see *Baker v. Herd* (1894), 58 J.P. 413).

**Tare weight  
of vehicle  
where coal  
sold in bulk.**

"(1) Where any quantity of coal exceeding two hundredweight is conveyed for delivery on sale in a vehicle in bulk, the seller of the coal shall, unless the vehicle is provided by the purchaser, cause the weight of the vehicle as well as of the coal contained therein to be previously ascertained by a weighing instrument stamped by the inspector of weights and measures, and being on or near to the place from which the coal is brought, and shall from time to time cause the tare weight of the vehicle to be marked thereon in such manner as the local authority<sup>1</sup> approve. (2) In any such case the seller of the coal shall insert or cause to be inserted in the ticket required by this Act to be given by him a statement of the correct weight of the vehicle or of the vehicle and of the animal drawing it where both are weighed together with the load, as well as of the correct weight of the coal contained in the vehicle"—*Penalty* for non-compliance, not exceeding £5 (*Act of 1889*, 52 & 53 Vict. c. 21, s. 22).

This is a penal statute and should be construed strictly (*per Lindley, L.J.*, in *Smith v. Wood* (1889), 24 Q.B.D. 23, at p. 26). The "correct weight" of the vehicle and the animal is the weight ascertained at the place from which the coal is brought, not the weight at the time of delivery. An inspector saw A.'s cart loaded with coal, witnessed the delivery, and then weighed the horse and cart. The weight of the two combined was less by twenty-eight pounds than the weight returned on the ticket. *Held*, that no offence under the section had been committed (*Knowles v. Sinclair* (1898), 1 Q.B. 170). It is not necessary that the waggon should be weighed immediately before each delivery. The true test is whether the justices had evidence before them that the waggon had been weighed so recently and under such circumstances that its correct weight previous to delivery had been determined (*per Lord Alverstone, C.J.*, in *Beardsley v. Pike* (1904), 20 Cox 648).

**Frauds by  
drivers of  
coal carts.**

"If the person in charge of any vehicle in which coal is being carried wilfully makes any false statement as to the tare weight of the vehicle, or wilfully does any act by which either the seller or the purchaser of the coal is defrauded"—*Penalty*, not exceeding £5 (*Act of 1889*, 52 & 53 Vict. c. 21, s. 23).

**Deficiency  
in weight  
on small  
sales.**

"If any person on the sale of coal in any quantity not exceeding two hundredweight fraudulently delivers to the purchaser a less quantity of coal than is agreed to be sold"—*Penalty*, not exceeding £5 (*Act of 1889*, 52 & 53 Vict. c. 21, s. 24).

**Weighing  
instrument  
to be kept at  
place where  
coal is sold  
by retail.**

"Where coal is sold by retail for delivery at the place where it is kept for sale and there is not at or near such place any weighing instrument stamped by an inspector of weights and measures at which the coal can be weighed, the seller shall keep at that place a weighing instrument stamped as aforesaid, and shall, if so required by any purchaser, or by an inspector of weights and measures, or by any other officer appointed for the

<sup>1</sup> See p. 840, n.<sup>1</sup>.

purpose by the local authority.<sup>1</sup> weigh any coal before the sale or delivery thereof"—*Penalty* for non-compliance with section, not exceeding, first offence, £2; second offence, £5 (*Act of 1889*, 52 & 53 Vict. c. 21, s. 25). Sale of coal.

Section 26 (1) of the Act of 1889, 52 & 53 Vict. c. 21, empowers the local authority<sup>1</sup> to erect and maintain fixed weighing instruments at convenient places for weighing coals and to provide portable instruments for the same purpose and to appoint persons as keepers.

"If the keeper of such fixed weighing instrument refuses, without reasonable excuse, to weigh or reweigh any vehicle or coal, or so weighs any vehicle or coal as wilfully to defraud either the seller or the purchaser of coal"—*Penalty*, not exceeding £5 (*Act of 1889*, 52 & 53 Vict. c. 21, s. 26 (2)).

"(1) Any seller or purchaser of coal, person in charge of a vehicle in which coal is carried, inspector of weights and measures or other officer appointed for the purpose by the local authority,<sup>1</sup> may require that any coal, or any vehicle used for the carriage of coal in bulk, be weighed or reweighed by any weighing instrument stamped by an inspector of weights and measures. Provided as follows:—(a) No seller of coal or person in charge of a vehicle in which coal is carried shall be required under this section to carry coal beyond such distance, not exceeding half a mile, as may be prescribed in that behalf by the local authority;<sup>1</sup> (b) where any such coal or vehicle has at the instance of the purchaser been weighed or reweighed in pursuance of this section, and found to be of the weight stated in that behalf by the seller of the coal or the person in charge of the vehicle, the purchaser shall be liable to the payment of all reasonable costs actually incurred of and incidental to the weighing or reweighing.<sup>2</sup> (2) If any person obstructs any weighing or reweighing authorised by this section"—*Penalty*, not exceeding £5 (*Act of 1889*, 52 & 53 Vict. c. 21, s. 27). Power to require weighing of vehicle, &c.

"(1) Any inspector of weights and measures or officer appointed for the purpose by the local authority may, at all reasonable times, enter any building or part of a building or other place in which coal is sold or kept or exposed for sale, and may stop any vehicle carrying coal for sale or for delivery to a purchaser, and may test any weights and weighing instruments found in any such place or vehicle, and may weigh any load, sack, or other less quantity of coal, found in any such place or vehicle, or which is in course of delivery to any purchaser. (2) If it appears to a court of summary jurisdiction that any load, sack, or less quantity so weighed is of less weight than that represented by the seller, the person selling or keeping or exposing the coal for sale, or the person in charge of the vehicle, as the case may be, shall be liable to a fine not exceeding £5"—*Penalty*, not exceeding, first offence, £5; second offence, £10 (*Act of 1889*, s. 29). Power to weigh coal in coal vehicles, &c.

In order to convict a seller of coal of an offence under subs. 2 of this section there must be an actual representation by him as to the weight of the coal sold, and a representation made to an inspector by a servant in charge of a vehicle carrying coal for delivery to a purchaser is not of itself the representation of the master so as to make him liable under the subsection (*Roberts v. Woodward* (1890), 25 Q.B.D. 412). False weight.

A coal dealer engaged a contractor to execute orders for him. The contractor executed an order; the sacks were found to be short in weight; and the man in charge of the vehicle was the contractor's servant. *Held*,

<sup>1</sup> See p. 840, n.<sup>1</sup>.

<sup>2</sup> The Dublin Improvement Act, 1849, 11 & 12 Vict. c. 97, s. 97, contains provisions requiring hawkers of coal to carry with them weighing machines and to weigh the coal upon request. The section is not—at all events expressly—repealed.



**Sale of coal.** the coal dealer was rightly convicted under s. 29 (*Baker v. Herd* (1894), 58 J.P. 413). A servant who delivers coal to a purchaser and who has no knowledge of any shortage of weight in any sack is not liable as a "person in charge of a vehicle" (*Paul v. Hargreaves* (1908), 2 K.B. 289). Where a metal label was attached to a sack stating the weight as fifty-six pounds but it was found to weigh forty-nine pounds only, the Q.B.D. upheld the conviction, holding that there was a representation by the seller (*Franklin v. Godfrey* (1894), 63 L.J.M.C. 239).

**Obstructing inspector.** "Any person who obstructs or hinders an inspector acting under this section"—*Penalty*, not exceeding £5; second offence, not exceeding £10 (*Act of 1889*, 52 & 53 Vict. c. 21, s. 293).

**Bye-laws and penalties.** "Any local authority<sup>1</sup> may from time to time make, revoke, and alter bye-laws (a) regulating for the purposes of this Act the sale of coal in quantities not exceeding two hundredweight; and (b) requiring, either generally or in specified classes of cases, a weighing instrument, of a form approved by the local authority, to be carried with any vehicle in which coal is carried for sale or delivery to a purchaser; and (c) prescribing the distance beyond which coal is not to be required to be carried for the purpose of being weighed or reweighed in pursuance of this Act; and (d) fixing the fees to be paid for the use of any weighing instrument maintained by the local authority;<sup>1</sup> and may by such bye-laws impose fines recoverable summarily and not exceeding in each case £5 for the breach of any such bye-law" (*Act of 1889*, 52 & 53 Vict. c. 21, s. 28). The bye-laws are to be approved by the Board of Trade (s. 28 (2)).

A coal dealer was retailing coal from a cart, the coal being in bags purporting to contain a hundredweight and a half hundredweight, and he had a correct set of scales, but only a single weight weighing half a hundredweight. The local bye-law required him to carry a correct weighing instrument for the purpose of weighing any quantity of coal less than two hundredweight. The justices held that the bye-law had been sufficiently complied with, and dismissed the summons. The court of King's Bench held that the statute and the bye-law contemplated that the seller should have sufficient weights to enable any bag to be weighed at a single operation (*Crick v. Nicholls* (1905), 1 K.B. 501). A local bye-law required persons carrying coal for sale or delivery to a purchaser to have a weighing instrument with correct weights or counterpoises. *Held*, the absence of small weights to counterbalance the weight of the bags containing a ton of coal delivered in twenty bags was a breach of the bye-law (*Houghton v. Andrews* (1905), 1 K.B. 503 n.). A local bye-law required every coal dealer to carry a correct weighing instrument on every vehicle out of which coal was sold or delivered, and to reweigh such coal "upon being requested." A. was summoned for not having an instrument as required. It was contended that the bye-law was bad because of the provision as to reweighing, but, on case stated, the court held that the bye-law was valid as regards so much of it as required a weighing instrument to be carried, and that the justices should convict (*Kent C.C. v. Humphrey* (1895), 1 Q.B. 903). In this case the question as to the validity of a bye-law requiring a hawker of coal to weigh upon request was not considered. In a later case it was held that a bye-law requiring any person in charge of any vehicle carrying coal for sale in quantities less than two hundredweight to reweigh upon request by any purchaser or any one acting on behalf of a purchaser or by any inspector or by any constable was unreasonable, and therefore bad (*Alty v. Farrell* (1896), 1 Q.B. 636). A bye-law which provided that a person in charge of a vehicle carrying coal for

<sup>1</sup> See p. 840, n.<sup>1</sup>.



sale or delivery to a purchaser should carry a weighing instrument of a "form approved" was held good (*Martin v. Clark* (1893), 9 T.L.R. 656). Any member of the public may lay an information for a breach of a bye-law under this section (*Crabtree v. Bulman* (1896), 12 T.L.R. 469).

"Where a person is convicted under any section of the principal Act or this Act<sup>1</sup> [of any] offence and the court by which he is convicted is of opinion that such offence was committed with intent to defraud"—*Penalty*, in addition to or in lieu of fine, imprisonment, with or without hard labour, not exceeding two months (*Act of 1889*, s. 4). Offences intentionally fraudulent.

The Weights and Measures Acts, 1878 to 1904, apply to weights, balances, scales, steelyards, and weighing machines used at any mine for determining the wages payable to any person employed in the mine according to the weight of the mineral gotten by him in like manner as those Acts apply to such weights, &c., when used in trade; an inspector is to inspect such weights, &c., half-yearly, and at such other times as he reasonably believes the same to be unjust; he is also to inspect measures and gauges in use at mines, and he has, without any authorisation from a justice, the same power of inspecting such weights, &c., as he would have under s. 48 of the Act of 1878 with regard to the same if they were used for trade and he were authorised by a justice in pursuance of that section (*Coal Mines Regulation Act*, 1887, 50 & 51 Vict. c. 58, s. 15). Application of Acts to mines.

The Acts also apply to weights, measures, scales, balances, steelyards, and weighing machines used in a factory or workshop in checking, &c., the wages of any person employed therein in like manner as if they were used in the sale of goods therein and such factory, &c., were a place where sold (*Factory and Workshop Act*, 1901, 1 Edw. 7, c. 22, s. 117, *verbatim*, APPENDIX OF STATUTES). Application of Acts to factories.

The Summary Jurisdiction Acts<sup>2</sup> are made applicable (*Act of 1878*, s. 56); the court to consist of two or more justices in petty sessions (*ib.*). The court may, if it thinks fit, order a conviction to be published in such manner as it deems desirable (*Act of 1889*, s. 14). Proceedings or convictions under the Acts are not to affect any civil remedy, or to exempt any person from proceedings at common law or under any other statute, provided a defendant cannot be twice convicted for the same offence; and the court before which an offender is brought may direct that, instead of proceedings under the Weights and Measures Acts, proceedings shall be taken at common law or under any other Act of Parliament (*Act of 1889*, s. 33). The description of an offence in the words of the statute is sufficient (*Act of 1878*, s. 57). Portion of the fine, not exceeding one half, may be paid to the informer<sup>3</sup> (*ib.*), unless the informer be an inspector (*Act of 1904*, s. 13 (2)). Forfeited articles are to be broken up and sold and the proceeds applied as fines (*Act of 1878*, s. 57). An offence is not to be treated as a second offence unless the conviction for a previous offence has taken place within the five years previous to the commission of the second offence (s. 58). Procedure.

"An inspector of weights and measures may, with the consent of the local authority, prosecute before a court of summary jurisdiction or justices any information, complaint, or proceeding arising under the Weights and Measures Acts or in the discharge of his duties as such inspector" (*Weights and Measures Act*, 1904, s. 14). A particular consent for each case is not required, a general consent being sufficient<sup>4</sup> (*Tyler v. Ferris* (1906), 1 K.B. 94).

<sup>1</sup> Substituted for "second or subsequent" by the Act of 1904, 4 Edw. 7, c. 28, s. 13 (3).

<sup>2</sup> For the meaning of which expression, see p. 335.

<sup>3</sup> That is to say, to the person in whose name the prosecution is brought (*Powell v. Castletown* (1891), 30 L.R.I. 93).

<sup>4</sup> The consent of the local authority must, it is submitted, be proved by proving the passing of the resolution by which such consent was given.

**Appeal.**

"Appeals from a court of summary jurisdiction shall lie in the manner and subject to the conditions and regulations prescribed in the twenty-fourth section of the Petty Sessions (Ir.) Act, 1851, and any Acts amending the same" (*Weights and Measures Act, 1878, 41 & 42 Vict. c. 49, s. 84*).

**Offences as to market brands.**  
**Counterfeiting.**

Counterfeiting market brands with intent to defraud, or with like intent altering ticket specifying weight, or with like intent using, &c., false or counterfeit market stamp—*Penalty*, not exceeding £5 (*Weights (Ir.) Amendment Act, 1862, 25 & 26 Vict. c. 76, s. 14*).

**Butter.**

As to fraudulently increasing weight of butter, see BUTTER, p. 392.

**Fraudulently increasing weight of wool.**

"If any person shall wind or cause to be wound in any fleece any wool not being sufficiently rivered or washed, or wind or cause to be wound within any fleeces any deceitful locks, cotts, skin, or lamb's-wool, or any substance, matter, or thing whereby the fleece may be rendered more weighty to the deceit and loss of the buyer"—*Penalty*, 2s. for every fleece so fraudulently made up (25 & 26 Vict. c. 76, s. 16).

**Procedure.**

Penalties are recoverable summarily, subject and according to the Summary Jurisdiction (Ir.) Acts.<sup>1</sup> In petty sessions one justice can adjudicate. Proceedings must be commenced within three months after the commission of the offence, or, in the case of a continuing offence, within three months after such offence has ceased to be committed (s. 17). The Petty Sessions Act will apply as to appeals. As to weighing bread, see BREAD, pp. 387–388.

**Weighing of cattle at markets and fairs.**

**Weighing accommodation to be provided.**

Provisions as to the weighing of cattle in fairs and markets are contained in the Markets and Fairs (Weighing of Cattle) Act, 1887, 50 & 51 Vict. c. 27, and the Markets and Fairs (Weighing of Cattle) Act, 1891, 54 & 55 Vict. c. 70, which are to be read as one (*Act of 1891, s. 6*). The powers under ss. 8 & 9 of the Act of 1887, given to the Local Government Board for Ireland by s. 10 of the Act of 1887, are now vested in the Department of Agriculture and Technical Instruction by Order of the Lord-Lieutenant made pursuant to 62 & 63 Vict. c. 50, s. 2 (1) (d). Those Acts apply to all markets and fairs in which tolls are for the time being authorised to be taken and actually are taken by any company, corporation, or person (which company, &c., is called "the market authority") (*Act of 1887, s. 2*), and in these Acts the term "cattle" includes ram, wether, ewe, lamb, and swine (s. 3). The market authority of every fair and market to which the Acts apply shall, unless exempted by the Department, provide and maintain to the satisfaction of the Department sufficient and suitable accommodation for weighing cattle (*Act of 1891, s. 2*); and no market authority failing so to do can recover tolls in respect of any cattle brought to any fair or market where, and whilst, these provisions are not complied with (*Act of 1887, s. 4*).

"Market authority."

"Cattle."

"Weighing accommodation."

"Any person who demands or receives any toll in respect of cattle in any market or fair to which for the time being this Act applies, but in which the market authority have not complied with the provisions of this Act, shall be liable on summary conviction to a fine not exceeding £5" (*ib.*).

**Cattle to be weighed at option of seller or buyer.**

"Every person selling, offering for sale, or buying any cattle in a market or fair provided with accommodation for weighing cattle may require such cattle to be weighed, and the tolls payable in respect of the weighing shall be paid by the person requiring the cattle to be weighed to the person authorised by the market authority to receive the tolls" (*Act of 1887, s. 5*).

**Refusal to weigh cattle or to give ticket, &c.**

"Every person appointed by the market authority to weigh cattle sold in the market or fair, who—(a) refuses or neglects to weigh the same when required; or (b) refuses or neglects to deliver to the seller or buyer

<sup>1</sup> For the meaning of which term, see p. 335.

a ticket specifying the true weight of the cattle weighed ; or (c) gives to any person a false ticket or account of any cattle weighed ; shall be liable on summary conviction to a fine not exceeding 40s. and not less than half a crown ” (s. 6). Weighing of cattle at markets and fairs.

“ Every person who knowingly acts or assists in committing any fraud respecting the weighing of any cattle weighed in pursuance of this Act, shall for every such offence be liable on summary conviction to a fine not exceeding £5 ” (s. 7). Fraud.

“ The market authority may from time to time (unless otherwise expressly provided by any Act) demand and receive in respect of the weighing of cattle tolls not exceeding the amounts specified in the schedule to this Act,<sup>1</sup> or such other amounts as may be authorised by the Department to be taken by the market authority ; and sections 26 to 41 (both included) of the Markets and Fairs Clauses Act, 1847. shall apply to the tolls mentioned in this section, as if this Act were the special Act, and the market authority were the undertakers ” (s. 8). Tolls.

The market authority of Belfast, Cork, and Dublin<sup>2</sup> are required to furnish returns as prescribed as to number, weight, and price—*Penalty* in default, not exceeding £20, or in case of a continuing offence to a fine not exceeding £10 for every day during which the offence continues : false or fraudulent statement in any return is a misdemeanour (*Act of 1891, s. 3*). Returns by market authority.

“(1) An auctioneer shall not, unless exempted by order of the ‘ Department ’ from the requirements of this section, sell cattle at any mart where cattle are habitually or periodically sold, unless there are provided at that mart similar facilities for weighing cattle as are required by the principal Act and this Act in the case of cattle sold at a market or fair to which the principal Act<sup>3</sup> applies. (2) Every auctioneer who in any place from which returns are required to be made under this Act sells cattle at any such mart as aforesaid, shall, unless exempted as aforesaid, make the like returns to the ‘ Department ’ with respect to cattle entering weighed, and sold at that mart as are required by this Act to be made by a market authority, and shall be subject to the like penalty for making any false or fraudulent statement in any such return. (3) If any such auctioneer makes default in complying with the requirements of this section, the auctioneer, or, if he is in the employment of any person, the person by whom he is employed, shall for each offence be liable on summary conviction to a fine not exceeding £20, or in case of a continuing offence to a fine not exceeding £10 for every day during which the offence continues ” (s. 4). Auction marts.

<sup>1</sup> That is to say, not exceeding 2d. for every head of cattle other than sheep or swine, and not exceeding 1d. for every five or less number of sheep or swine.

<sup>2</sup> Or of any other place prescribed by the Department.

<sup>3</sup> The Act of 1887. See preamble to Act of 1891.



## WHALE FISHING.

See Whale Fisheries (Ir.) Act. 1908, 8 Edw. 7, c. 51, in APPENDIX OF STATUTES.

## WILD BIRDS PROTECTION.

	PAGE		PAGE
Close season . . . . .	850	Taking or destroying eggs . . . . .	854
Exemption . . . . .	851	Springs, traps, &c. . . . .	856
Orders by Lord-Lieutenant as to . . . . .		Demanding name and address of . . . . .	
close season . . . . .	851	offender . . . . .	856
Orders of exemption . . . . .	852	Forfeitures . . . . .	856
Orders of Lord-Lieutenant as to . . . . .		Procedure . . . . .	856
eggs of wild birds . . . . .	853	Protection of sand grouse . . . . .	856

The Acts for the protection of wild birds (other than game) and their eggs are the Wild Birds Protection Acts, 1880, 43 & 44 Vict. c. 35; of 1881, 44 & 45 Vict. c. 51; 1894, 57 & 58 Vict. c. 24; 1896, 59 & 60 Vict. c. 56; 1902, 2 Edw. 7, c. 6; and 1904, 4 Edw. 7, c. 4, which (see s. 3 of the *Act of 1881*, s. 1 of the *Act of 1894*, s. 7 of the *Act of 1896*, s. 2 of the *Act of 1902*, and s. 3 of the *Act of 1904*) are all to be construed as one, and are collectively entitled (s. 3 of the *Act of 1904*) the Wild Birds Protection Acts, 1880 to 1904.

**Close season.** “Any person who between the first day of March and the first day of August in any year shall knowingly and wilfully shoot, or attempt to shoot, or shall use any boat for the purpose of shooting or causing to be shot, any wild bird, or shall use any lime, trap, snare, net, or other instrument for the purpose of taking any wild bird, or shall expose or offer for sale, or shall have in his control or possession after the fifteenth day of March, any wild bird recently killed or taken, shall, on conviction of any such offence before any two justices of the peace . . . in the case of any wild bird which is included in the schedule hereunto annexed, forfeit and pay for every such bird in respect of which an offence has been committed a sum not exceeding £1, and, in the case of any other wild bird, shall for the first offence be reprimanded and discharged on payment of costs, and for every subsequent offence forfeit and pay for every such wild bird in respect of which an offence is committed a sum of money not exceeding 5s., in addition to the costs. . . . This section shall not apply to the owner or occupier of any land, or to any person authorised by the owner or occupier of any land, killing or taking any wild bird on such land not included in the schedule hereto annexed” (*Act of 1880*, 43 & 44 Vict. c. 35, s. 3).

The following are the wild birds mentioned in the schedule :—American quail, auk, avocet, bee-eater, bittern, bonxie, colin, Cornish chough, coulteneb, cuckoo, curlew, diver, dotterel, dunbird, dunlin, eider-duck, fern-owl, fulmar, gannet, goatsucker, godwit, goldfinch, grebe, greenshank, guillemot, gull (except black-backed gull), hoopoe, kingfisher, kittiwake, lapwing, lark,<sup>1</sup> loon, mallard, marrot, merganser, murre, night-hawk, nightjar, nightingale, oriole, owl, oxbird, oyster-catcher, peewit, petrel, phalarope, plover, ploverspage, pochard, puffin, purre, razorbill, redshank, reeve or ruff, roller, sanderling, sandpiper, scout, sealark, seamew, sea-parrot, sea-swallow, shearwater, shelldrake, shoveller, skua, smew, snipe, solan goose, spoonbill, stint, stone curlew, stone hatch, summer snipe, tarrock, teal, tern, thickknee, tystey, whaup, whimbrell, widgeon, wild duck, willock, woodcock, woodpecker.

<sup>1</sup> Added by 44 & 45 Vict. c. 51, s. 2.

*To face page 850.]*

## WILD BIRDS' PROTECTION ACT.

“ Any person who shall take or attempt to take any wild bird by means of a hook or other similar instrument shall be guilty of an offence, and shall be liable, on summary conviction, to a penalty not exceeding 40s., and for a second or subsequent offence to a penalty not exceeding £5 ” (*Wild Birds' Protection Act*, 1908, 8 Edw. 7, c. 11, s. 1). The *Wild Birds' Protection Act*, 1908, is to be construed as one with the *Wild Birds' Protection Acts*, 1880 to 1901 (*ib.*, s. 3).





"A person shall not be liable to be convicted under s. 3 of the Wild Birds Protection Act, 1880, of exposing or offering for sale, or having the control or possession of any wild bird recently killed, if he satisfies the court before whom he is charged either (1) that the killing of such wild bird, if in a place to which the said Act extends, was lawful at the time when and by the person by whom it was killed; or (2) that the wild bird was killed in some place to which the said Act does not extend, and the fact that the wild bird was imported from some place to which the said Act does not extend shall, until the contrary is proved, be evidence that the bird was killed in some place to which the said Act does not extend" (*Act of 1881, 44 & 45 Vict. c. 51, s. 1*).

G. during the prohibited season captured with a net several sparrows on lands where he had no authority or permission to make such capture. He sold the sparrows to a hotel manager and they were then brought in bags to a meadow held with the hotel and there put in traps from which they were released for the purpose of being shot at. The shooting was permitted by the hotel manager. *Held*, that neither G. nor those who shot at the sparrows came within the exception in s. 3 of the Act of 1880 (*R. v. Gilham and others* (1884), 15 Cox 719). Under the repealed exception in s. 3 of the Act of 1880:—"Unless such person shall prove that the said wild bird was either killed or taken or brought or received during the period in which such wild bird could be legally killed or taken or from some person residing out of the United Kingdom":—it was held that a poulterer, who proved that he had bought birds in respect of which he was prosecuted from a salesman, who had bought them from a person residing out of the United Kingdom, had not brought himself within the exemption which, it was held, contemplated a direct purchase or receipt from a person residing out of the United Kingdom (*Taylor v. Rogers* (1881), 50 L.J.M.C. 132); but this case is now covered by the exception in the Act of 1881 given above. In *Green v. Carstang* (1902), 20 Cox 92, a dealer was summoned for exposing for sale on 24th May ravens recently taken, which at that time were about six weeks old. The ravens had come into his possession from Holland on the 4th May. The magistrate dismissed the case on the ground that the birds having been three weeks in the dealer's possession were not "recently taken," and also on the ground that the Act of 1881 did not apply to live birds. It was held that the respondent could be convicted of exposing for sale wild birds recently taken but that the prosecutor must adduce evidence from which the magistrate could conclude that the birds were recently taken. In *Hollis v. Young* (1909), 1 K.B. 629, the defendant was charged with having in his possession on July 30 wild birds recently taken contrary to s. 3 of the Wild Birds Protection Act, 1880. The evidence showed that the defendant had in cages on his premises seven young larks which were very wild, beating themselves against the bars of the cages, and that the plumage of the birds was light in colour. The magistrate dismissed the summons, without calling on the defendant, on the ground that there was no evidence that the birds were recently taken. On a case stated it was held that there was evidence that the birds were recently taken and that the magistrate was wrong in dismissing the summons without calling on the defendant (*Hollis v. Young* (1909), 1 K.B. 629).

"The Lord-Lieutenant may . . ., upon application of the justices in quarter sessions assembled of any county, by order extend or vary the time during which the killing and taking of wild birds or any of them is prohibited by this Act; after the making of which order the penalties imposed by this Act in respect of such wild birds shall in such county apply only to offences committed during the time specified in such order; and the order

Orders by  
Lord-Lieu-  
tenant as to  
close season

Orders by  
Lord Lieu-  
tenant as to  
close season.

for the extension or variation of such time shall be published . . . in the Dublin Gazette and a copy of . . . the Dublin Gazette containing any order made under this Act shall be evidence of the same having been made" (*Act of 1880*, 43 & 44 Vict. c. 35, s. 8). On the like application the Lord-Lieutenant may exempt any county or part thereof from the operation of the Act as to all or any wild birds (s. 9).

The following orders have been made under s. 8 :—

Date.	Number of Gazette.	County.	Species of Bird.	Close Season.
25 April 1898	1898, v. i. 517 April 26	Down	Woodcock and Snipe	1st March to 1st October.
29 June 1898	1898, v. ii. 874 July 1	Longford	Woodcock and Snipe	1st March to 1st October.
20 Sept. 1898	1898, v. ii. 1269 Sept. 23	Tyrone	Snipe	1st March to 1st October.
28 Oct. 1898	1898, v. ii. 1433 Nov. 1	King's Co.	Snipe	1st March to 1st October.
22 Nov. 1898	1898, v. ii. 1625 Nov. 25	Tipperary	Woodcock and Snipe	1st March to 1st October.
26 Nov. 1898	1898, v. ii. 1669 Nov. 29	Monaghan	Woodcock and Snipe	1st March to 1st October.
28 June 1901	1901, v. ii. 937 July 2	Sligo	Woodcock and Snipe	1st March to 1st October.
13 Jan. 1906	1906, v. i. 57 Jan. 16	Dublin	Goldfinch, Sealark, Tern, Linnet, Bull- finch, Skylark, Siskin, Redpoll.	1st March to 1st December.
5 Feb. 1906	1906, v. i. 161 Feb. 9	Wicklow	{ Goldfinch, Sealark, Tern, Linnet, Sky- lark, Siskin, Red- poll	{ 1st March to 1st December.
3 Feb. 1910	1910, v. i. 203 Feb. 8	"		
2 May 1906	1906, v. i. 581 May 8	Antrim	Woodcock and Snipe	1st March to 1st September.
28 Jan. 1907	1907, v. i. 129 Feb. 1	King's County	Goldfinch, Bullfinch, Siskin, Linnet, Redpoll, Green- finch, Skylark	1st March to 1st December.
7 Feb. 1907	1907, v. i. 173 Feb. 8	Mayo	Golden Eagle, Sea Eagle, Raven, Peregrine Falcon, Hen Harrier, Gold- finch, Linnet, Red- poll, Bullfinch, Skylark, Red- necked Phalarope, Chough, Fork- tailed Petrel, Red- throated Diver, Sandwich Tern, Common Tern, Arctic Tern, Little Tern, Roseate Tern, Blackheaded Gull	1st March to 1st December.
1 Mar. 1909	1909, v. i. 353 Mar. 9	Carlow, Cavan, Clare, Cork, Galway, Kerry, Kilkenny, Lime- rick, London- derry, Louth, Mayo, Queen's, Roscommon, Wexford, and Wicklow	Woodcock and Snipe	1st March to 1st October.
15 Nov. 1909	1909, v. ii. 1609 Nov. 19	Armagh, Kildare, Meath, Water- ford, West- meath	Woodcock and Snipe	1st March to 1st October.
15 Nov. 1909	1909, v. ii. 1609 Nov. 19	Donegal	Woodcock and Snipe	1st March to 1st September.

The following orders of exemption have been made under s. 9:—

Exemption  
orders.

Species exempted from Acts.	County and Districts to which exemption extends.	Date of Order.	Volume of Dublin Gazette.
Mergansers . . .	County of Clare	7 March 1899	1899, v. i. 497
Cormorants . . .	County of Clare Townlands of Quinspool South, Parteen, Garraun, Fairyhill, Kilquane, Knockballynameath and Athlunkard (parish of St. Patricks); townlands of Cloon- carhy, Gilloge, Garraun, Sra- wickeen, Illaunyregan, Doonass Demsne, Summer Hill, Errina, Drummeen, and Kildoorus (parish of Kiltinanlea); town- lands of Ardataggle, and O'Brien's Bridge (parish of O'Brien's Bridge); townlands of Ardlooney, Cloonfadda, Moys and Shantraud (parish of Killaloe)	do.	10 March 1899. do.
	County of Limerick Townland of Monabraher (parish of Kileely); townland of Re- boge (parish of St. Patricks); townlands of Dromroe, Sree- lane, Newcastle, Castleroy (parish of Kilmurry); townlands of Rivers, Ballyvohlane, Prospect, New Garden N., Hermitage, Stradbally N., Coolbane, Cloon and Commons, Lacka, Port- crusha, Montpelier, Fairy Hill (parish of Stradbally)	7 March 1899	1899, v. i. 497 10 March 1899.
Blackheaded Gull .	Westmeath, the whole county	11 May 1905	1905, v. i. 665 May 12.

It would seem that an order made under s. 8 of the Act of 1880 varying the time for killing and taking certain wild birds makes it an offence to possess, in the district to which the order applies and during the close season specified in the order, any of the specified kinds of birds, though such were captured elsewhere under conditions which made such capture lawful at the place where made. By an order of July 1909, the time during which the taking or killing of larks was prohibited in the county of London was varied to the period between 31st August and 1st February. A dealer in birds received in November 1909 live larks lawfully captured at Cambridge. The magistrate held that the dealer was guilty of the offence of possessing wild birds contrary to s. 3 of the Act of 1880 and to the Order of 1909. The conviction was upheld (*Flower v. Watts* (1910), 2 K.B. 327).

"The Lord-Lieutenant may . . . upon application by the county council of any administrative county<sup>1</sup> [or of a county borough] by order prohibit (1) The taking or destroying of wild birds' eggs in any year or years in any place or places within that county<sup>1</sup> [or county borough]; or (2) the taking or destroying the eggs of any specified kind of wild birds within that county<sup>1</sup> [or county borough] or part or parts thereof, as recommended by the said county council<sup>1</sup> [or county borough council] and set forth in the said order. (3) The application by the county council<sup>1</sup> [or county borough council] shall specify the limits of the place or places or otherwise, the particular species of wild birds to which it is

Orders of  
Lord-Lieu-  
tenant as to  
taking or  
destroying  
eggs.

<sup>1</sup> See 61 & 62 Vict. c. 37, s. 21.



proposed that any prohibition in the order is to apply, and shall set forth the reasons on account of which the application is made" (*Act of 1894*, 57 & 58 Vict. c. 24, ss. 2, 7 (1)). "The Lord-Lieutenant may, on the representation of the council of any administrative county<sup>1</sup> [or of a county borough], order that the principal Act<sup>2</sup> shall apply, within that county<sup>1</sup> [or county borough] or any part or parts thereof, to any species of wild bird not included in the schedule of that Act, as if that species of wild bird were included in the schedule of that Act, and on the making of such order that Act shall apply accordingly" (*Act of 1894*, s. 3).

Section 4 of the Act of 1894 provides for the publication of such orders. The magistrates have jurisdiction to entertain an information for an offence against an order made under the above sections although no notice of the order has been given by the county council under s. 4 of the Act of 1894 (*Duncan v. Knill and others* (1907), 96 L.T. 911).

Taking or  
destroying  
eggs.

"Any person who . . . shall take or destroy, or incite any other person to take or destroy—(a) the eggs of any wild birds within any area specified in such order, or (b) the eggs of any species of wild bird named in the order"—*Penalty*, on conviction before two justices, not exceeding £1 for every egg so taken or destroyed (*Wild Birds Protection Act*, 1894, 57 & 58 Vict. c. 24, s. 5; see also 27 Geo. 3, c. 15 (Ir.), s. 4, noted p. 494, *ante*, as to destroying eggs or nests of game birds).

The following orders made under the Act of 1894 as regards taking and destroying of eggs are now in force :—

County.	Birds.	Close Season for Eggs.	Date and Duration of Order.	Volume of Gazette.
Antrim . . . . .	Peregrine Falcon, Buzzard, Harriers (all species), Raven, Chough, Crossbill, King- fisher, Swan, Tern (all species)	1st March to 1st August	20 Aug. 1909 5 years from 1st Mar. 1910	V. ii., 1909, p. 1221 Aug. 24.
Donegal . . . . .	Golden Eagle, Raven, Chough, Phalarope (all species), Petrel (all species), Red- throated Diver, Tern (all species)	1st March to 1st August	25 April 1898 1909, 1910, 1911, 1912	V. i., 1908, p. 661 May 5.
Down (including Copeland Islands)	Bullfinch, Buzzard, Chough Crossbill, Goldfinch, Harrier (all species), King- fisher, Peregrine Falcon, Raven, Siskin, Swan, Tern (all species)	1st March to 1st August	22 Jan. 1910 5 years from 1st Mar. 1910	V. i., 1910, p. 145 Jan. 28.
Dublin (including Lambay and Ire- land's Eye)	Black Guillemot, Chough, Crossbill, Goldfinch, Kestrel, Kingfisher, Oyster Catcher, Owl (all species), Peregrine Falcon, Plover (all species), Raven, Shell-duck, Sky- lark, Tern (all species)	1st March to 1st August	13 Jan. 1910 5 years from 1st Mar. 1910	V. i., 1910, p. 109 Jan. 18.

<sup>1</sup> See 61 & 62 Vict. c. 37, s. 21.

<sup>2</sup> The Act of 1880 (*Act of 1894*, s. 1).

## SUMMARY OFFENCES—WILD BIRDS PROTECTION. 855

County.	Birds.	Close Season for Eggs.	Date and Duration of Order.	Volume of Gazette.
Galway . . . . .	Golden Eagle, Peregrine Falcon, Woodcock, Sea Eagle, Red-necked Phalarope, Chough, Hen Harrier, Red-throated Diver, Tern, Raven, Fork-tailed Petrel, Mallard, Teal, Black-headed Gull, Mute Swan, Kingfisher.	1st March to 1st August	17 Aug. 1906 5 years from 1st Mar. 1907	V. ii., 1906, p. 1105 Aug. 21.
Kerry . . . . .	Golden Eagle, Sea Eagle, Peregrine Falcon, Merlin, Kestrel, Harriers (all species), Raven, Kingfisher, Owls (all species), Siskin, Goldfinch, Temo (all species), Petrel (all species), Woodcock, Snipe, Hoopoe, Phalarope (all species)	1st March to 1st August	23 Mar. 1909 1910, 1911, 1912, 1913	V. i., 1909, p. 445 Mar. 30.
Mayo . . . . .	Golden Eagle, Sea Eagle, Hen Horner, Raven, Peregrine Falcon, Red-necked Phalarope, Woodcock, Chough, Fork-tailed Petrel, Red-throated Diver, Tern	1st March to 1st August	15 Feb. 1906 5 years from 1st Mar. 1906	V. i., 1906, p. 221 Feb. 20.
Queen's Co. . . . .	Crossbill, Harriers (all species), Kingfisher, Swan	1st March to 1st August	18 Aug. 1909 5 years from 1st Mar. 1910	V. ii., 1909, p. 1221 Aug. 24.
Roscommon . . . . .	Crossbill, Harriers (all species), Kingfisher, Swan, Tern (all species)	1st March to 1st August	15 Dec. 1909 5 years from 1st Mar. 1910	V. ii., 1909, p. 1769 Dec. 17.
Waterford . . . . .	Golden Eagle, White-tailed Eagle, Peregrine Falcon, Merlin, Kestrel, Harriers (all species), Owls (all species), Goldfinch, Siskin, Crossbill, Chough, Raven, Kingfisher, Night-jar, Turtle Dove, Heron, Woodcock, Water-rail, Shelldrake, Shoveller Duck, Teal, Black Guillemot, Great Black-backed Gull, Tufted Duck	1st March to 1st August	20 Mar. 1909 1910, 1911, 1912, and 1913	V. i., 1909, p. 421 Mar. 26.
Wexford (Saltee and Keeragh Islands)	Any species	1st March to 1st August	21 Dec. 1905 5 years from 1st Mar. 1906	V. ii., 1905, p. 1637 Dec. 22.
Wicklow . . . . .	Chough, Crossbill, Eagle (all species), Peregrine Falcon, Black Guillemot, Harrier (all species), Kingfisher, Raven, Redstart, Swan, Tern (all species)	1st March to 1st August	1 Oct. 1909 5 years from 1 Mar. 1910	V. ii., 1909, p. 1373 Oct. 5.

**Springs,  
traps, and  
gins.**

"Every person who, on any pole, tree, or cairn of stones or earth, shall affix, place, or set any spring, trap, gin, or other similar instrument calculated to cause bodily injury to any wild bird coming in contact therewith, and every person who shall knowingly permit or suffer or cause any such trap to be so affixed, placed, or set, shall be guilty of an offence"—*Penalty*, not exceeding, first offence, £2; second offence, £5 (*Act of 1904*, 4 Edw. 7, c. 4, s. 1).

**Name and  
address of  
offender may  
be demanded.**

"Where any person shall be found offending against this Act,<sup>1</sup> it shall be lawful for any person to require the person so offending to give his Christian name, surname, and place of abode, and in case the person so offending shall, after being so required, refuse to give his real name or place of abode, or give an untrue name or place of abode"—*Penalty*, in addition to penalties imposed by s. 3 of the Act of 1880, not exceeding 10s. (*Act of 1880*, 43 & 44 Vict. c. 35, s. 4).

**Forfeitures.**

Where any person is convicted of an offence against the Wild Birds Protection Acts, 1880 to 1904,<sup>2</sup> the court may, in addition to any penalty that may therein be imposed, order any wild bird, or wild bird's egg, in respect of which the offence has been committed, to be forfeited and disposed of as the court shall think fit (*Wild Birds Protection Act*, 1904, 2 Edw. 7, c. 6, s. 1).

**Procedure.**

Offences against any of the Acts may be prosecuted and penalties recovered within the police district of Dublin Metropolis under the Dublin Police Acts and elsewhere before two justices in manner provided by the Petty Sessions (Ir.) Act,<sup>3</sup> 1851 (*Act of 1880*, 43 & 44 Vict. c. 35, s. 5). Offences committed within the jurisdiction of the Admiralty shall be punishable as if they had been committed in any place ashore in the United Kingdom in which the offender shall be apprehended, or be in custody, or be summoned; and in any information or conviction for any such offence the offence may be averred to have been committed "on the high seas." Where any offence is committed in or upon any waters forming the boundary between any two counties, districts of quarter sessions or petty sessions, such offence may be prosecuted before any justices of the peace in either of such counties or districts (*Act of 1880*, s. 7).

**Protection of  
sand grouse.**

Killing, wounding, or taking sand grouse, or exposing or offering for sale sand grouse—*Penalty*, on conviction before any justice, not exceeding £1, together with costs of conviction<sup>4</sup> (*Sand Grouse Protection Act*, 1888, 51 & 52 Vict. c. 55, s. 1).

**WRECK.**

	PAGE		PAGE
Duties of receiver of wreck . . . . .	856	Procedure under the Merchant	
Right of passage over lands . . . . .	857	Shipping Act, 1894 . . . . .	857
Offences as to wreck . . . . .	857	Unlawful possession of goods	
Warrant to search for concealed		from wreck . . . . .	857
wreck . . . . .	857		

**Duties of  
receiver  
of wreck.**

The receiver of wreck<sup>5</sup> for the district in which a ship is wrecked, stranded, or in distress is given the duty of taking steps for the preserva-

<sup>1</sup> Or any of the other Acts to be read as one therewith. See p. 850.

<sup>2</sup> See p. 850.

<sup>3</sup> This probably gives such right of appeal as is provided by the Petty Sessions Act, see p. 131.

<sup>4</sup> The Act is silent as to procedure. As to procedure under such circumstances, see p. 41.

<sup>5</sup> "Wreck" includes jetsam, flotsam, lagan, and derelict found in or on the shores of the sea or any tidal water (s. 10 (1)).

*Flotsam* is when a ship is sunk or otherwise perished and the goods float on



tion of the ship, shipwrecked persons, cargo, and apparel, and empowered to take command of all persons present—*Penalty*, for wilful disobedience to the receiver, not exceeding £50 (*Merchant Shipping Act*, 1894, 57 & 58 Vict. c. 60, s. 511). The receiver is also empowered, for the purpose of such preservation, to demand assistance from such persons as he thinks necessary, and from the master and crew of any vessel near at hand, and to demand the use of any waggon, cart, or horses near at hand—*Penalty*, for refusal, not exceeding £100 (s. 512).

Duties of receiver of wreck.

In the absence of the receiver of wreck the following persons in succession may act instead: chief officers of Customs, principal officer of coastguard, officer of Inland Revenue, sheriff, justice of the peace, commissioned officer on full pay in the Navy or Army (s. 516).

Persons rendering assistance to a ship are given right of passage over lands—*Penalty*, for obstructing such passage, preventing deposit of cargo, &c., not exceeding £100 (s. 513).

Right of passage over lands.

Failure to deliver to the receiver of the district wreck found—*Penalty*, not exceeding £100, as well as payment of double the value of wreck and forfeiture of claim to salvage (s. 518). Without leave of the master or the receiver of wreck, boarding ship in distress; impeding preservation of ship, secreting wreck, or carrying away parts of wrecked vessel—*Penalty*, not exceeding £50 (s. 536).

Offences as to wreck.

A justice may grant a warrant to the receiver of wreck authorising him to search for concealed wreck (s. 537).

Warrant to search for concealed wreck.

An offence made punishable with imprisonment not exceeding six months with or without hard labour or by fine not exceeding £100, shall be prosecuted summarily in manner provided by the Summary Jurisdiction Acts<sup>1</sup> (s. 680 (1 b)). As to admissibility of document as evidence, see s. 695; as to service of documents, see s. 696.

Procedure under Merchant Shipping Act.

Proceedings to be instituted within six months of commission of offence or arising of the cause of complaint; where either of the parties is out of the United Kingdom proceedings to be commenced in cases of summary conviction within two months after both happen to arrive or be at the same time in the United Kingdom (s. 683). For the purpose of giving jurisdiction under this Act, every offence shall be deemed to have been committed and every cause of complaint to have arisen either in the place in which the same actually was committed or arose, or in any place in which the offender or person complained against may be (s. 684). Justices of districts on the coast of the sea, or abutting or projecting into navigable waters, are given additional jurisdiction over ships in these waters (s. 685).

Person in possession of goods from wreck or offering such goods for sale, unless he can satisfy the justices that he came lawfully by the same—*Penalty*, imprisonment not exceeding six months with or without hard labour, or fine (over and above the value of the goods) not exceeding £20 (*Larceny Act*, 1861, 24 & 25 Vict. c. 96, ss. 65, 66).

Unlawful possession of goods from wreck

the sea. *Jetsam* is where the ship is in danger of being sunk, and to lighten the ship the goods are cast into the sea, and afterwards notwithstanding the ship perished. *Lagan* (*vel potius ligam*) is when the goods which are so cast into the sea, and afterwards the ship perishes and such goods cast are so heavy that they sink to the bottom, and the mariners to the intent to have them again, tie to them a buoy, or cork, or such other thing that will not sink so that they may find them again and *dicitur lig a ligando* (1601). Sir Henry Constable's case, 5 Coke 106 (vol. iii. *Coke's Rep.*, p. 216).

<sup>1</sup> As to which, see p. 335.

## NOTE AS TO VENUE.

Rule as to  
venue.  
Exceptions.

At common law, the venue or place of trial of the offence must be laid where the offence is committed. But there are many statutory provisions enlarging the jurisdiction as to venue, *e.g.*:—(1) boundaries of counties (see p. 15, *ante*); (2) offences on journey or voyage (see p. 16, *ante*); (3) offences on ships, &c. (see p. 16, *ante*); (4) indictable offences under any of the Criminal Law Consolidated Acts, 1861, committed within the Admiralty jurisdiction (see pp. 14 *u.*, 16, *ante*); (5) receiving goods knowing them to be stolen (see p. 17, *ante*); and (6) various other statutory provisions, *e.g.*, offences against customs, excise, stamp laws, bigamy, perjury, &c., for which reference must be made in each case to the particular statute.

Further, the Petty Sessions Act, 1851, s. 10, gives jurisdiction where the offence is committed out of the justice's jurisdiction, but the defendant is within the justice's jurisdiction.

Where does  
offence take  
place?

The question as to where an offence takes place depends upon the nature of the offence.

It may be that there are several appropriate venues, *e.g.*, in embezzlement, the accused may be charged either (*a*) where he refused to account, or (*b*) at any place where distinct acts of embezzlement are proved (*R. v. Davison* (1885), 7 Cox 158; *R. v. Treadgold* (1878), 14 Cox 220). So also, on a prosecution for sending a libellous threatening letter, the accused may be tried either where the letter was posted or where it was delivered (*R. v. Burdett* (1820), 4 B. & Ald. 95).

If a statute commands a thing to be done, the place where the thing should have been done is the place where the offence is committed (*R. v. Milner* (1846), 2 C. & K. 310).

No decision seems to have been given as to the place where a sale, forbidden by statute (*e.g.*, under the Merchandise Marks Act), takes place. There is, of course, no difficulty where the sale and delivery are contemporaneous; but frequently the order, the acceptance, the appropriation of the goods and the delivery are not contemporaneous. It is submitted that, at any rate, the venue can be properly laid where the delivery takes place to the purchaser, but possibly also the venue may be laid where any other essential element of an executed sale takes place, *e.g.*, the appropriation of the goods to the purchaser's order (see *Pletts v. Beatty* (1896), 1 Q.B. 519; *Saunders v. Thorney* (1898), 78 L.T. 627; *Strickland v. Whittaker* (1904), 20 T.L.R. 224; *Noblett v. Hopkinson* (1905), 2 K.B. 214).

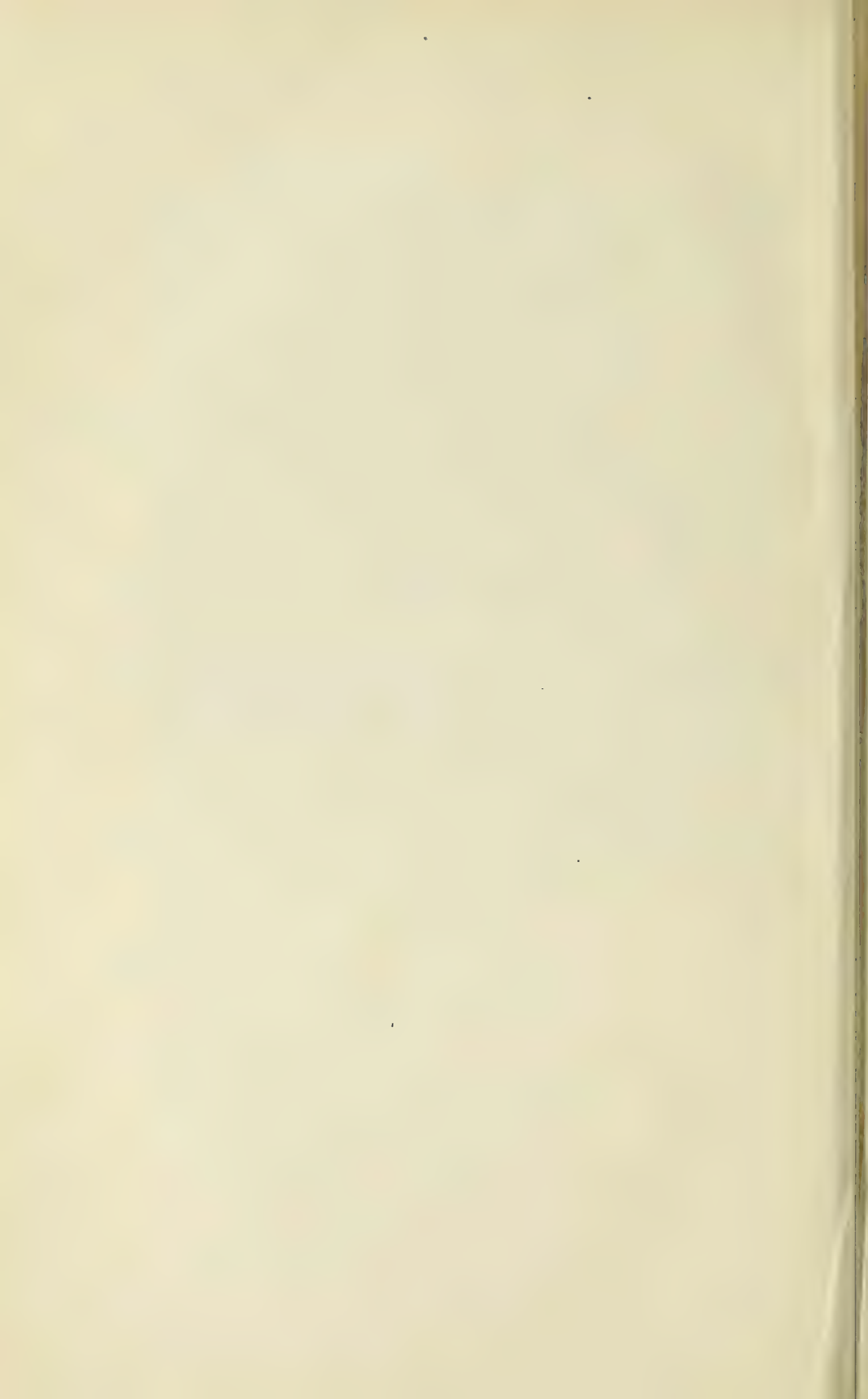
The rules as to venue are less strict in the case of misdemeanour than in the case of felony (*R. v. Ellis* (1899), 1 Q.B. 230, *per* Bruce, J., at p. 242), which statement, it is submitted, is as applicable to misdemeanours triable summarily, as to misdemeanours triable on indictment.

PART III.

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CATALOGUE OF INDICTABLE OFFENCES.





## INTRODUCTORY TO PART III.

### PUNISHMENT OF OFFENDERS CONVICTED ON INDICTMENT.

THE punishments of the various offences enumerated in the CATALOGUE OF INDICTABLE OFFENCES have been given fully, except in the case of offences, such as piracy, which are of infrequent occurrence, or where the complexity and the length of the Acts make it hopeless to attempt to enumerate, within the space that can be given to the subject, either the various offences or the punishments allotted to them. In the case of statutory offences, where the punishments have been varied by either the Punishment of Offences Act, 1837, 7 Wm. 4 and 1 Vict. c. 91 (which abolished the death penalty under several English and Irish statutes), or the Capital Punishment (Ir.) Act, 1842, 5 & 6 Vict. c. 28 (which did the same as regards a number of statutes of the Irish Parliament), such variation has been noted by a reference to whatever section of those two statutes applies.

Scheme of  
Part III. as  
regards  
punish-  
ment.

The punishment of any other indictable offence can be ascertained by referring to the section quoted with regard to it in the CATALOGUE OF INDICTABLE OFFENCES and by bearing in mind (1) that the Penal Servitude Act, 1857, 20 & 21 Vict. c. 3, s. 2, substituted penal servitude for transportation in every case in which the latter punishment was authorised by any Act then in force, and (2) s. 1 of the Penal Servitude Act, 1891, 54 & 55 Vict. c. 69, which has altered the punishments authorised by a great many Acts previously enacted.

That section is as follows :—

“(1) Where under any enactment” in force on August 5, 1891, “a court has power to award a sentence of penal servitude, the sentence may, at the discretion of the court, be for any period not less than three years, and not exceeding either five years or any greater period authorised by the enactment. (2) Where under any Act “in force” on August 5, 1891, “or under any future Act, a court is empowered or required to award a sentence of penal servitude, the court may, in its discretion, unless such future Act otherwise provides, award imprisonment for any term not exceeding two years with or without hard labour.”

Penal Servi-  
tude Act,  
1891.

The Penal Servitude Act, 1864, 27 & 28 Vict. c. 47, s. 9, as amended by s. 3 (3) of the Penal Servitude Act, 1891, 54 & 55 Vict. c. 69, provides that where any licence granted in the form set forth in Schedule A to the Act of 1864, or any form lawfully substituted for it, is forfeited by a conviction on indictment of any offence or is revoked in pursuance of any summary conviction under the Act of 1864 or any other Act, the licensee shall, after undergoing any other punishment to which he may be sentenced for the offence in consequence of which the forfeiture or revocation arises, further undergo a term of penal servitude equal to the portion of his term of penal servitude that remained unexpired at the time his licence was granted.<sup>1</sup> Under the above enactments power is taken away from the court of making the new sentence run concurrently

Inspection  
of “ticket  
of leave.”

<sup>1</sup> These provisions apparently do not apply to licences to habitual criminals on discharge from preventive detention (see HABITUAL CRIMINALS, *post*, and s. 14 (7) of 8 Edw. 7, c. 59).

with the remainder of the old (*R. v. Hamilton* (1908), Cr. App. Rep. 87), or to make the new sentence follow on the old (*R. v. Smith*; *R. v. Wilson* (1909), 2 K.B. 756; *R. v. King* (1897), 1 Q.B. 214).

The punishments now authorised are either set out fully after the offence, which is the course adopted where the punishment is unusual, or else some one of the letters distinguishing the various punishments in the following list has been used to indicate that the punishment set out in this article after such letter is the punishment appertaining to the offence :—

**List of  
punishments.**

A. Penal servitude for life or not less than three years, or imprisonment not exceeding two years with or without hard labour, and the offender may, in addition to such punishment, be required to enter into recognisances, with or without sureties, to keep the peace, and on failure to find sureties may be imprisoned for not more than one year.<sup>1</sup>

B. Penal servitude for life or not less than three years, or imprisonment not exceeding two years with or without hard labour, and the offender may, if a male under sixteen, be once privately whipped with such instrument and number of strokes as the court specifies, and any prisoner may, in addition to such punishment, be required to enter into his own recognisances, with or without sureties, to keep the peace, and on failure to find sureties may be imprisoned for not more than one year.<sup>1</sup>

C. Penal servitude for life or not less than three years, or imprisonment not exceeding two years with or without hard labour.<sup>1</sup>

D. Penal servitude not exceeding twenty nor less than three years, or imprisonment not exceeding two years with or without hard labour.<sup>1</sup>

E. Penal servitude not exceeding fourteen nor less than three years, or imprisonment not exceeding two years with or without hard labour, and the offender may, in addition to such punishment, be required to enter into his own recognisances, with or without sureties, to keep the peace, and on failure to find sureties may be imprisoned for not more than one year.<sup>1</sup>

F. Penal servitude not exceeding fourteen nor less than three years, or imprisonment not exceeding two years with or without hard labour, and the offender may, if a male under sixteen, be once privately whipped with such instrument and number of strokes as the court specifies, and any prisoner may, in addition to such punishment, be required to enter into his own recognisances, with or without sureties, to keep the peace, and on failure to find sureties may be imprisoned for not more than one year.<sup>1</sup>

G. Penal servitude not exceeding fourteen nor less than three years, or imprisonment not exceeding two years with or without hard labour.<sup>1</sup>

H. Penal servitude not exceeding ten nor less than three years, or imprisonment not exceeding two years with or without hard labour, and the offender may, in addition to such punishment, be required to enter into his own recognisances, with or without sureties, to keep the peace, and on failure to find sureties may be imprisoned for not more than one year.<sup>1</sup>

<sup>1</sup> A person convicted of any felony within the Criminal Law Consolidation Acts, 1861, may, in addition to any other punishment, be required to enter into recognisances, with or without sureties, to keep the peace, and in default may be imprisoned for a term not exceeding a year. A person convicted of any misdemeanour (whether by statute or at common law) may, in addition to or in substitution for any other punishment, be required to enter into recognisances, with or without sureties, to keep the peace and be of good behaviour (*R. v. Dunn* (1847), 12 Q.B. 1026); in cases within the Criminal Law Consolidation Acts, 1861, the term of imprisonment in default shall not exceed a year. A married woman may be ordered to enter into recognisances (Russell, 7th ed., p. 219).



I. Penal servitude not exceeding ten nor less than three years, or imprisonment not exceeding two years with or without hard labour, and the offender may, if a male under sixteen, be once privately whipped with such instrument and number of strokes as the court specifies, and any offender may, in addition to such punishment, be required to enter into his own recognisances, with or without sureties, to keep the peace, and on failure to find sureties may be imprisoned for not more than one year.<sup>1</sup>

J. Penal servitude not exceeding ten nor less than three years, or imprisonment not exceeding two years with or without hard labour, and the offender may, in addition to or in lieu of such punishment, be fined and be required to enter into his own recognisances, with or without sureties, to keep the peace and be of good behaviour, and on failure to find sureties may be imprisoned for not more than one year.<sup>1</sup>

K. Penal servitude not exceeding ten nor less than three years, or imprisonment not exceeding two years with or without hard labour.<sup>1</sup>

L. Penal servitude not exceeding seven nor less than three years, or imprisonment not exceeding two years with or without hard labour, and the offender may, in addition to such punishment, be required to enter into his own recognisances, with or without sureties, to keep the peace, and on failure to find sureties may be imprisoned for not more than one year.<sup>1</sup>

M. Penal servitude not exceeding seven nor less than three years, or imprisonment not exceeding two years with or without hard labour, and the offender may, if a male under sixteen, be once privately whipped with such instrument and number of strokes as the court specifies, and any offender may, in addition to such punishment, be required to enter into his own recognisances, with or without sureties, to keep the peace, and on failure to find sureties may be imprisoned for not more than one year.<sup>1</sup>

N. Penal servitude not exceeding seven nor less than three years, or imprisonment not exceeding two years with or without hard labour, and the offender may, in addition to or in lieu of such punishment, be fined and be required to enter into recognisances, with or without sureties, to keep the peace and be of good behaviour, and on failure to find sureties may be imprisoned for not more than one year.<sup>1</sup>

O. Penal servitude not exceeding seven nor less than three years, or imprisonment not exceeding two years with or without hard labour, and the offender may, if a male under sixteen, be once privately whipped with such instrument and number of strokes as the court specifies, and any offender may, in addition to or in lieu of such punishment, be fined and be required to enter into his own recognisances, with or without sureties, to keep the peace and be of good behaviour, and on failure to find sureties may be imprisoned for not more than one year.<sup>1</sup>

P. Penal servitude not exceeding seven nor less than three years, or imprisonment not exceeding two years with or without hard labour.<sup>1</sup>

Q. Penal servitude not exceeding five nor less than three years, or imprisonment not exceeding two years with or without hard labour, and the offender may, in addition to such punishment, be required to enter into his own recognisances, with or without sureties, to keep the peace, and on failure to find sureties may be imprisoned for not more than one year.<sup>1</sup>

R. Penal servitude not exceeding five nor less than three years, or imprisonment not exceeding two years with or without hard labour, and the offender may, if a male under sixteen, be once privately whipped with such instrument and number of strokes as the court specifies, and any prisoner may, in addition to such punishment, be required to enter into his own recognisances, with or without sureties, to keep the peace,

<sup>1</sup> See p. 862, *n*.

and on failure to find sureties may be imprisoned for not more than one year.<sup>1</sup>

S. Penal servitude not exceeding five nor less than three years, or imprisonment not exceeding two years with or without hard labour, and the offender may, in addition to or in lieu of such punishment, be fined and be required to enter into recognisances, with or without sureties, to keep the peace and be of good behaviour, and on failure to find sureties may be imprisoned for not more than one year.<sup>1</sup>

T. Penal servitude not exceeding five nor less than three years, or imprisonment not exceeding two years with or without hard labour.<sup>1</sup>

U. Imprisonment not exceeding three years with or without hard labour.<sup>1</sup>

V. Imprisonment not exceeding two years with or without hard labour, and the offender may, in addition to such punishment, be required to enter into his own recognisances, with or without sureties, to keep the peace and on failure to find sureties may be imprisoned for not more than one year.<sup>1</sup>

W. Imprisonment not exceeding two years with or without hard labour, and the offender may, if a male under sixteen, be once privately whipped with such instrument and number of strokes as the court specifies, and any offender may, in addition to such punishment, be required to enter into his own recognisances, with or without sureties, to keep the peace, and on failure to find sureties may be imprisoned for not more than one year.<sup>1</sup>

X. Imprisonment not exceeding two years with or without hard labour, and the offender may, in addition to such punishment, be fined and be required to enter into his own recognisances, with or without sureties, to keep the peace, and on failure to find sureties may be imprisoned for not more than one year.<sup>1</sup>

Y. Imprisonment not exceeding two years with or without hard labour, and the offender may, in addition to or in lieu of such punishment, be fined and be required to enter into his own recognisances, with or without sureties, to keep the peace and be of good behaviour, and on failure to find sureties may be imprisoned for not more than one year.<sup>1</sup>

Z. Imprisonment not exceeding two years with or without hard labour, and the offender may, if a male under sixteen, be once whipped with such instrument and number of strokes as the court specifies, and any offender may, in addition to or in lieu of such punishment, be fined and be required to enter into his own recognisances, with or without sureties, to keep the peace and be of good behaviour, and on failure to find sureties may be imprisoned for not more than one year.<sup>1</sup>

AA. Imprisonment not exceeding two years with or without hard labour.<sup>1</sup>

BB. Imprisonment not exceeding eighteen months with or without hard labour, and the offender may, in addition to or in lieu of such punishment, be fined and be required to enter into his own recognisances, with or without sureties, to keep the peace and be of good behaviour, and on failure to find sureties may be imprisoned for not more than one year.<sup>1</sup>

CC. Imprisonment not exceeding one year with or without hard labour, and the offender may, in addition to or in lieu of such punishment, be fined and be required to enter into his own recognisances, with or without sureties, to keep the peace and be of good behaviour, and on failure to find sureties may be imprisoned for not more than one year.<sup>1</sup>

DD. Imprisonment not exceeding one year with or without hard labour.<sup>1</sup>

EE. Imprisonment not exceeding one year without hard labour.<sup>1</sup>

FF. Imprisonment not exceeding six months with or without hard

<sup>1</sup> See p. 862, *n*.

labour, and the offender may, in addition to or in lieu of such punishment, be fined and be required to enter into his own recognisances, with or without sureties, to keep the peace and be of good behaviour, and on failure to find sureties may be imprisoned for not more than one year.<sup>1</sup>

GG. Imprisonment not exceeding six months with or without hard labour, and the offender may, if a male under sixteen, be once privately whipped with such instrument and number of strokes as the court specifies, and any offender may, in addition to or in lieu of such punishment, be fined and be required to enter into his own recognisances, with or without sureties, to keep the peace and be of good behaviour, and on failure to find sureties may be imprisoned for not more than one year.<sup>1</sup>

HH. Imprisonment not exceeding six months with or without hard labour.<sup>1</sup>

II. Imprisonment not exceeding three months with or without hard labour, and the offender may, in addition to or in lieu of such punishment, be fined and be required to enter into his own recognisances, with or without sureties, to keep the peace and be of good behaviour, and on failure to find sureties may be imprisoned for not more than one year.<sup>1</sup>

JJ. Fine, or imprisonment with or without hard labour, or both.<sup>1</sup>

KK. Fine, or imprisonment without hard labour, or both, and the offender may, in addition to or in lieu of such punishment, be fined and be required to enter into his own recognisances, with or without sureties, to keep the peace and be of good behaviour, and on failure to find sureties may be imprisoned for not more than one year with hard labour.<sup>1</sup>

LL. Fine, or imprisonment without hard labour, or both.<sup>1</sup>

There is no statute fixing any general maximum term of imprisonment or any minimum term of penal servitude. But under 9 Geo. 4, c. 54, s. 15, it is provided that in cases of felonies where no punishment is provided the convict shall be punished by transportation not exceeding seven years or imprisonment not exceeding two years. Transportation is now replaced by an equivalent term of penal servitude, so that, for all felonies created by statutes passed before 5th August 1891, and providing no punishment, the punishment is punishment P. by force of the 9 Geo. 4, c. 54, s. 15, 20 & 21 Vict. c. 3, s. 2, and 54 & 55 Vict. c. 69, s. 2 (1). There are several statutes under which imprisonment with hard labour for three years is allowed, for which see this catalogue, *post*, and s. 11 of the Forgery Act, 1861,<sup>2</sup> although most statutes allow a maximum of only two years; but where imprisonment without hard labour is inflicted under a common law power (*R. v. Castro* (1880), 5 Q.B.D. 490, *per* Bramwell, L.J., at p. 509), or under any statute that does not specify any term, there is no limit to the amount that may be imposed. In every case except one, which is noted hereafter, the minimum term of penal servitude that is authorised by any statute is three years.

Hard labour can be ordered only where some statute expressly authorises it, and cannot be ordered for offences which are such only at common law (*R. v. Mallon* (1910), 5 Cr. App. Rep. 216). Where a statute authorises only imprisonment with hard labour, imprisonment without hard labour cannot be ordered.<sup>3</sup>

Under the Criminal Procedure Act, 1851, 14 & 15 Vict. c. 100, s. 29, it is provided that imprisonment with hard labour for any term "now

Penal  
servitude and  
imprison-  
ment.

Hard labour.

<sup>1</sup> This is the punishment for any misdemeanour, whether statutory or at common law, to which no punishment has been assigned by statute (Russell, 7th ed., p. 249). As to requiring recognisances in such cases, see p. 862. *n*

<sup>2</sup> As to punishment for smuggling offences, see note to title SMUGGLING, *post*.

<sup>3</sup> At p. 212 of Russell, 7th ed., the opinion is expressed that a sentence of hard labour is never obligatory on the court. No authority is quoted for the statement. See, as to summary jurisdiction, p. 90, *n*.<sup>2</sup>, *ante*.



warranted by law" may be imposed on conviction on indictment for the following misdemeanours. (1) Cheat or fraud at common law. (2) Conspiracy to (a) cheat or defraud, (b) extort, (c) falsely accuse of crime, (d) pervert or defeat the course of justice. (3) Public selling or exposure of obscene books, &c., or any indecent exhibition.

**Fine.** Where a fine is imposed under a common law power or under a statute which does not limit the amount (such as the five Criminal Law Consolidation Acts of 1861, that is to say, those relating to Forgery, Larceny, Malicious Injuries. Offences against the Person, and Coinage) there appears to be no limit to the amount of the fine that may be imposed, except in so far as Magna Charta and the Bill of Rights prohibit unreasonable fines.

A fine cannot be imposed at common law for felony (Russell, 7th ed., p. 217). Under s. 5 of 24 & 25 Vict. c. 100, power to impose a fine in case of conviction for manslaughter is expressly given.

**Solitary confinement.** The power given by many statutes passed in the early part of the last century to order solitary confinement has never been taken away by any general enactment, but except in a few cases, such as those specified hereafter, the power has been taken away by the repeal of the particular words that conferred the power. Solitary confinement is now, however, never ordered. All imprisonment has for many years practically involved solitary confinement.

**Whipping.** The punishment of whipping cannot be inflicted on women (*Whipping Act*, 1820, 1 Geo. 4, c. 57). It can be inflicted upon adult males under the Treason Act, 1842, s. 2, under the Larceny Act, 1861, and under the Offences against the Person Act, 1861; and there appears to be nothing except the good sense of the court to prevent its being inflicted upon adult males convicted under the Tumultuous Risings (Ir.) Act, 1831, ss. 2-6, or the 15 & 16 Geo. 3, c. 21 (Ir.), ss. 2, 5. Under the Larceny Act, 1861, 24 & 25 Vict. c. 96, s. 101, it may be inflicted on a male whose age does not exceed eighteen; but, in cases other than those above mentioned, it can be inflicted only on males under sixteen. Under the Whipping Act, 1862, 25 & 26 Vict. c. 18, s. 1, it is provided that where whipping is ordered by a court of summary jurisdiction the order must specify the number of strokes and the instrument, and in case of an offender under fourteen the instrument is to be a birch rod and the number of strokes not to exceed twelve. This section is incorporated as to offences against girls under thirteen, by offenders under sixteen, by s. 4 of the Criminal Law Amendment Act, 1885, 48 & 49 Vict. c. 69. No offender shall be whipped more than once for the same offence (*Whipping Act*, 1862, s. 2).

**Probation of Offenders Act, 1907.** As to the power of the court to discharge convicted persons on probation, instead of inflicting punishment, see the Probation of Offenders Act, 1907, 7 Edw. 7, c. 17, *verbatim*, APPENDIX OF STATUTES.

**Youthful offenders.** The law relating to the punishment of persons under sixteen has been materially altered by the Children Act, 1908, 8 Edw. 7, c. 67. No such person can now be sentenced to death or to penal servitude (ss. 102 (1), (2), 103, and 131). If under fourteen he cannot be imprisoned at all (ss. 102 (1), 131), and if between fourteen and sixteen only under exceptional circumstances (ss. 102 (3) and 108). For the methods in which persons under sixteen and their parents may be punished, reference should be made to Parts IV. and V. of the Act. The following is a table of punishments applicable to children under the Children Act, 1908:—

Punishment not applicable to children.	SECTION		SECTION	
	A child means a person under the age of 14 years . . . . .	131	No child can be sentenced to imprisonment . . . . .	102
	No child can be sentenced to death . . . . .	103	No child can be committed to prison in default of payment of a fine, damages, or costs . . . . .	102
	No child can be sentenced to penal servitude . . . . .	102		

## OFFENCES.

## PUNISHMENTS APPLICABLE TO A CHILD.

Capital offences . . . . No. I.—The Court must sentence the child to Punishments be detained during His Majesty's pleasure. The place and conditions of such detention are to be directed by the Secretary of State (in Ireland by the Chief Secretary). (*Children Act*, 1908, s. 103.)

Offences punishable in adults with penal servitude or imprisonment. No. II.—The Court may discharge the child on his entering into a recognisance, with or without sureties, to be of good behaviour and to appear for sentence when called on at any time during a specified period not exceeding three years: and may impose a further condition that the child be under the supervision of any person named in the Order (for probation purposes). The Court may also order payment of damages for injury, compensation for loss, or costs. (*Children Act*, 1908, s. 107; *Probation of Offenders Act*, 1907, ss. 1 (2) (3), 2.)

Or,

No. III.—If the child appear to be under 12 years, the Court, if satisfied on inquiry that it is expedient so to deal with the child, may order him to be sent to a certified **Industrial School** for such time (specified in the Order) as to the Court may seem proper, not extending beyond the time when the child will attain 16 years. Such offenders, after the expiration of the period of detention, remain under the supervision of the managers of the school up to the age of 18. (*Children Act*, 1908, ss. 58 (2), 65 (b), 68 (2).)

Or,

No. IV.—If the child appear to be under 12 years, the Court may make an Order for the committal of the child to the care of a relative or other fit person named by the Court, with or without the supervision of a probation officer. (*Children Act*, 1908, ss. 58 (7), 60.)

Or,

No. V.—If the child is, in the opinion of the Court, over 12 years, the Court may, in addition to or in lieu of other sentence, order the child to be sent to a certified **Reformatory School** for a time to be specified in the Order, being not less than 3 or more than 5 years. (*Children Act*, 1908, ss. 57 (1), 65.)

Or,

No. VI.—The Court, if it consider that none of the other methods in which the case may be legally dealt with is suitable, may commit the child to custody in a **Place of Detention** provided by the police authorities, and named in the Order, for such term as may be specified in the Order, not exceeding that for which but for the Children Act, 1908, he might have been committed to prison, and in no case exceeding one month. (*Children Act, 1908, s. 106.*)

Or,

When the offence so punishable is either: No. VII.—The Court in these cases, if of opinion that no other authorised punishment is sufficient, may sentence a child to be detained for a period to be specified in the sentence. The place and conditions of such a detention are to be directed by the Secretary for State (in Ireland by the Chief Secretary). (*Children Act, 1908, s. 104.*)

- (1) Manslaughter;
- (2) Wounding with intent to do grievous bodily harm; or,
- (3) Attempt to murder.

Any offence for the commission of which a fine, damages, or costs may be imposed on an adult. No. VIII.—If of opinion that the case would be best so met, the Court may impose a fine, damages, or costs, with or without other punishment. The amount awarded must be ordered to be paid by the parent or guardian of the child, unless the Court is satisfied (1) that such parent or guardian cannot be found, or (2) that he has not conduced to the commission of the offence by neglecting to exercise due care of the child. (*Children Act, 1908, s. 99 (1).*)

Or,

If the child appear to be under 12 years, the Court may apply Punishments III. or IV.

Any offence which would in the case of an adult render him liable to be imprisoned in default of payment of any fine, damages, or costs.

The Court may apply Punishment No. VI. Or, where the child is under 12, Punishment III. or Punishment IV.

The Children Act makes no change in the law as to **Whipping**. Whipping is now ordered only when authorised by statute. No female can be whipped. There are a few offences for which adult males can be whipped. The statutes authorising the whipping of males under 16 years are numerous.

The Court is given general power to order the parent or guardian of a child offender to give security for the good behaviour of such child. (*Children Act, 1908, s. 99 (2).*)

Young  
offender.  
Borstal  
system.

The Prevention of Crime Act, 1908, 8 Edw. 7, c. 59, aims at the reformation of offenders not less than sixteen nor more than twenty-one years of age by providing for their detention in places known as Borstal institutions. Where any such person is convicted on indictment of an



offence for which penal servitude or imprisonment may be imposed, he may, if it appears to the court expedient by reason of his criminal habits, tendencies, or association with persons of bad character, in lieu of any such punishment, be ordered to be detained in a Borstal institution for not more than three years nor less than one year; provided that the court, before passing such a sentence, shall consider any report or representations which may be made to it by or on behalf of the General Prisons Board as to the suitability of the case for treatment in a Borstal institution, and shall be satisfied that the character, state of health, and mental condition of the offender and other circumstances of the case are such that the offender is likely to profit by such instruction and discipline as aforesaid (*Prevention of Crimes Act, 1908, s. 1*).

The Lord-Lieutenant may make an order extending the Act to persons apparently under the age of twenty-one and not exceeding the age of twenty-three as provided by the order (ss. 1 (2), 18 (a)). The Act makes no provision as to the proof of age.

In determining whether or not to pass a sentence upon a prisoner of detention under penal discipline in a Borstal institution, the judge, although he has to consider any report of the prison governor as to the suitability of the prisoner for the Borstal treatment, is not bound to come to the same conclusion as that stated in the report, and in a proper case he may sentence a prisoner to be dealt with under that system, even although the prison governor has reported that the particular prisoner is not suited for treatment under it (*R. v. Wilkins, Smallwood, and Jones* (C.C.A.) (1910), 26 T.L.R. 581).

In fixing the length of sentence to be imposed, the judge may properly take into consideration the treatment the prisoner is to receive. The judge may therefore give a longer sentence than might otherwise be proper in order that the prisoner may receive the benefit of the Borstal system (*R. v. Kirkpatrick* (1908), 73 J.P. 29; 25 T.L.R. 66, C.C.A.).

As to the cases in which the court may order offenders to be subject to the supervision of the police after the expiration of the sentence passed by the court, see PREVENTION OF CRIMES, p. 682.

Where an alien is convicted of felony or misdemeanour, the court may recommend his expulsion from the United Kingdom, and thereupon the Secretary of State for the Home Department may give effect to such recommendation<sup>1</sup> (*Aliens Act, 1905, 5 Edw. 7, c. 13, s. 3 (1)*).

As to habitual criminals, see HABITUAL CRIMINALS.

As to habitual drunkards, see p. 514.

<sup>1</sup> As to the powers of a court of summary jurisdiction under this Act, see p. 354.

Length of sentence determined by the treatment prisoner is to receive.

Police supervision.

Deportation of aliens.

Habitual criminals.

Habitual drunkards.

# CATALOGUE OF INDICTABLE OFFENCES.

## ABDUCTION.

Abduction  
of females  
over  
eighteen :

TAKING away or detaining against her will from motives of lucre,<sup>1</sup> any woman of any age who has any interest of any nature in real or personal property or who is a presumptive heiress or next of kin with intent to marry or carnally know her or to cause her to be married or carnally known by any person ; or fraudulently alluring, taking away, or detaining. such woman, being under the age of twenty-one years, out of the possession and against the will of any person having lawful care or charge of her with like intent<sup>2</sup>—*Felony*, punishment E, as to which see p. 862 (*Offences against the Person Act*, 1861, 24 & 25 Vict. c. 100, ss. 53 and 71).

By force taking away or detaining against her will any woman of any age with like intent—*Felony*, like punishment (ss. 54 and 71).

of children  
under  
fourteen :

Unlawfully, either by force or fraud, taking away or detaining any child under the age of fourteen years with intent to deprive any person having lawful care or charge of such child of the possession of such child, or to steal any article upon or about its person,<sup>3</sup> or with like intent receiving or harbouring any such child knowing it to have been by force or fraud so taken away or detained—*Felony*, punishment M, as to which see p. 863 (ss. 56, 70, 71). Strict proof of the age of the child is required where that age is material to the prosecution (*Lockwood v. Walker* (1910), S. C. Just. 3).

of girl under  
sixteen ;

Unlawfully taking or causing to be taken any unmarried girl under the age of sixteen years out of the possession and against the will of any person having lawful care or charge of her<sup>4</sup>—*Misdemeanour*, punishment X, as to which see p. 864 (ss. 55, 71).

of girl under  
eighteen.

Taking or causing to be taken any unmarried girl under the age of eighteen years, with intent that she shall be unlawfully and carnally known, out of the possession and against the will of any person having lawful care or charge of her<sup>5</sup>—*Misdemeanour*, punishment AA, as to which see p. 864 (*Criminal Law Amendment Act*, 1885, 48 & 49 Vict. c. 69, s. 7).

<sup>1</sup> No offence is committed under this part of the section unless the defendant acted from motives of lucre (*R. v. Barratt* (1840), 9 C. & P. 387).

<sup>2</sup> The woman, even though married to the offender, is a competent witness against him (*R. v. Wakefield* (1827), 2 Lew. 279).

<sup>3</sup> No one is liable to conviction for this offence who has claimed any right to the possession of the child, or who is the mother, or, in the case of an illegitimate child, who shall have claimed to be the father of the child (24 & 25 Vict. c. 100, s. 56) ; but the mother may, it seems, be convicted of conspiracy with some other person to commit the offence (*R. v. Duguid* (1906), 21 Cox 200 ; *R. v. Crossman* (1908), 98 L.T. 760).

<sup>4</sup> The fact that the defendant believed upon reasonable grounds that the girl was sixteen years of age is no defence (*R. v. Prince* (1875), L.R. 2 C.C.R. 154) ; but apparently no offence is committed if the defendant is ignorant of the fact that the girl is under the lawful care or charge of any person (*R. v. Hibbert* (1869), L.R. 1 C.C.R. 184).

<sup>5</sup> The section makes it a sufficient defence that the defendant had reasonable cause to believe that the girl was eighteen years of age. This offence is within the Vexatious Indictments Act.

**ABORTION.**

Any woman with child unlawfully administering to herself any noxious thing or using any instrument or other means with intent to procure her own miscarriage,<sup>1</sup> or any person unlawfully administering to or causing to be taken by any woman, whether with child or not, anything with intent to procure her miscarriage, or using any instrument or other means with like intent<sup>2</sup>—*Felony*, punishment A, as to which see p. 862 (*Offences against the Person Act*, 1861, 24 & 25 Vict. c. 100, ss. 58, 71).

Any person supplying or procuring any noxious thing or any instrument or thing, knowing that it is intended to be unlawfully used with intent to procure the miscarriage of a woman, whether she be with child or not—*Misdemeanour*, punishment S, as to which see p. 864 (ss. 59, 71).

**ACCESSORIES.**

See **CRIMES, PRINCIPALS AND ACCESSORIES.**

**ACCOUNTS, FALSIFICATION OF.**

Clerk, officer, or servant, or person acting in any of these capacities. (1) wilfully and with intent to defraud, destroying, altering, mutilating, or falsifying any book, paper, writing, valuable security, or account belonging to or in the possession of his employer, or received by him for or on behalf of his employer, or (2) wilfully and with intent to defraud making, or concurring in making, false entry or omitting or altering material particular from or in such book, &c.<sup>3</sup>—*Misdemeanour*, punishment N, as to which see p. 864 (*Falsification of Accounts Act*, 1875, 38 & 39 Vict. c. 24, ss. 1 and 3; *Larceny Act*, 24 & 25 Vict. c. 96, s. 117).

Destruction, mutilation, alteration, or falsification of books, papers, or securities, or making or being privy to making any false or fraudulent entry in any register, account, or document of a company being wound up, by any director, officer, or contributory of such company, with intent to defraud—*Misdemeanour*, punishment AA, as to which see p. 864 (*Companies Consolidation Act*, 1908, 8 Edw. 7, c. 69, s. 216). Other similar offences by directors are dealt with by the *Larceny Act*, 1861, ss. 82, 83, 84, as to which see **LARCENY**. See also **BANKRUPTCY, OFFENCES RELATING TO**, and **ASSURANCE COMPANIES**.

**AFFRAY.**

Two or more persons fighting in a public place to the terror of His Majesty's subjects—*Misdemeanour*, at common law, punishment LL, as to which see p. 865 (Russell, 7th ed., 427; see *R. v. O'Neill* (1871), 1 R. 6 C.L. 1).

<sup>1</sup> It has been held by Darling, J., that if a woman with child takes, with intent to procure her miscarriage, a substance, harmless in fact but believed by her to be noxious, the common law offence of attempting to procure abortion has been committed (*R. v. Brown* (1899), 63 J.P. 790).

<sup>2</sup> To prove the intent with which the noxious thing was administered or the instrument used, evidence showing that the accused had on previous occasions used similar means with the avowed intention of procuring abortion, or had previously admitted having done the same thing, is admissible (*R. v. Bond* (1906), 2 Q.B. 389).

<sup>3</sup> That is, book, &c., belonging to or in possession of the employer, or received by defendant for the employer (*R. v. Palin* (1906), 1 K.B. 7).



A prize-fight carried out in a private place or in a place where no one except those who come to see the fight are in fact likely to see it is not an affray (*R. v. Hunt* (1845), 1 Cox 177). The law as to boxing matches is as follows :—

“ In cases where life and limb are exposed to no serious danger in the common course of things, I think that consent is a defence to a charge of assault, even when considerable force is used, as, for instance, in cases of wrestling, singlestick, sparring with gloves, football, and the like; but in all cases the question whether consent does nor does not take from the application of force to another its illegal character, is a question of degree depending upon circumstances ” (*per* Stephen, J., in *R. v. Coney* (1882), 8 Q.B.D. 534, at p. 549). “ But the injuries given and received in prize-fights are injurious to the public, both because it is against the public interest that the lives and the health of the combatants should be endangered by blows, and because prize-fights are disorderly exhibitions, mischievous on many obvious grounds ” (*ib.*, see also judgments of Cave, J., at p. 539; Matthew, J., 547; Hawkins, J., 553; Denman, J., 567). The ordinary prize-fight, therefore, in which each combatant means to knock out the other, if he can, is illegal; and the wearing of gloves does not make a fight a sparring match (*R. v. Orton* (1878), 14 Cox 226). All who are present at a prize-fight for the purpose of promoting or assisting at the fight are guilty of unlawful assembly (*R. v. Billingham* (1825), 2 C. & P. 234), or may be convicted of assault (*R. v. Coney, supra*). Mere accidental presence at a prize-fight is no offence (*ib.*; see *R. v. Rankin* (1841), 7 State Tr., N.S., 711, at p. 789); but mere presence is some evidence to go to the jury of assisting or promoting the fight (*R. v. Coney, supra*); and it is submitted that the presence of a person who pays for entrance is assisting at a prize-fight.

### ARMED, GOING.

Going armed by night or day in such a manner as to terrify the King's subjects; discharging firearms in the public street is within the statute (*R. v. Meade* (1903), 19 T.L.R. 540). So also, it is submitted, is the displaying or discharging of firearms at public meetings. A man is liable to punishment if he makes himself a public nuisance by firing a revolver in a public place with the result that the public are frightened and terrified, and in such a case justices are within their rights in sending the case for trial instead of dealing summarily with it (*per* Wills, J., in *R. v. Meade, supra*)—*Misdemeanour*, punishment LL, as to which see p. 865 (2 Edw. 3, c. 3, and Common Law).

Being armed by night with any dangerous or offensive weapon or instrument with intent to break or enter into a dwelling-house or building and commit a felony therein—*Misdemeanour*, punishment S, as to which see p. 863 (*Larceny Act*, 1861, 24 & 25 Vict. c. 96, ss. 58 and 117). On conviction of misdemeanour under s. 58 after previous conviction for felony or such misdemeanours, punishment J, as to which see p. 863 (*ib.*, ss. 59 and 117).

### ARSON.

See MALICIOUS INJURIES TO PROPERTY, and SHIPS.

## ASSAULT.

An assault is an attempt or offer to apply force of any kind to another person, by striking, touching, or moving him or otherwise applying any direct or indirect force to him, as by striking at another with a stick or other weapon, or without a weapon, though the party striking misses his aim. So drawing a sword or bayonet, or even holding up a fist in a menacing manner, throwing a bottle or glass with intent to wound or strike, presenting a gun at a person who is within the distance to which the gun will carry, pointing a pitchfork at a person who is within reach, or any other similar act, accompanied with such circumstances as denote at the time an intention, coupled with an actual or apparent present ability, of using actual force against the person of another, will amount to an assault (Russell, 7th ed., 879). If force, however slight, be actually applied, the assault becomes a battery (1 Hawk, c. 62, s. 5). Mere words can never amount to an assault (1 Hawk, c. 15, s. 1). Consent is no defence where the act charged amounts to a breach of the peace, or directly tends to a breach of the peace, or is in itself dangerous (*R. v. Coney* (1882), 8 Q.B.D. 534, at pp. 539, 549).

Wounding with intent to do grievous bodily harm—*Felony*, punishment A, as to which see p. 862 (*Offences against the Person Act*, 1861, 24 & 25 Vict. c. 100, ss. 18, 71). Malicious wounding—*Misdemeanour*, punishment S, as to which see p. 863 (*ib.*, ss. 20, 71). Common assault<sup>1</sup>—*Misdemeanour*, punishment CC, as to which see p. 864 (*ib.*, ss. 47, 71). Assault occasioning actual bodily harm—*Misdemeanour*, punishment S, as to which see p. 864 (*ib.*, ss. 47, 71). Obstructing or assaulting clergyman or minister in discharge of his duties—*Misdemeanour*, punishment X, as to which see p. 864 (*ib.*, ss. 36, 71). Assaulting magistrate, peace officer, &c., on account of his preserving wreck—*Misdemeanour*, punishment N, as to which see p. 863 (*ib.*, ss. 37, 71). Assault with intent to commit felony, or assaulting or obstructing peace officer in execution of his duty,<sup>2</sup> or assault on a person acting in aid of such officer—*Misdemeanour*, punishment X, as to which see p. 864 (*ib.*, ss. 38, 71). Assault with attempt to commit sodomy, or indecent assault on a male person—*Misdemeanour*, punishment J, as to which see p. 863 (*ib.*, ss. 62, 71).<sup>3</sup> Assault with intent to rob—*Felony*, punishment Q, as to which see p. 863 (*Larceny Act*, 1861, 24 & 25 Vict. c. 96, ss. 42, 117).

<sup>1</sup> A person driving a vehicle (which includes a bicycle or motor-car) furiously, wantonly, or negligently, in such a way as to cause bodily injury to another, cannot be convicted of a common or any other assault (*Ackroyd v. Barrett* (1894), 11 T.L.R. 115), but he may be convicted under s. 35 of the Offences against the Person Act, 1861, for which see OFFENCES AGAINST THE PERSON.

<sup>2</sup> Merely giving notice to motorists that the police are timing cars with a view to prosecuting under the Motor Cars Acts, 1898 and 1903, and by such notice preventing motorists from exceeding the legal speed on such part of a road as the police are timing cars on, is not an offence within this section (*Bastable v. Little* (1907), 1 K.B. 59). But if it can be proved that at the time the notice was given the motorists who received such notice were exceeding the legal speed, and then slowed down whilst passing over the part of the road on which the police were operating, so that the operations of the police were rendered futile, the person giving such notice may be convicted of obstructing the police in the execution of their duty (*Betts v. Stevens* (1910), 1 K.B. 1).

If it is proved that the accused has not merely assaulted, but has either resisted or wilfully obstructed, or that, without assaulting, he has either resisted or wilfully obstructed, a constable in the execution of his duty, the justices have no summary jurisdiction (*R. v. Kilkenny J.J.* (1871), I.R. 5 C.L. 394).

It is an offence against this section to collect a crowd and refuse to leave when requested by the police (*Pankhurst v. Jarvis* (1909), 74 J.P. 64; and see *Despard v. Wilcox* (1910), 74 J.P. 115).

<sup>3</sup> As to indecent assaults on females, see p. 897.

Assault on a deer-keeper—*Felony*, punishment Z, as to which see p. 864 (*ib.*, ss. 16, 117, 119).

For summary jurisdiction in cases of (1) common assault, see p. 379; of aggravated assault on female or boy under fourteen, see p. 380; of assault on peace officer, see p. 381. A certificate of dismissal (given under the 24 & 25 Vict. c. 100. s. 44), or of conviction before justices for assault, is (*ib.*, s. 45) a bar to any indictment for any charge except manslaughter (*R. v. Morris* (1867), L.R. 1 C.C.R. 90), or it would seem murder, where the person assaulted afterwards dies.

### ASSEMBLY, UNLAWFUL.

An unlawful assembly is an assembly of three or more persons with intent either to commit a crime by open force, or to carry out a common purpose, either lawful or unlawful, in such a manner as to give firm and courageous persons in the neighbourhood of such assembly reasonable grounds to apprehend a breach of the peace (Stephen, *Dig. Criminal Law*, 6th ed., 55).

Taking part in an unlawful assembly—*Misdemeanour*, at common law, punishment LL, as to which see p. 865.

An assembly which was originally lawful may become unlawful if a proposal is made at such meeting to do any act of violence to the disturbance of the public peace and if such proposal is acted on (*Redford v. Birley* (1822), 3 Stark 76; *R. v. Vincent* (1839), 9 C. & P. 91). Persons assembled for an innocent purpose and with no intention of carrying it out unlawfully are not guilty of unlawful assembly merely because they have reason to believe (*Beatty v. Gillbanks* (1882), 9 Q.B.D. 308; *R. v. Clarkson* (1892), 17 Cox 483) that other persons will, as the result of such assembly, commit a breach of the peace, but they are guilty of unlawful assembly if they are determined to carry out their purpose by force (*R. v. Cunningham Graham and Burns* (1886), 16 Cox 420). A meeting lawfully assembled may become unlawful if during its course seditious words are spoken of such a nature as to produce a breach of the peace (*R. v. Burns and others* (1886), 16 Cox 355). As to a prize-fight, see AFFRAY, p. 871. There is no summary jurisdiction in cases of unlawful assembly except under the Criminal Law and Procedure (Ir.) Act, 1887, 50 & 51 Vict. c. 20, s. 2 (3), for which see APPENDIX OF STATUTES.

### ASSURANCE COMPANIES ACT, 1909, 9 Edw. 7, c. 49.

Signing any account, balance-sheet, abstract, statement, or other document required by the Assurance Companies Act, 1909, which is false to the knowledge of the person signing it—*Misdemeanour*, punishable on indictment with LL (see p. 865), or on summary conviction with *fine* not exceeding £50 (*Assurance Companies Act*, 1909, 9 Edw. 7, c. 49, s. 24). Penalties imposed by the Act to be recovered and applied in the same manner as penalties imposed by the Companies (Consolidation) Act, 1908 (*ib.*, s. 25). See p. 410.

### ATTEMPT TO COMMIT A CRIME.

Every attempt to commit any act that is either a felony or a misdemeanour either at common law or by statute is itself an indictable misdemeanour at common law, punishment LL, as to which see p. 865



(Russell, 7th ed., 140). The proof of the physical impossibility of committing the crime attempted is not enough to excuse the attempt (*R. v. Brown* (1889), 24 Q.B.D. 357; *R. v. Ring* (1892), 17 Cox 491). Many attempts are punishable by statute, as felonies or misdemeanours, as to which see under various titles, *passim*. Any attempt to procure the commission of a crime by another is punishable as an attempt to commit a crime whether the crime be committed or not (*R. v. Higgins* (1801), 2 East 5; *R. v. Quail* (1866), 4 F. & F. 1076; *R. v. Ransford* (1874), 13 Cox 9; *R. v. De Kromme* (1892), 17 Cox 492). The attempt may be made by matter published in a newspaper or otherwise addressed merely to the public in general (*R. v. Most* (1880), 7 Q.B.D. 244). It must be proved that the persons intended to be incited were reached by the communication; the purchase of a newspaper which contains the incitement is some evidence that the persons to be incited were reached (*R. v. M'Carthy* (1903), 2 I.R. 146). If, as the result of such attempt to procure the commission of a crime, such crime is actually committed, the person procuring the commission is, if the crime be felony, guilty of felony as an accessory before the fact, whereas in the case of a misdemeanour the person procuring its commission is guilty of misdemeanour as a principal. The following definition of an attempt was accepted in *R. v. Laitwood* (1910), 4 Cr. App. Rep. 248: "An attempt to commit an offence is an act done or committed with intent to commit the offence, forming part of a series of acts or omissions which would have constituted the offence if such series of acts or omissions had not been interrupted either by the voluntary determination of the offender not to complete the offence or by some other cause."

#### BAIL.

As to admitting to bail, see pp. 29–31.

#### BANKRUPTCY, OFFENCES RELATING TO.

Any person adjudged bankrupt, or having presented petition for arrangement, (1) failing to truly discover, to the best of his knowledge or belief, property;<sup>1</sup> (2) failing to deliver up property; (3) failing to deliver up books, documents, &c., in his custody or control; (4) after presentation of a bankruptcy or arrangement petition, or within four months next before such presentation, concealing any property to the value of £10, or any debt; (5) within the same period fraudulently removing property to the value of £10 or upwards;<sup>2</sup> (6) making any material omission in any statement relating to his affairs; (7) failing for the period of one month to give information of falsehood of debt which he knows or believes to have been proved against him; (8) after presentation of a bankruptcy or arrangement petition, preventing the production of any document affecting or relating to his property or affairs; (9) after presentation of petition as above, or within four months next before such presentation, concealing, destroying, falsifying, &c., any such document, or being privy thereto; (10) within the same period making false entry in such document or being privy thereto; (11) within the same period fraudulently parting with, altering, or making any omission, in any such document, or being privy thereto; (12) within the same period attempting

<sup>1</sup> A bankrupt commits an offence by not disclosing after acquired property (*R. v. Michell* (1880), 14 Cox 490).

<sup>2</sup> The property must have been the property of the prisoner at the date of its removal; so that no offence is committed under this section where the prisoner, who had assigned the goods under a bill of sale, was merely in possession of them at the date of their removal (*R. v. Creese* (1874), L.R. 2 C.C.R. 105).

to account for any part of his property by any fictitious losses or expenses; (13) having within four months before the presentation of a petition obtained by fraud property on credit and not having paid for the same;<sup>1</sup> (14) within same period, being a trader, having obtained property on credit under false pretence of ordinary trade dealing; (15) within same period, being a trader, disposing otherwise than in the ordinary way of trade of any property obtained by him on credit and not paid for; (16) obtaining agreement of creditors by false representation or other fraud (*unless*—in offences 1-6, 14, 15—the jury is satisfied that he had no intent to defraud, or—in offences 8, 10—the jury is satisfied he had no intent to conceal the state of his affairs or to defeat the law)—*Misdemeanour*, punishment AA, as to which see p. 864 (*Debtors Act (Ir.)*, 1872, 35 & 36 Vict. c. 57, s. 11).

Any person whatever obtaining credit by false pretences or any other fraud,<sup>2</sup> making gift, delivery, transfer of, or charge upon his property with intent to defraud his creditors, or with like intent concealing or removing property since or within two months before the date of unsatisfied judgment or order for payment of money, or wilfully concealing property of any bankrupt or arranging debtor, and not having within forty-two days after filing of petition discovered such estate—*Misdemeanour*, punishment DD, as to which see p. 864 (*ib.*, s. 13).

Any creditor wilfully and with intent to defraud making false claim or any proof, declaration, or statement of account untrue in a material particular in bankruptcy or arrangement or composition—*Misdemeanour*, punishment DD, as to which see p. 865 (*ib.*, s. 14).

Bankrupt or arranging debtor, after adjudication or petition, or within four months before, absconding, or preparing to abscond, with property amounting to £20 or upwards, and by law divisible amongst creditors, unless the jury is satisfied that he had no intent to defraud—*Felony*, punishment AA, as to which see p. 864 (*ib.*, s. 12).

Prosecutions under ss. 11, 13, and 14 of the 35 & 36 Vict. c. 57 are subject to the Vexatious Indictments Act, 1859, 22 & 23 Vict. c. 17, and in any prosecution under those sections the justices are to take into consideration any evidence tending to show that the act charged was not committed with a guilty intent (*ib.*, s. 18).

Knowingly and wilfully resisting or obstructing messenger of bankruptcy court—*Misdemeanour*, punishment HH, as to which see p. 865 (*Irish Bankrupt and Insolvent Act*, 1857, 20 & 21 Vict. c. 60, s. 389).

Officer of the court fraudulently demanding or taking unauthorised fees or reward other than is allowed by the Act, liable to forfeit £500, and is incapable of ever holding any office or place under the Crown (*ib.*, s. 395).

Forging signature of judge or officer or the seal of court; tendering in evidence a document with such false signature or seal, knowing the same to be forged—*Felony*, punishment P, as to which see p. 863 (*ib.*, s. 397).

Inserting unauthorised advertisement as to bankruptcy—*Misdemeanour*, punishment LL, as to which see p. 865 (*ib.*, s. 396).

Gaoler suffering persons committed in bankruptcy to escape—*Penalty*, £500 (*ib.*, s. 398).

As to perjury in bankruptcy proceedings, see PERJURY.

<sup>1</sup> On an indictment under this section it is not necessary to allege or prove intent to defraud (*R. v. Dyson* (1894), 2 Q.B. 176; *R. v. Brownlow* (1910), 4 Cr. App. Rep. 131).

Where the goods are obtained by letter the indictment may be laid in the county where the letter was written and to which the goods were sent (*R. v. Peters* (1886), 16 Q.B.D. 636; *R. v. Ellis* (1899), 1 Q.B. 230).

<sup>2</sup> An intention to defraud is an essential ingredient in the offence created by the foregoing words of this section (*R. v. Muirhead* (1908), 1 Cr. App. Rep. 189; *R. v. Brownlow* (1910), 4 Cr. App. Rep. 131).

## BETTING.

Street betting, &c., after the accused has been twice convicted of like offence, or where in committing such offence he has any betting transaction with a person under sixteen—*Misdemeanour*, fine not exceeding £50, or imprisonment not exceeding six months with or without hard labour (*Street Betting Act*, 1906, 6 Edw. 7, c. 43, s. 1 (1) (c)).<sup>1</sup>

Inviting infant to bet or borrow money or unlawfully soliciting infant to make affidavit in connection with loan—*Misdemeanour*, imprisonment not exceeding three months with or without hard labour, or fine not exceeding £100, or both (*Betting and Loans (Infants) Act*, 1892, 55 & 56 Vict. c. 4, ss. 1, 2, 4).<sup>2</sup> Knowledge of infanc y is presumed where the circular, &c., is sent to a person who is an infant at a university, college, school, or other place of education, unless the person sending such circular, &c., prove reasonable ground for belief that the person to whom it was sent was of full age (s. 3).

## BIGAMY.

See MARRIAGE, OFFENCES RELATING TO.

## BIRTH, CONCEALMENT OF.

“If any woman shall be delivered of a child, every person who shall by any secret disposition of the dead body of the child, whether such child died before, at, or after its birth, endeavour to conceal the birth thereof”—*Misdemeanour*, punishment Y, as to which see p. 864 (*Offences against the Person Act*, 1861, 24 & 25 Vict. c. 100, ss. 60, 71). “If any person tried for the murder of a child shall be acquitted thereof, it shall be lawful for the jury . . . to find, in case it shall so appear in evidence, that the child had recently been born, and that such person did, by some secret disposition of the body of such child, endeavour to conceal the birth thereof, and thereupon the court may pass such sentence as if such person had been convicted upon an indictment for the concealment of the birth” (*ib.*, s. 60).

To constitute the offence it must be proved :—(1) That a woman has been delivered of something more than a foetus which had not reached the stage of development at which it could have been born alive (*R. v. Hewett* (1866), 4 F. & F. 1101). (2) That the dead body was found and had been identified as that of the child the concealment of whose birth is charged (*R. v. Williams* (1871), 11 Cox 684).<sup>3</sup> (3) That there was some definite act of concealment.<sup>4</sup> (4) That the child was dead when concealed.<sup>5</sup> (*R. v. Bell*, I.R. 8 C.L. 542).

<sup>1</sup> Any person who appears to the court to be under the age of sixteen shall be deemed to be under that age till the contrary is proved, or unless the person charged satisfies the court he had reasonable ground for believing otherwise (s. 1 (3)). As to summary jurisdiction under the Act, see p. 504.

<sup>2</sup> As to summary jurisdiction under this Act, see p. 404.

<sup>3</sup> Unless in cases where from the evidence it appears that the finding of the body was rendered impossible by circumstances such as those in *R. v. Kersey* (1908), 21 Cox 690, where a woman was convicted of concealment of birth on her own confession that she had killed her child and cremated the body.

<sup>4</sup> Neither the mere leaving of the body in the place where the confinement took place (*R. v. Derham* (1843), 1 Cox 56), nor the mere denial of the fact of the birth (*R. v. Turner* (1839), 8 C. & P. 755), nor leaving on the public street (*R. v. Clark* (1883), 15 Cox 171), is such an act. But putting the body under the bolster of a bed (*R. v. Perry* (1855), Dears 471), or putting the body entirely exposed in some secluded place where no one would be likely to find it (*R. v. Brown* (1870), L.R. 1 C.C.R. 244), is such an act.

<sup>5</sup> A person who conceals a living child which, as the result of such concealment, is caused either suffering or injury, or dies, is obviously guilty either of cruelty to children, or of murder or manslaughter, as the case may be.



## BLASPHEMY.

Any person speaking or printing and publishing any blasphemous words is guilty of a misdemeanour at common law, punishment LL, as to which see p. 865. Opinions differ as to what constitutes the crime of blasphemy: "The gist of the offence is not now considered to be in holding an opinion contrary to the general tenets of Christianity, or to the doctrines of the Church of England, but in the mode of expressing it" (Russell, 7th ed., 395; but see Stephen's *Dig. Criminal Law*, 6th ed., 125).

## BRIBERY AND CORRUPTION.

As to bribery at Elections, see ELECTIONS, OFFENCES AS TO.

Corruptly soliciting or receiving, &c., any gift, &c., as an inducement to or reward for any member, officer, or servant of a public body as defined by the Act, doing or forbearing to do anything in respect of any matter in which such public body is concerned, or corruptly giving, promising, or offering such inducement or reward—*Misdemeanour*, punishment AA, as to which see p. 864, or £500 fine, or both, and the accused is liable to pay to such public body value of such gift received, and incurs certain disqualifications as to office (*Public Bodies Corrupt Practices Act*, 1889, 52 & 53 Vict. c. 69, ss. 1, 2). Public body means any council of a county, city, or town, or municipal borough, any board, &c., having power to act for local government, public health, poor law, or to administer money raised by public rates (*ib.*, s. 7). No prosecution under ss. 1 and 2 can be instituted without the leave of the Attorney-General or Solicitor-General for Ireland (*ib.*, s. 4).

Under the Prevention of Corruption Act, 1906, 6 Edw. 7, c. 34, s. 1 (1), any agent corruptly accepting or obtaining, or attempting to so obtain from any person, any gift or consideration as inducement or reward for doing or forbearing to do, or having after the passing of the Act done or forborne to do any act, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business, is guilty of misdemeanour, punishable by AA (see p. 865), or fine of £500, or both, on indictment.<sup>1</sup> Any person giving, agreeing to give, or offering any such inducement as above—*Misdemeanour*, same punishment (*ib.*). Any person knowingly giving to any agent; any agent knowingly using with intent to deceive his principal, any receipt or account or other document containing false, erroneous, or defective statement in material particular to his knowledge intended to deceive his principal—*Misdemeanour*, same punishment (*ib.*).<sup>2</sup>

## BURGLARY.

Common  
law.

Burglary is:—(1) at common law, breaking and entering the dwelling-house of another in the night-time with intent to commit any felony therein, whether such intent be executed or not (1 Hawk, c. 38, s. 1);

<sup>1</sup> For summary jurisdiction, see p. 389.

<sup>2</sup> "Consideration" means valuable consideration of any kind (*ib.*, s. 1 (2)). "Agent" includes any person employed by or acting for another or serving under the Crown, a corporation, municipal borough, county, or district council or board of guardians (*ib.*, s. 1 (2), (3)): "principal" includes employer (*ib.*, s. 1 (2)).

A prosecution for an offence under the Act cannot be instituted except by leave of the Attorney or Solicitor General (*ib.*, s. 2).

The Vexatious Indictments Act, 1859, 22 & 23 Vict. c. 17, applies to prosecutions under the Act.

(2) by statute, where any person shall enter the dwelling-house of another with intent to commit any felony therein or being in such dwelling-house shall commit any felony therein, and shall in either case break out of such house in the night (*Larceny Act*, 1861, 24 & 25 Vict. c. 96, ss. 51, 52). The offence in either case is—*Felony*, punishment A, as to which see p. 862 (*ib.*, ss. 52, 117). Statutory.

Night-time begins at 9 P.M. and ends at 6 A.M. (24 & 25 Vict. c. 96, s. 1). Both the breaking and the entry must be in the night-time (1 Hale 551). If either or both of the acts is committed in the day the offence is HOUSE-BREAKING.<sup>1</sup> The breaking may be effected in one night and the entry on another night (*R. v. Smith* (1820), Russ. & Ry. 417); and the breaking may be by one person and the entry by a confederate, in which case each is guilty of burglary (*R. v. Jordan* (1836), 7 C. & P. 432). Dwelling-house means a permanent building (1 Hale 557; 1 Hawk, c. 38, s. 17) (as distinguished from such a structure as a tent), in which the owner (*R. v. Bridges* (1845), 1 Cox 261, in which case a tenant at will was held to be an owner) or his family, including his domestic servants (*R. v. Gibbons* (1821), Russ. & Ry. 442; *R. v. Stock* (1810), Russ. & Ry. 185; *R. v. Westwood* (1822), *ib.* 495), are in the habit of sleeping (*R. v. Harris* (1795), 2 Leach 701; *R. v. Thompson* (1796), *ib.* 771; *R. v. Martin* (1806), Russ. & Ry. 108; *R. v. Smith* (1833), 1 Mood & R. 256), even during portion only of the year (1 Hawk, c. 8, s. 11; *R. v. Nutbourn* (1750), Fost. 76; *R. v. Murry* (1698), 2 East P.C. 496; *R. v. Smith* (1833), 1 Mood & R. 256), and any building communicating either internally, or by a covered and enclosed passage, with such dwelling-house, and held with it by the same owner (*R. v. Jenkins* (1812), Russ. & Ry. 244), is deemed to be part thereof (24 & 25 Vict. c. 96, s. 53). "Night-time."  
"Dwelling-house."

The breaking must be in respect of some part of the dwelling-house itself, as above defined. Thus it is not burglary to break the gate of the yard of a house (*R. v. Bennett* (1815), Russ. & Ry. 289), or an area gate (*R. v. Davis* (1817), Russ. & Ry. 322), or chests, &c., in a house (1 Hale 553), or a shutter case outside a shop (*R. v. Paine* (1834), 7 C. & P. 135). The breaking may be either actual or constructive. Actual breaking includes opening by any means, any outer or inner (1 Hale 553; 1 Hawk, c. 38; *R. v. Johnson* (1786), 2 East P.C. 488) door or window or cellar flap, which is completely closed (1 Hale 552), *e.g.* by lifting a latch (*Pugh v. Griffith* (1838), 7 A. & E. 827), but does not include the further opening of a door, &c., already partly open (*R. v. Smith* (1827), 1 Mood C.C. 178); or entering through a hole in a cellar window (*R. v. Lewis* (1827), 2 C. & P. 628), or through a hole in the roof (*R. v. Spriggs* (1834), 1 Mood & R. 357). Constructive breaking includes an entry by fraud (1 Hawk, c. 38, s. 9), or by fraudulent conspiracy (*R. v. Farre* (1665), Kel. 43), or by threats (*R. v. Swallow* (1813), noted Russell, 7th ed., p. 1070). The entry must be the consequence of the breaking (*R. v. Davis* (1854), 6 Cox 369). The entry of any part of the body (1 Hale 553), or the insertion of any part of any instrument (1 Hale 555) or weapon (1 Hawk, c. 38, s. 7), if such insertion be for the purpose of committing any felony, is deemed to be an entry. If a breaking is proved, but an entry is not proved, the accused may be convicted of attempt to commit burglary (*R. v. Spanner* (1872), 12 Cox 155). "Breaking."  
"Entering."

As to attempts to commit burglary, see ATTEMPT TO COMMIT A CRIME, p. 874.

<sup>1</sup> As to which, see *post*.

## CENSUS OF PRODUCTION.

Unlawfully publishing or disclosing individual return made for the purposes of the Census of Production Act, 1906—*Misdemeanour*, punishable with imprisonment (with or without hard labour) not exceeding two years, or fine, or both (*Census of Production Act*, 1906, 6 Edw. 7, c. 49, s. 6 (1)).

Any person, having possession of any information knowing the same to have been disclosed in contravention of the Act, publishing or communicating such information—*Misdemeanour*, punishable with imprisonment (with or without hard labour) not exceeding two years, or fine, or both (*ib.*, s. 6 (5)).<sup>1</sup>

## CHEAT.

Any deceitful or illegal practice, not amounting to felony, which directly affects or may affect the public—*Misdemeanour* at common law, punishment LL, as to which see p. 865 (Stephen, *Dig. C.L.*, 6th ed., 306. See *R. v. Brailsford* (1905). 2 K.B. 730; *R. v. Vreones* (1891), 1 Q.B. 360).

As to cheating at cards, &c., see p. 895.

CHEMISTS.<sup>2</sup>

Any person who shall wilfully procure or attempt to procure registration under the Pharmacy Act (Ir.), 1875, or any person aiding or abetting such procuring or attempt, or any registrar of the Pharmaceutical Society wilfully falsifying or causing to be falsified any register kept pursuant to that Act—*Misdemeanour*, punishable with imprisonment not exceeding twelve months (*Pharmacy (Ir.) Act*, 1875, 38 & 39 Vict. c. 57, s. 28).

## CHILDREN, OFFENCES AS TO.

Cruelty to children and young persons, including suffocation of infants by over-laying as the result of drunkenness—*Misdemeanour*, fine not exceeding £100, or alternatively, or in default of payment thereof, or in addition thereto, imprisonment not exceeding two years with or without hard labour (*Children Act*, 1908, 8 Edw. 7, c. 67, ss. 12 and 13).<sup>3</sup> The fine may be increased under the circumstances specified in s. 12 (5), to an amount not exceeding £200. Allowing children or young persons to be in brothels—*Misdemeanour*, fine not exceeding £25, or alternatively, or in default of payment thereof, or in addition thereto, imprisonment not exceeding six months with or without hard labour (*ib.*, s. 16).

Abandoning or exposing<sup>4</sup> child under two so as to endanger its life or health—*Misdemeanour*, punishment S, as to which see p. 863 (*Offences against the Person Act*, 1861, 24 & 25 Vict. c. 100, ss. 27, 71).

See also ABDUCTION, and FEMALES, OFFENCES AGAINST AND RELATING TO.

<sup>1</sup> As to summary jurisdiction, see p. 394.

<sup>2</sup> As to summary jurisdiction, see p. 395.

<sup>3</sup> These two misdemeanours are by s. 35 of the Children Act, 1908, made subject to the Vexatious Indictments Act. As to summary jurisdiction with regard to them, see p. 406.

<sup>4</sup> To prove an offence of exposure under this section it is not necessary to prove that the child was actually taken and placed in some place with intent to injure, and there was held to be exposure within the meaning of the section where a man unnecessarily tramped many miles with his children during a wet and cold night (*R. v. Williams* (1910), 26 T.L.R. 290, 4 Cr. App. Rep. 89).



## CHURCHES, OFFENCES AS TO.

See HOUSEBREAKING, PUBLIC WORSHIP, and MALICIOUS INJURIES.

COINAGE OFFENCES.<sup>1</sup>

Counterfeiting current gold or silver coin<sup>2</sup>—*Felony*, punishment A, as to which see p. 862 (*Coinage Offences Act*, 1861, 24 & 25 Vict. c. 99, ss. 2, 38). Colouring, &c., coin or metal with intent to make them pass for current gold or silver coin, or colouring or altering genuine coin with intent to make it pass for a higher coin—*Felony*, punishment A, for which see p. 862 (*ib.*, ss. 3, 38). Impairing, diminishing, or lightening current gold or silver coin with intent to pass same for current gold or silver coin—*Felony*, punishment E, for which see p. 862 (*ib.*, ss. 4, 38). Unlawful possession of filings, &c., produced or obtained from lightening, &c., of current gold or silver coin, knowing the same to be so produced—*Felony*, punishment L, for which see p. 863 (*ib.*, ss. 5, 38). Buying or selling without lawful authority, &c., counterfeit current gold or silver coin for less than face value—*Felony*, punishment A, for which see p. 862 (*ib.*, ss. 6, 38).<sup>3</sup> Importing without lawful authority or excuse counterfeit gold or silver coin—*Felony*, punishment A, for which see p. 862 (*ib.*, ss. 7, 38). Exporting, &c., without lawful authority or excuse, counterfeit current coin—*Misdemeanour*, punishment Y, for which see p. 864 (*ib.*, ss. 8, 38). Knowingly tendering, uttering, or putting off<sup>4</sup> counterfeit gold or silver coin—*Misdemeanour*, punishment CC, for which see p. 864 (*ib.*, ss. 9, 38). Knowingly tendering, uttering, or putting off counterfeit current gold or silver coin either whilst in possession of other counterfeit current gold or silver coin, or when the first tendering, &c., is followed by a second tendering, &c., within ten days—*Misdemeanour*, punishment Y, for which see p. 864 (*ib.*, ss. 10, 38). Possession of three or more counterfeit current gold or silver coins, with intent to utter—*Misdemeanour*, punishment S, for which see p. 864 (*ib.*, ss. 11, 38). Repetition of offences against ss. 9, 10, or 11—*Felony*, punishment A, for which see p. 862 (*ib.*, ss. 12, 38). Uttering, as current gold or silver coin, coin not current, medals, &c.—*Misdemeanour*, punishment CC, for which see p. 864 (*ib.*, ss. 13, 38). Counterfeiting current copper coin, making or mending instruments for counterfeiting copper coin without lawful authority,<sup>5</sup> buying copper coin for lower value than its denomination—*Felony*, punishment L, for which see p. 863 (*ib.*, ss. 14, 38). Uttering, &c., counterfeit current copper coin, or possessing three or more pieces thereof—*Misdemeanour*, punishment CC, for which see p. 864 (*ib.*, ss. 15, 38). Defacing gold, silver,

<sup>1</sup> For summary jurisdiction in cases of (1) tendering defaced coin, (2) making or issuing coins or tokens, (3) possession of more than five counterfeit foreign gold or silver coins, see p. 408.

<sup>2</sup> False or counterfeit coin includes current coin gilt, washed, &c., so as to resemble current coin of a higher denomination (24 & 25 Vict. c. 99, s. 1). A genuine sovereign off which the milled edge has been ground, a new milling being then put on, is false and counterfeit, because it resembles, but is not in fact, what a sovereign ought to be (*R. v. Hermann* (1879), 4 Q.B.D. 284). Any credible witness may prove that the coin is counterfeit (24 & 25 Vict. c. 99, s. 29).

<sup>3</sup> The onus of proof of lawful authority is on the accused in all cases.

<sup>4</sup> Offering, whether the offer be accepted or not (*R. v. Welch* (1851), 4 Cox 432), and whether without legal consideration, as for charity (*R. v. Ion* (1852), 2 Den. 475), or for an illegal consideration, as to a prostitute for her prostitution (*R. v. —* (1845), 1 Cox 250), is uttering.

<sup>5</sup> Proof whereof lies on party charged.

or copper coin, by stamping words thereon—*Misdemeanour*, punishment CC, for which see p. 864 (*ib.*, ss. 16, 38).<sup>1</sup> Making counterfeit foreign gold or silver coin—*Felony*, punishment L, for which see p. 863 (*ib.*, ss. 18, 38). Importing counterfeit foreign gold or silver coin without lawful authority or excuse<sup>2</sup>—*Felony*, punishment L, for which see p. 863 (*ib.*, ss. 19, 38). Uttering counterfeit foreign gold or silver coin—*Misdemeanour*, punishment FF, for which see p. 865 (*ib.*, ss. 20, 38). Like offence after a previous conviction for such offence—*Misdemeanour*, punishment Y, as to which see p. 864, except that the court may order the imprisonment to be with solitary confinement<sup>3</sup> (*ib.*, ss. 21, 38). Like offence after two previous convictions for such offences—*Felony*, punishment A, as to which see p. 862 (*ib.*, ss. 21, 38). Making counterfeit foreign copper coin—*Misdemeanour*, first conviction, punishment CC, as to which see p. 864; second conviction, punishment N, as to which see p. 863 (*ib.*, ss. 22, 38). Knowingly and without lawful authority or excuse<sup>4</sup> making or possessing instruments for counterfeiting gold or silver coin<sup>5</sup>—*Felony*, punishment A, as to which see p. 862 (*ib.*, ss. 24, 38). Conveying coinage tools out of Mint without lawful authority or excuse<sup>6</sup>—*Felony*, punishment A, as to which see p. 862 (*ib.*, ss. 25, 38). Principal in the second degree or accessory before the fact in or to any felony under the Act shall be punishable as principal in first degree (*ib.*, s. 35). Accessory after the fact to any felony under the Act, punishment AA, as to which see p. 864 (*ib.*, s. 35). Selling, &c., medals resembling current coin—*Misdemeanour*, punishment CC, as to which see p. 864 (*Counterfeit Medals Act*, 1883, 46 & 47 Vict. c. 45, s. 2).

### COMMON NUISANCE.

Common nuisances may be defined as offences against the public, either by doing a thing which tends to the annoyance of all the King's subjects, or by neglecting to do a thing which the common good requires (1 Hawk, c. 32, s. 4).

The following are a few instances of common nuisances:—Exposing in the public thoroughfare a person suffering from a dangerous infectious disease (*R. v. Vantandillo* (1815), 4 M. & S. 73), or a horse suffering from glanders (*R. v. Henson* (1852), Dears 24); the owner of a house adjoining the highway allowing it to become ruinous and dangerous to passers-by (*R. v. Watson* (1705), 2 Ld. Raym. 856); blasting in a quarry so as to throw stones on the public road (*R. v. Mutters* (1864), L. & C. 491); polluting water to the danger of the public health (*R. v. Medley* (1834), 6 C. & P. 292); any unauthorised obstruction of a highway (*R. v. Train* (1862), 31 L.J. (N.S.), (M.C.) 169); selling food unfit for consumption (*R. v. Dixon* (1814), 3 M. & S. 11). It should be noted that many acts, &c., which at common law are common nuisances are now the subject of legislation, giving in most instances summary powers to justices, but, such legislation notwithstanding, the right to indict at common law for a common nuisance remains in each instance. A common nuisance is a *misdemeanour* at common law, punishment LL, as to which see p. 865.

<sup>1</sup> Tendering coin so defaced is an offence triable summarily. See p. 408.

<sup>2</sup> Proof whereof lies on the accused (*ib.*).

<sup>3</sup> The courts have ceased since the passing of the Prison Act, 1865, 28 & 29 Vict. c. 126, to order solitary confinement, as that Act by s. 17 made any such order superfluous.

<sup>4</sup> Proof whereof lies on the accused (*ib.*).

<sup>5</sup> If a workman in good faith makes the instrument, believing it to be for an innocent purpose, the person who employed him to make it can be convicted of making (*R. v. Bannen* (1844), 2 Mood C.C. 309).

<sup>6</sup> Proof whereof lies on the accused (*ib.*).

**COMPANIES (CONSOLIDATION) ACT, 1908.**

Any director, manager, or officer of company wilfully concealing name of any creditor entitled to object to reduction, or wilfully misrepresenting claim of any creditor, or director or manager being privy, &c., to such concealment or misrepresentation—*Misdemeanour*, punishable with LL, as to which see p. 865 (*Companies (Consolidation) Act, 1908*, 8 Edw. 7, c. 69, s. 54). Any person wilfully making a statement false in any material particular, knowing it to be false, for the purposes referred to in s. 281 of the Companies (Consolidation) Act, 1908—*Misdemeanour*, punishment AA (see p. 864), or fine, or both <sup>1</sup> (*ib.*, s. 281). See also FORGERY and PERSONATION.

**COMPOUNDING OFFENCES.**

The compounding of a felony is a misdemeanour at common law, punishment LL, as to which see p. 865. The offence is committed where any person <sup>2</sup> agrees <sup>3</sup> in consideration of any advantage not to prosecute the person who has committed the felony (1 Hale 534). It seems to be doubtful whether an agreement to compromise a misdemeanour is an offence (Russell, 7th ed., 580). Corruptly taking any reward, directly or indirectly, under pretence of helping any person to recover any property which has been stolen, &c., by any felony or misdemeanour unless the person taking such reward shall have used due diligence to cause the offender to be brought to trial—*Felony*, penal servitude, not exceeding seven nor less than three years, or imprisonment not exceeding two years with or without hard labour, and if a male under eighteen with or without whipping (*Larceny Act, 1861*, 24 & 25 Vict. c. 96, s. 101). Corruptly taking any reward, under pretence of aiding any person to recover a dog stolen or in the possession of any person not being the owner—*Misdemeanour*, punishable with imprisonment not exceeding eighteen months with or without hard labour (*ib.*, s. 20). The reward is taken corruptly if the person taking it has no intention to detect or disclose the offender (*R. v. King* (1844), 1 Cox 36; *R. v. Pascoe* (1849), 3 Cox 462). It is not necessary, in order to bring a case within the Acts, that the money paid for procuring the return of stolen property should be paid before the property is returned, provided the money was paid in pursuance of a previous agreement on the subject (*R. v. O'Donnell* (1857), 7 Cox 337).

The public advertisement of a reward for lost or stolen property, intimating that no questions will be asked or no inquiries made, or promising to return to pawnbroker, &c., any sum advanced on such property, subjects the person so advertising to a forfeiture of £50 to be recovered by a common informer in an action of debt (*ib.*, s. 102), which must be brought within six months, and cannot be brought without the consent of the Attorney-General or Solicitor-General (*Larceny Advertisements Act, 1870*, 33 & 34 Vict. c. 65, s. 3).

**CONSPIRACY.**

Criminal conspiracy consists in an unlawful combination of two or more persons to do that which is contrary to law, or to cause a public mischief, or to do that which is wrongful and harmful towards another person, or to do a lawful act for an unlawful end, or by unlawful means,

<sup>1</sup> For summary jurisdiction under this and other sections of the Act, see p. 408.

<sup>2</sup> A person may be convicted of compounding a larceny though he is not the owner of the stolen goods (*R. v. Burgess* (1885), 16 Q.B.D. 141).

<sup>3</sup> It is immaterial whether the person who has made the agreement does or does not subsequently prosecute (*R. v. Burgess, supra*, which impliedly overrules *R. v. Stone* (1830), 4 C. & P. 379).



or wrongfully to prejudice a third person <sup>1</sup> (Russell, 7th ed., 146); and see judgment of Lord Brampton in *Quinn v. Leatham* (1901), A.C., at p. 528). The offence is at common law a misdemeanour, punishment LL, for which see p. 865. A husband and wife cannot be convicted of conspiracy with one another, although they, or either of them, may be convicted of conspiracy with another person or other persons (1 Hawk P.C., c. 27, s. 8; *R. v. Cope* (1719), 1 Stra. 144).

The gist of the offence lies not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to effect such purpose nor in inciting others to do so, but in the forming of the scheme or agreement between the parties (Russell, 7th ed., 147; 1 East 462).

A combination to injure a third party or a class without just cause or excuse is a criminal conspiracy, although the wrong intended if done by an individual would be a wrong and not a crime (*R. v. Parnell* (1881), 14 Cox 508, 513). To refrain from dealing with a person is lawful; but an agreement between several to so refrain and to induce and compel others to so refrain is a criminal conspiracy (*ib.*).

But no agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute between employers and workmen is punishable as conspiracy, if such act, committed by one person, would not be punishable as a crime (39 & 40 Vict. c. 86, s. 3; 6 Edw. 7, c. 47, ss. 1, 5).

For seditious conspiracy, see OFFENCES AGAINST THE GOVERNMENT; for conspiracy to murder, see OFFENCES AGAINST THE PERSON; for conspiracy to commit a crime, see ATTEMPT TO COMMIT A CRIME.

#### CONSPIRACY AND PROTECTION OF PROPERTY ACT, 1875, 38 & 39 Vict. c. 86.<sup>2</sup>

By s. 9 of the Act the following offences are triable on indictment, if the accused objects to being tried by a court of summary jurisdiction:—breach of contract by persons employed in supply of gas or water (s. 4); breach of contract involving injury to person or property (s. 5); neglect by master to provide food, clothing, &c., for apprentice or servant (s. 6); intimidation or annoyance by violence or otherwise (s. 7). Each of the offences under ss. 4, 5, and 7 is punishable with a fine not exceeding £20, or imprisonment not exceeding three months with or without hard labour. Offences under s. 6 are punishable with a fine not exceeding £20, or imprisonment not exceeding six months.

#### CONSTABLES, OFFENCES BY AND RELATING TO.

As to resisting or assaulting constable, see ASSAULT; as to bribery of constable, &c., see OFFICERS, OFFENCES BY AND RELATING TO PUBLIC; as to larceny by constable, &c., see LARCENY; and as to refusing to assist a constable, see POLICE, REFUSING TO ASSIST.

<sup>1</sup> Where any sentence for the common law misdemeanours of conspiracy to cheat or defraud, or to extort money or goods or falsely to accuse of any crime, or to obstruct, prevent, pervert, or defeat the course of public justice, is, or includes, imprisonment, such imprisonment may be with or without hard labour (*Criminal Procedure Act*, 1851, 14 & 15 Vict. c. 100, s. 29). This offence is within the Vexatious Indictments Act, 22 & 23 Vict. c. 17. There is no summary jurisdiction with regard to it except under the Criminal Law and Procedure (Ir.) Act, 1887, for which see APPENDIX OF STATUTES.

As to an agreement made *bona fide* in the protection and defence of one's own interests, see *Mogul Steamship Company v. McGregor, Gow, & Co.* (1889), (1892), A.C. 25.

<sup>2</sup> For summary jurisdiction, see p. 610.

**CONVICT AT LARGE.**

Any person sentenced to penal servitude, who without lawful excuse is at large within the United Kingdom before the expiration of his sentence—*Felony*, punishment C, as to which see p. 862 (*Criminal Law (Ir.) Act*, 1828, 9 Geo. 4, c. 54, s. 16; *Capital Punishment (Ir.) Act*, 1842, 5 & 6 Vict. c. 28, s. 12).

**CRIME, DEFINITION OF.**

A crime may be defined as an unlawful act or default which is an offence against the public, and renders the person guilty of such act or default liable to legal punishment (Stephen, *Hist. Crim. Law*, vol. i. p. 1). As to criminal capacity, see p. 255; as to distinction between felonies and misdemeanours, see *infra*; as to bail, see pp. 29–31.

**CRIMES: PRINCIPALS AND ACCESSORIES.**

There are no accessories in treasons or misdemeanours. All who would be deemed accessories either before or after the fact if the crime were a felony are in treason deemed principals. In misdemeanours all who would be accessories before the fact if the crime were a felony are deemed principals, and are punishable as such (*Accessories and Abettors Act*, 1861, 24 & 25 Vict. c. 94, s. 8).

In felonies those concerned in the crime are divided into principals and accessories. Principals are divided into principals in the first degree and principals in the second degree. A principal in the first degree is he who commits the crime either himself or through an innocent person. A principal in the second degree is he who is actually or constructively present at the commission of the crime, aiding and abetting the principal in the first degree.

Accessories are divided into accessories before the fact and accessories after the fact. An accessory before the fact is one who directly or indirectly procures by any means the commission of any felony. An accessory after the fact is one who, knowing a felony to have been committed and not being the wife of the felon, in any way whatever secures or attempts to secure the escape of the felon whether by harbouring him or otherwise. Such an act is no offence in the case of a misdemeanour. Accessories before the fact and all principals in the second degree are liable to whatever punishment is assigned by law to the felony in which they are implicated, and may be convicted even though the principal felon has not been convicted or arrested, or even though he has been acquitted (Stephen, *Dig. Cr. Law*, p. 36).

An accessory after the fact to murder is guilty of felony, punishable with A, as to which see p. 862 (*Offences against the Person Act*, 1861, 24 & 25 Vict. c. 100, ss. 67, 71), and any accessory after the fact to any other felony under that Act, is guilty of felony, punishable with X, as to which see p. 864 (*ib.*, *ib.*). Accessories after the fact to any felony (1) under the Larceny Act, 1861, except receivers of stolen property,<sup>1</sup> are guilty of felony, punishable with X (see p. 864) (24 & 25 Vict. c. 96, ss. 98, 117), or (2) under the Malicious Damage Act, 1861, 24 & 25 Vict. c. 97, are guilty of felony, with like punishment (ss. 56, 73), or (3) under the Forgery Act, 1861, 24 & 25 Vict. c. 98, are guilty of felony, with like punishment (ss. 49, 51), or (4) under the Coinage Offences Act, 1861, 24 & 25 Vict. c. 99, are guilty of felony, with like punishment (ss. 35, 38).

<sup>1</sup> As to whom, see *post*.

It is not, however, easy to understand why these special sections in these five Acts as to accessories in offences other than murder were inserted. For in the Accessories and Abettors Act, 1861, 24 & 25 Vict. c. 94, passed on precisely the same day as these five Acts, it provided that every accessory after the fact to any felony (except where it is otherwise specially enacted), whether the same be a felony at common law or by virtue of any Act is guilty of felony (*ib.*, s. 3), may be convicted whether the principal felon shall or shall not have been previously convicted or shall or shall not be amenable to justice, and may be sentenced to punishment X (see p. 864) (*ib.*, s. 4), which seems to have been a sufficient dealing with the matter.

### DEAD BODY OF HUMAN BEING, OFFENCES RELATING TO.<sup>1</sup>

#### Common law.

The following are misdemeanours at common law, punishment LL, for which see p. 865. Destroying or disposing of a dead body, in order to prevent an inquest being held or in contempt of the authority of the coroner in case where it is lawful to hold an inquest (*R. v. Price* (1884), 12 Q.B.D. 247; *R. v. Stephenson* (1884), 13 Q.B.D. 331; *R. v. Beeton* (1910), *Times* newspaper, 22nd June 1910; *Anon* (1702), 7 Mod. Rep. 10);<sup>2</sup> any person whose duty it is to dispose of a dead body,<sup>3</sup> and having the means to discharge such duty, failing to discharge the same (*R. v. Vann*, (1851), 2 Den. 325; *R. v. Stewart* (1840), 12 A. & E. 773); preventing a dead body from being buried (*R. v. Scott* (1842), 2 Q.B. 248 n.); disinterment without lawful authority (*R. v. Lynn* (1788), 2 T.R. 733)<sup>4</sup> for any purpose or from any motive whatever (*R. v. Cundick* (1822), 1 D. & R. (M.C.) 356; *R. v. Jacobson* (1880), 14 Cox 522; *R. v. Sharpe* (1857), 1 D. & B. 160); sale by an undertaker for purposes of dissection, of a

<sup>1</sup> The Cremation Act, 1902, 2 Edw. 7, c. 8, empowering burial authorities to provide and regulate crematoria, does not apply to Ireland. To burn a dead body is not an offence, unless done in such a manner as to cause a public nuisance (*R. v. Price* (1884), 12 Q.B.D. 247), or, where an inquest may lawfully be held, in order to prevent an inquest being held. A dead body is not capable of being stolen (*R. v. Haynes* (1614), 12 Co. Rep. 113, 2 East P.C. 652), but this case does not apply to skeletons or parts thereof prepared for educational purposes.

<sup>2</sup> When any dead body shall be found, or any case of sudden death, or of death attended with suspicious circumstances shall occur, the coroner of the district may, if he thinks fit, hold an inquest (9 & 10 Vict. c. 37, s. 22). In the case of the execution of sentence of death (31 & 32 Vict. c. 24, s. 5), or the death of any prisoner within a prison (40 & 41 Vict. c. 49, s. 56), the coroner must hold an inquest.

<sup>3</sup> Amongst these are executors (2 Bl. Com. 508); a husband (*Bradshaw v. Beard* (1862), 12 C.B. (N.S.) 344); a parent of a minor (*R. v. Vann* (1857), 2 Den. 325); any householder on whose premises the body is (*R. v. Stewart* (1840), 12 A. & E. 778).

<sup>4</sup> The statute 20 & 21 Vict. c. 81, s. 25, which deals with the question of disinterment, does not apply to Ireland. In Ireland under the common law a body, wheresoever interred, may be disinterred (1) on an order from a coroner issued within a reasonable time after death for the purpose of holding an inquest, or of holding a further inquest where the first was insufficient; (2) where an inquisition has been quashed, by order of the High Court made for the purpose of the holding of another inquisition (*Jarvis on Coroners*, 6th ed., p. 27); (3) on an order of the Chief Secretary to the Lord-Lieutenant made for any reason that seems to him fit. No authority whether at common law or under any statute can be quoted as regards such last-named order, but such order has in various instances been made and acted on. It is also submitted that a body interred in any graveyard vested in the Representative Body of the Church of Ireland may be disinterred on a faculty granted from the court of the bishop (of that Church) in whose diocese such graveyard is situate, but only for the purpose of the removal of such body from one place of interment in any such graveyard to another. The view so submitted is undoubtedly in accordance with the settled law as existing prior to the Irish Church Act, 1869.



dead body entrusted to him for burial (*R. v. Cundick* (1822), 1 D. & R. (M.C.) 356); exposing a dead body on or near the public highway where it may be seen by the public, and in such manner as to shock public decency (*R. v. Clark* (1833), 15 Cox 171).

As to summary jurisdiction relating to burial, see p. 774.

### DEATHS, REGISTRATION OF.

See REGISTRATION OF BIRTHS AND DEATHS, p. 773.

### DECENCY, OFFENCES AGAINST.<sup>1</sup>

Any act done in public in such a way as to offend modesty or cause scandal or injure the morals of the community—*Misdemeanour* at common law, punishment LL,<sup>2</sup> for which see p. 865. Such acts include wilful exposure of the naked person (*R. v. Sedley* (1663), 1 Sid. 168; *R. v. Harris* (1871), L.R. 1 C.C.R. 282); bathing unclothed (*R. v. Crunden* (1809), 2 Camp. 89; *R. v. Reed* (1871), 12 Cox 1) near and in sight of any place along which the public habitually pass as of right, or permissively (*R. v. Wellard* (1884), 14 Q.B.D. 63; but see *R. v. Farrell* (1862), 9 Cox 446); keeping an indecent or disgusting exhibition which the public can see or are invited to enter (*R. v. Saunders* (1875), 1 Q.B.D. 15); public selling or exposing for sale or to public view any obscene book, print, or picture (*R. v. Hicklin* (1868), L.R. 3 Q.B. 360; *R. v. Barraclough* (1906), 1 K.B. 201); procuring with intent to publish such indecent book, &c. (but not the mere possession thereof) (*R. v. Hicklin* (1868), L.R. 3 Q.B. 360; *Steele v. Brannan* (1872), L.R. 7 C.P. 261).

Sending indecent matter by post—*Misdemeanour*, punishment DD, as to which see p. 865 (*Post Office Act*, 1908, 8 Edw. 7, c. 48, s. 63); also punishable summarily (see p. 680).

Unnatural offences (sodomy or bestiality)—*Felony*, punishment A, as to which see p. 862 (*Offences against the Person Act*, 1861, 24 & 25 Vict. c. 100, ss. 61, 71). Assault with intent to commit sodomy, or any indecent assault on a male person<sup>3</sup>—*Misdemeanour*, punishment J, as to which see p. 863 (*ib.*, ss. 62, 71). Soliciting to sodomy—*Misdemeanour* at common law, punishment LL, as to which see p. 865 (*R. v. Ransford* (1874), 13 Cox 9). Gross indecency between males or procuring or attempting to procure such offence—*Misdemeanour*, punishment AA, as to which see p. 864 (*Criminal Law Amendment Act*, 1885, 48 & 49 Vict. c. 69, s. 11). Keeping a disorderly house<sup>4</sup>—*Misdemeanour* at common law, punishment LL, as to which see p. 865 (Co. Inst. 205). The term disorderly house includes a bawdy house, a common gaming house, a common betting house, and a disorderly place of entertainment (Steph., *Dig. Cr. Law*, 3rd ed., p. 122).

<sup>1</sup> For summary jurisdiction as to such offences, see—

(1) VAGRANTS, p. 839.

(2) TOWNS IMPROVEMENT, p. 800.

(3) ADVERTISEMENTS, p. 352.

(4) OBSCENE BOOKS, PICTURES, &c., p. 650.

<sup>2</sup> Where the sentence imposed for the common law misdemeanours of public and indecent exposure of the person, or any public selling or exposing for public sale or to public view of any obscene book, print, picture, or other indecent exhibition, is or includes imprisonment, such imprisonment may be with or without hard labour (*Criminal Procedure Act*, 1851, 14 & 15 Vict. c. 100, s. 29).

<sup>3</sup> By 43 & 44 Vict. c. 45, s. 2, the consent of the person assaulted is no defence if such person be under thirteen; and the consent of any person of any age is never a defence to any charge under 48 & 49 Vict. c. 69, s. 11.

A charge of indecent assault under this section appears to be within the Vexatious Indictments Act.

<sup>4</sup> This offence is within the Vexatious Indictments Act.

**DRILLING, UNLAWFUL.**

Attending unlawful meetings for the purpose of drilling others, or aiding or assisting therein—*Misdemeanour*, punishment P, as to which see p. 864 (*Unlawful Drilling Act*, 1819, 60 Geo. 3 and 1 Geo. 4, c. 1, s. 1).

Attending unlawful meetings for the purpose of being drilled—*Misdemeanour*, punishment, fine and imprisonment not exceeding two years, at discretion of court. Prosecutions under this Act must be commenced within six months after the commission of the offence (*ib.*, s. 7). It may be observed that a meeting is not for the purposes of this Act unlawful if held under lawful authority either from the king, or from the lieutenant or any two justices of the county or riding where such meeting is held (*ib.*, s. 1).

**DWELLING-HOUSES, OFFENCES RELATING TO.**

Unroofing dwelling-house, with intent to dispossess any person actually dwelling there, except where necessary to allow the sheriff, &c., to enter—*Misdemeanour*, punishment LL, as to which see p. 865 (*Eviction (Ir.) Act*, 1848, 11 & 12 Vict. c. 47, s. 7). For other offences as to dwelling-houses, see **BURGLARY, HOUSEBREAKING, LARCENY, and MALICIOUS INJURIES TO PROPERTY.**

**ELECTIONS. OFFENCES RELATING TO.**

By Order in Council dated 22nd December 1898, and made pursuant to the Local Government (Ir.) Act, 1898, 61 & 62 Vict. c. 37, s. 104, sch. 4, it is provided that at all elections held under rules framed under that order by the Local Government Board, the Ballot Act, 1872, 35 & 36 Vict. c. 33, the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, 47 & 48 Vict. c. 70, and ss. 56, 74, and 75, and Part IV. of the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, as amended by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (including the penal provisions of those Acts), shall, subject to alterations, &c., not affecting those penal provisions, apply in like manner as in the case of a municipal election. By s. 20 of the Ballot Act the penal provisions of that Act apply as well to municipal as to parliamentary elections; and consequently those provisions now, by virtue of the above-quoted order, apply to all elections held under rules framed as above mentioned (see Vanston, *Loc. Govt.*, pp. 170, 171, 172).

Such rules have been framed in respect of elections of aldermen and councillors of county boroughs (*ib.*, p. 205), urban district councillors (including aldermen and councillors of boroughs other than county boroughs), and of town commissioners (*ib.*, p. 243), guardians in urban districts (*ib.*, p. 374), and county councillors and rural district councillors (*ib.*, p. 411).

A "corrupt practice" means any one of the following offences:—(1) bribery; (2) treating; (3) undue influence; (4) personation, or aiding, abetting, counselling, and procuring personation; (5) knowingly making falsely the declaration as to election expenses required to be made under the Corrupt and Illegal Practices Prevention Act, 1883, s. 33 (*Corrupt and Illegal Practices Prevention Act*, 1883, 46 & 47 Vict. c. 51, ss. 3, 33 (7)).

Every corrupt practice, other than personation, or aiding, abetting, counselling, or procuring personation, is a misdemeanour punishable with

DD, as to which see p. 864, or a fine of £200 (*ib.*, s. 6 (1)). Personation is a felony punishable by imprisonment not exceeding two years with hard labour (*ib.*, s. 6 (2)). Knowingly making falsely the declaration required to be made by s. 33 of the Corrupt and Illegal Practices Prevention Act, 1883, is a misdemeanour punishable as wilful and corrupt perjury<sup>1</sup> with punishment LL (see p. 865), or punishment P (see p. 863) (*ib.*, s. 33 (7)). Persons convicted on indictment of a corrupt practice are also under disabilities as to voting, being elected to and holding public offices (*ib.*, s. 6 (3)). Prosecutions for these offences must be commenced within one year after the offence was committed, or, if in connection with an election that led to an election inquiry, then within three months after the report made on such inquiry, whichever period expires last (*ib.*, s. 51). As to costs, see *R. v. Law* (1900), 1 Q.B. 605.

### EMBEZZLEMENT.<sup>2</sup>

Embezzlement is committed when a clerk or servant wrongfully appropriates to his own use property entrusted to him for his employer before such property has reached the actual or constructive possession of his employer. Embezzlement was not punishable as larceny at common law; but now a clerk or servant who embezzles any chattel, money, or valuable security shall be deemed to have feloniously stolen the same—Punishment F, as to which see p. 862 (*Larceny Act*, 1861, 24 & 25 Vict. c. 96, ss. 68, 117, 119).

If upon the trial of a person for embezzlement the facts proved amount to larceny, the accused may be convicted of larceny, and *vice versa* (*ib.*, s. 72).

All the provisions of the Criminal Justice Act, 1855, shall extend and be applicable to the offence of embezzlement by clerks or servants, or persons employed for the purpose or in the capacity of clerks or servants, and the said Act shall henceforth be read as if the said offence of embezzlement had been included therein (*Larceny Act*, 1868, 31 & 32 Vict. c. 116, s. 2). As to the summary jurisdiction given by this enactment, see p. 585.

Any person being a member of any co-partnership, or being one of two or more beneficial owners of any money, goods, or effects, bills, notes, &c., stealing or embezzling such property belonging to such co-partnership or beneficial owners shall be liable to be tried, and convicted and punished as if he was not a member of such co-partnership or such beneficial owners (*ib.*, s. 1).<sup>3</sup>

### EMBRACERY.

By any means whatever, except the production of evidence and argument in open court, attempting to influence or instruct any jurymen or to incline him to be more favourable to the one side than to the other in any judicial proceeding, whether any verdict is given or not, and whether such verdict, if given, is true or false (*Stephen's Dig. Cr. Law*, 6th ed., p. 99), or giving a reward to a juror for anything done by him as a jurymen though there has been no previous promise to pay it (1 Hawk,

<sup>1</sup> See PERJURY.

<sup>2</sup> For summary jurisdiction, see p. 586.

<sup>3</sup> Where the co-partnership is not for gain but for mental recreation it is not within the Act (*R. v. Robson* (1885), 16 Q.B.D. 137). An association illegal under the Companies Acts appears to be a co-partnership to which the Act applies (*R. v. Tankard* (1894), 1 Q.B. 548). A member of a fete committee guaranteeing the expenses may be a "beneficial owner" of the gate-money (*R. v. Neat* (1899), 19 Cox 424).



c. 85. s. 3), or for a jurymen at any time to receive any money, &c., for, or in contemplation of, anything that he has done or may do as a jurymen (*ib.*, c. 27, ss. 1-4)—*Misdemeanour* at common law, punishment LL, as to which see p. 865.

The Juries (Ir.) Act, 1871, 34 & 35 Vict. c. 65. s. 49, provides that, notwithstanding anything in the Act, the offence of embracery by any person, and the offence of a juror wilfully and corruptly consenting to embracery, shall be punishable on indictment or information by fine and imprisonment in like manner as before the passing of the Act. This provision keeps alive the provisions contained in s. 48 of the Jurors (Ir.) Act, 1833, 3 & 4 Wm. 4, c. 91, which provided that any person guilty of embracery, or any juror wilfully or corruptly consenting thereto, should be guilty of *misdemeanour*—Punishment LL, for which see p. 865.

### ESCAPE.

#### Escape.

This offence is committed where any prisoner in lawful custody on a criminal charge escapes therefrom without force, but by artifice or similar means, or where any person whatsoever, having the custody of such prisoner, either voluntarily or negligently permits him to escape.

The offence when committed by the prisoner is a common law *misdemeanour* (2 Hawk, c. 17, s. 5), punishable with fine or imprisonment, and if the prisoner be in custody on a criminal charge, with or without hard labour, or both (*Criminal Procedure Act*, 1851, 14 & 15 Vict. c. 100, s. 29).

An officer having custody of the prisoner and voluntarily committing the offence is liable to be fined (2 Hawk, c. 19, s. 31), whilst a private person, guilty of the same offence, is liable to fine and imprisonment, or both (2 Hawk, c. 20, s. 6). If a prisoner in custody escapes therefrom, the person having such custody is deemed to have been negligent until the contrary is proved (1 Hale 595; 2 Hawk, c. 20).

#### Aiding a prisoner to escape.

Aiding a prisoner to escape from lawful custody on civil process—*Misdemeanour* at common law, punishment LL,<sup>1</sup> for which see p. 865 (*R. v. Allan* (1841), C. & M. 295). Aiding a prisoner of war to escape—*Felony*, punishment C, for which see p. 862 (52 Geo. 3, c. 156, s. 1).

#### Allowing or aiding convicts to escape.

Any person having the custody of a convict in or during his conveyance to or from a convict prison knowingly and wilfully allowing such convict to escape or, even though such convict does not escape, aiding any such convict to escape—*Felony*, punishment P, as to which see p. 863 (*Convict Prisons (Ir.) Act*, 1854, 17 & 18 Vict. c. 76, s. 18). Any person having such custody of a convict carelessly permitting such convict to escape—*Misdemeanour*, punishment LL,<sup>1</sup> as to which see p. 865 (*ib.*).

See PRISON BREACH and RESCUE.

### EXPLOSIONS, ETC.

Causing explosion likely to endanger life or property—*Felony*, punishment C, as to which see p. 862 (*Explosive Substances Act*, 1883, 46 & 47 Vict. c. 3, s. 2). Attempt to cause explosion, or making or keeping explosive substance<sup>2</sup> with intent to endanger life or property—*Felony*, punishment

<sup>1</sup> It is doubtful whether this offence is within the Criminal Procedure Act, 1851, 14 & 15 Vict. c. 100, s. 29.

<sup>2</sup> This term includes any materials for making any explosive substance, also any apparatus, machine, implement, or materials used or intended to be used or adapted for causing or aiding in causing any explosion in or with any explosive substance, also any part of such machine, apparatus, or implement (*ib.*, s. 6).

D, and the explosive substance shall be forfeited (*ib.*, s. 3). Making or having explosive substance without lawful object<sup>1</sup>—*Felony*, punishment G, as to which see p. 862, and the explosive substance shall be forfeited (*ib.*, s. 4 (1)). Being accessory to any crime under the Act—*Felony*, as if a principal (*ib.*, s. 5).

Destroying or damaging a house with gunpowder or other explosive substance, any person being therein or whereby the life of any person may be endangered—*Felony*, punishment B, as to which see p. 862 (*Malicious Damage Act*, 1861, 24 & 25 Vict. c. 97, ss. 9, 73, 75). Attempting to destroy buildings with gunpowder or other explosive substance—*Felony*, punishment F, as to which see p. 862 (*ib.*, ss. 10, 73, 75). Placing gunpowder or other explosive substance with intent to damage ship—*Felony*, punishment F, as to which see p. 862 (*ib.*, ss. 45, 73, 75).

Making or possessing any explosive substance, or any dangerous or noxious thing<sup>2</sup> for the purpose of committing any of the felonies mentioned in the Act—*Misdemeanour*, punishment Z, as to which see p. 864 (*ib.*, ss. 54, 73, 75).

Destroying or damaging buildings with explosives with intent to murder—*Felony*, punishment A, as to which see p. 862 (*Offences against the Person Act*, 1861, 24 & 25 Vict. c. 100, ss. 12, 71). Doing grievous bodily harm by explosion—*Felony*, punishment B, as to which see p. 862 (*ib.*, ss. 28, 70, 71). Causing explosion, sending explosive to, or throwing corrosive fluid on, a person with intent to do grievous bodily harm—*Felony*, punishment B, as to which see p. 862 (*ib.*, ss. 29, 70, 71). Placing explosives on vessels or buildings with like intent—*Felony*, punishment F, as to which see p. 862 (*ib.*, ss. 30, 70, 71).

See also MALICIOUS INJURY TO PROPERTY.

### EXTORTION BY THREATS.

Sending, delivering, or uttering, or directly or indirectly causing to be received any letter or writing<sup>3</sup> (the contents of which are known to the person sending, &c.), demanding of any person with menaces and without reasonable or probable cause<sup>4</sup> any valuable thing—*Felony*, punishment B, as to which see p. 862 (*Larceny Act*, 1861, 24 & 25 Vict. c. 96, ss. 44, 117, 119). Sending, &c., any letter or writing demanding with menaces or by force any valuable thing of any person with intent to steal the same—*Felony*, punishment S, as to which see p. 864 (*ib.*, ss. 45, 117). Sending, &c., any letter, &c., accusing or threatening to accuse any person of any crime punishable with death or with not less than seven years' penal servitude, or of any assault with intent to commit a rape, or of any attempt to commit a rape, or of any infamous crime,<sup>5</sup>

<sup>1</sup> Proof of the lawfulness of the object is imposed by the section upon the accused, who or whose wife or husband is a competent witness for the defence (*ib.*, s. 4 (2)).

<sup>2</sup> Boiling water may be a dangerous thing within the section (see *R. v. Crawford* (1845), 2 C. & K. 129).

<sup>3</sup> Leaving such a letter, &c., where the person for whom it is intended is likely to find it is a sending within the meaning of the Act (*R. v. Wagstaff* (1819), Russ. & Ry. 398).

<sup>4</sup> "Reasonable or probable cause" for the menaces is no defence. Those words relate to the demand (*R. v. Hamilton* (1843), 1 C. & K. 212).

<sup>5</sup> "Infamous crime" includes sodomy or bestiality, assault with intent to commit, attempt to commit, and solicitation, &c., to commit or permit the same (24 & 25 Vict. c. 96, s. 46), but it does not include the offence (under 48 & 49 Vict. c. 69, s. 11) of indecency with a male person (*R. v. Gilgannon* (1899), 63 J.P. 457).

with intent to obtain thereby any valuable thing from any person—*Felony*, punishment B, as to which see p. 862 (*ib.*, ss. 46, 117, 119). Accusing or threatening<sup>1</sup> to accuse any person of like offence with like intent—*Felony*, like punishment (*ib.*, ss. 47, 117, 119). With intent to defraud or injure, compelling or inducing any person, by any unlawful violence to or restraint of any person, or by accusing or threatening to accuse any person of any treason, felony, or infamous crime<sup>2</sup> to execute, &c., alter, or destroy any valuable security, or to write, &c., any name, &c., on any paper, &c., in order that the same may be made into, &c., any valuable security—*Felony*, punishment A, as to which see p. 862 (*ib.*, ss. 48, 117).

<sup>1</sup> With intent to extort, publishing, or threatening to publish, or proposing to abstain from publishing anything—*Misdemeanour*, punishment U, as to which see p. 864 (*Libel Act*, 1843, 6 & 7 Vict. c. 96, s. 3).

### FALSE PRETENCES.

Obtaining  
goods, &c.,  
by false  
pretence.

By any false pretence to obtain from any other person any chattel, money, or valuable security with intent to defraud—*Misdemeanour*, punishment S, for which see p. 864 (*Larceny Act*, 1861, 24 & 25 Vict. c. 96, ss. 88, 117).<sup>3</sup>

Of what the  
offence  
consists.

To constitute the offence there must be (1) a false pretence that some fact exists or has existed, made by the accused to some other person; (2) knowledge by the accused that such pretence is false; (3) an actual obtaining as the result of such pretence of something that is the subject of larceny at common law; and (4) an intent by the accused to defraud (see *R. v. Aspinall* (1876), 2 Q.B.D. 48).

On a prosecution for the offence the indictment must allege, and the evidence must show, that the accused knew the pretence to be false (*R. v. Dunleavy* (1908), 1 Cr. App. Rep. 240). The fact that the accused was guilty of the false pretence charged cannot be shown by proving that he has been guilty of swindling on other occasions by false pretences not in any way connected with the particular offence charged (*R. v. Fisher* (1910), 1 K.B. 149; *R. v. Ellis* (1910), 2 K.B. 746; see also EVIDENCE, p. 263, *ante*, and the cases there cited).

False  
pretence,  
what is.

There must be a false pretence that some fact exists or has existed. A false pretence or an untrue promise that something will occur or be done in the future is not sufficient, unless there be also a false pretence that some fact exists or has existed. A. and B. took two bicycles to a sale; they parted company before coming to the sale. A. went to the sale and put a reserve price on each machine. B. then came and bid the reserve price for each. Before B. paid, A. went to the auctioneer, and according to the latter's practice obtained the money bid before it was received from B. A. and B. then left. The bicycles were worthless, and B. never paid

<sup>1</sup> The preceding section deals with *written* threats. This section with any threat.

<sup>2</sup> "Infamous crime" includes sodomy or bestiality, assault with intent to commit, attempt to commit, and solicitation, &c., to commit or permit the same (24 & 25 Vict. c. 96, s. 46),<sup>1</sup> but it does not include the offence (under 48 & 49 Vict. c. 69, s. 11) of indecency with a male person (*R. v. Gilgannon* (1899), 63 J.P. 457).

<sup>3</sup> Justices have no summary jurisdiction in any case under this section. The Summary Jurisdiction Acts, 1879 and 1899, under which in England there is summary jurisdiction under the section, do not apply to Ireland. The Probation of Offenders Act, 1907, does not apply, because there is no summary jurisdiction under the section. All prosecutions under the section are within the Vexatious Indictments Act.



any money. *Held*, that, as the auctioneer intended to part not only with the possession of, but also with the property in, the money, an indictment for larceny by a trick was bad, but that the evidence might support a verdict on an indictment for false pretences (*R. v. Fisher* (1910), 5 Cr. App. Rep. 102). Thus there was held to be a false pretence as to a fact that existed or had existed where the accused obtained a certain sum by falsely alleging that he owed a society that sum and was going to pay it, the fact being that he owed a much smaller sum (*R. v. Woolley* (1850), 1 Den. 559); whilst in another case where a man who actually did owe £10 for rent, obtained that sum by saying that he was going to pay it to his landlord but did not intend to so pay it, and never in fact so paid it, there was held to be no such false pretence (*R. v. Lee* (1863), L. & C. 309). And where the accused informed tradesmen that he was intending to bring out a directory and that "everything was in order," and as the result of such representations obtained from them cash for advertisements to be inserted in the directory which, as is to be gathered from the report, he did not in fact bring out, he was held rightly convicted on the ground that he had falsely represented that everything was in order for publication (*R. v. Bancroft* (1909), 26 T.L.R. 10). In this case Lord Alverstone, L.C.J., cited with approval the dictum in Archbold, 24th ed., p. 686, cited from *R. v. Giles* (1865), L. & C. 502, that "a promise to do a thing in future may involve a false pretence that the promisor has the power to do that thing, for which false pretence the promisor may be indictable."

A false pretence as to a fact that exists or has existed may be made by words, writing, or conduct. Such false pretences were held to have been made in the following cases, which are a few only of those on the subject.

Where the accused falsely pretended that he had been sent by a customer for goods (*R. v. Burnsides* (1860), 30 L.J. (M.C.) 42); where the accused knowingly passed off a £1 note as a £5 note (*R. v. Jessop* (1858), Dears & B. 442); where the accused falsely pretended that he was connected with a wealthy man (*R. v. Archer* (1855), Dears 449); where the accused passed off the notes of a bank that he knew had stopped payment (*R. v. Dowey* (1868), 37 L.J. (M.C.) 52); where the accused obtained cash for a cheque upon a bank at which he had never had an account,<sup>1</sup> although he made no pretence, otherwise than by saying that he wanted to cash a cheque, that the cheque would be paid (*R. v. Garratt* (1893), 10 T.L.R. 167); where the accused, not being a member of the University of Oxford, represented himself to be such by wearing an undergraduate cap or gown (*R. v. Barnard* (1837), 7 C. & P. 784); and where the accused falsely pretended that he was a dealer in potatoes in a large way of business and in a position to pay for large quantities thereof by writing the following letter:—"Please send me one truck of Regents and one truck of Rocks as sample, at your price named in your letter. Let them be of good quality, and then I am sure a good trade will be done for both of us. I will remit you the cash on arrival of goods and invoices. I may say, if you use me well, I shall be a good customer" (*R. v. Cooper* (1877), 2 Q.B.D. 510). A person obtaining goods by forwarding half a note, having parted with the other half to a third party, is guilty of a false pretence (*R. v. Murphy* (1876), I.R. 10 C.L. 508, 13 Cox 298).

Although a false promise to pay for goods on delivery is not by itself a false pretence (*R. v. Hall* (1821), Russ. & Ry. 463), yet the person making such promise may easily commit a punishable offence. Thus where two

<sup>1</sup> But if the prisoner can prove that he expected that the cheque would be paid on presentation, there is no false pretence (*R. v. Walne* (1870), 11 Cox 647).

False  
pretence,  
what is.

False  
pretence.  
what is.

persons ordered goods promising to pay for them on delivery, and on obtaining delivery got the owner to sign a receipt for the agreed price, but refused either to pay the money or to return the goods, they were held to be guilty of larceny (*R. v. Slowly* (1873), 12 Cox 269); and where the accused went into a restaurant and without saying anything as to his ability to pay, ordered and obtained a meal without having money to pay for it, it was held that, though he could not be convicted of obtaining by false pretence, he was guilty of obtaining credit by fraud within the Debtors Act, 1869, s. 13 (1), which is *verbatim* the same as s. 13 (1) of the Debtors (Ir.) Act, 1872, as to which see p. 876 (*R. v. Jones* (1898), 1 Q.B. 119). Cf. *R. v. Wyatt* (1904), 1 K.B. 188. The credit alleged to have been fraudulently obtained must have been obtained by and given to the person charged in order to justify a conviction under s. 13 (1) of the Debtors Act, 1869 (*R. v. Steel* (1910), 5 Cr. App. Rep. 289), there being as regards this offence no enactment corresponding to s. 89 of the Larceny Act, 1861, as to which see *infra*.

The precise line of demarcation dividing the offence of obtaining by false pretences from larceny can be ascertained only by collating a very large number of decided cases, and no general rule can safely be laid down on the subject. The distinction between the two offences is, however, of minor importance so far as justices are concerned.<sup>1</sup> If they are satisfied that either the one offence or the other has been committed, they can commit the prisoner for either offence and leave the rest to the court above; for s. 88 of the Larceny Act, 1861, provides that if a prisoner be indicted for obtaining by false pretences he may be convicted of larceny if the latter be the offence that is in fact proved.<sup>2</sup> It may be observed that there is no correlative enactment to the effect that if the prisoner be indicted for larceny he may be convicted of obtaining by false pretences (see *R. v. Fisher* (1910), 26 T.L.R. 589).

Obtaining,  
what is.

The obtaining need not in fact be by the person guilty of the false pretence, for s. 89 of the Larceny Act, 1861, provides that any person who shall by any false pretence cause or procure any money to be paid, or any chattel or valuable security to be delivered, to any other person for the use or benefit of the person making such false pretence, or of any other person with intent to defraud, shall be deemed to have obtained such money, &c., within the meaning of s. 88 of that Act.

To "obtain" means to get possession of the goods, &c., other than money, with intent to deprive the owner permanently of them. Thus where a man obtained the use of a horse for a day with the intention of returning it, and did in fact return it, he was held not to be guilty of obtaining by false pretences (*R. v. Kilham* (1870), L.R. 1 C.C.R. 261), but to obtain the loan of money by false pretences is within the statute (*R. v. Burgon* (1856), Dears & B. 11).

It is immaterial whether the goods, &c., are obtained in the course of trade or as a gift (*R. v. Jones* (1851), 1 Den. 551). There is not an offence of obtaining by a false pretence where the person who parts with the goods, &c., knows that the pretence is false (*R. v. Mills* (1857), Dears & B.

<sup>1</sup> The distinction laid down by Lord Coleridge, C.J., in *R. v. Russett* (1892), 2 Q.B. 312, is as follows: "If the possession of the money or goods said to have been stolen has been parted with, but the owner did not intend to part with the property in them, so that part of the transaction is incomplete, and the parting with the possession has been obtained by fraud—that is larceny."

This distinction has been accepted by the Court of Criminal Appeal in *R. v. Fisher* (1910), 5 Cr. App. Rep. 102.

<sup>2</sup> The Court of Criminal Appeal refused to set aside a verdict where it was doubtful whether the evidence justified a conviction for false pretences but where it clearly proved either obtaining by fraud or larceny (*R. v. Armitage* (1910), 74 J.P. 48).



205). The false pretence must be the means, or one of the means, by which the goods, &c., were obtained. Thus where the accused falsely pretended to a pawnbroker that a chain was made of silver, and the pawnbroker, without paying any attention to the statement of the accused, made an advance upon the chain after himself testing it with an acid, it was held that the prisoner was wrongly convicted of obtaining by false pretences, but that he was rightly convicted of an attempt to obtain by false pretences (*R. v. Roebuck* (1856), Dears & B. 24). It is immaterial, that the person who parted with the goods, &c., was influenced by matters which were not in law false pretences as well as by matters that were. Thus where a married man got £8 from a woman by the combined effect of telling her that he was unmarried (which was in law a false pretence), that he would marry her and that he would furnish a house with the money (the two latter representations being mere promises), he was held to be rightly convicted (*R. v. Jennison* (1862), Le. & Ca. 157).

As the thing must be the subject of larceny at common law (see LARCENY, *post*), it follows that the obtaining of a dog by false pretences is not within the statute (*R. v. Robinson* (1859), Bell 34). It would seem that the obtaining by false pretences of a railway ticket or pass is within the statute (*R. v. Boulton* (1849), 1 Den. 508; *R. v. Chapman* (1910), 4 Cr. App. Rep. 276).

There is held to be an intent to defraud where the accused obtains goods, &c., by false pretences, but intending to pay for them afterwards if he can (*R. v. Naylor* (1865), L.R. 1 C.C.R. 4). Proof that the pretence was false and that the accused knew it to be false is *prima facie* evidence of intent to defraud; but the accused may show that there was in fact no such intent, as where a servant by a false pretence obtained goods from a person who owed, but would not pay, money to his master, and it was proved that such obtaining was with intent to enable the master to enforce payment of the debt (*R. v. Williams* (1836), 7 C. & P. 354).

The attempt to obtain goods, &c., by false pretences is a misdemeanour at common law (*R. v. Roebuck* (1856), Dears & B. 24; *R. v. Hensler* (1870), 11 Cox 570)—Punishment LL, for which see p. 865.<sup>1</sup>

Any one, with intent to defraud or injure any other person, by false pretence causing any other person to execute, &c., or destroy any valuable security, &c.<sup>2</sup>—*Misdemeanour*, punishment S, as to which see p. 864 (*Larceny Act*, 1861, 24 & 25 Vict. c. 96, ss. 90, 117).

Any person winning money or valuables by unlawful device or ill practice in playing with cards, dice, tables,<sup>3</sup> or other game, or in bearing a part in the stakes, &c., or in wagering on the event of any game, sport, pastime, or exercise, shall be deemed to have obtained such money, &c., by false pretence with intent to defraud (*Gaming Act*, 1845, 8 & 9 Vict. c. 109, s. 17). The Vexatious Indictments Act applies to prosecutions under this section, which are in effect prosecutions under s. 88 of the Larceny Act, 1861.

Any person by false certificate, false representation, false document, false statement, or other fraudulent means, obtaining or attempting to

<sup>1</sup> See ATTEMPT TO COMMIT A CRIME. The offence of attempting to obtain by false pretences is not within the Vexatious Indictments Act (*R. v. Burton* (1875), 13 Cox 71).

<sup>2</sup> This offence does not appear to be within the Vexatious Indictments Act.

<sup>3</sup> "Tables" means backgammon (see Murray, *New Eng. Dict. sub verb.*). "Pitch and toss" is a "pastime or exercise" within the meaning of the section (*R. v. O'Connor* (1881), 15 Cox 3). To constitute the offence there must be actual fraud, &c., in the course of the game, &c., itself. Mere fraudulent, &c., inducing to play is not sufficient (*R. v. Bailey* (1850), 4 Cox 390). This offence is not within the Vexatious Indictments Act.

Obtaining,  
what is.

Intent to  
defraud.  
what is.

Attempt  
to obtain  
by false  
pretences.  
Obtaining  
execution of  
security, &c.,  
by false  
pretence.

Cheating at  
cards, &c.



Obtaining  
army pay  
or pension  
by false  
pretences.

obtain for himself or any other person, the grant, increase, or payment of any military pay or pension payable, or any privilege or advantage obtainable in pursuance of any warrant, order, or regulation of His Majesty or a Secretary of State—*Misdemeanour*, punishment AA, as to which see p. 864 (*Pensions and Yeomanry Act*, 1884, 47 & 48 Vict. c. 55, s. 3 (1)). The Vexatious Indictments Act, 22 & 23 Vict. c. 17, would seem to apply to the offence of actually obtaining money in contravention of this section.

False  
statements,  
promises, &c.,  
by money-  
lender.

Money-lender, or manager, agent, or clerk of money-lender, or director, manager, or officer of corporation carrying on business of money-lending, by false, misleading, or deceptive statement, representation, or promise, or dishonest concealment of any material facts, fraudulently inducing or attempting to induce any person to borrow money or to agree to the terms on which money is to be borrowed—*Misdemeanour*, punishment AA, as to which see p. 864, or £500 fine, or both (*Money-lenders Act*, 1900, 63 & 64 Vict. c. 51, s. 4). It should be noted that the section is not confined to such false representations as are false pretences within s. 88 of the Larceny Act, 1861. There is no summary jurisdiction under the section. The Vexatious Indictments Act does not apply.

As to obtaining credit by false pretences, see BANKRUPTCY.

## FEMALES, OFFENCES AGAINST AND RELATING TO.

Rape.

The crime of rape consists in having unlawful carnal knowledge of a woman without her consent, that is, her free and conscious permission (Russell, 7th ed., 931), and is a felony, punishment A, as to which see p. 862 (*Offences against the Person Act*, 1861, 24 & 25 Vict. c. 100, ss. 48, 71). A husband cannot under any circumstances be convicted as a principal in the first degree (see p. 885) for a rape upon his wife, but if present, aiding, &c., another person to commit the offence upon her he may be convicted as a principal in the second degree (1 Hale 629; *Lord Audley's Case* (1631), 3 State Trials, 401); and a woman aiding, &c., in a rape may also be convicted as a principal in the second degree (*R. v. Ram* (1893), 17 Cox 609), and so may a boy under fourteen under similar circumstances (*R. v. Eldershaw* (1828), 3 C. & P. 396).

Proof of any penetration, however slight, is sufficient (*R. v. Lines* (1844), 1 C. & K. 393; *R. v. Stanton* (1844), 1 C. & K. 415). If penetration cannot be proved the accused may be convicted of attempted rape (see ATTEMPT TO COMMIT A CRIME) or of indecent assault (*Criminal Law Amendment Act*, 1885, 48 & 49 Vict. c. 69, s. 9).

A boy under fourteen cannot be convicted of rape (*R. v. Groombridge* (1836), 7 C. & P. 582), nor of any other offence for the commission of which capacity to have carnal knowledge is required, such as the offence of carnal knowledge of a girl under thirteen (*R. v. Waite* (1892), 2 Q.B. 600), or of the attempt to commit such offence (*R. v. Eldershaw* (1828), 3 C. & P. 396);<sup>1</sup> but he may be found guilty of indecent assault (*R. v. Brimilow* (1840), 9 C. & P. 366; *R. v. Williams* (1893), 1 Q.B. 320).

<sup>1</sup> But see the remarks of Hawkins and Cave, JJ., in *R. v. Williams* (1893), 1 Q.B. 320, and compare *R. v. Ring* (1892), 17 Cox 491, where it was held that a pickpocket who with intent to steal had put his hand into an empty pocket, could be convicted of attempting to steal, and *R. v. Brown* (1889), 24 Q.B.D. 357, where the Court for Crown Cases Reserved declared that *R. v. Collins* (1864), L. & C. 471, in which it was held a man could not be convicted of attempting to steal from an empty pocket, was no longer law.

The consent of a girl under thirteen is no defence<sup>1</sup> (*Criminal Law Rape Amendment Act*, 1885, 48 & 49 Vict. c. 69, s. 4), nor is the fact that the woman did not object because she was drunk (*R. v. Camplin* (1845), 1 Cox 22), or asleep (*R. v. Mayers* (1872), 12 Cox 311; *R. v. Young* (1878), 14 Cox 114), or because she did not know or mistook, as the result of the fraud of the accused, the nature of the act (*R. v. Flattery* (1877), 2 Q.B.D. 410; *R. v. Case* (1850), 4 Cox 220); or because the accused personated her husband (48 & 49 Vict. c. 69, s. 4). The question as to whether an idiot or imbecile girl, known by the accused to be such, did or did not consent, is not, so far as justices are concerned, of much practical importance in view of s. 5 (2) of the *Criminal Law Amendment Act*, 1885, 48 & 49 Vict. c. 69, which provides that the defilement of an idiot or imbecile<sup>2</sup> under circumstances which do not amount to rape, but which prove that the offender knew that the woman was an imbecile or idiot, shall be a misdemeanour, punishment AA, as to which see p. 864. When the woman is a lunatic, and the accused a person in charge of her, the fact that she consented is no defence (*Lunacy Act*, 1890, 53 & 54 Vict. c. 5, s. 324; *Lunacy (Ir.) Act*, 1901, 1 Edw. 7, c. 17, s. 2).

Any manager, officer, nurse, attendant, &c., employed in an institution for lunatics, including any asylum for criminal lunatics, carnally knowing or attempting to know any female inmate—*Misdemeanour*, punishment AA, as to which see p. 864 (*Lunacy Act*, 1890, s. 324; *Lunacy (Ir.) Act*, 1901, s. 2).

Indecent assault upon any female<sup>3</sup>—*Misdemeanour*, punishment Y. Indecent assault. as to which see p. 864 (*Offences against the Person Act*, 1861, 24 & 25 Vict. c. 100, ss. 52, 71). The consent of a girl under thirteen is no defence (*Criminal Law Amendment Act*, 1880, 43 & 44 Vict. c. 45, s. 2).

Any person who (1) procures or attempts to procure any girl or woman under twenty-one, not being a common prostitute or of known immoral character, to have unlawful carnal connection either within or without the King's dominions with any other person or persons,<sup>4</sup> or (2) procures or attempts to procure any woman or girl to become<sup>5</sup> either within or without the King's dominions a common prostitute, or (3) procures or attempts to procure any woman or girl to leave the United Kingdom with intent that she shall become an inmate of a brothel elsewhere, or (4) procures or attempts to procure any woman or girl to leave her usual place of abode in the United Kingdom (such place of abode not being a brothel), with intent that she may, for the purposes of prostitution, become an inmate of a brothel within or without the King's dominions—*Misdemeanour*, punishment AA, as to which see p. 864 (*Criminal Law Amendment Act*, 1885, 48 & 49 Vict. c. 69, s. 2).

<sup>1</sup> Except by way of establishing that the accused, instead of being liable to the punishment prescribed in case of rape, is liable to the practically identical punishment provided by s. 4 of the *Criminal Law Amendment Act*, 1885.

<sup>2</sup> As to the difference between an idiot and an imbecile, see *R. v. F.* (1910), 74 J.P. 384.

<sup>3</sup> This offence is within the Vexatious Indictments Act.

<sup>4</sup> Under s. 2 (1) of the *Criminal Law Amendment Act*, 1885, 48 & 49 Vict. c. 69, a person cannot be convicted of procuration if the female is procured to have connection with himself (*R. v. C.* (1910), 74 J.P. 208).

<sup>5</sup> No prosecution under this subsection can be successfully instituted in respect of the exportation from the United Kingdom of a woman who is already a prostitute, in order that she may be a prostitute abroad; for she cannot "become" what she already is (*R. v. Gold & Cohen* (1907), 71 J.P. 360). In such case, however, subsection 3 will clearly apply if it be intended that she shall become an inmate of a brothel abroad.

<sup>6</sup> No conviction under this section can take place on the evidence of one witness unless such evidence is corroborated in some material particular by evidence implicating the accused (*ib.*, s. 2). All prosecutions for misdemeanours under the Act are by s. 17 made subject to the Vexatious Indictments Act.

Defilement  
of females  
by threats,  
fraud, or  
drugs.<sup>1</sup>

Any person who (1) by threats or intimidation procures or attempts to procure any woman or girl to have any unlawful carnal connection<sup>1</sup> either within or without the King's dominions, or (2) by false pretences or false representations<sup>2</sup> procures any woman or girl not being a common prostitute or of known immoral character to have any unlawful carnal connection<sup>3</sup> either within or without the King's dominions, or (3) applies, administers to, or causes to be taken by any woman or girl, any drug, matter, or thing with intent to stupefy or overpower, so as thereby to enable any person to have unlawful carnal connection with such woman or girl<sup>4</sup>—*Misdemeanour*, punishment AA, as to which see p. 864 (*ib.*, s. 3).

Defilement of  
girl under  
thirteen.

Any person who unlawfully and carnally knows any girl under thirteen—*Felony*, punishment C, as to which see p. 862, but any prisoner under sixteen may in lieu of such punishment be once privately whipped with such instrument and number of strokes as the court specifies (*ib.*, s. 4). Any person attempting to commit the like offence—*Misdemeanour*, punishment AA, as to which see p. 864, but any prisoner under sixteen may in lieu of such punishment be once privately whipped with such instrument and number of strokes as the court specifies (*ib.*, s. 4).<sup>5</sup>

Defilement of  
girl between  
thirteen and  
sixteen or  
idiot, &c.

Any person who (1) unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any girl of or above the age of thirteen and under the age of sixteen, or (2) unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any female idiot or imbecile woman or girl, under circumstances which do not amount to rape, but which prove that the offender knew at the time of the commission of the offence that the woman or girl was an idiot or imbecile<sup>6</sup>—*Misdemeanour*, punishment AA, for which see p. 864 (*ib.*, s. 5).

If upon the trial of any indictment for rape, or of any offence made

<sup>1</sup> Either with the accused or any other man (*R. v. Williams* (1898), 62 J.P. 310).

<sup>2</sup> Seduction under promise of marriage and by means of such promise by a man already married is within the section (*R. v. Williams, supra*).

<sup>3</sup> Either with the accused or any other man (*R. v. Williams, supra*).

<sup>4</sup> No conviction under this section can take place on the evidence of one witness unless such evidence is corroborated in some material particular by evidence implicating the accused (*ib.*, s. 2). All prosecutions for misdemeanours under the Act are by s. 17 made subject to the Vexatious Indictments Act.

<sup>5</sup> As to the parts of this section that have been repealed, see s. 134 of the Children Act, 1908. Consent is no defence to a charge under this section, nor is the fact that the prisoner believed the girl to be thirteen. The evidence of any child of tender years who in the opinion of the court is unable to understand the nature of an oath may in any prosecution under this Act be admitted without oath, subject to the provisions of s. 30 of the Children Act, 1908, for which see APPENDIX OF STATUTES. Such unsworn evidence requires to be corroborated, as provided in that section. In no other instance does the evidence of a witness on a charge under this section require corroboration. As to the Vexatious Indictments Act, see note<sup>6</sup>, p. 897. As to the incapacity of a boy under fourteen to commit an offence under this section, see p. 896. In *R. v. Waite* (1892), 2 Q.B. 600, the judges doubted whether he could be convicted of the attempt, but see note<sup>1</sup>, p. 896. From the grounds of the decision in *R. v. Tyrrell* (1894), 1 Q.B. 710 (as to which see note to s. 5), it would seem that it is not a criminal offence for a girl under thirteen to aid and abet a male person in having, or to incite him to have, carnal knowledge of her.

<sup>6</sup> The section provides that a reasonable belief by the prisoner that the girl was sixteen is a defence to a charge under subsection 1. Consent is no defence to any charge under the section, which does not require any evidence to be corroborated (see *R. v. Graham* (1910), 74 J.P. 246). No prosecution under the section can be commenced more than six (s. 27 of the Prevention of Cruelty to Children Act, 1904) months after the commission of the offence, but this time limit is subject to the decision in *R. v. West* (1898), 1 Q.B. 174, where it was held that a man could be convicted of the misdemeanour under this section if within the time limit he had been prosecuted for rape, although the prosecution only became a prosecution for the misdemeanour when at the assizes, after the time limit had expired, a bill for the



felony by s. 4 of this Act, the jury shall be satisfied that the defendant is guilty of an offence under ss. 3, 4, or 5 of this Act or of an indecent assault, but are not satisfied that the defendant is guilty of the felony charged in such indictment, or of an attempt to commit the same, the jury may acquit the defendant of such felony, and find him guilty of such offence as aforesaid or of an indecent assault (*ib.*, s. 9). The defendant may, where indicted under s. 4 for felony, be convicted of indecent assault although the unsworn evidence of a child is received against him, and although apart from such evidence there is no other sufficient evidence against him (*R. v. Wealand* (1888), 20 Q.B.D. 827).<sup>1</sup> The defendant, whether indicted for rape or under s. 4 of this Act, cannot be convicted of common assault (*R. v. Catherall* (1875), 13 Cox 109), nor if he has been indicted for rape and acquitted of that offence can he be convicted under s. 5, unless the prosecution for rape was commenced within the six months mentioned in that section as amended by s. 27 of the Prevention of Cruelty to Children Act, 1904 (*R. v. Cotton* (1896), 60 J.P. 824, which was decided before the section was so amended).

**Power on indictment for rape or defilement of children under thirteen.**

Any person who, being the owner or occupier of any premises, or having, or acting or assisting in the management or control thereof, induces or knowingly suffers<sup>2</sup> any girl of such age as in this section mentioned to resort to or be in or upon such premises for the purpose of being unlawfully and carnally known by any man or men whatever :

**Householder permitting defilement of girls.**

(1) If such girl is under thirteen—*Felony*, punishment C, as to which see p. 862.

(2) If such girl is of or over the age of thirteen and under sixteen—*Misdemeanour*, punishment AA, as to which see p. 864 (*ib.*, s. 6).<sup>3</sup>

Unlawful detention of any woman against her will upon any premises that she may be carnally known by any man or men whatever or in any brothel—*Misdemeanour*, punishment AA, as to which see p. 864 (*ib.*, s. 8).

**Unlawful detention for immoral purposes.**

Any person having the custody, charge, or care of a girl under sixteen causing or encouraging the seduction or prostitution<sup>4</sup> [or unlawful carnal knowledge] of that girl—*Misdemeanour*, punishment AA, as to which see p. 864 (*Children Act*, 1908, 8 Edw. 7, c. 67, s. 17).<sup>5</sup>

**Encouraging prostitution.**

A person shall be deemed to have caused or encouraged such seduction or prostitution if the person so seduced or prostituted was sent up to the grand jury. The court, in fact, held that the prosecution for the greater offence involved the prosecution for the less. For special provisions as to the evidence of children of tender years, of other children under fourteen, and of young persons between fourteen and sixteen, see ss. 29, 30, 131, of the Children Act, 1908, and also EVIDENCE. As to the incapacity of a boy under fourteen to commit an offence under this section, see p. 896. It is not a criminal offence for a girl of or above the age of thirteen and under sixteen to aid and abet a male person in having, or to incite him to have, unlawful carnal knowledge of her (*R. v. Tyrrell* (1894), 1 Q.B. 710). Any person indicted under s. 5 can be convicted of common assault if in the indictment there is a separate count for common assault (*R. v. Bostock* (1893), 17 Cox 700).

<sup>1</sup> In this case the unsworn evidence was admitted under the repealed part of s. 4, which as regards the part beginning, "Where upon the hearing"—and ending—"duty of speaking the truth" is re-enacted and expanded by s. 30 of the Children Act, 1908.

<sup>2</sup> A parent who on one occasion permitted a man to have illicit intercourse in her house with her daughter (whom he had previously seduced) for the purpose of obtaining evidence against him was held not to have "knowingly suffered" (*R. v. Merthyr Tydvil JJ.* (1894), 10 T.L.R. 375).

<sup>3</sup> It is a defence to any charge under this section if the accused had reasonable cause to believe that the girl was of or above sixteen years of age. A father or mother with whom the girl is living may be convicted under this section (*R. v. Webster* (1885), 16 Q.B.D. 134).

<sup>4</sup> Words in brackets added by the Children Act Amendment Act, 1910, 10 Edw. 7, and 1 Geo. 5, c. 25, s. 1.

<sup>5</sup> Prior to the passing of the amending Act, 10 Edw. 7, and 1 Geo. 5, c. 25, it was held that in this section the word "seduction" means inducing a girl to

or prostitution or unlawful carnal knowledge, if he has knowingly allowed the girl to consort with, or to enter or continue in the employment of, any prostitute or person of known immoral character (*ib.*).

As to offences with regard to lunatics, see LUNATICS, OFFENCES RELATING TO; as to abduction, see ABDUCTION.

### FISHERIES.

As to the statutory misdemeanour (punishable with LL, as to which see p. 865) of constructing a dam or weir that does not permit the free passage of salmon or other fish, see FISHERIES in CATALOGUE OF SUMMARY OFFENCES, p. 445.

### FOOD AND DRUGS, OFFENCES RELATING TO.<sup>1</sup>

Mixing injurious ingredients with food, &c., or selling food, &c., so adulterated after a previous conviction for like offence, punishable with imprisonment not exceeding six months with hard labour (*Sale of Food and Drugs Act*, 1875, 38 & 39 Vict. c. 63, s. 3).<sup>2</sup>

Forging or uttering, knowing it to be forged, for the purposes of the Act any certificate or writing purporting to contain a warranty—*Misdemeanour*, punishable with imprisonment not exceeding two years with hard labour (*ib.*, s. 27).

### FORCIBLE ENTRY.

Forcible entry<sup>3</sup> or forcible detainer of lands is an indictable misdemeanour at common law and under various statutes (punishment LL, as to which see p. 865) (5 Rd. 2, c. 7; 15 Rd. 2, c. 2; 8 Hy. 6, c. 9), and a felony under an Irish statute (punishment P, as to which see p. 863), 26 Geo. 3, c. 24, s. 64).

An entry is deemed to be forcible if effected either by actual violence to the person of another, or by threats of such violence, or by breaking into a house, or by going to the lands, &c., under such circumstances as to show that entry will be effected by violence (1 Hawk, c. 28, ss. 26, 27; Stephen, *Dig. Cr. Law*, 6th ed., p. 61; *Milner v. Maclean* (1825), 2 C. & P. 17). Forcible detainer is committed where any person being wrongfully in possession of lands, &c., retains possession thereof by such actual or threatened violence as would make an entry an offence as above defined (Stephen, *Dig. Cr. Law*, 6th ed., p. 61).

surrender her chastity for the first time; and therefore, where a father, having the custody of his daughter, a girl under sixteen who had already been seduced, subsequently encouraged illicit sexual intercourse between the girl and her seducer, it was held that he did not thereby encourage her seduction (*R. v. Moon* (1910), 1 K.B. 818); but he could (*R. v. Webster* (1885), 16 Q.B.D. 124) have been convicted under s. 6 of the Criminal Law Amendment Act, 1885, and now, in a similar state of facts, he could be convicted under s. 17 of the Act of 1908, as amended by the Act of 1910.

<sup>1</sup> For summary jurisdiction as to such offences, see FOOD AND DRUGS, p. 456.

<sup>2</sup> For notes upon this section, see FOOD AND DRUGS, p. 457.

<sup>3</sup> Justices have power under 15 Rich. 2, c. 2, to convict summarily on their own view in cases only of forcible detainer where there had been a previous forcible entry, and in cases of unlawful entry and forcible detainer under 8 Hen. 6, c. 9, but instances of the exercise of this jurisdiction are rare (see Russell, 7th ed., p. 444).

It is no defence to prove that the accused had a right to possession, or a right to enter, for he must assert his right otherwise than by forcible entry (*Newton v. Harland* (1840), 1 M. & G. 644), so that a forcible entry, even by the owner as against a tenant at will, is within the statutes (Russell, 7th ed., 445, n.<sup>o</sup>). But this does not apply where the person in possession is a mere custodian or bailiff for the person who enters<sup>1</sup> (Bac. Abr. "Forcible Entry" (D)), or a mere trespasser (*Scott v. Mathew Brown & Co.* (1884), 51 L.T. 746).

The entry must be with intent to take possession of the land, &c. A mere coming upon the land with any other intent cannot be forcible entry (*R. v. Blake* (1765), 3 Burr. 1731; *R. v. Wilson* (1799), 8 T.R. 357). It is doubtful whether a person under twenty-one can be convicted of the offence (1 Hale P.C. 21; 4 Bac. Abr. "Infancy," 7th ed., p. 352).

### FOREIGN ENLISTMENT ACT.

The Foreign Enlistment Act, 33 & 34 Vict. c. 90, provides penalties for enlisting, &c., in the service of any foreign country during the existence of hostilities between such country and any other foreign country with which Great Britain is at peace. For the various offences and penalties under the Act reference should be made thereto.

### FORGERY.

Forgery may be defined as the fraudulent making or alteration of a writing to the prejudice of another man's right (4 Bl. Com. 245), and in a modern case has been defined as the fraudulent making of a written instrument which purports to be what it is not (*Ex parte Windsor* (1865), 10 Cox 118, at pp. 123, 124). Every fraudulent alteration of a genuine instrument, whether of a name, date, figure, or clause or in any other way, provided that such alteration has a material effect on the rights of the parties affected by the instrument, is forgery of the whole instrument (*Dawson's Case* (1717), 2 East P.C. 978; *R. v. Teague* (1802), Russ. & Ry. 33; *R. v. Ritson* (1869), L.R. 1 C.C.R. 200). Fraudulent means with intent to defraud, and such intent is necessary in order to constitute the offence (2 East P.C. 853). The forgery must be of some instrument.<sup>2</sup> Thus fraudulently to affix a painter's name to a picture is not forgery<sup>3</sup> (*R. v. Closs* (1858), Dears & B. 460). It is doubtful whether one who by fraud induces another to execute an instrument is guilty of forgery (see the dicta of Rolfe, B., in *R. v. Collins* (1843), 2 Mood & R. 461, and in *R. v. Chadwick* (1844), 2 Mood & R. 545, as cited pp. 1605-6, of Russell on Crimes, 7th ed.). But the person so procuring the execution, &c., of any instrument which is a valuable security is now punishable under s. 90 of the Larceny Act, 1861, as to which see p. 895. To constitute the offence of forgery it is not necessary that the forged instrument should be uttered (*R. v. Elliott* (1777), 1 Leach 175; *R. v. Crocker* (1805), Russ. & Ry. 97).

An instrument is deemed to be uttered when any attempt, whether successful or not, is made to obtain money or credit by means of it (*R. v.* Uttering.

<sup>1</sup> A caretaker is such a mere custodian, and though the person for whom he is caretaker may get him out under s. 86 of the Landlord and Tenant (Ir.) Act, 1860, 23 & 24 Vict. c. 154, yet that section in no way affects the pre-existing law, except in so far as it gives a simple and inexpensive legal process for recovering possession.

<sup>2</sup> A telegram is an instrument (*R. v. Riley* (1896), 1 Q.B. 309).

<sup>3</sup> But such act is punishable summarily under the Fine Arts Copyright Act, 1862, 25 & 26 Vict. c. 68, s. 7.



*Ion* (1852), 2 Den. 475; *R. v. Sharman* (1854), Dears C.C. 285). Either forgery as above defined, or the uttering of any instrument which within the above definition has been forged (*R. v. Sharman, supra*) is at common law a misdemeanour, punishable with LL, as to which see p. 865; but if any one be actually defrauded, then the accused may be convicted of a common law cheat and sentenced to JJ, as to which see p. 865 (*R. v. Hamilton* (1901), 1 K.B. 740; *Criminal Procedure Act*, 1851, 14 & 15 Vict. c. 100, s. 29).

A very large number of statutory forgeries are punishable under the Forgery Act, 1861, 24 & 25 Vict. c. 98, and other statutes. Within the space available in this work, it is impossible to set out or even to enumerate all these offences.

For summary jurisdiction with regard to forgery and cognate offences, see CATALOGUE OF SUMMARY OFFENCES under various heads.

### FRAUDULENT CONCEALMENT ON SALE OF PROPERTY.

Seller or mortgagor of land, or of any chattels, real or personal, or choses in action conveyed or assigned to a purchaser<sup>1</sup> or the solicitor or agent of such seller or mortgagor, concealing settlement, deed, will, or other instrument material to the title, or any incumbrance, from the purchaser,<sup>1</sup> or falsifying any pedigree upon which the title does or may depend, in order to induce the purchaser to accept the title offered, with intent to defraud—*Misdemeanour*, punishment JJ, as to which see p. 865, or fine, or both, and the offender is also liable in an action for damages. No prosecution is to be brought without sanction of Attorney-General, or Solicitor-General, such sanction not to be given without such previous notice of the application for leave to prosecute the alleged offender as the Attorney-General or Solicitor-General shall direct (*Law of Property Amendment Act*, 1859, 22 & 23 Vict. c. 35, s. 24).

### GAME.

As to indictable offences relating to game, see LARCENY, *post*, p. 908, and GAME (pp. 484–486), in CATALOGUE OF SUMMARY OFFENCES.

### HABITUAL CRIMINALS, PREVENTIVE DETENTION OF.

The Prevention of Crimes Act, 1908, 8 Edw. 7, c. 59, Part II., provides for the preventive detention of habitual criminals. For the purposes of the Act a habitual criminal means a person who, after attaining the age of sixteen years, has been three or more times convicted either before or after the passing of the Act of the following crimes or some one or more of them; namely, any felony, the offences of uttering false or counterfeit coin, of possessing counterfeit gold or silver coin, of obtaining goods or money by false pretences, of conspiracy to defraud,<sup>2</sup> or any misdemeanour

<sup>1</sup> Or mortgagee (23 & 24 Vict. c. 38, s. 8).

<sup>2</sup> Conspiracy to defraud is not punishable by penal servitude. The Act provides for preventive detention in case of sentence of penal servitude only. And it would therefore appear that a sentence of preventive detention cannot be passed upon conviction for this crime.

under the Larceny Act, 1861, and who is proved to have been<sup>1</sup> leading persistently a dishonest or criminal life,<sup>2</sup> or any person who on any such previous conviction has been found to be a habitual criminal and sentenced to preventive detention under the Act (s. 10 (2)). When such habitual criminal is convicted on an indictment charging him with any of such specified crimes, and also with being a habitual criminal (which latter charge cannot be inserted in the indictment without leave of the Attorney-General for Ireland (s. 10 (4) (a), and s. 18 (e)), and unless not less than seven days' notice has been given to the proper officer of the court by which the offender is to be tried, and to the offender, of intention to insert the charge (s. 10 (4) (b)), he may, where he is convicted of any such specified crime and of being a habitual criminal, and sentenced to a term of penal servitude in respect of such specified crime, be further sentenced to be detained, as from the expiration of such term of penal servitude, for not more than ten nor less than five years (ss. 10 and 13). Where a person is sentenced to penal servitude for five years or upwards, if, after three years of same have been served, he appears to the Lord-Lieutenant to have been a habitual criminal, the sentence of penal servitude may be commuted to one of preventive detention (ss. 12, 18 (a)). If a person is sentenced to a term of penal servitude exceeding five years, but no charge is made of his being a habitual criminal, this section cannot be applied (*R. v. Flicker* (1910), 26 T.L.R. 540).

When the accused is being tried on the charge of being an habitual criminal, evidence of character may be admitted by the court for the purpose of showing the accused has or has not led persistently a dishonest or criminal life (s. 10 (5)). The provisions of the Crown Cases Act, 1848. 11 & 12 Vict. c. 78, apply to the trial of a person as a habitual criminal (s. 18 (f)).

It is the duty of the clerk of the crown or clerk of the peace, before sending up to the grand jury any bill containing a charge of being a habitual criminal, to satisfy himself that the Attorney-General, pursuant to ss. 10 (4) (a) and 18 (e), has consented to that charge being inserted (*R. v. Waller* (1910), 1 K.B. 364). The consent of the Attorney-General need not be proved at the trial unless the fact of such consent having been given is challenged by the accused (*ib.*), in which case it may be proved by a person who has been in communication with the Attorney-General on the subject, and who states that he has in the ordinary course of business received a document giving such consent (*R. v. Turner* (1910), 1 K.B. 346).

A person charged with being a habitual criminal must be tried separately on that charge from any other person (*R. v. Blake* (1910), W.N. 123). There is no objection to the jury that tries the charge of being a habitual criminal being sworn as if to try a felony, but it is sufficient if they are sworn as if for the trial of a misdemeanour (*R. v. Turner* (1910), 1 K.B. 346).

The seven days' notice prescribed by s. 10 (4) (b), means a seven clear days' notice. The fact of its having been given to the officer of the court must be proved by some person, not necessarily the officer of the court, who can testify to the fact of its receipt. If such notice, given to the accused in pursuance of s. 10 (4) (b), is not produced at the trial, secondary evidence may be given of its contents (*R. v. Turner* (1910), 1 K.B. 346). The notice given to the accused need not, in addition to specifying the previous convictions of the accused, also set out other grounds for the charge, unless

<sup>1</sup> This means between the expiration of his last sentence and the commission of the offence for which he is indicted (*R. v. Baggott* (1910), 26 T.L.R. 266).

<sup>2</sup> The fact that he spends some portion of his time in doing legitimate work does not take him out of this definition of a habitual criminal (*R. v. Jennings* (1910), 26 T.L.R. 339. See also *R. v. Martin* (1910), 5 Cr. App. Rep. 31).

the prosecution proposes to rely upon grounds other than the previous convictions (*R. v. Waller* (1910), 1 K.B. 364); but if the prosecution propose to rely upon other grounds such other grounds must be stated, and it is not enough to say merely that the accused is persistently leading a dishonest or criminal life (*R. v. Turner* (1910), 1 K.B. 346).

The evidence intended to prove that the accused is persistently leading a dishonest or criminal life must be brought down to the date of the particular crime with which the accused is charged, and whether such evidence can extend to any time preceding his last conviction is a question which in each case must be decided upon the circumstances of the case (*R. v. Turner* (1910), 1 K.B. 346). In *R. v. Baggott* (1910), 26 T.L.R. 266, the conviction of the accused as a habitual criminal was quashed because there was no evidence that, between the expiration of the last sentence and the commission of the crime charged, the accused had been leading a dishonest or criminal life. And in *R. v. Kelly* (1910), 26 T.L.R. 193, a similar conviction was quashed because there was no evidence as to the course of life of the prisoner during the nine months between his last coming out of prison and the commission of the crime charged, and also because the jury had not been sufficiently directed whether, in the circumstances of the case, the prisoner's previous convictions justified the finding that he was a habitual criminal.

Unless it is obvious that the accused must have been over sixteen at the date of the three convictions relied on by the prosecution, evidence must be given that he was on that date over the age of sixteen; and for this purpose evidence of a statement by the accused is sufficient (*R. v. Turner* (1910), 1 K.B. 346).

Where a prisoner is charged with a crime and also with being a habitual criminal, and is convicted of, or pleads guilty to, the crime, sentence for the crime should not be passed before the question whether he is or is not a habitual criminal has been decided (*R. v. Walker* (1910), 27 T.L.R. 51; *R. v. Turner* (1910), 1 K.B. 346).

As to the principles governing the length of the term of penal servitude that should precede the term of preventive detention, see *R. v. Smith* (1909), W.N. 235.

## HARBOURING, ETC., ANY FELON.

See CRIMES, p. 885.

## HOUSEBREAKING.<sup>1</sup>

Breaking and entering any church, chapel, or place of divine worship and committing felony, or being in church, &c., and committing felony—*Felony*, punishment A. as to which see p. 862 (*Larceny Act*, 1861, 24 & 25 Vict. c. 96, ss. 50, 51, 117). Breaking and entering any building and committing any felony therein, such building being within the curtilage<sup>2</sup> of a dwelling-house and occupied therewith, but not being part thereof,<sup>3</sup>

<sup>1</sup> For distinction between burglary and housebreaking, see BURGLARY, p. 878, and for meaning of (1) breaking, (2) entering, (3) dwelling-house, (4) part of dwelling-house, (5) night-time, see p. 879.

<sup>2</sup> Curtilage means the enclosed area attached to and containing a dwelling-house and its outbuildings. See Murray, *New Eng. Dict.*

<sup>3</sup> No building, although within the same curtilage with any dwelling-house, and occupied therewith, shall be deemed to be part of such dwelling-house, for any of the purposes of this Act, unless there shall be a communication between such building and dwelling-house, either immediate or by means of a covered and enclosed passage leading from one to the other (s. 53).



or being in any such building and committing felony therein and breaking out of same—*Felony*, punishment E, as to which see p. 862 (*ib.*, ss. 55, 117). Breaking and entering any dwelling-house, school-house, shop,<sup>1</sup> warehouse,<sup>2</sup> or counting-house,<sup>3</sup> and committing any felony therein, or, being therein, committing felony and breaking out thereof—*Felony*, punishment E, as to which see p. 862 (*ib.*, ss. 56, 117). Breaking and entering any dwelling-house, church, &c., or building within the curtilage, school-house, shop, warehouse, or counting-house with intent to commit any felony therein—*Felony*, punishment L, as to which see p. 863 (*ib.*, ss. 57, 117). Stealing in any dwelling-house<sup>4</sup> to the total value of £5 or more—*Felony*, punishment E, as to which see p. 862 (*ib.*, ss. 60, 117). Stealing any chattel, &c., in any dwelling-house, and by menace or threat putting any one therein in bodily fear—*Felony*, punishment E, as to which see p. 862 (ss. 61, 117). Being found at night (a) armed with any dangerous, &c., weapon, &c., with intent to break or enter any building and commit any felony therein, or (b) in possession<sup>5</sup> without lawful excuse (proof of which excuse must be made by the accused) of any implement of house-breaking,<sup>6</sup> or disguised with intent to commit any felony, or by night in any building with intent to commit any felony therein—*Misdemeanour*, punishment S, as to which see p. 864 (*ib.*, ss. 58, 117).

### INCEST.

Carnal knowledge by any male person of his granddaughter, daughter, sister, or mother (he knowing her to be such)—*Misdemeanour*, punishment P, as to which see p. 863, unless it is alleged in the indictment and proved that the female was under thirteen, in which case punishment C, as to which see p. 862 (*Punishment of Incest Act*, 1908, 8 Edw. 7, c. 45, s. 1).<sup>7</sup> Attempt by any male person to commit such offence as aforesaid—*Misdemeanour*, punishment AA, as to which see p. 864 (*ib.*). Any female person of or over the age of sixteen permitting her grandfather, father, brother, or son (she knowing him to be such) to have carnal knowledge of her—*Misdemeanour*, punishment P, as to which see p. 863 (*ib.*, s. 2).

On indictment for rape, the jury, if not satisfied that the prisoner is guilty of rape, may find him guilty of an offence under the Punishment of Incest Act, 1908. On indictment under that Act the prisoner may be

<sup>1</sup> Shop includes a workshop (*R. v. Carter* (1843), 1 C. & K. 173).

<sup>2</sup> Warehouse means a place where goods not immediately wanted for sale are kept (*R. v. Hill* (1843), 2 Mood & R. 458).

<sup>3</sup> Includes a solicitor's office (*Re Creek* (1863), 3 B. & S. 459).

<sup>4</sup> The owner of the house may himself commit the offence (*R. v. Bowden* (1843), 2 Mood C.C. 285).

<sup>5</sup> If several persons are together for the common purpose of housebreaking, all are constructively in possession of implements of housebreaking, which are, in fact, in the possession of only one of such persons (*R. v. Thompson* (1869), 11 Cox 362).

<sup>6</sup> Any implement capable of an innocent use is an implement of house-breaking if the accused had it in his possession for the purpose of housebreaking (*R. v. Oldham* (1852), 2 Den. 472).

<sup>7</sup> If the female is proved to be under thirteen the punishment is as provided by s. 4 of the Criminal Law Amendment Act, 1885, and therefore the offender, if under sixteen, can be sentenced to be whipped, as prescribed by the Whipping Act, 1862, 25 & 26 Vict. c. 18, instead of being sentenced to any term of imprisonment. "Brother" and "sister" include "half-brother" and "half-sister," and apply whether the relationship is through lawful wedlock or not (s. 3).

The Vexatious Indictments Act, 1859, 22 & 23 Vict. c. 17, applies to offences under the Act.

acquitted of an offence under that Act, and convicted of an offence under s. 4 or s. 5 of the Criminal Law Amendment Act, 1885 (*ib.*, s. 4 (3)).

No prosecution for any offence under the Act can be commenced without the sanction of the Attorney-General (*ib.*, s. 6).

All proceedings under the Act must be *in camera* (*ib.*, s. 5).

### LARCENY.<sup>1</sup>

This article deals not only with larceny, but also with robbery, embezzlement, and cognate offences.

By s. 72 of the Larceny Act, 1861, 24 & 25 Vict. c. 96, it is provided that any person indicted for larceny may be convicted of embezzlement and *vice versa*, so that in any case it is immaterial whether the accused is returned for trial for larceny or embezzlement.

What is  
larceny.

Larceny is the wrongful or fraudulent taking and carrying away<sup>2</sup> by any person of the mere personal goods of another<sup>3</sup> from any place, with a felonious intent<sup>4</sup> to convert them to his own use<sup>5</sup> and make them his own property, without the consent<sup>6</sup> of the owner (2 East P.C. 553). In

<sup>1</sup> For summary jurisdiction in cases of larceny, &c., see LARCENY AND EMBEZZLEMENT, p. 585; GAME, p. 486.

<sup>2</sup> There may be sufficient carrying away without entire removal of the thing stolen from the physical possession of the owner. Thus, a conviction for larceny was held good where the prisoner took a purse in the prosecutor's pocket, but in pulling out the purse caught it in the prosecutor's belt, whereupon the prosecutor seized the purse and put it back again (*R. v. Taylor* (1910), 6 Cr. App. Rep. 12).

<sup>3</sup> But a man may be convicted of stealing his own goods when they are in the possession of a bailee (*e.g.* a pawnbroker) who, as against the owner, has for the time a right to the possession of them. See Russell on Crimes, 7th ed., p. 1282, note *f*, and authorities there cited. A person cannot be convicted of larceny of his own goods which have been seized by the sheriff and retaken by the owner (*R. v. Knight* (1908), 1 Cr. App. Rep. 186). And by 31 & 32 Vict. c. 116, s. 1, any person being a member of a partnership, or one of two or more beneficial owners of property, may be convicted of stealing any property of such partnership or of such beneficial owners, as if he were not such partner or owner. As to the circumstances under which a wife may be convicted of stealing the goods of her husband, and a husband of stealing the goods of his wife, see the Married Woman's Property Act, 1882, 45 & 46 Vict. c. 75, ss. 12, 16, noted p. 530.

<sup>4</sup> Felonious intent means with intent to steal, and the term does not include taking unlawfully but under a *bona fide* claim of right (2 East P.C. 659; 1 Hale 506, 509; *R. v. Hall* (1828), 3 C. & P. 409; *R. v. Wade* (1869), 11 Cox 549).

<sup>5</sup> This means a permanent conversion. In *R. v. Crump* (1825), 1 C. & P. 658, wrongfully taking a horse from a stable, riding it a long distance, and leaving it at another stable was held not to be larceny. This case is directly in point as regards the offence popularly known as "cattle-driving," the parties concerned in which are, however, guilty of conspiracy, unlawful assembly, or riot, or of several or all of those offences as the case may be.

<sup>6</sup> As to where the consent of the owner is obtained by a false pretence, see p. 892. There is not consent within the meaning of the above-stated definition of the offence where property to a greater amount than a person is entitled to receive is, by a mistake of the owner of such property, known at the time of receipt to the person receiving such property, delivered to such person so receiving; and the person so receiving such greater amount is guilty of larceny if he fraudulently appropriates the same (*R. v. Middleton* (1873), L.R. 2 C.C.R. 38; *R. v. Flowers* (1886), 16 Q.B.D. 643). Where, however, the person receiving such greater amount through the mistake of the owner, is at the time unaware of the mistake, but afterwards fraudulently appropriates to his own use such greater amount, a question of much difficulty arises, which in *R. v. Ashwell* (1885), 16 Q.B.D. 190, was left undecided, but the question was finally the subject of an authoritative decision in 1895 under the following circumstances:—The prosecutor owed the prisoner the sum of £2, 8s. 9d. for work done in his employment. The prosecutor, intending to discharge the debt, handed to the prisoner 9s. in silver and two notes, both of which were believed, alike by prosecutor and prisoner, to be £1 notes. One of these was a £10 note. There was evidence that after receiving this note the prisoner discovered its true value, and fraudulently appropriated it to his own use. On this evidence the jury

larceny the property has reached the actual or constructive possession of the owner. In EMBEZZLEMENT (for which see p. 889), the wrongful taking occurs before the property has reached such possession. Thus, the wrongful taking by a shopman of money that he has received for his master before it has gone into the till is embezzlement, but such taking of such money by the shopman after he has put it into the till is larceny (*R. v. Bazeley* (1799), 2 Leach 835). Larceny is either simple or compound. Simple larceny is any offence that merely fills the definition above given. Compound larceny is larceny from the person or from a house. Robbery is larceny from the person effected by either violence or intimidation.

*Simple larceny.*

*Compound larceny.*

*Robbery.*

Larceny is an offence both at common law and by statute. At common law, trees, crops, fruit, vegetables, &c., whilst still growing,<sup>1</sup> dogs,<sup>2</sup> wild animals not in captivity, wild animals kept in captivity for any purpose except food or profit, ore from a mine, or fixtures, cannot be the subject of larceny. **Larceny at common law.**

The common law recognises as the subject of larceny only something which is a movable chose in possession (such as money, goods, merchandise, or chattels), which is of some definite value, and in which the common law recognised property.<sup>3</sup>

The following are some of the statutory provisions as to the punishment on indictment of larceny and other offences involving fraud or dishonesty:— **Statutory provisions.**

Simple larceny, or any felony made punishable as simple larceny— *Simple Felony*, punishment R, as to which see p. 863 (*Larceny Act*, 1861, 24 & 25 Vict. c. 96, ss. 4, 117, 119). Bailee<sup>4</sup> fraudulently converting chattel, money, or valuable security to his own use or the use of any person, though not breaking bulk or otherwise determining bailment, to be deemed guilty of larceny (*ib.*, s. 3). Simple larceny, or any offence by this Act made larceny by a person previously convicted (whether on indictment or under the Criminal Justice Act, 1855<sup>5</sup>) of any felony— *Felony*, punishment I, as to which see p. 862 (*ib.*, ss. 7, 117, 119). Simple larceny, or any offence by this Act made punishable as such after a previous conviction of any indictable misdemeanour punishable under this Act— *Felony*, punishment M, as to which see p. 863 (*ib.*, ss. 8, 117, 119). Simple larceny, or any offence by this Act made punishable as such after two summary convictions either under this Act or under the Malicious Damage Act, 1861— *Felony*, punishment M, as to which see p. 863 (*ib.*, ss. 9, 117, 119).

*Larceny after previous conviction.*

Stealing horse, cattle, sheep, &c.— *Felony*, punishment E, as to which see p. 862 (*ib.*, ss. 10, 117). Killing any animal (the stealing whereof would be felony) with intent to steal the carcase, skin, or any part thereof **Animals.**

convicted the prisoner of larceny. *Held*, by Sir Peter O'Brien, L.C.J., Palles, C.B., O'Brien, Andrews, and Johnson, JJ. (*disc.* Murphy, Holmes, Gibson, and Madden, JJ.), that the subsequent fraudulent misappropriation of the £10, previously innocently acquired, did not amount to larceny, and that the conviction should be quashed (*R. v. Hehir* (1895), 2 I.R. 709; 29 I.L.T.R. 119, in which case *R. v. Ashwell*, *supra*, and all the law and all the authorities on the subject were exhaustively considered).

<sup>1</sup> 1 Hale 510; 1 Hawk, c. 38, s. 21.

<sup>2</sup> *R. v. Robinson* (1859), 28 L.J. 58.

<sup>3</sup> This excludes treasure-trove. It also excludes a corpse (2 East P.C. 652; 1 Hawk, c. 33, s. 4-6). But water (*Ferens v. O'Brien* (1883), 11 Q.B.D. 21) and gas (*R. v. White* (1853), Dears C.C. 203) supplied through pipes for money are included. As to electricity, see p. 909.

In *R. v. Clinton* (1869), I.R. 4 C.L. 6, the taking of ungathered seaweed lying between high and low water mark was held not to be larceny.

<sup>4</sup> A bailee is a person to whom property has been entrusted for a specific purpose without there being any intention that the ownership should be transferred to him.

<sup>5</sup> As to which see p. 585.



—*Felony*, like punishment as for stealing the animal (*ib.*, s. 11). Unlawfully and wilfully coursing, hunting, snaring, &c., killing, wounding, or attempting to kill or wound, any deer kept in any ground not enclosed, after previous conviction of an offence relating to deer<sup>1</sup> for which a pecuniary penalty shall have been imposed—*Felony*, punishment W, as to which see p. 864 (*ib.*, ss. 12, 117, 119). Unlawfully and wilfully coursing, &c., any deer kept or being in enclosed ground where usually kept—*Felony*, like penalty (*ib.*, ss. 13, 117, 119). Assaulting, &c., deer-keeper—*Felony*, like penalty (*ib.*, ss. 16, 117, 119). Dog-stealing, after previous conviction<sup>2</sup> therefor<sup>1</sup>—*Misdemeanour*, punishment BB, as to which see p. 864 (*ib.*, ss. 18, 117). Unlawful possession of stolen dog, or skin thereof, knowing same to have been stolen, after previous conviction<sup>1</sup> for such offence—*Misdemeanour*, like penalty (ss. 19, 117). Taking money to restore dogs—*Misdemeanour*, same penalty (ss. 20, 117).

## Fish.

Taking or destroying fish in water situate in land adjoining, &c., a dwelling-house, &c., otherwise than by angling—*Misdemeanour*, punishment KK, as to which see p. 865 (*ib.*, ss. 24, 117). Stealing oyster, &c., from oyster bed, &c., the property of another, and sufficiently marked out to be known as such—*Felony*, punishable as simple larceny (*ib.*, s. 26). Unlawfully using dredge within limits of oyster-bed or fishery, or dragging with any instrument upon the ground or soil of such fishery—*Misdemeanour*, punishment II, as to which see p. 865 (*ib.*, ss. 26, 117).

## Documents.

Stealing, or for any fraudulent purpose destroying, &c., valuable security, &c.,<sup>3</sup> other than document of title to land—*Felony*, punishable in same manner as the larceny of the money or property thereby secured (*ib.*, s. 27). Stealing, or for any fraudulent purpose destroying, &c., documents of title to land—*Felony*, punishment Q, as to which see p. 863 (*ib.*, ss. 28, 117). Stealing, or for any fraudulent purpose destroying, &c., wills or codicils—*Felony*, punishment A, as to which see p. 862 (*ib.*, ss. 29, 117). Stealing, or unlawfully and maliciously destroying, &c., records or other legal documents—*Felony*, punishment Q, as to which see p. 863 (*ib.*, ss. 30, 117).

## Fixtures.

Stealing or cutting, &c., with intent to steal, metal, glass, wood, &c., fixed to house or land, or any public place or graveyard, &c.—*Felony*, punishable as simple larceny (*ib.*, s. 31). Stealing or cutting,

## Trees.

&c., with intent to steal tree, &c., over value of £1 in pleasure ground, &c., or tree, &c., elsewhere over the value of £5—*Felony*, punishable as simple larceny (*ib.*, s. 32). Stealing tree, &c., anywhere of any value after two previous convictions for such offence<sup>1</sup>—*Felony*, punishable as simple larceny (*ib.*, s. 33).

## Fruit.

Stealing fruit, &c., from garden, &c., after previous conviction for such offence<sup>1</sup>—*Felony*, punishable as simple larceny (s. 36).

## Ore.

Stealing ore, &c., from mine—*Felony*, punishment V, as to which see p. 864 (*ib.*, ss. 38, 117). Miners removing ore, &c., with intent to defraud—*Felony*, like penalty (s. 39).

Larceny from the person.  
Assault with intent to rob.  
Robbery under arms.  
&c.

Robbery or stealing from the person<sup>4</sup>—*Felony*, punishment E, as to which see p. 862 (ss. 40, 117). Assault with intent to rob—*Felony*, punishment (except where a greater punishment is provided by this Act) Q, as to which see p. 863 (ss. 42, 117). Robbery or assault with intent to rob by person armed, or by two or more persons, or robbery and wounding—*Felony*, punishment A, as to which see p. 862 (*ib.*, ss. 43, 117). and the prisoner may also be whipped in accordance with the Garrotters Act,

<sup>1</sup> Either against this or any former Act of Parliament (*ib.*).

<sup>2</sup> First offence punishable summarily.

<sup>3</sup> A money order is a valuable security within the meaning of this section (8 Edw. 7, c. 48, s. 59 (1)).

<sup>4</sup> A person indicted for this offence may be convicted of assault with intent to rob (s. 41).

1863. 26 & 27 Vict. c. 44, to which reference should be made. Stealing Textiles. textiles in process of manufacture—*Felony*, punishment E, as to which see p. 862 (*ib.*, ss. 62, 117). Stealing from ships, docks, wharfs, or from From ships, ship in distress—*Felony*, like penalty<sup>1</sup> (*ib.*, ss. 63, 64, 117). Larceny by &c. clerks or servants—*Felony*, punishment F, as to which see p. 862 (*ib.*, Servants. ss. 67, 117, 119). Embezzlement by clerk or servant, to be deemed felonious stealing—like penalty (*ib.*, s. 68). Larceny by person in King's service, or police—*Felony*, punishment E, as to which see p. 862 (*ib.*, ss. 69. 117). Embezzlement by person in King's service, or police, to be deemed Persons in H.M. service. felonious stealing—like penalty (*ib.*, s. 70). Embezzlement by officers of Bank of England or Ireland—*Felony*, punishment A, as to which see Officers of Bank of Ireland. p. 862 (*ib.*, ss. 73, 117). Tenants or lodgers stealing chattel or fixture, let to hire with house or lodgings—*Felony*, punishment W, as to which see p. 864, or if value of the chattel, &c., exceeds five pounds, punishment M. Tenants. as to which see p. 863 (*ib.*, ss. 74, 117, 119). Holders of powers of attorney fraudulently selling property entrusted to them<sup>2</sup>—*Misdemeanour*, punishment N, as to which see p. 863 (*ib.*, ss. 77, 117; *Larceny Act*, 1901, 1 Edw. 7, c. 10, ss. 1, 2). Factor or agent fraudulently pledging, &c., property of principal, or clerk, &c., knowingly assisting in such offence<sup>2</sup>—*Misdemeanour*, like punishment (*ib.*, ss. 78, 117; *Larceny Act*, 1901, 1 Edw. 7, c. 10, ss. 1, 2). Trustees fraudulently disposing of property<sup>2</sup>—*Misdemeanour*, like punishment (*ib.*, ss. 80, 117). Directors of companies fraudulently disposing of property<sup>2</sup>—*Misdemeanour*, like punishment (*ib.*, ss. 81, 117; *Larceny Act*, 1901, 1 Edw. 7, c. 10, s. 1). Directors of companies falsifying accounts<sup>2</sup>—*Misdemeanour*, like punishment (*ib.*, ss. 82, 117). Directors of companies destroying books of account<sup>2</sup>—*Misdemeanour*, like punishment (*ib.*, ss. 83, 117). Directors of companies publishing fraudulent statement<sup>2</sup>—*Misdemeanour*, like punishment (*ib.*, ss. 84, 117). As to s. 90. see FALSE PRETENCES. Fraudulent Misappropriation of property—*Misdemeanour*, penal servitude not exceeding seven years<sup>3</sup> or imprisonment not exceeding two years, with or without hard labour (*Larceny Act*, 1901, 1 Edw. 7, c. 10, s. 1). Any Electricity. one fraudulently abstracting electricity, &c., shall be deemed guilty of simple larceny (*Electric Lighting Act*, 1882, 45 & 46 Vict. c. 56, s. 22). As to gas and water, see p. 907, *n.*<sup>3</sup>

See also EMBEZZLEMENT, FALSE PRETENCES, RECEIVING STOLEN GOODS, CHEATING, EXTORTION BY THREATS, BURGLARY, HOUSEBREAKING, POST OFFICE.

#### LIBEL.<sup>4</sup>

The publication of matter defamatory of any living private person or definite class of living persons, is an indictable misdemeanour at common law (punishment LL, as to which see p. 865) if effected by writing or print or by signs or effigies<sup>5</sup> or pictures. Such matter is usually referred to as "libel." Words spoken, however defamatory, are not the subject of Libel on individuals.

<sup>1</sup> The offender may be tried either in the county or place where the offence was committed or in any county adjoining (*ib.*).

<sup>2</sup> Section 86 provides that offences under ss. 77 to 85 (ss. 75 and 76 have been repealed by the *Larceny Act*, 1901) are triable only at Assizes. A prosecution under s. 80 cannot be commenced without the sanction of a judge or the Attorney-General.

<sup>3</sup> This Act is not within s. 1 (1) of the Penal Servitude Act, 1891 (for which see p. 861), and consequently the minimum term of penal servitude that the court may inflict is not three years, but may, for instance, be six months. It is, however, submitted that it is inadvisable to inflict any less term than three years.

<sup>4</sup> Any charge of libel of any kind is within the Vexatious Indictments Act.

<sup>5</sup> See *Monson v. Tussauds Ltd.* (1894), 1 Q.B. 671.



indictment unless they directly tend to a breach of the peace, *e.g.* by conveying a challenge to fight, or are seditious, or blasphemous, or perhaps obscene, or constitute an incitement to the commission of an indictable offence (Russell, 7th ed., p. 1021).

Maliciously publishing any defamatory libel, knowing same to be false—*Misdemeanour*, punishment, imprisonment not exceeding two years without hard labour and fine (*Libel Act*, 1843, 6 & 7 Vict. c. 96, ss. 4, 5). Maliciously publishing any defamatory libel—*Misdemeanour*, punishment, imprisonment not exceeding one year without hard labour, or fine, or both (*ib.*, s. 5). As to summary jurisdiction in cases of libel, see p. 591.

At common law, the proprietor of a newspaper or other publication was deemed criminally responsible for any libel contained in it, though published without his authority or knowledge (see *R. v. Holbrook* (1878), 4 Q.B.D. 42, at p. 46), but now it is a defence, in a criminal proceeding, to show that the publication was made without the authority, consent, or knowledge of the accused, and that the publication did not arise from want of due care or caution on his part (*Libel Act*, 1843, 6 & 7 Vict. c. 96, s. 7). And now also, no criminal proceeding can be commenced against any proprietor, publisher, editor, or any person responsible for the publication of a newspaper for any libel published therein without the order of a Judge at Chambers (*Law of Libel Amendment Act*, 1888, 51 & 52 Vict. c. 64, s. 8).

Generally, wherever proof of malice is necessary to constitute any offence, it is not necessary to prove spite or ill-will against any particular person, or generally. There is held to be malice wherever an unlawful act is wilfully done (see *M'Pherson v. Daniels* (1829), 10 B. & C. 263, 272; *R. v. Harvey* (1823), 2 B. & C. 257, 258). See also p. 602.

In libel, the publication is malicious in every case that does not fall within some one or more of the following cases:—

(1) Where the libel is true and its publication is shown to be for the public benefit (*Libel Act*, 1843, 6 & 7 Vict. c. 96, s. 6). (2) Where the person publishing it believed it to be true, and if the relation between the parties by and to whom the publication is made is such that the person publishing it is under any duty to so publish the libel, provided that such publication does not either in extent or manner exceed the requirements of the occasion, and is not made for any indirect motive. (3) Where the libel is fair criticism of a public man, or of actors, books, &c. (4) Where the libel is contained in a report of the proceedings of either House of Parliament. (5) Where the libel is within the Law of Libel Amendment Act, 1888, 51 & 52 Vict. c. 64, ss. 3 and 4. (6) Where the libel consists of anything published in a judicial proceeding by either judge, counsel, witness, or any party, or of anything whatever published in the discharge of a military duty. (7) Where the libel is an accurate and fair report of the proceedings of any court of justice.<sup>1</sup>

Seditious libel is the publication with a seditious intention of anything capable of being a libel; <sup>2</sup> blasphemous libel is the publication of any blasphemous matter (as to meaning of which see p. 878); and both offences are *Misdemeanours*, punishable with LL, as to which see p. 865.

<sup>1</sup> This statement is condensed from Stephen, *Dig. Cr. Law*, 6th ed., pp. 231–238.

<sup>2</sup> Seditious intention means an intention to bring into hatred or contempt or to excite disaffection against the Sovereign, or the Constitution, or either House of Parliament, or the administration of justice, or to excite the public to attempt to bring about otherwise than by lawful means the alteration of any matter by law established, or to incite any person to commit any crime in disturbance of the peace, or to raise discontent or disaffection amongst his Majesty's subjects, or to promote ill-will and hostility between different classes of such



## LINEN.

Any person purchasing or taking in pawn or otherwise receiving linen, &c., yarn or tools, &c., for manufacturing the same, knowing that such linen, &c., yarn or tools are being fraudulently disposed of, or any person selling, pawning, or otherwise disposing of the same, knowing that the same have been fraudulently disposed of, or attempting so to do—*Misdemeanour*, punishment LL, as to which see p. 865 (*Textile Manufactures (Ir.) Act*, 1840, 3 & 4 Vict. c. 91, ss. 3 and 4, as amended by the *Textile Manufactures (Ir.) Act*, 1867, 30 & 31 Vict. c. 60).

## LUNATICS, OFFENCES RELATING TO.

Wilfully making or causing to be made false statement in return or notice transmitted to registrar in lunacy, punishable as perjury with punishment LL or punishment P, as to which see pp. 863, 865 (*Lunacy (Ir.) Act*, 1871, 34 & 35 Vict. c. 22, s. 7). Forging signature or seal of registrar—*Felony*, punishment P, as to which see p. 863 (*ib.*, s. 50). Ill-treatment of lunatic by person having charge<sup>1</sup>—*Misdemeanour*, punishment LL, as to which see p. 865 (*Lunacy Act*, 1890, 53 & 54 Vict. c. 5, s. 322; *Lunacy (Ir.) Act*, 1901, 1 Edw. 7, c. 17, s. 2). Carnal knowledge or attempted carnal knowledge of female lunatic by person having charge—*Misdemeanour*, punishment AA, as to which see p. 864 (*Lunacy Act*, 1890, s. 324; *Lunacy (Ir.) Act*, 1901, s. 2).

## MALICIOUS INJURIES TO PROPERTY.

The Malicious Damage Act, 1861, 24 & 25 Vict. c. 97, provides for the punishment, either summarily (as to which see p. 601), or on indictment, of malicious injuries to property.<sup>2</sup> Setting fire to a church, &c., or to dwelling-house, any person being therein, or to house, &c., with intent to injure or defraud, or to railway station, &c., or to public buildings—*Felony*, punishment B, as to which see p. 862 (*ib.*, ss. 1–5, 73, 75). Setting fire to other building<sup>3</sup> or to goods in building, or attempting to commit any of the foregoing offences—*Felony*, punishment F, as to which see p. 862 (*ib.*, ss. 6–8, 73, 75). As to damaging building with explosive or placing explosive therein<sup>4</sup> (ss. 9, 10), see EXPLOSIONS. Damage by rioters (ss. 11, 12), see RIOT. Tenants damaging buildings—*Misdemeanour*, punishment KK, as to which see p. 865 (*ib.*, ss. 13, 73). De-

Malicious  
Damage  
Act, 1861.

Buildings  
or goods  
therein.

Damage by  
tenants.

subjects (Stephen, *Dig. Cr. Law*, 6th ed., pp. 70, 71). This definition was cited with approval by Lord O'Brien, L.C.J., in *R. v. M'Hugh* (1901), 2 I.R. 569, which related to an attack in the defendant's newspaper on jurors for bringing in a certain verdict.

<sup>1</sup> For summary jurisdiction as to this offence, see p. 593.

<sup>2</sup> By s. 60, where it shall be necessary to allege and prove an intent to injure or defraud, it is sufficient to allege and prove that the accused did the act with intent to injure or defraud, as the case may be, without alleging or proving an intent to injure or defraud any particular person. As to malice, see p. 601.

<sup>3</sup> For a man to burn any building that is his property and in his possession is no offence (see *n.*<sup>3</sup>, p. 912), unless it be done with intent to defraud or so as to set contiguous houses on fire, in which case it is felony, punishment P, as to which see p. 863 (*R. v. Isaac* (1799), 2 East P.C. 1031; see also *R. v. Kirby*, noted at p. 912), or unless such building be contiguous to others, in which case it is a *misdemeanour*, punishment LL, as to which see p. 865 (*R. v. Probert* (1799), 2 East P.C. 1030), or unless the act constitutes an offence under ss. 2 or 3 of this Act.

<sup>4</sup> It would appear that under circumstances on all fours with those in *R. v. Kirby* (as to which, see *n.*<sup>3</sup>, p. 912), an owner cannot be convicted under either of these sections. But if the act charged be done with intent to defraud, or so as to injure or expose to injury other buildings or any person, then it would appear from *R. v. Isaac* and *R. v. Probert*, *supra*, that such owner can be convicted under these sections.

Goods in process of manufacture or machinery.	stroying goods in process of manufacture, certain machinery. &c.— <i>Felony</i> , punishment B. as to which see p. 862 ( <i>ib.</i> , ss. 14, 73, 75). Destroying other machinery— <i>Felony</i> , punishment M. as to which see p. 862 ( <i>ib.</i> , ss. 15, 73, 75). Setting fire to crops— <i>Felony</i> , punishment F. as to which see p. 862 ( <i>ib.</i> , ss. 16, 73, 75). Setting fire to stacks of corn, &c.— <i>Felony</i> , punishment B. as to which see p. 862 ( <i>ib.</i> , ss. 17, 73, 75). Attempting to set fire to crops, stacks of corn, &c.— <i>Felony</i> , punishment M. as to which see p. 863 ( <i>ib.</i> , ss. 18, 73, 75). Destroying hopbinds— <i>Felony</i> , punishment F. as to which see p. 862 ( <i>ib.</i> , ss. 19, 73, 75). Destroying or damaging trees, shrubs, &c., exceeding value of £1 in pleasure ground; or trees, shrubs, &c., growing elsewhere exceeding value of £5— <i>Felony</i> , punishment R. as to which see p. 863 ( <i>ib.</i> , ss. 20, 21, 73, 75). Destroying or damaging trees, shrubs, &c., to value of 1s. growing anywhere (after two previous convictions <sup>1</sup> for such offence)— <i>Misdemeanour</i> , punishment Z. as to which see p. 864 ( <i>ib.</i> , ss. 22, 73, 75). Destroying or damaging fruit or vegetable product in garden, &c. (after two previous convictions <sup>1</sup> for such offence)— <i>Felony</i> , punishment R. as to which see p. 863 ( <i>ib.</i> , ss. 23, 73, 75). Setting fire to coal-mine— <i>Felony</i> , punishment B. as to which see p. 862 ( <i>ib.</i> , ss. 26, 73, 75). Attempting to set fire to coal-mine— <i>Felony</i> , punishment F. as to which see p. 862 ( <i>ib.</i> , ss. 27, 73, 75). Flooding any mine, obstructing shaft, &c.— <i>Felony</i> , punishment M. as to which see p. 863 ( <i>ib.</i> , ss. 28, 73, 75). Destroying or damaging apparatus for working any mine— <i>Felony</i> , punishment M. as to which see p. 863 ( <i>ib.</i> , ss. 28, 29, 73, 75). Destroying sea-bank or sea-wall or wall of canal— <i>Felony</i> , punishment B. as to which see p. 862 ( <i>ib.</i> , ss. 30, 73, 75). Removing the piles of any sea-bank, &c., or doing any damage so as to obstruct the navigation of river or canal— <i>Felony</i> , punishment M. as to which see p. 863 ( <i>ib.</i> , ss. 31, 73, 75). Breaking down dam of fishery, &c., or poisoning fish— <i>Misdemeanour</i> , punishment O. as to which see p. 863 ( <i>ib.</i> , ss. 32, 73, 75). Injury to public bridge, &c.— <i>Felony</i> , punishment B. as to which see p. 862 ( <i>ib.</i> , ss. 33, 73, 75). Placing obstruction, &c., on railway with intent to obstruct or overthrow any engine, &c.— <i>Felony</i> , punishment B. as to which see p. 862 ( <i>ib.</i> , ss. 35, 73, 75). Obstructing engines, &c., on railway— <i>Misdemeanour</i> , punishment Y. as to which see p. 864 ( <i>ib.</i> , ss. 36, 73). Injuring telegraphs, &c. <sup>2</sup> — <i>Misdemeanour</i> , punishment Y. as to which see p. 864 ( <i>ib.</i> , ss. 37, 73). Destroying articles in museums, &c.— <i>Misdemeanour</i> , punishment GG. as to which see p. 865 ( <i>ib.</i> , ss. 39, 73, 75). Killing, maiming, or wounding cattle, &c.— <i>Felony</i> , punishment E. as to which see p. 862 ( <i>ib.</i> , ss. 40, 73). Malicious injuries to and acts relating to ships: see (as to ss. 42–44, and 46, 49) SHIPS, and (as to s. 45) EXPLOSIONS. As to letter threatening malicious injury (s. 50), see MENACES. Committing malicious injury to an amount exceeding £5, not provided for in previous sections <sup>3</sup> — <i>Misdemeanour</i> , punishment Y, as to which see p. 864, or, if the
Crops, &c.	
Trees, &c.	
Fruit, &c.	
Mines, &c.	
Sea-walls, &c.	
Fish, &c.	
Bridges.	
Trains, &c.	
Telegraphs.	
Museums.	
Letter threatening injury.	

<sup>1</sup> Under this or any former Act of Parliament (*ib.*).

<sup>2</sup> For summary jurisdiction as to attempt to commit this offence, see p. 604.

<sup>3</sup> Where a defendant himself cut off the tail of his own cow, and then informed the police that he had seen one W. M. cut off the tail and asked them to arrest W. M., the county court judge of Limerick told the jury that they ought to convict the defendant, if they believed that he had wounded the cow with intent to injure W. M. by falsely charging him with the wounding and having him arrested, whereupon the jury convicted. It was held by Sir Peter O'Brien, L.C.J., Palles, C.B., Andrews, Johnson, Holmes, Gibson, and Madden, J.J., that the conviction must be quashed. Sir P. O'Brien, L.C.J., referred to s. 58 and said: "I think . . . that the animal must be the property of some person other than the person causing the injury." Palles, C.B., gave the reason for his decision as follows: "I think the Act constituting the *corpus delicti* within the section must be a wrong, or *injuria*, against the owner of the animal" (*R. v. Kirby* (1897), 31 I.L.T.R. 46). This decision would appear to govern any charge made under ss. 6, 9, 10, 14–29, 41, 42, 45, 46, or 51 of this Act.

offence be committed between 9 P.M. and 6 A.M. next morning, punishment S, as to which see p. 864 (*ib.*, ss. 51, 73). Injuring electric line or works with intent to cut off supply—*Felony*, punishment T, as to which see p. 864 (*Electric Lighting Act*, 1882, 45 & 46 Vict. c. 56, s. 22). In any way wilfully injuring any works, &c., erected, &c., for the purposes of the Drainage (Ir.) Act, 1842, 5 & 6 Vict. c. 89<sup>1</sup>—*Felony*, punishment P, as to which see p. 863 (*Drainage (Ir.) Act*, 1842, s. 133).

Malicious injuries generally.  
Electric works, &c.  
Drainage works.

### MARRIAGE, OFFENCES RELATING TO.

A person is guilty of bigamy who, being married, marries any other person during the life of the former husband or wife, whether the second marriage shall have taken place in England or Ireland, or elsewhere—*Felony*, punishment L, as to which see p. 863 (*Offences against the Person Act*, 1861, 24 & 25 Vict. c. 100, ss. 57, 71). Provided that nothing in the section shall extend (1) to any second marriage contracted elsewhere than in England or Ireland by any other than a subject of His Majesty; or (2) to any person marrying a second time whose husband or wife shall have been continually absent<sup>2</sup> from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time; or (3) to any person who, at the time of such second marriage, shall have been divorced from the bond of the first marriage;<sup>3</sup> or (4) to any person when the former marriage shall have been declared void by the sentence of any court of competent jurisdiction (*ib.*, s. 57).

Bigamy.

The person, not being married, who contracts a bigamous marriage is punishable as a principal in the second degree, if aware at the time of the celebration of such bigamous marriage that the previous marriage was still subsisting (*R. v. Brown* (1843), 1 C. & K. 144).

To sustain the charge of bigamy, the prosecution must prove the actual celebration of the previous marriage. It is not sufficient to prove cohabitation or reputation of marriage (*Morris v. Millar* (1767), 4 Burr 2057; *Catherwood v. Caslon* (1844), 13 M. & W. 261); or the admission by the prisoner of the previous marriage (*R. v. Truman* (1795), 1 East P.C. 470; *R. v. Savage* (1876), 13 Cox 178; *R. v. Flaherty* (1847), 2 C. & K. 782; *R. v. Lindsay* (1902), 66 J.P. 505). The prosecution must also prove that the first wife or husband of the accused was alive at the time of the celebration of the alleged bigamous marriage (*R. v. Lumley* (1869), L.R. 1 C.C.R. 196; *R. v. Willshire* (1881), 6 Q.B.D. 366),<sup>4</sup> and the prosecution must also prove that the accused is the person who contracted the previous marriage. Any satisfactory

<sup>1</sup> As to summary jurisdiction under this Act, see p. 424.

<sup>2</sup> The fact that the absence was the effect of desertion by the accused is immaterial (*R. v. Faulkes* (1903), 19 T.L.R. 250). Once the absence has been proved the charge cannot be sustained, unless it be proved that the accused knew the first wife or husband to have been alive (*R. v. Heaton* (1863), 3 F. & F. 819; *R. v. Curgerwen* (1865), L.R. 1 C.C.R. 1), and it is not sufficient to prove merely that the accused had the means of such knowledge (*R. v. Briggs* (1856), Dears & B. 98).

<sup>3</sup> This does not apply where there has been merely a divorce *a mensa et thoro*, or a decree for judicial separation, or a decree *nisi* not yet made absolute (*Norman v. Villars* (1877), 2 Ex. D. 359; *Stanhope v. Stanhope* (1886), 11 P.D. 103). Divorce *a mensa et thoro* is all that can be obtained in the Irish court; but this can be enlarged by private Act of Parliament into a divorce *a vinculo*.

<sup>4</sup> Where the husband and wife have been separated for less than seven years the prosecution need not prove that the accused knew that the husband or wife was alive at the date of the second marriage (*R. v. Jones* (1869), 11 Cox 358).



evidence of identity is sufficient (1 East P.C. 472). A photograph has been admitted as evidence (*R. v. Tolson* (1864), 4 F. & F. 103).

Where a woman *bona fide* believed, on reasonable grounds, in the death of her husband at the time of the second marriage, this was held to afford a good defence, though seven years' absence had not elapsed (*R. v. Tolson* (1889), 23 Q.B.D. 168).

It is immaterial where the second marriage took place (2 Hale 692). The fact that the first marriage is void because of blood-relationship, or affinity through the marriage of relatives, or lunacy, or any other reason, is a defence (see *R. v. Chadwick* (1847), 11 Q.B. 205). The fact that the second marriage, even if not bigamous, would be otherwise invalid, because, for instance, of its being within the prohibited degrees, is no defence if the second marriage be by a form recognised by the law as capable of producing a valid marriage between parties capable of contracting between them any valid marriage (*R. v. Allen* (1872), L.R. 1 C.C.R. 367, disapproving of the Irish case *R. v. Fanning* (1866), 17 I.C.L.R. 289); but such fact is a defence if the second marriage be (as in *Burt v. Burt* (1860), 2 Sw. & Tr. 88) by a form not so recognised by the law.

Other  
offences  
relating to  
marriage.

Solemnisation of any marriage in contravention of 12 Geo. 1, c. 3 (Ir.), s. 1<sup>1</sup>—*Felony*, punishment P, as to which see p. 863 (12 Geo. 1, c. 3 (Ir.), s. 1; *Capital Punishment (Ir.) Act*, 1842, 5 & 6 Vict. c. 28, s. 1 (see p. 861)). Solemnisation or registration of marriage, &c., in contravention of 7 & 8 Vict. c. 81, ss. 45, 46, 47—*Felony*, punishment P, as to which see p. 863 (*Marriages (Ir.) Act*, 1844,<sup>2</sup> 7 & 8 Vict. c. 81, ss. 45, 46, 47; *Criminal Law (Ir.) Act*, 1828, 9 Geo. 4, c. 54, s. 15). Solemnisation of marriage in contravention of the 26 & 27 Vict. c. 27, s. 7—*Felony*, punishment P, as to which see p. 863 (*Marriage Law (Ir.) Amendment Act*, 1863, 26 & 27 Vict. c. 27, s. 7; *Criminal Law (Ir.) Act*, 1828, 9 Geo. 4, c. 54, s. 15). Forging, &c., register of marriages—*Felony*, punishment L, as to which see p. 863 (*Forgery Act*, 1861, 24 & 25 Vict. c. 98, ss. 35, 51). Forging, &c., certificate of marriage—*Felony*, punishment A, as to which see p. 862 (*ib.*, ss. 36, 51). Falsely making any declaration, &c., required by the 7 & 8 Vict. c. 81, or by the 26 & 27 Vict. c. 27, for the purpose of procuring any marriage—*Misdemeanour*, punishment LL or punishment P, as to which see pp. 863, 865 (*Marriages (Ir.) Act*, 1844, s. 44; *Marriage Law (Ir.) Amendment Act*, 1863,<sup>3</sup> s. 15). Falsely pretending to be, or to act on behalf of, a person having power to forbid the issue of a registrar's certificate pursuant to the Marriages (Ir.) Act, 1844—*Misdemeanour*, with like punishment (*Marriages (Ir.) Act*, 1844, s. 44). Supplying false particulars required by the Marriages (Ir.) Act, 1844, for insertion in register of marriages—*Misdemeanour*, with like punishment (*ib.*, s. 73). Wilfully making or causing to be made for the purpose of insertion in any register of marriages any false statement touching the particulars required by the Registration of Marriages (Ir.) Act, 1863, to be known and registered—*Misdemeanour*, with like punishment (see pp. 863, 865) (*Registration of Marriages (Ir.) Act*, 1863, 26 & 27 Vict. c. 90, s. 22). Sections 35 and 36 of the Forgery Act, 1861, are by s. 23 of the Registration of Marriages (Ir.) Act, 1863, incorporated therewith.

<sup>1</sup> Part of this section is repealed by 3 & 4 Wm. 4, c. 102, s. 1, and other parts of it have been varied by 33 & 34 Vict. c. 110, ss. 38–40. Reference should be made to those Acts.

<sup>2</sup> As to summary jurisdiction under this Act, see p. 776.

This Act does not apply to marriages celebrated by a Roman Catholic priest. It is amended by the Marriage Law (Ir.) Amendment Act, 1863, 26 & 27 Vict. c. 27, and both Acts are amended by the Matrimonial Causes and Marriage Law (Ir.) Amendment Act, 1870, 33 & 34 Vict. c. 110.

<sup>3</sup> As to summary jurisdiction under ss. 11, 22, 24, 25, and 26 of this Act, see p. 777.

**MEDICAL PRACTITIONERS.**

Obtaining or attempting to obtain registration as a medical practitioner by false pretences, or aiding and abetting such obtaining or attempt—*Misdemeanour*, punishable with imprisonment not exceeding twelve months (*Medical Act*, 1858, 21 & 22 Vict. c. 90, s. 39).

As to registration, practising of unqualified persons, see CATALOGUE OF SUMMARY OFFENCES, MEDICAL PRACTITIONER, p. 615.

**MENACES.**

Sending, &c., letter threatening to murder—*Felony*, punishment I, as to which see p. 862 (*Offences against the Person Act*, 1861, 24 & 25 Vict. c. 100, ss. 16, 70, 71).

Sending, &c., letter threatening to burn house, building, ship, &c.—*Felony*, punishment I, as to which see p. 862 (*Malicious Damage Act*, 1861, 24 & 25 Vict. c. 97, ss. 50, 73, 75). See also EXTORTION, and WHITEBOY ACTS.

**MERCHANDISE MARKS.**

Offences under the Merchandise Marks Act, 1887, are punishable, at the option of the accused, either summarily or on indictment. The subject is treated at p. 616, *ante*. All indictable misdemeanours under the Act are subject to the Vexatious Indictments Act (*Merchandise Marks Act*, 1887, 50 & 51 Vict. c. 78, s. 13). Accessories are liable as principals (*ib.*, s. 11).

**MERCHANT SHIPPING.**

The Merchant Shipping Act, 1894, 57 & 58 Vict. c. 60, consolidates the law as to merchant shipping, and is itself amended by the Merchant Shipping Act, 1906, 6 Edw. 7, c. 48, and by the Merchant Shipping Act, 1907, 7 Edw. 7, c. 48.

The three Acts occupy over three hundred pages of the statute book, and it is impossible, in the space here available, to deal with the various offences created by them. The following may, however, be noted.

All offences termed misdemeanours under the Acts for which no punishment is otherwise provided are punishable by imprisonment not exceeding two years with or without hard labour on indictment, but may be prosecuted summarily and punished on summary conviction by imprisonment not exceeding six months, or fine not exceeding £100 (*Merchant Shipping Act*, 1894, s. 680).

The following offences are misdemeanours punishable as above under s. 680 of the Merchant Shipping Act, 1894 :—

(a) Registration : Master or owner using for navigation a certificate improperly granted (*Merchant Shipping Act*, 1894, 57 & 58 Vict. c. 60, s. 16).

(b) Making, assisting in making, procuring false statement before registrar (*ib.*, s. 67).

(c) Concealing, or being privy to concealing, the British character or assumed foreign character of a ship (*ib.*, s. 70).

Discharging or leaving seamen abroad without proper sanction (*Merchant Shipping Act*, 1906, 6 Edw. 7, c. 48, ss. 30 and 36); forcing seamen ashore or abandoning them (*ib.*, s. 43).

Misconduct of masters, seamen, or apprentices. Wilful breach or neglect of duty tending to immediate loss or damage to ship or endanger life or limb of persons belonging thereto, or refusal or omission to do any lawful act requisite for the preservation of the ship from total loss or any person from danger to life or limb (*Merchant Shipping Act*, 1894, 57 & 58 Vict. c. 60, s. 220).

Taking money for apprenticeship in sea-fishing service (*ib.*, s. 398).<sup>1</sup>

Failure by master to assist vessel, &c., in case of a collision (*ib.*, s. 422). Preventing service of documents under the Act (*ib.*, s. 96 (2)).

The following misdemeanour, punishable under s. 680 of the Merchant Shipping Act, 1894, is punishable *only* on indictment :—

Sending, attempting to send, &c., a British ship to sea in such unseaworthy state that the life of any person therein may be endangered, unless such person prove he took all reasonable means to secure the seaworthy state of such ship, or that her going to sea in unseaworthy state was otherwise unjustifiable, or master of a British ship knowingly taking her to sea in an unseaworthy condition (s. 457). It need not be alleged in respect of sending an unseaworthy ship to sea that the defendant knew of the vessel's condition (*R. v. Freeman* (1875), I.R. 9 C.L. 527). As to unseaworthiness, see *The Diamond* (1906), P. 282.<sup>2</sup>

The following is a felony punishable with T (see p. 864) :—

Taking wreck found on or near the coast of the United Kingdom, or any part of the cargo of a wrecked vessel, into a foreign port (*ib.*, s. 535).

The following misdemeanour is punishable with imprisonment without hard labour and fine of £100, or is indictable as a common nuisance :—

Failing to comply with notice of lighthouse authority as to extinguishing false or misleading lights (s. 667 (3)).<sup>3</sup>

See also SHIPS.

## OATHS, UNLAWFUL.

Administering, or causing to be administered, any unlawful oath—*Felony*, punishment C, as to which see p. 862 (27 Geo. 3. c. 15 (Ir.), s. 6). Taking any such oath—*Felony*, punishment P, as to which see p. 863 (*ib.*). Administering, &c., oath or engagement to belong to seditious society, or to disturb the peace, or to injure person or property, or to compel any person to do, &c., any act, or to obey order of unlawful authority, or not to give evidence against any person, &c., or as to taking of such oath, &c.—*Felony*, punishment C, as to which see p. 862 (*Unlawful Oaths (Ir.) Act*, 1810, 50 Geo. 3, c. 102, s. 1). Taking any such oath—*Felony*, punishment P, as to which see p. 863 (*ib.*). Persons compelled to administer or take such oath to be excused on giving full information to a justice, on oath within ten days, or if prevented by sickness or force from so doing then within seven days after such sickness or force shall cease (*ib.*, s. 2). Proceedings to be commenced within six months of the offence (*ib.*, s. 10).

Any person without legal authority administering an oath, whether such oath be harmless or not, is guilty of misdemeanour, punishable with LL. as to which see p. 865 (3 Co. Inst. 165; *R. v. Eadon* (1813), 31 St. Tr. 1064, 1069).

The Statutory Declarations Act, 1835, 5 & 6 Wm. 4, c. 62, s. 13, makes

<sup>1</sup> Applies to fishing vessels of the tonnage of twenty-five tons and upwards.

<sup>2</sup> And see the Marine Insurance Gambling Policies Act, 1909, 9 Edw. 7, c. 12.

<sup>3</sup> The lighthouse authorities in Ireland are the Commissioners of Irish Lights (*Merchant Shipping Act*, 1894, 57 & 58 Vict. c. 60, s. 634).



it unlawful for any justice of the peace or other person to administer or cause, or allow to be administered, or to receive or cause or allow to be received, any oath, affidavit, or solemn affirmation touching any matter or thing whereof such justice or other person hath not jurisdiction or cognisance by statute in force at the time being, and any person acting in contravention of this section commits a misdemeanour, punishable with LL, as to which see p. 865.

See also SOCIETIES, UNLAWFUL; and WHITEBOY ACTS.

## OFFENCES AGAINST THE GOVERNMENT.

High-treason consists in (1) compassing or imagining the death of the King, Queen, or heir-apparent; (2) levying war against the King in his realm; (3) adhering to the King's enemies; (4) killing the King's wife or son; (5) violating the King's companion or eldest daughter or the wife of the heir-apparent; (6) killing the Lord Chancellor, treasurer, or judges while in their places doing their office, &c. (25 Edw. 3, st. 5, c. 2). The punishment of treason is death. Every person who in the case of felony would be an accessory before or after the fact is in the case of high-treason a principal traitor. High-treason.

Treason felony consists in an intention to depose the Sovereign or levy war against the Sovereign, to compel the Sovereign to change measures or counsels, or to terrorise the Houses of Parliament, or to move any foreigner with force to invade the King's dominions, coupled with an expression of such intention by any publication or by open or advised speech or by overt act; punishment C, as to which see p. 862 (*Treason Felony Act*, 1848, 11 & 12 Vict. c. 12, s. 3). Treason felony.

Discharging, or attempting to discharge, or aiming or attempting so to do, firearms, or throwing any offensive matter, or striking or attempting to strike at with any weapon, with intent to break the public peace or to injure or alarm the King. Having near the person of the King any arm or explosive with intent to injure or alarm—*High misdemeanour*, punishment P, as to which see p. 863, and the prisoner may be whipped not more than three times whilst imprisoned<sup>1</sup> (*Treason Act*, 1842, 5 & 6 Vict. c. 51, s. 2). Assaults on person of the Sovereign.

Seditious conspiracy consists in agreeing with some other person (not being the wife or husband of the accused) to do any act for the furtherance of a common seditious purpose,<sup>2</sup> and is a misdemeanour at common law, punishable with LL, as to which see p. 865. Seditious conspiracy.

Endeavouring to seduce any of the King's seamen or soldiers from their duty—*Felony*, punishment C, as to which see p. 862, and if such punishment be imprisonment the court may order that the offender be kept in solitary confinement<sup>3</sup> (37 Geo. 3, c. 40 (Ir.). s. 1; *Punishment of Offences Act*, 1837, 7 Wm. 4, and 1 Vict. c. 91). Mutiny, inciting to.

## OFFENCES AGAINST THE PERSON.

Homicide is the killing of one human being by another, and the law presumes every homicide to be murder till the contrary is proved. Manslaughter is unlawful homicide without malice aforethought (Stephen, *Dig. of Cr. Law*, p. 182)—*Felony*, punishment A, as to which see p. 862, Man-slaughter.

<sup>1</sup> See, however, s. 2 of the Whipping Act, 1862, noted p. 866.

<sup>2</sup> See Stephen's *Dig. Crim. Law*, 6th ed., pp. 70, 71. For the meaning of the term seditious, see p. 910, n.<sup>3</sup>.

<sup>3</sup> Such order is, however, never made now. See p. 866.

and the offender may be fined in addition to or substitution for such punishment (*Offences against the Person Act*, 1861, ss. 5, 71).

#### Murder.

Murder is the unlawful killing by any person of sound memory and discretion of any person under the King's peace with malice aforethought either express or implied by law (Russell, 7th ed., 655)—Punishment, death (*Offences against the Person Act*, 1861, s. 1).

The precise distinction between murder and manslaughter is governed by a great volume of case law which it is unnecessary to set out, inasmuch as justices in any case of unlawful homicide will return the accused for trial. It may, however, be stated generally that manslaughter is either (1) unlawful homicide upon such provocation (which, however, can never be given by mere words), as would naturally lead to the act that caused death; or (2) where a person doing an unlawful act or a felony not likely to cause danger kills another unintentionally; or (3) where any person being under an obligation to perform any duty tending to preserve life, either negligently fails to perform, or negligently performs, such duty, and thereby, as the direct result of such negligence, causes the death of another person. Cases coming within this third class are *R. v. Dalloway* (1847), 2 Cox 273 (driver not holding reins of cart); *R. v. Salmon* (1880), 6 Q.B.D. 79 (firing a rifle in a thickly inhabited neighbourhood); *R. v. Lowe* (1850), 3 C. & K. 123 (leaving in charge of steam-engine working a lift in a mine a boy whom accused knew to be incompetent); *R. v. Haines* (1847), 2 C. & K. 368 (neglecting to ventilate mine); *R. v. Dant* (1865), Le. & Ca. 567 (turning out dangerous animal where people were likely to be); *R. v. Stevenson* (1861), 3 F. & F. 106 (selling diseased meat); *R. v. Curtis* (1885), 15 Cox 746 (relieving officer failing to relieve destitute person). As to treating diseases, compounding medicines, and performing operations, the medical man or other person acting as such must have acted either with the grossest ignorance or the most criminal carelessness in order to substantiate the charge of manslaughter (*R. v. Williamson* (1807), 3 C. & P. 635).

It has been held that frightening a person to death by threatened assault is manslaughter (*R. v. Hayward* (1908), 21 Cox 692).

No person can be convicted of murder or manslaughter unless the person in respect of whose death the charge is made died within a year and a day after the stroke received or cause of death administered, in the computation of which time the whole day upon which the hurt was done is to be reckoned the first (*R. v. Dyson* (1908), 2 K.B. 454).

Murder or manslaughter committed by a British subject on land in any place whatever outside the United Kingdom is triable in any county, &c., in Ireland where the accused may be apprehended or in custody (24 & 25 Vict. c. 100, s. 9). Murder or manslaughter (as well as any other offence) committed on any British ship that is on the high seas is deemed to have been committed on British territory, and is triable at any place within the King's dominions where the offender is found (57 & 58 Vict. c. 60, s. 686). If any injury, &c., be inflicted at any place outside England or Ireland and death ensues in Ireland, or *vice versa*, then the person inflicting the injury, &c., is triable in any county, &c., in Ireland where either the injury was inflicted or the death occurred<sup>1</sup> (24 & 25 Vict. c. 100, s. 10).

Being accessory after the fact to murder—*Felony*, punishment A, as to which see p. 862 (*ib.*, ss. 67, 71).

<sup>1</sup> This section notwithstanding, a foreign subject who stabbed in any place outside the King's dominions other than a British ship on the high seas, a man who within a year and a day died at any place within the King's dominions, could not by any means be tried and punished in this country (see *R. v. Keyn* (1876), 2 Ex.D. 63).

Conspiracy to murder—*Misdemeanour*, punishment J, as to which see p. 863 (*Offences against the Person Act*, 1861, 24 & 25 Vict. c. 100, ss. 4, 71). Attempt to murder<sup>1</sup>—*Felony*, punishment A, as to which see p. 862 (*ib.*, ss. 11, 14, 15, 70). As to s. 12, see EXPLOSIONS, and as to s. 13, see SHIPS. As to s. 16, see MENACES. As to s. 17, see SHIPS. Unlawful wounding with intent to maim, or do grievous bodily harm, resist arrest, &c.<sup>2</sup>—*Felony*, punishment A, as to which see p. 862 (*ib.*, ss. 18, 71). Unlawfully wounding, &c., with whatever intent<sup>3</sup>—*Misdemeanour*, punishment S, as to which see p. 864 (*ib.*, ss. 20, 71). Attempts to choke, &c., with intent to commit indictable offence—*Felony*, punishment A, as to which see p. 862 (*ib.*, ss. 21, 71), and the offender may also be whipped in accordance with the Garrotters Act, 1863, 26 & 27 Vict. c. 44, to which reference should be made. Administering drugs with like intent<sup>4</sup>—*Felony*, punishment A, as to which see p. 862 (*ib.*, ss. 22, 71). Administering poison or other destructive or noxious thing so as to endanger life—*Felony*, punishment H, as to which see p. 862 (*ib.*, ss. 23, 71). Maliciously administering poison, &c., with intent to injure, aggrieve, or annoy—*Misdemeanour*, punishment S, as to which see p. 864 (*ib.*, ss. 24, 71). Ill-treating apprentices, so as to endanger life or health—*Misdemeanour*, like punishment (*ib.*, ss. 26, 71). As to s. 27, see CHILDREN. Setting, or permitting to be set, spring-guns, &c., with intent to inflict grievous bodily harm (but not to extend to traps for vermin, or man-traps at night in a dwelling-house for protection thereof)—*Misdemeanour*, punishment S, as to which see p. 864 (*ib.*, ss. 31, 71). Maliciously doing any act with intent to endanger railway passengers—*Felony*, punishment B, as to which see p. 862 (*ib.*, ss. 32, 70, 71). Maliciously casting stones, &c., on railway train with intent to endanger safety of passengers—*Felony*, punishment A, as to which see p. 862 (*ib.*, ss. 33, 70). By unlawful act or negligence endangering any railway passenger—*Misdemeanour*, punishment Y, as to which see p. 864 (*ib.*, ss. 34, 71). By furious, negligent, &c., driving of vehicle causing bodily harm, like penalty (*ib.*, ss. 35, 71).

Conspiracy to murder.  
Attempt to murder.  
Other offences against the person.

See also ASSAULT, CHILDREN, OFFENCES AS TO, EXPLOSIONS, and SHIPS.

## OFFICIAL SECRETS, DISCLOSURE OF.

For the purpose of wrongfully obtaining information, entering fortress, &c., or when in such fortress, &c., wrongfully obtaining document, sketch, &c., or when outside such fortress, &c., wrongfully taking sketch or plan of such fortress, &c.; or, being in possession of any document, sketch, &c., obtained in contravention of the Act, wrongfully communicating the same, or having been entrusted with any document, sketch, &c., wrongfully communicating the same—*Misdemeanour*, punishment DD, as to which see p. 865, or fine, or both (*Official Secrets Act*, 1889, 52 & 53 Vict. c. 52, s. 1 (1)). Any person having possession of document,

Disclosure, &c., of information.

<sup>1</sup> Where a man put cyanide of potassium in a glass with intent that his mother should drink it, and where she did not drink it, but died from heart failure caused by finding the poison in the glass, it was held that the prisoner was rightly convicted under s. 14 of this Act, and rightly sentenced to punishment A (*R. v. White* (1910), 2 K.B. 124).

<sup>2</sup> If there be any intent to wound, &c., any person whatever, the question as to what particular person is wounded, &c., is immaterial (*R. v. Fretwell* (1864), Le. & Ca. 443), which was a case of firing into a crowd.

<sup>3</sup> If any person unlawfully and maliciously does any act as the direct result of which another is injured, he may be convicted under this section of causing grievous bodily harm. See *R. v. Martin* (1881), 8 Q.B.D. 54; *R. v. Latimer*, 17 Q.B.D. 359; *R. v. Fretwell*, *supra*; *R. v. Chapin* (1910), 74 J.P. 71.

<sup>4</sup> See also FEMALES, OFFENCES AGAINST AND RELATING TO, for a somewhat similar offence.



sketch, &c., relating to any fortress, &c., or military or naval affairs of the King, wilfully communicating same to person to whom the same ought not to be communicated—*Misdemeanour*, like penalty (*ib.*, s. 1 (2)), and the offence is felony punishable with C (see p. 862) if offender communicate or intend to communicate to a foreign state (*ib.*, s. 1 (3)).

**Breach of official trust.** Breach to a foreign state of official trust—*Felony*, punishment C, as to which see p. 862 (*ib.*, s. 2). Breach otherwise than to a foreign state of official trust—*Misdemeanour*, punishment DD, as to which see p. 865, or fine, or both (*ib.*, s. 2). **Inciting to such offences.**—*Misdemeanour*, same punishment as committing such offence (*ib.*, s. 3).

### PARTNERSHIPS, LIMITED.

Every person making, signing, sending or delivering for purpose of registration under the Limited Partnership Act, 1907, any false statement known by him to be false—*Misdemeanour*, punishable with imprisonment not exceeding two years with hard labour<sup>1</sup> (*Limited Partnership Act*, 7 Edw. 7, c. 24, s. 12).

### PERJURY AND SIMILAR OFFENCES.<sup>1</sup>

#### Perjury.

Perjury is the making on oath or affirmation, before a competent court or authority in the course<sup>2</sup> of a judicial proceeding,<sup>3</sup> of any assertion, material<sup>4</sup> to the matter in question in such proceeding, which to the knowledge of such person is false, or which, whether true or false, he does not believe to be true, or as to which he knows himself to be ignorant (1 Hawk, c. 27, s. 1; Stephen, *Dig. Cr. Law*, 6th ed., 106). Subornation of perjury is the procuring of another to take any oath or affirmation that is perjury or punishable as perjury (1 Hawk, c. 27, s. 10; Stephen, *Dig. Cr. Law*, 6th ed., 106; 2 Chit., *Cr. L.*, 317). Both perjury and subornation of perjury are common law misdemeanours, punishable with LL, as to which see p. 865, and both offences are also under 3 Geo. 2, c. 4, s. 2, punishable alternatively with P, as to which see p. 863. Any person swearing falsely on any affidavit taken before any commissioner for oaths appointed pursuant to the Commissioners for Oaths (Ir.) Act, 1872, is guilty of perjury and may be indicted and tried for perjury as if such affidavit had been sworn in the county of the city of Dublin (*Commissioners for Oaths (Ir.) Act*, 1872, 35 & 36 Vict. c. 75, s. 5). Any person upon examination or in any affidavit in proceedings under the Common Law Procedure Amendment (Ir.) Act, 1856, wilfully and corruptly asserting anything that is false is punishable as for perjury (*Common Law Procedure Amendment (Ir.) Act*, 1856, 19 & 20 Vict. c. 102, s. 92). Any person wilfully and corruptly giving false evidence before a naval court-martial is guilty of

#### Subornation of perjury.

#### False oaths made perjuries by statute :—

- (1) In affidavits before commissioner;
- (2) Before arbitrator;
- (3) Before naval court-martial;

<sup>1</sup> The offences of perjury and subornation of perjury are subject to the Vexatious Indictments Act, 1859, 22 & 23 Vict. c. 17, and any Act amending the same. See the Act in the APPENDIX OF STATUTES.

<sup>2</sup> False swearing in an affidavit made in view of, and for the purpose of, an action in respect of which the writ has not yet been issued is perjury (*King v. R.* (1849), 14 Q.B. 31).

<sup>3</sup> Proceedings in an arbitration before a county court judge under the Workmen's Compensation Act, 1906, are judicial proceedings (*R. v. Crossley* (1909), 1 K.B. 411); evidence taken before a grand jury is taken in a judicial proceeding (*R. v. Hughes* (1844), 1 Car. & Kir. 519).

<sup>4</sup> Answers to questions affecting only the credibility of the witness, or of any other witness, are material (*R. v. Gibbon* (1862), Le. & Ca. 109; *R. v. Baker* (1895), 1 Q.B. 797).

perjury (*Navy Discipline Act*, 29 & 30 Vict. c. 109, s. 67). Any person not subject to military law wilfully and corruptly giving false evidence before a military court-martial is punishable as for perjury (*Army Act*, 1881, 44 & 45 Vict. c. 58, s. 126 (2)). Making a false affidavit for the purposes of the Bills of Sale (Ir.) Act, 1878, is perjury (*Bills of Sale (Ir.) Act*, 1879, 42 & 43 Vict. c. 50, s. 17). Any person upon examination or in any affidavit, &c., in proceedings in bankruptcy wilfully and corruptly asserting anything that is false is guilty of perjury (*Bankruptcy (Ir.) Amendment Act*, 1872, 35 & 36 Vict. c. 58, s. 123). "If any person on examination on oath authorised under this Act, or in any affidavit or deposition in or about the winding up of any company or otherwise in or about any matter arising under this Act, wilfully and corruptly gives false evidence, he shall be liable to the penalties of wilful perjury" (*Companies Consolidation Act*, 1908, 8 Edw. 7, c. 69, s. 218).

To sustain a charge of perjury there must be either (1) two witnesses who prove the falsity of the statement alleged to be false<sup>1</sup> (*R. v. Yates* (1841), Car. & M. 132; *R. v. Parker* (1842), Car. & M. 639), or (2) one witness whose evidence to the like effect is corroborated by independent proof of some other material fact. (See *R. v. Boulter* (1852), 3 C. & K. 236; *R. v. Braithwaite* (1859), 8 Cox 254, both of which cases show that there must be some real corroboration).<sup>2</sup> A justice may (under the 14 & 15 Vict. c. 100, s. 19) commit for trial to the next assizes any person appearing to such justice to have committed perjury before him. See the section. *Kennedy, J.*, according to a reported case in 64 J.P. 370, told the Grand Jury at Dorchester Summer Assizes, 1900, that this procedure was practically obsolete. It has, however, never been so regarded in Ireland.

Wilfully making a false statutory declaration—*Misdemeanour*, punishment LL, as to which see p. 865 (*Statutory Declaration Act*, 1835, 5 & 6 Wm. 4, c. 62, s. 21). The taking of a false oath, before any one who has authority to administer an oath, but not in the course of a judicial proceeding, is a misdemeanour at common law, punishment LL, as to which see p. 865, if such oath be taken with an illegal object and in a matter in which the public are interested (*R. v. Chapman* (1849), 1 Den. 432, where the object was to obtain a marriage licence). The taking of a false oath before an arbitrator under the Railways (Ir.) Act, 1851, 14 & 15 Vict. c. 70 (s. 6 whereof gives the arbitrator authority to swear witnesses), or under article 30 of the second schedule to the Housing of the Working Classes Act, 1890, 53 & 54 Vict. c. 70 (which by the Public Health (Ir.) Act, 1896, 59 & 60 Vict. c. 54, s. 8, is extended to the taking of lands compulsorily under the Public Health (Ir.) Acts, 1878 to 1890, and is by the Public Health (Ir.) Act, 1896, s. 8 (2), and the Local Government (Ir.) Act, 1898, 61 & 62 Vict. c. 37, s. 10 (1) (2), extended to the taking of lands compulsorily under the Local Government (Ir.) Act, 1898), is certainly such misdemeanour, such arbitrator having power under the Evidence Act, 1851, 14 & 15 Vict. c. 99, s. 16, to administer oaths, although it is doubtful whether such false oath is perjury (see *R. v. Crossly* (1909), 1 K.B. 411).

(4) Before military court-martial;  
(5) In affidavit for filing bill of sale;  
(6) In bankruptcy proceedings;  
(7) In proceedings under the Companies Consolidation Act, 1908.

Misdemeanour cognate to perjury:

(1) In statutory declarations;  
(2) In non-judicial proceedings.

Including arbitrations other than those under the Common Law Procedure Amendment (Ir.) Act, 1856.

<sup>1</sup> False evidence given by a person who is not a competent witness is not perjury (*R. v. Clegg* (1868), 19 L.T. 47; *R. v. Sullivan* (1874), I.R. 8 C.L. 404).

<sup>2</sup> *R. v. Webster* (1859), 1 F. & F. 515, where one witness was held to have corroborated himself by a memorandum that he himself had made, is not likely to be followed. *Knill v. Knill* (1822), 5 B. & Ald. 929 (n.) (where it was held that proof that the accused had on a former occasion made a statement upon oath contradictory of the statement in respect of which he was indicted was sufficient by itself to prove the charge) is also an authority unlikely to be followed, as appears from the remarks of Pollock, C.B., in *R. v. Hook* (1858), Dears & B. 606, at p. 614.

PERSONATION.<sup>1</sup>

Personation generally.

Personation of another, if amounting to a cheat (as to which see p. 880), is a misdemeanour at common law, punishable with LL, as to which see p. 865 (2 East P.C. 1010; Chit., *Cr. L.*, 1081).

Personation of owner of shares, &c.

Personation of owner of various kinds of stocks, funds, and shares, share certificates, share coupons, &c., with intent to receive money, &c., due to such owner—*Felony*, punishment A, as to which see p. 862 (*Forgery Act*, 1861, 24 & 25 Vict. c. 98, ss. 3, 51; *Forgery Act*, 1870, 33 & 34 Vict. c. 58, ss. 2, 4). Personation of owner of any share or interest in any company established under the Companies Consolidation Act, 1908, or of any share, warrant, or coupon issued under that Act—*Felony*, punishment C, as to which see p. 862 (*Companies Consolidation Act*, 1908, 8 Edw. 7, c. 69, s. 38 (1)). Personation with intent to obtain land or any other property—*Felony*, punishment C, as to which see p. 862 (*False Personation Act*, 1874,<sup>2</sup> 37 & 38 Vict. c. 36, s. 1). Personation with intent to obtain army pay, pension, prize-money, &c.—*Felony*, punishment C, as to which see p. 862 (*Chelsea and Kilmainham Hospitals Act*, 1826, 7 Geo. 4, c. 16, s. 38; *Army Prize Money Act*, 1832, 2 & 3 Wm. 4, c. 53, s. 49).

Personation with intent to obtain land, &c.

Personation with intent to obtain army pay, &c.

Personating bail.

Personation for the purpose of entering into recognisances—*Felony*, punishment L, as to which see p. 863 (*Forgery Act*, 1861, 24 & 25 Vict. c. 98, s. 34).

Personation with intent to obtain naval pay, &c.

Personation with intent to obtain naval pay, pension, &c.—*Misdemeanour*, punishment T, as to which see p. 864 (*Admiralty Powers, &c., Act*, 1865, 28 & 29 Vict. c. 124, s. 8).<sup>3</sup>

As to personation at elections, see ELECTIONS.

## PIRACY.

Piracy *jure gentium*.

Piracy by the law of nations may be defined shortly as the unlawful taking on the high seas of a ship or anything belonging to, or in it, in a way that would amount to robbery if done in a harbour within the United Kingdom, and is a felony, punishable with C, as to which see p. 862 (Stephen, *Dig. Crim. Law*, 6th ed., p. 78; *Piracy Act*, 1837, 7 Wm. 4, and 1 Vict. c. 88, s. 3).

Piracy *jure gentium* "is only a sea-term for robbery, piracy being robbery within the jurisdiction of the Admiralty" (*R. v. Dawson* (1696), 13 State Tr. 454).

Piracy by statute.

Many offences as well as that above specified are now piracies under various Acts, which in view of their number and the exigencies of space are not here set forth. In all of these cases the punishment is C, except unless, perhaps, in case an assault with intent to murder or wounding, &c., so as to endanger life, forms part of the act charged as piracy, as to which case it is provided by the Piracy Act, 1837, 7 Wm. 4, and 1 Vict.

<sup>1</sup> For summary jurisdiction in case of—

Personation of factory inspector, see the Factory Act, 1901, 1 Edw. 7, c. 22, s. 139, in APPENDIX OF STATUTES.

Personation of soldier in order to get billet (44 & 45 Vict. c. 58, s. 121), see ARMY, p. 376.

Personation of soldier to get pay, &c. (44 & 45 Vict. c. 58, s. 142 (3), see ARMY, p. 376.

Personation of constable, see p. 676.

<sup>2</sup> Not triable at quarter sessions (*ib.*, s. 2). As to summary jurisdiction under this section and the Army Act, 1881, s. 142 (3), where the offence is committed with intent to obtain military pay, &c., from the military authorities, see p. 376.

<sup>3</sup> The offence is also punishable on summary conviction before one justice with imprisonment not exceeding six months with or without hard labour (*ib.*).



c. 88, s. 2, that the offence is punishable with death. It is certainly so punishable in England, but by the Capital Punishment (Ir.) Act, 1842, 5 & 6 Vict. c. 28, s. 16, it is provided that "Whosoever shall be convicted of any offence which by any Act or Acts in force in Ireland amounts to the crime of piracy, and is thereby made punishable with death, shall not suffer death or have sentence of death awarded against him," and it is submitted these words impliedly repeal s. 2 of the Piracy Act, 1837, so far as Ireland is concerned, although they were probably aimed at the 11, 12, and 13 Ja. 1, c. 2 (Ir.).

Where the offence charged is piracy by the law of nations the King's courts have jurisdiction over the offence wherever committed, and whether by a subject or member of a nation at peace with the Sovereign (1 Hawk, c. 20, s. 1). In the case of piracy by statute the offence is punishable by a British court only when committed by a British subject or within the King's dominions or the Admiralty jurisdiction (Halsbury, vol. ix. p. 524, *note m*).

### PLATE.

Changing, altering, or defacing names, numbers, &c., on watches, or crests, &c., thereon, or names, cyphers, crests, &c., on gold or silver plate, without the consent in writing of the owner or of some person authorised to sell, unless such watches or plate have been bought at public auction—*Misdemeanour*, punishable, as receiving stolen goods, with LL, as to which see p. 865 (28 Geo. 3, c. 49 (Ir.), s. 7).

### POACHING BY NIGHT.<sup>1</sup>

Unlawfully taking game or rabbits by night (after two previous convictions for the like offence)—*Misdemeanour*, punishment P, as to which see p. 863 (*Night Poaching Act*, 1828, 9 Geo. 4, c. 69, s. 1). Assaulting, &c., with offensive weapon persons lawfully arresting persons unlawfully taking game or rabbits by night—*Misdemeanour*, punishment P, as to which see p. 863 (*ib.*, s. 2). Three or more armed by night unlawfully entering on lands for purpose of unlawfully taking game or rabbits—*Misdemeanour*, punishment G, as to which see p. 862; not triable at quarter sessions (*ib.*, s. 9). All prosecutions under this Act must be commenced within one year after the commission of the offence (*ib.*, s. 4).

Night under this Act is to be considered as commencing at the expiration of one hour after sunset, and concluding at the beginning of the last hour before sunrise (*ib.*, s. 12). This would seem to mean the actual time of sunset and sunrise at the place where the offence is committed. See p. 484.

### POLICE, REFUSAL TO ASSIST.

Refusing to assist a constable or other peace officer is a misdemeanour at common law, punishable with LL, as to which see p. 865 (*R. v. Sherlock* (1866), L.R. 1 C.C.R. 20; *R. v. Brown* (1841), 1 C. & M. 314). In order to support the charge it must be proved (1) that a breach of the peace occurred or was threatened in the presence of the constable; (2) that there was a reasonable necessity for his calling other persons to his assistance; (3) that he called on the accused; (4) that the accused did not assist; (5) and that the accused was physically able to obey and had no lawful excuse for failing to obey (*R. v. Brown, supra*). The fact that the assistance would have been useless is immaterial (*R. v. Brown*, and *R. v.*

<sup>1</sup> For summary jurisdiction, see GAME, p. 484.

*Sherlock, supra*). Private persons are under no legal duty to afford physical assistance to a constable in effecting arrest, except in the case of an actual or threatened breach of the peace in the presence of the constable, in either of which cases, the assistance which the constable is entitled to demand includes assistance to arrest (2 Hawk, c. 63, s. 14). But as to the right of private persons to arrest for felony, see p. 147.

### POST OFFICE, OFFENCES RELATING TO.<sup>1</sup>

Stealing mail-bags, or stealing from mail-bag or post office or officer of Post Office or mail, any postal packet<sup>2</sup> in course of transmission by post, or stealing any chattel, money, or valuable security from such packet, or stopping mail with intent to rob or search—*Felony*, punishment C, as to which see p. 862 (*Post Office Act*, 1908, 8 Edw. 7, c. 48, s. 50). Unlawfully taking away or opening mail-bag sent by mail vessel employed by post office—*Felony*, punishment G, as to which see p. 862 (*ib.*, s. 51). Receiving mail-bag, postal packet, &c., stolen, &c., in such way as to be a felony under the Act, is a felony punishable in the same way as such stealing, &c. (*ib.*, s. 52).<sup>3</sup> Fraudulently or wilfully retaining or secreting, keeping or detaining, neglecting or refusing, when required by an officer of the Post Office, to deliver (a) any postal packet in course of transmission by post, and which ought to have been delivered to some other person, or (b) any such postal packet found by the offender or other person—*Misdemeanour*, punishment, fine and imprisonment with or without hard labour (*ib.*, s. 53). Any one not a postal official wilfully and maliciously with intent to injure, opening letter which ought to be delivered or otherwise diverting due delivery of letters from addressee—*Misdemeanour*, punishable with HH, as to which see p. 865, or fine not exceeding £50<sup>4</sup> (*ib.*, s. 54). Officer of the Post Office destroying, secreting, or embezzling postal packet—*Felony*, punishment P (see p. 863), or if such packet contains any chattel, money, or valuable security, C (see p. 862) (*ib.*, s. 55). Officer of the Post Office unlawfully opening or procuring to be opened, or wilfully delaying or causing to be delayed, postal packet—*Misdemeanour*, punishment JJ, as to which see p. 865 (*ib.*, s. 56). Officer of Post Office issuing money-order with fraudulent intent—*Felony*, punishment P, as to which see p. 863 (*ib.*, s. 58).<sup>5</sup> The forging or stealing of a money-order is to be deemed to be the forging or stealing of an order for the payment of money and of a valuable security within the meaning of this Act, the Forgery Act, 1861, and the Larceny Act, 1861 (s. 59 (1)).

Any person fraudulently altering crossing of money-order, or uttering money-order so altered—*Felony*, punishable with A, as to which see p. 862, as if the order were a cheque<sup>6</sup> (*ib.*, s. 59 (2)). Application to postal orders of penal enactments regarding stamp duties (*ib.*, s. 60). Placing injurious substance, &c., in or against post office letter-box or sending by post explosive, inflammable, or deleterious substance or indecent prints, words, &c.—*Misdemeanour*, punishment DD, as to which see p. 865 (*ib.*, ss. 61,

<sup>1</sup> For summary jurisdiction under the Post Office Act, 1908, see p. 678.

<sup>2</sup> Throughout this Act the expression "postal packet" includes a telegram (s. 89).

<sup>3</sup> The offender may be indicted whether the principal offender has been tried or indicted or not, or is or is not amenable to justice (*ib.*).

<sup>4</sup> The section does not apply to parents or persons in *loco parentis*. No prosecution under this section to be instituted without direction or consent of the Postmaster-General (*ib.*).

<sup>5</sup> Reissuing a money-order previously paid is issuing with fraudulent intent within this section (*ib.*, sub-s. 2).

<sup>6</sup> As to this, see ss. 25, 51, of the Forgery Act, 1861.

63). Endeavouring to procure commission of any offence that is indictable under this Act—*Misdemeanour*, punishment AA, as to which see p. 864 (*ib.*, s. 69).

For the only indictable offence relating solely to wireless telegraphy, see p. 797. Wireless  
telegraphy.

### PRINCIPAL.

See CRIMES (ACCESSORIES AND PRINCIPALS).

### PRISON BREACH.

Any person is guilty of this offence who, whilst in lawful custody for any cause, whether criminal or civil, and if for a criminal cause whether before or after conviction, whether he be in prison or not, escapes from such custody by the use of any force (2 Hawk, c. 18, s. 21 (4); *R. v. Haswell* (1821), Russ. & Ry. 458). The offence of prison breaking by a person lawfully in custody for treason or felony is a felony—*Misdemeanour*, punishment P, as to which see p. 863 (9 Geo. 4, c. 54, s. 15). Prison breach by a person lawfully in custody otherwise than for felony—*Misdemeanour*, punishment JJ, as to which see p. 865 (2 Hawk, c. 18, ss. 1, 8, 15, 16; *Criminal Procedure Act*, 1851, 14 & 15 Vict. c. 100, s. 29).

See also ESCAPE and RESCUE.

### PUBLIC BODIES (CORRUPT PRACTICES) ACT, 1889, 52 & 53 Vict. c. 69.

See BRIBERY AND CORRUPTION.

### PUBLIC OFFICERS, OFFENCES BY AND RELATING TO.

The offence of extortion by a public officer who under colour of his office takes any valuable thing that is not at the time of such taking due to him, is a common law misdemeanour,<sup>1</sup> punishable with LL, as to which see p. 865. Extortion by bailiff or assistant bailiff acting under civil bill decree, or under colour of process of county court—*Misdemeanour*, punishment DD, as to which see p. 865, or fine, or both (*Civil Bill Courts Procedure Amendment Act (Ir.)*, 1864, 27 & 28 Vict. c. 99, s. 18). Extortion.

For extortion by bankruptcy officer, see BANKRUPTCY.

The common law misdemeanour of oppression is committed by any public officer who under colour of his office and from an improper motive inflicts any bodily harm, imprisonment, or any injury<sup>2</sup>—Punishment LL, as to which see p. 865. Oppression.

Any public officer committing any fraud or breach of trust<sup>3</sup> in a matter

<sup>1</sup> Co. Litt. 368 b; *Dive v. Manningham* (1550), 1 Plowd. 60, at p. 68. A mere taking in mistake does not constitute the offence (see *Lee v. Dangar, Grant, & Co.* (1892), 2 Q.B. 337; *Shoppee v. Nathan & Co.* (1892), 1 Q.B. 245; *Woolfords Est. v. Levy* (1892), 1 Q.B. 772).

<sup>2</sup> Stephen, *Dig. Crim. Law*, 6th ed., p. 88; Bac. Abr. tit. Offices and Officers N. A mere mistake on the part of the officer is not sufficient (*R. v. Badger* (1843), 4 Q.B. 468).

Where justices of the peace refused licences to publicans because the publicans refused to vote as the justices wished, the offence was held to have been committed (*R. v. Williams* (1762), 3 Burr. 1317).

<sup>3</sup> As when a public officer makes a contract for the supply of stores for the public service on condition that the contractor is to divide the profits with him (*R. v. Jones* (1809), 31 St. Tr. 251).



**Breach of trust or fraud by public officer.** affecting the public is guilty of a common law misdemeanour, punishable with LL, as to which see p. 865.

**Selling offices under the Crown.** Selling or buying, &c., any office under the Crown, or receiving or paying any reward in connection with the obtaining of such office—*Misdemeanour*, punishment LL, as to which see p. 865 (*Sale of Offices Act*, 1809, 49 Geo. 3, c. 126, s. 3). Making interest for offices for reward—*Misdemeanour*, like punishment (*ib.*, s. 4). Trafficking in commissions in the army—*Misdemeanour*, punishable with fine not exceeding £100, or imprisonment not exceeding six months with hard labour (*Army Act*, 1881, 44 & 45 Vict. c. 58, s. 155).

**Refusal to perform duty.** Public officer wilfully refusing to perform any duty imposed on him by law,<sup>1</sup> where the danger attending the performance of such duty is not calculated to deter a man of average firmness—*Misdemeanour* at common law, punishable with LL, as to which see p. 865.

Refusing to serve in public office after due notice of appointment is a misdemeanour at common law, punishable with LL,<sup>2</sup> as to which see p. 865.

**Bribes, taking or offering.** Judge, magistrate, or other judicial officer taking any bribe offered to influence him in the discharge of his duty,<sup>3</sup> or any person offering such bribe to such judge, &c., common law misdemeanour, punishable with LL, as to which see p. 865. Attempting to induce any public officer other than a judicial officer to do, or omit to do, any act, which act or omission is to the knowledge of the person making such attempt in violation of the duty of such officer, common law misdemeanour,<sup>4</sup> punishable with LL, as to which see p. 865.

**Illegal billeting.** Billeting in contravention of the *Army Act*, 1881—*Misdemeanour*, punishable LL, as to which see p. 865 (*Army Act*,<sup>5</sup> 1881, 44 & 45 Vict. c. 58, s. 111).

As to offences by post office officials, see **POST OFFICE**.

As to bribery of member or servant of any public body, see **BRIBERY AND CORRUPTION**.

## PUBLIC STORES.

Unauthorised application of marks used to distinguish property of His Majesty<sup>6</sup>—*Misdemeanour*, punishment Y, as to which see p. 864 (*Public Stores Act*, 1875, 38 & 39 Vict. c. 25, ss. 4, 12). Obliteration of such marks with intent to conceal His Majesty's property in the objects bearing them<sup>6</sup>—*Felony*, punishment L, as to which see p. 863 (ss. 5, 12).

## PUBLIC WORSHIP.

Obstructing burial service held under 31 & 32 Vict. c. 103—*Misdemeanour*, punishment LL, as to which see p. 865 (*Burial (Ir.) Act*, 1868, 31 & 32 Vict. c. 103, s. 1). Assaulting or obstructing clergyman in execution of his duty, see **ASSAULT**. For summary jurisdiction (under 23 & 24 Vict. c. 32) as to disturbing public worship, see **DISTURBANCE IN CHURCHES**, p. 418.

<sup>1</sup> As where a constable wilfully refuses to arrest for a felony committed in his view (5 Hawk 129), or a justice refrains from reading the Riot Act when it is his duty to read it (*R. v. Kennett* (1781), 5 C. & P. 282, n.).

<sup>2</sup> Russell, 7th ed., p. 617.

<sup>3</sup> 1 Hawk, c. 67; Stephen, *Dig. Cr. Law*, 6th ed., p. 97.

<sup>4</sup> Stephen, *Dig. Cr. Law*, 6th ed., p. 97.

<sup>5</sup> As to summary jurisdiction under this Act, see p. 374.

<sup>6</sup> Section 12 of the Act does not give justices summary jurisdiction as to this offence. As to summary jurisdiction regarding other offences under the Act, see p. 606.

RAILWAYS, OFFENCES RELATING TO.<sup>1</sup>

See MALICIOUS INJURIES TO PROPERTY and OFFENCES AGAINST THE PERSON. Misconduct of railway servants (triable summarily under the 3 & 4 Vict. c. 97, s. 13, but indictable if the justices wish to send the accused to quarter sessions for trial)<sup>2</sup>—*Misdemeanour*, punishment AA, as to which see p. 864 (*Railways Regulation Act*, 1840, 3 & 4 Vict. c. 97, s. 14).

RECEIVING STOLEN GOODS.<sup>3</sup>

Receiving stolen goods knowing them to be such—*Misdemeanour* at common law, punishable with LL, as to which see p. 865 (1 Hale 620). Receiving any chattel, &c., the stealing, &c., whereof amounts to felony either at common law or under the Larceny Act, 1861,<sup>4</sup> 24 & 25 Vict. c. 96, knowing the same to have been feloniously stolen, &c.<sup>5</sup>—*Felony*, punishment F, as to which see p. 862 (*Larceny Act*, 1861, ss. 91, 117, 119). Receiving or possessing without lawful excuse any chattel, &c., the stealing whereof is made a felony by the Larceny Act, 1896<sup>6</sup>—Punishment L, as to which see p. 863 (*Larceny Act*, 1896, 59 & 60 Vict. c. 52, s. 1 (1 and 4); see *R. v. Graham* (1901), 65 J.P. 248). Receiving any chattel, &c., the obtaining, &c., whereof is a misdemeanour under the Larceny Act, 1861, knowing the same to have been unlawfully obtained, &c.—*Misdemeanour*, punishment O, as to which see p. 863 (*Larceny Act*, 1861, 24 & 25 Vict. c. 96, ss. 95, 117, 119). Receiving or possessing without lawful excuse any chattel, &c., the stealing whereof is made a

<sup>1</sup> For summary jurisdiction, see p. 768.

<sup>2</sup> This Act is applied to tramways in Ireland (subject to certain modifications) by the 23 & 24 Vict. c. 152, s. 46.

<sup>3</sup> For summary jurisdiction of justices in cases of receiving stolen goods, see p. 586. And as to the power under the 5 Vict. c. 24, s. 53, of convicting summarily within the police district of Dublin metropolis, persons failing satisfactorily to account for the possession of goods suspected to have been stolen, see that statute, APPENDIX OF STATUTES.

<sup>4</sup> Larceny by one partner or joint-owner from another is an offence created by the Larceny Act, 1868, 31 & 32 Vict. c. 116, s. 1. Consequently no charge of feloniously receiving goods so stolen can be sustained (*R. v. Smith* (1870), L.R. 1 C.C.R. 266). It is, however, submitted that in such case the accused may be convicted of the common law misdemeanour of receiving stolen goods knowing them to be such. It was held in *R. v. Payne* (1906), 1 K.B. 97, that a person may be convicted of the common law misdemeanour of receiving stolen goods with respect to goods stolen by a wife from her husband (such stealing being a felony under the Married Woman's Property Act, 1882, s. 16, in the circumstances set forth in that section), although in *R. v. Streeter* (1900), 2 Q.B. 601, it was held that the person so receiving could not be convicted under the Larceny Act, 1861, of feloniously receiving. It is also submitted that a person may be convicted of the common law misdemeanour in respect of receiving goods stolen by a husband from his wife (see s. 12 of the Married Woman's Property Act, 1882), for the reasons upon which *R. v. Payne*, *supra*, was decided clearly apply to this case also. A person charged with receiving under the Larceny Act, 1861, may be tried wherever in the United Kingdom he either receives or has in his possession the stolen property (24 & 25 Vict. c. 96, s. 114).

<sup>5</sup> A person may under this section be charged either as an accessory after the fact to the felony committed by the thief, &c., or with the substantive felony of receiving the stolen &c., chattel, &c., well knowing when he received the same that it has been feloniously stolen, &c. (*ib.*).

<sup>6</sup> This Act relates to property stolen, &c., in a place outside the United Kingdom. A person charged under it may be tried anywhere in Ireland where he has or has had the goods in respect of which he is charged (s. 1 (1)). The offence is felony or misdemeanour, according as the act committed outside the United Kingdom would have been a felony or misdemeanour if committed in Ireland (*ib.*, s. 1 (3)).

misdemeanour by the Larceny Act, 1896—*Felony*, punishment L, as to which see p. 863 (*Larceny Act*, 1896, 59 & 60 Vict. c. 52, s. 1 (1 and 4)).

As to receiving goods stolen from the Post Office, see POST OFFICE, OFFENCES RELATING TO.

It is unnecessary to prove that the accused actually knew the goods to have been stolen, &c., it being sufficient to show by satisfactory evidence that he believed the goods to have been stolen, &c. (*R. v. White* (1859), 1 F. & F. 655). As to the facts which, in the circumstances set forth in s. 19 of the Prevention of Crimes Act, 1871, are to be regarded as evidence of guilty knowledge by a receiver, see p. 268. Receiving cannot take place unless the goods have reached the actual or constructive possession of the accused. It is unnecessary to prove physical possession of the goods by the accused, it being sufficient to prove that they were under his control (*R. v. Smith* (1855), Dears C.C. 494; *R. v. Hobson* (1854), Dears C.C. 400; *R. v. Miller* (1853), 6 Cox 353), as, for instance, in the hands of his innocent agent or bailee, &c. (*R. v. Cryer* (1857), Dears & B. 324; *R. v. Rogers* (1868), L.R. 1 C.C.R. 136). On the trial of the prisoner for receiving goods knowing the same to be stolen it was proved that he had pawned the goods with a pawnbroker on the day preceding his arrest. *Held*, the goods were "found in his possession" within the meaning of s. 19 of the Prevention of Crimes Act, 1871 (*R. v. Rowland* (1910), 1 K.B. 458; *R. v. Drage* (1878), 14 Cox 85, and *R. v. Carter* (1884), 12 Q.B.D. 522, not followed). Mere knowledge of where the goods are is not constructive possession (*R. v. Orris* (1908), 1 Cr. App. Rep. 199, 73 J.P. 15). A husband can be convicted of receiving from his wife (*R. v. Macathey* (1862), Le. & Ca. 250). But a wife cannot be convicted of receiving from her husband (*R. v. Brooks* (1853), Dears C.C. 184; *R. v. Archer* (1826), 1 Mood C.C. 143; *R. v. Wardroper* (1860), 8 Cox 284). The possession may be joint and several (*R. v. Payne* (1909), 3 Cr. App. Rep. 259). The goods at the time of the receiving must not have been recovered by their owners; so, where the owner or some one on his behalf gets back the goods and then lets the receiver get them in order to make a case against him, the receiver cannot be convicted (*R. v. Dolan* (1855), 6 Cox 449; *R. v. Schmidt* (1866), L.R. 1 C.C.R. 15; *R. v. Hancock* (1878), 14 Cox 119; *R. v. Villensky* (1892), 2 Q.B. 597). In these cases the owners or their agents had caused the property to be delivered to the receiver in order to make a case against him.

If any general dealer, after receiving information of the theft, &c., of any metals, &c., melts, &c., or causes to be melted any metals, &c., answering to the description of the stolen property without the written authorisation of a justice, and if it is found that the metals, &c., so melted were stolen, &c., by any person, then it shall be held that the general dealer knew that the said metals, &c., were stolen, embezzled, or fraudulently obtained (*General Dealers (Ir.) Act*, 1903, 3 Edw. 7, c. 44, s. 7; as to which see further, p. 508).

### REGISTRATION OF BIRTHS AND DEATHS.

See p. 775 for the only indictable offence (except forgery, as to which see 24 & 25 Vict. c. 98, ss. 36 & 37, and 26 & 27 Vict. c. 11, s. 56) in relation to registration of births and deaths.

### RESCUE.

#### Rescue of prisoners.

The offence known to the law as rescue is committed when any person by force frees another in lawful custody, whether of a constable, gaoler, or



private person, and whether the person so freed is in prison or not (Halsbury, vol. ix. p. 511). If the person rescued is in the custody of a private person, the offender must have notice of the fact that the person rescued is in such custody (Stephen. *Dig. Cr. Law*, 6th ed., p. 116). The rescue of a person in custody for high-treason, felony, or misdemeanour is high-treason, felony, or misdemeanour respectively at common law (*ib.*).

Rescue or attempted rescue of any person committed for or convicted of murder—*Felony*, punishment C. as to which see p. 862, and if the punishment be imprisonment the court may order the offender to be kept in solitary confinement<sup>1</sup> (31 Geo. 3. c. 17 (Ir.), s. 10; *Punishment of Offences Act*, 1837, 7 Wm. 4, and 1 Vict. c. 91, ss. 1 and 2).

Rescue of any person in custody for felony—*Felony*, penal punishment P, as to which see p. 863 (*Rescue Act*, 1821, 1 & 2 Geo. 4, c. 88, s. 1). Rescue of any person committed for treason, felony, or any offence declared to be punishable with transportation by the 1 & 2 Wm. 4, c. 44, before such person is lodged in gaol—*Misdemeanour*, punishment, penal servitude for life or not less than three years, or imprisonment not exceeding three years with or without hard labour, and the offender if a male may be not more than three times whipped (*Tumultuous Risings (Ir.) Act*, 1831, 1 & 2 Wm. 4, c. 44, s. 5). Rescue of a person in lawful custody on any criminal charge—*Misdemeanour*, punishable with fine or imprisonment with or without hard labour, or both (*Criminal Procedure Act*, 1851, 14 & 15 Vict. c. 100, s. 29). Rescue or attempted rescue of convict from, or during his conveyance to or from, a convict prison—*Felony*, punishment T, as to which see p. 864 (*Convict Prisons (Ir.) Act*, 1854, 17 & 18 Vict. c. 76, s. 18). Rescue of convicts.

Rescuing a distress for rent<sup>2</sup>—*Misdemeanour*, punishable with fine, and in default of payment, imprisonment not exceeding one month without hard labour, followed by imprisonment not exceeding six or less than three months with hard labour (4 Geo. 1, c. 5 (Ir.), s. 1).<sup>3</sup> Rescuing or liberating animal from pound or breaking a pound<sup>4</sup> if the justices think fit to abstain from adjudicating summarily—*Misdemeanour*, punishable with fine not exceeding £10, and the prisoner may be ordered to pay the amount of the injury done (*Summary Jurisdiction (Ir.) Act*, 1851, 14 & 15 Vict. c. 92, s. 19 (10)).<sup>5</sup> Rescue, other than of a prisoner.

Rescuing or attempting to rescue, or by force, &c., compelling sheriff or bailiffs to abandon, anything seized under a civil bill decree—*Misdemeanour*, punishment HH, as to which see p. 865 (*Civil Bill Courts Procedure Amendment (Ir.) Act*, 1864, 27 & 28 Vict. c. 99, s. 26). Rescuing goods lawfully distrained for rates—*Misdemeanour* at common law, punishable with LL (*R. v. Brennan* (1854), 6 Cox 381; 69 Jur., O.S., 307; *R. v. Westropp* (1851), 2 I.C.L.R. 217). Rescuing anything in the legal custody of any officer of the law (which of course includes the rescue of goods seized under an execution by the sheriff)—*Misdemeanour*

<sup>1</sup> But such order is never made now. See p. 866.

<sup>2</sup> This appears to be also a misdemeanour indictable at common law. See *R. v. Noonan* (1876), I.R. 10 C.L. 505; *R. v. Walshe, ib.*, p. 511; *Thomas v. Harries*, 1 Man. & G. 695, at p. 704, note (a).

<sup>3</sup> The words of the section are: "Shall be committed in execution by the Court . . . for such fine as the Court shall deem reasonable to impose; and in case the party so convicted shall not pay to the sheriff of the county such fine . . . within one month after such commitment, the party so convicted shall be conveyed by the sheriff of the county to the house of correction . . . in the said county and there detained and kept at hard labour for any time not less than three months, and not exceeding six months, according to the discretion of the judge or justice before whom such offender shall be convicted."

<sup>4</sup> For summary jurisdiction, see p. 682.

<sup>5</sup> Pound breach is also a common law misdemeanour (*Green v. Duckett* (1883), 11 Q.B.D. 275).

at common law, punishment LL, as to which see p. 865 (*R. v. Beauchamp* (1827), 5 L.J., O.S., M.C. 66).

See ESCAPE AND PRISON BREACH.

### RIOT.

A riot is an unlawful assembly (as to which see p. 874) which has actually begun to execute the purpose for which it assembled, by a breach of the peace and to the terror of the public, and the offence is also committed if persons lawfully assembled form an unlawful purpose and proceed to execute such purpose to the terror of the public (Stephen, *Dig. Cr. Law*, 56). It is sufficient if the assembly acts to the terror of only one person (*R. v. Phillips* (1842), 2 Mood C.C. 252; *Field v. Receiver of Met. Police* (1907), 2 K.B. 853). The offence is at common law a misdemeanour, punishable with LL, as to which see p. 865. Remaining together to the number of twelve or more for one hour after the reading of the proclamation specified in 27 Geo. 3, c. 15 (Ir.), s. 2, or obstructing, &c., the reading of such proclamation<sup>1</sup>—*Felony*, punishment C, as to which see p. 862 (27 Geo. 3, c. 15 (Ir.), ss. 2 & 3; *Capital Punishment (Ir.) Act*, 1842, 5 & 6 Vict. c. 28, s. 6). Rioters interfering with the storage, carriage, or export of corn, flour, &c., or potatoes, or destroying or attempting to destroy buildings, or goods manufactured or unmanufactured, or the engine of colliery or mine—*Felony*, punishment P, as to which see p. 863 (23 & 24 Geo. 3, c. 20 (Ir.) ss. 1, 7, 8; *Capital Punishment (Ir.) Act*, 1842, 5 & 6 Vict. c. 28, s. 5). Rioters demolishing buildings, &c.—*Felony*, punishment A, as to which see p. 862 (*Malicious Damage Act*, 1861, 24 & 25 Vict. c. 97, ss. 11, 73). Rioters injuring buildings, &c.—*Misdemeanour*, punishment N, as to which see p. 863 (*ib.*, ss. 12, 73).

As to refusal of a justice to read the Riot Act, see PUBLIC OFFICERS OF, BY, AND RELATING TO. As to refusal to assist a peace officer in suppressing a riot, see POLICE, REFUSAL TO ASSIST.

There is no summary jurisdiction as to riot except under the Criminal Law and Procedure (Ir.) Act, 1887, 50 & 51 Vict. c. 20.

### ROBBERY.

See LARCENY.

### SEDITIONOUS WORDS, SPEAKING.

This offence consists in the speaking with a seditious intention of any words whatever,<sup>2</sup> and is a misdemeanour at common law, punishable with LL, as to which see p. 865. For the meaning of "seditious intention," see p. 910, n.<sup>2</sup>.

### SHIPS, OFFENCES RELATING TO.<sup>3</sup>

Unlawfully and maliciously setting fire to, casting away, or destroying ship,<sup>4</sup> or vessel, whether in finished or unfinished

<sup>1</sup> Any prosecution under this Act must be commenced within twelve months of the commission of the offence charged (*ib.*, s. 12). In this section "month" means calendar month (*Lacon v. Hooper* (1795), 6 T.R. 224, at p. 226; *Bruner v. Moore* (1904), 1 Ch. 305).

<sup>2</sup> Stephen, *Dig. Crim. Law*, 6th ed., p. 70.

<sup>3</sup> For summary jurisdiction as to offences relating to ships, see p. 780.

<sup>4</sup> In *R. v. Bowyer* (1831), 4 C. & P. 559, Pattison, J., held that a boat only eighteen feet long was a vessel for the purposes of this section, whilst in *R. v. Smith*, *ib.*, 569, Alderson, B., doubted whether a barge came within the section.

state<sup>1</sup>—*Felony*, punishment B, as to which see p. 862 (*Malicious Damage Act*, 1861, 24 & 25 Vict. c. 97, ss. 42, 73, 75).

Unlawfully and maliciously setting fire to, casting away, or destroying ship with intent to defraud underwriter or prejudice owner or owners of ship or goods on same<sup>2</sup>—*Felony*, like punishment (*ib.*, ss. 43, 73, 75). Attempting to commit any offence under ss. 42 or 43—*Felony*, punishment F, as to which see p. 862 (*ib.*, ss. 44, 73, 75). As to s. 45, see EXPLOSIONS. Unlawfully and maliciously damaging ship, complete or unfinished, with intent to destroy, otherwise than by fire or explosion—*Felony*, punishment M, as to which see p. 863 (*ib.*, ss. 46, 73, 75).

Unlawfully altering, masking, or removing lights, &c., or unlawfully exhibiting false lights, &c., with intent to endanger ship, or unlawfully doing anything to bring ship, vessel, or boat in danger—*Felony*, punishment B, as to which see p. 862 (*ib.*, ss. 47, 73, 75).<sup>3</sup> Unlawfully and maliciously cutting away, &c., or unlawfully doing act with intent to cut away, &c., buoys, &c., intended for guidance of seamen—*Felony*, punishment M, as to which see p. 863 (*ib.*, ss. 48, 73, 75). Unlawfully and maliciously destroying any part of a ship in distress or articles belonging thereto—*Felony*, punishment E, as to which see p. 862 (*ib.*, ss. 49, 73). Setting fire to ship or tackle or furniture thereof, or casting away or destroying ship with intent to commit murder or preventing the saving of life from shipwreck—*Felony*, punishment A, as to which see p. 862 (*Offences against the Person Act*, 1861, 24 & 25 Vict. c. 100, ss. 13, 17, 71).

Unlawfully sending ship to sea in such an unseaworthy state as to endanger life, or master unlawfully taking such a ship to sea—*Misdemeanour*, punishable with fine or CC, as to which see p. 864 (*Merchant Shipping Act*, 1894, 57 & 58 Vict. c. 60, ss. 457, 680). Upon any charge under this section it need not be proved that the accused knew the vessel to be unseaworthy (*R. v. Freeman* (1875), I.R. 9 C.L. 539).

See also EXPLOSIONS, LARCENY, and MENACES.

### SMUGGLING.<sup>4</sup>

Smuggling is the bringing on shore, or the carrying from the shore, of any dutiable goods for which duty has not been paid, or of any goods the importation of which is prohibited (1 Hawk, c. 30, s. 1).

Signalling, &c., smuggling vessels in contravention of section 190 of the Customs Consolidation Act, 1876—*Misdemeanour*, punishable with forfeiture of £100, or imprisonment not exceeding one year with hard labour (39 & 40 Vict. c. 36, s. 190).<sup>5</sup> Maliciously shooting at King's

<sup>1</sup> Where the master of a yacht, acting in concert with the owner, set fire to her in order to defraud the underwriters, it was held by Bigham, J., that the master could be convicted under this section as well as under s. 43 (*R. v. Guy* (1902), July, Hunts Assizes, cited in Archbold, 24th ed., at p. 746, and cf. note to s. 6 of this Act on p. 911). A part-owner may be convicted of an offence under the section (*R. v. Philp* (1830), 1 Mood C.C. 263; see also *R. v. Wallace* (1841), C. & Mar. 200).

<sup>2</sup> A sailor on a ship went, for the purpose of stealing rum, to the place where rum was stowed. While tapping a cask he made use of a lighted match, which ignited the rum from the cask and fired and destroyed the vessel. *Held*, a conviction under s. 43 could not be upheld (*R. v. Faulkner* (1877), I.R. 11 C.L. 8).

<sup>3</sup> For penalties under the Merchant Shipping Act, 1894, ss. 667–680 (1), for misleading lights, see MERCHANT SHIPPING.

<sup>4</sup> As to summary jurisdiction, see p. 786.

<sup>5</sup> The offence must be committed between sunset and sunrise between the 21st September and 1st April, or between 8 P.M. and 6 A.M. during any other time of the year (*ib.*). It is not necessary to prove the presence of any vessel off the coast (*ib.*). The onus of proof as to intent lies on the defendant (*ib.*, s. 191).



ship, &c., or coastguard, &c., engaged in preventing of smuggling, or aiding or abetting in such shooting—*Felony*, penal servitude for life or for not less than three years, or imprisonment without hard labour not exceeding three years, or imprisonment with hard labour not exceeding two years<sup>1</sup> (*ib.*, s. 193). Procuring any person to assemble for purpose of smuggling—*Misdemeanour*, punishable with U, as to which see p. 864 (*ib.*, s. 189). Being armed or disguised when smuggling—*Misdemeanour*, punishable with imprisonment not exceeding three years with or without hard labour (*ib.*). Persons to the number of three or more assembling to run, &c., uncustomed goods—*Penalty*, fine not exceeding £500 or less than £100 (*Customs and Inland Revenue Act*, 1879, 42 & 43 Vict. c. 21, s. 10). This section to be read in place of s. 188 of the 39 & 40 Vict. c. 36 (*ib.*, s. 14). Proceedings under the Customs Consolidation Act, 1876, must be commenced within three years of the offence being committed (*Customs Consolidation Act*, 1876, 38 & 39 Vict. c. 36, ss. 190, 257).

### SOCIETIES, UNLAWFUL.

Belonging to any society whose members take oaths which are declared unlawful by the Unlawful Oaths (Ir.) Act, 1810, 50 Geo. 3, c. 102, or to any secret society<sup>2</sup>—*Misdemeanour*, punishable with P, as to which see p. 863 (*Unlawful Oaths (Ir.) Act*, 1823, 4 Geo. 4, c. 87, ss. 1, 2, and 3).

See OATHS, UNLAWFUL; and WHITEBOY OFFENCES.

### SUICIDE.

Attempt to commit suicide is a misdemeanour at common law, punishable with LL, as to which see p. 865 (*R. v. Doody* (1854), 6 Cox 463). Inciting to commit suicide, where suicide is actually committed, is murder, and an agreement to commit suicide, where one person commits suicide and the other survives, is murder as regards the survivor (*R. v. Dyson* (1823), Russ. & Ry. 523; *R. v. Alison* (1838), 8 C. & P. 418; *R. v. Jessop* (1877), 16 Cox 204; *R. v. Stormouth* (1897), 61 J.P. 729; *R. v. Abbott* (1903), 67 J.P. 151).

### TELEGRAPHS AND TELEGRAMS.

See under POST OFFICE.

### TRADE MARKS ACT, 1905.

Making or causing to be made a false entry in the register kept under this Act, or a writing falsely purporting to be a copy of an entry in such register, or producing or tendering or causing to be produced or tendered in evidence any such writing, knowing the entry or writing to be false—*Misdemeanour*, punishment LL, as to which see p. 865 (*Trade Marks Act*, 1905, 5 Edw. 7, c. 15, s. 66).

<sup>1</sup> These, it is submitted, are the various alternative sentences that may be passed under this section, read along with the Penal Servitude Act, 1891, 54 & 55 Vict. c. 69, s. 1 (see Stephen, *Dig. Cr. Law*, 6th ed., pp. 1, 195). See, however, Archbold, 24th ed., p. 964; Russell, 7th ed.; Halsbury, vol. ix. p. 522.

<sup>2</sup> For summary jurisdiction under this Act, see p. 778. For summary jurisdiction as to illegal assemblies on licensed premises under 6 & 7 Wm. 4, c. 38, ss. 8–9, see INTOXICATING LIQUOR, p. 548.

**TREASURE-TROVE.**

Treasure-trove is gold or silver, in coin, plate, or bullion, hidden in ancient times, of which no person can prove himself to be the owner (3 Co. Inst. 132; *Terms de la Ley*, 565).

Finding treasure-trove and concealing it is a misdemeanour at common law, punishable with LL, as to which see p. 865 (see *R. v. Toole* (1867), I.R. 2 C.L. 36, and *R. v. Thomas* (1863), Le. & Ca. 313).

There cannot be larceny of treasure-trove (1 Hale 510; 1 Hawk, c. 33, s. 38).

**TRUCK ACTS.**

Employer entering into any contract with, or making any payment to, any artificer in contravention of the Truck Act, 1831, after having been twice convicted summarily of such offence—*Misdemeanour*, fine not exceeding £100 (*Truck Act*, 1831, 1 & 2 Wm. 4, c. 37, s. 9). This section is extended by the Truck Acts, 1887 (50 & 51 Vict. c. 46) and 1896 (59 & 60 Vict. c. 44), and all three Acts are to be construed as one (*Act of 1896*, s. 12).

For summary jurisdiction under these Acts, see p. 818.

**VACCINATION.**

As to the only indictable offence relating to vaccination, see p. 829.

**WATER.**

As to stealing water, see p. 907, *n.*<sup>3</sup>.

**WHITEBOY OFFENCES.**

Assembling by day or night, to the terror of His Majesty's subjects, armed or disguised, &c.—*Misdemeanour*, offenders may be fined, imprisoned, whipped, and ordered to find sureties for good behaviour at the discretion of the court (15 & 16 Geo. 3, c. 21 (Ir.), s. 2; 40 Geo. 3, c. 96 (Ir.), s. 4). Forcibly, &c., tendering any unlawful oath—*Misdemeanour*, punishable with fine, imprisonment, and whipping at the discretion of the court (*ib.*, s. 21). By drums, &c., promoting unlawful meeting—*Misdemeanour*, punishable with LL, as to which see p. 865 (*ib.*, s. 23). Digging, erecting, &c., any grave, gallows, &c., in order to compel persons to enter into unlawful combinations or to prevent the giving of evidence or the collection of rates, &c. &c., or abetting such offence, or publishing, &c., notices, &c., tending to excite to unlawful meeting—*Felony*, punishment P, as to which see p. 863 (27 Geo. 3, c. 15 (Ir.), ss. 8, 9; 40 Geo. 3, c. 96 (Ir.), s. 5; *Capital Punishment (Ir.) Act*, 1842, 5 & 6 Vict. c. 28, ss. 7, 19). Taking or supplying, &c. &c., arms, ammunition, horses, for use in connection with offences under 27 Geo. 3, c. 15 (Ir.)—*Felony*, punishment C, as to which see p. 862, and the offender if a male may in addition to such punishment be not more than three times<sup>1</sup> whipped (27

<sup>1</sup> But see the Whipping Act, 1862, s. 2, noted p. 866.

Geo. 3, c. 15 (Ir.), s. 10; 40 Geo. 3, c. 96 (Ir.), s. 5; *Capital Punishment (Ir.) Act*, 1842, 5 & 6 Vict. c. 28, s. 8). Persons assembled in contravention of 27 Geo. 3, c. 15 (Ir.), unlawfully compelling, &c., others to leave their abodes or employment, or attacking houses or injuring property or unlawfully taking arms or other property—*Misdemeanour*, punishment penal servitude for life or for not less than three years, or imprisonment not exceeding three years, and the offender if a male may in addition to such punishment be not more than three times<sup>1</sup> whipped (*Tumultuous Risings (Ir.) Act*, 1831, 1 & 2 Wm. 4, c. 44, s. 2).

Publishing or sending inflammatory or threatening notices—*Misdemeanour*, punishment penal servitude not exceeding seven nor less than three years, or imprisonment with or without hard labour not exceeding three years, and the offender if a male may in addition to punishment be not more than three times<sup>1</sup> whipped (*ib.*, s. 3).

See RESCUE; OATHS, UNLAWFUL; SOCIETIES, UNLAWFUL.

Under s. 6 of the 15 & 16 Geo. 3, c. 21 (Ir.), justices of the peace, sheriffs, under-sheriffs, mayor, bailiffs, and other peace officers within the limits of their respective jurisdictions are authorised to command the assistance of all of His Majesty's subjects of age and ability and with assistance necessary to disperse, resist, and oppose all persons concerned in any of the acts declared unlawful by ss. 2, 3, 4, and 5 of the Act, and the justices, sheriffs, or peace officers and their assistants are indemnified for the killing, maiming, or hurting of any person or persons in so apprehending, dispersing, resisting, or opposing such offenders. Under s. 22 of the Act 15 & 16 Geo. 3, c. 21 (Ir.), every justice of the peace is empowered to summon any person within his jurisdiction whom he shall have cause to suspect of being capable of giving material evidence concerning any offence or offences committed against the Act, and to examine on oath such person concerning any of the said offences, and to bind such person by recognisance to appear and prosecute at the next assizes; upon refusal of such person to submit to such examination, or be bound by such recognisance, he may be committed to prison till he submit to such examination or give such recognisance or is discharged by due course of law; and such examination shall not subject the person so examined to any penalty nor be used as evidence against him except on his indictment for wilful perjury in such examination.

If any justice of the peace of the county where any offence is committed happens to be in another county, he or any justice of the peace for such other county may upon proper information issue his or their warrant to arrest any person offending against this Act; and the person arrested shall be brought before such justice of the peace; who may commit the offender to prison or admit him to bail if the offence is bailable, or discharge him (15 & 16 Geo. 3, c. 21, s. 24).

Any two or more justices of the peace may summon any person reasonably suspected of Whiteboy offences and bind him to appear at the next assizes for the county of their residence to answer such matters as he shall be then charged with and to be of good behaviour in the meantime; and in case such person refuses to enter into security the justices are empowered to imprison him till he submits to appear and enter into such security or until he is discharged by due course of law (15 & 16 Geo. 3, c. 21, s. 28). The above powers and duties of justices are referred to in a Memorandum of 1st December, 1880, from Dublin Castle.

<sup>1</sup> But see the Whipping Act, 1862, s. 2, noted p. 866.

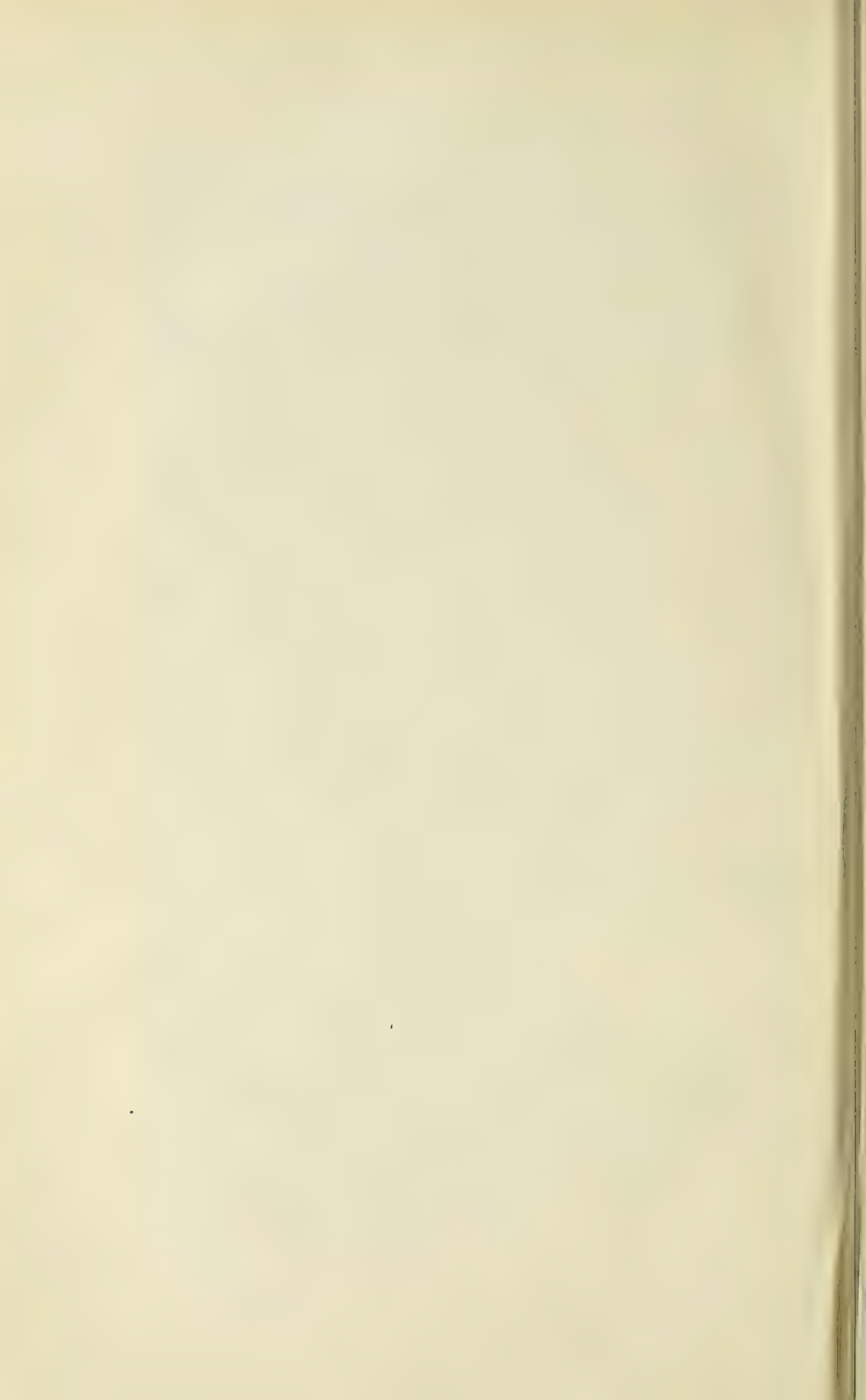


**WITNESSES, TAMPERING WITH.**

By any means, whether persuasion, intimidation, or actual violence, preventing or attempting to prevent a witness who is under a legal obligation to give evidence in a criminal prosecution from giving any evidence that he is under a legal obligation to give, is a misdemeanour at common law,<sup>1</sup> punishable with LL, as to which see p. 865.

As to procuring or attempting to procure the giving of false evidence, see **PERJURY, ATTEMPT TO COMMIT A CRIME, and CONSPIRACY.**

<sup>1</sup> 1 Hawk, c. 6, s. 15; Stephen, *Dig. Cr. Law*, 6th ed., p. 113; *R. v. Lawley* (1731), 2 Stra. 904; *R. v. Loughran* (1839), 1 Craw & D. 79; *R. v. Silverman* (1908), 12 Canada Cr. Cas. 79.

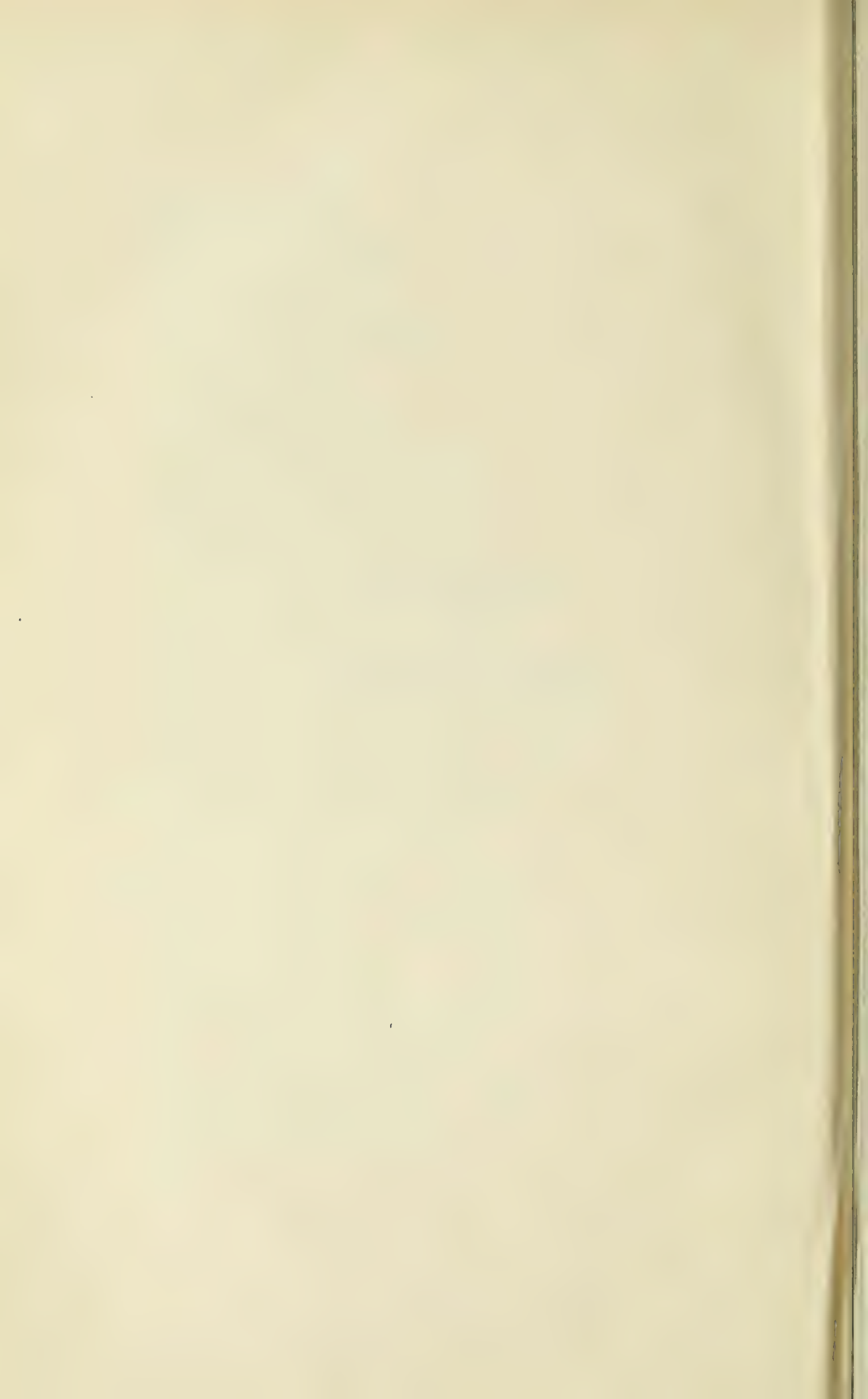


PART IV.

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STATUTES.





## TABLE OF STATUTES.

	PAGE
57 Geo. 3, c. 56 (Recognizances (Ir.) Act, 1817) . . . . .	941
9 Geo. 4, c. 54 (Criminal Law (Ir.) Act, 1828) . . . . .	942
4 & 5 Wm. 4, c. 51, s. 19 (Excise Management Act, 1834) . . . . .	942
5 & 6 Vict. c. 24 (Dublin Police Act, 1842) . . . . .	944
6 & 7 Vict. c. 91 (Charitable Loan Societies (Ir.) Act, 1843) . . . . .	961
11 & 12 Vict. c. 78 (Crown Cases Act, 1848) . . . . .	964
12 & 13 Vict. c. 16 (Justices Protection (Ir.) Act, 1849) . . . . .	966
13 & 14 Vict. c. 69, s. 84 (Registration (Ir.) Act, 1850) . . . . .	967
14 & 15 Vict. c. 68, s. 17 (Poor Relief (Ir.) Act, 1851) . . . . .	968
14 & 15 Vict. c. 90 (Fines Act (Ir.), 1851) . . . . .	969
14 & 15 Vict. c. 92 (Summary Jurisdiction (Ir.) Act, 1851) . . . . .	978
14 & 15 Vict. c. 93 (Petty Sessions (Ir.) Act, 1851) . . . . .	995
18 & 19 Vict. c. 126 (Criminal Justice Act, 1855) . . . . .	1033
19 & 20 Vict. c. 65 (Cottier Tenant (Ir.) Act, 1856) . . . . .	1036
20 & 21 Vict. c. 43 (Summary Jurisdiction Act, 1857) . . . . .	1039
21 & 22 Vict. c. 100 (Petty Sessions Clerk (Ir.) Act, 1858) . . . . .	1041
22 Vict. c. 14 (Manor Courts Abolition (Ir.) Act, 1859) . . . . .	1047
22 & 23 Vict. c. 17 (Vexatious Indictments Act, 1859) . . . . .	1050
25 & 26 Vict. c. 50 (Summary Jurisdiction (Ir.) Act, 1862) . . . . .	1051
27 & 28 Vict. c. 99 (Civil Bill Courts Procedure Amendment Act (Ir.), 1864) . . . . .	1052
30 & 31 Vict. c. 115 (Justices of the Peace Act, 1867) . . . . .	1053
31 & 32 Vict. c. 107 (Indictable Offences Act Amendment Act, 1868) . . . . .	1053
34 & 35 Vict. c. 76 (Summary Jurisdiction (Ir.) Amendment Act, 1871) . . . . .	1054
34 & 35 Vict. c. 96 (Pedlars Act, 1871) . . . . .	1055
36 & 37 Vict. c. 82 (Small Penalties (Ir.) Act, 1873) . . . . .	1060
37 & 38 Vict. c. 72 (Fines Act (Ir.), 1851, Amendment Act, 1874) . . . . .	1061
38 & 39 Vict. c. 90 (Employers and Workmen Act, 1875; and rules) . . . . .	1061
38 & 39 Vict. c. cxcv. (Dublin Traffic Act, 1875) . . . . .	1074
41 & 42 Vict. c. 69 (Petty Sessions Clerks and Fines (Ir.) Act, 1878) . . . . .	1079
44 & 45 Vict. c. 18 (Petty Sessions Clerks (Ir.) Act, 1881) . . . . .	1081
47 & 48 Vict. c. 19 (Summary Jurisdiction over Children (Ir.) Act, 1884) . . . . .	1082
50 & 51 Vict. c. 20 (Criminal Law and Procedure (Ir.) Act, 1887) . . . . .	1084
51 & 52 Vict. c. 33 (Hawkers Act, 1888) . . . . .	1091
56 & 57 Vict. c. 32 (Barbed Wire Act, 1893) . . . . .	1093
60 & 61 Vict. c. 30 (Police (Property) Act, 1897) . . . . .	1094
60 & 61 Vict. c. 60 (Chaff Cutting Machines (Accidents) Act, 1897) . . . . .	1095
63 & 64 Vict. c. 25 (Charitable Loan Societies (Ir.) Act, 1900) . . . . .	1095
1 Edw. 7, c. 22 (Factory and Workshop Act, 1901) . . . . .	1097
2 Edw. 7, c. 18 (Licensing (Ir.) Act, 1902) . . . . .	1157
2 Edw. 7, c. 21 (Shop Clubs Act, 1902) . . . . .	1158
4 Edw. 7, c. 9 (Registration of Clubs (Ir.) Act, 1904) . . . . .	1160
6 Edw. 7, c. 23 (Charitable Loan Societies (Ir.) Act, 1906) . . . . .	1166
6 Edw. 7, c. 27 (Fertilisers and Feeding Stuffs Act, 1906) . . . . .	1167

	PAGE
7 Edw. 7, c. 17 (Probation of Offenders Act, 1907) . . . .	1172
7 Edw. 7, c. 22 (Petty Sessions Clerk (Ir.) Amendment Act, 1907)	1175
7 Edw. 7, c. 39 (Factory and Workshop Act, 1907) . . . .	1175
7 Edw. 7, c. 45 (Lights on Vehicles Act, 1907) . . . .	1178
8 Edw. 7, c. 24 (Summary Jurisdiction (Ir.) Act, 1908) . . . .	1180
8 Edw. 7, c. 31 (Whale Fisheries (Ir.) Act, 1908) . . . .	1181
8 Edw. 7, c. 34 (Bee Pest Prevention (Ir.) Act, 1908; and rules)	1184
8 Edw. 7, c. 42 (White Phosphorus Matches Prohibition Act, 1908)	1190
8 Edw. 7, c. 67 (Children Act, 1908; and rules) . . . .	1191
9 Edw. 7, c. 12 (Marine Insurance (Gambling Policies) Act, 1909)	1267
9 Edw. 7, c. 22 (Trade Boards Act, 1909) . . . .	1268
9 Edw. 7, c. 30 (Cinematograph Act, 1909) . . . .	1273
9 Edw. 7, c. 31 (Weeds and Agricultural Seeds (Ir.) Act, 1909)	1275
10 Edw. 7, c. 81 (Finance (1909-10) Act, 1910, extract from) . .	1277



# STATUTES.

## RECOGNIZANCES (IRELAND) ACT, 1817.

[57 GEO. 3, CH. 56.]

2. Every recognizance taken in Ireland by or before His Majesty's Court of King's Bench there, or by or before His Majesty's chief justice of the said Court of King's Bench, or by or before any of the justices of the said Court of King's Bench, or by or before any justice or justices of oyer and terminer or gaol delivery, or by or before any justice or justices of the peace, either at their sessions of the peace or otherwise, or by any magistrate or other person lawfully authorised to take the same, shall contain the name and addition of the person or persons respectively thereby acknowledging himself, herself, or themselves respectively to be bound, and the name of the townland, parish, and barony or half barony, or town or city, and street therein (if in a county of a town or city), in which the usual or actual place or places of residence of such person or persons is or are respectively situated; and all and every persons or person who shall hereafter come before His Majesty's said Court of King's Bench, or before any of His Majesty's justices of the said court, or before any such justice or justices of oyer and terminer or gaol delivery, or before any justice or justices of the peace, either at their sessions of the peace or otherwise, or before any magistrate or other person lawfully authorised to admit to bail, in order to give bail or be bound for the appearance of any person or persons charged with any crime or crimes (which person so charged shall by law be entitled to bail), or for keeping the peace, shall respectively make oath in one of the forms here following, or in some other form of words to the like import and effect respectively; that is to say, if such person shall reside in a county at large, in this form; (to wit),

Every recognizance shall specify the name, addition, and residence of the person bound.

Persons becoming bail for appearance of an accused person or for keeping the peace, shall make oath of their residence and sufficiency.

" I A. B. do swear, that I am a householder, and have a house wherein I usually reside, at \_\_\_\_\_ in the parish of \_\_\_\_\_ barony or half barony of \_\_\_\_\_ and county of \_\_\_\_\_ and that I support and maintain myself by \_\_\_\_\_ and that I am worth the sum of [here insert double the sum in which he or she is to be bound] over and above all my just debts.

" So help me GOD."

And if such person shall reside in a county of a city or town, the words "reside at" and from thence to "county of" shall be omitted; and instead thereof, these words shall be inserted; (to wit) "residing in [naming the Street, Square, Lane, or Place] in the parish of \_\_\_\_\_ and county of the city or town of \_\_\_\_\_;" and every such oath shall be annexed to or be written on the same piece of paper or parchment with the recognizance, and shall be signed by the person making the same, and attested by the proper jurat of the court, judge, justice, or other person taking the same as aforesaid, and shall be sufficient in lieu of all and every oaths and oath required by any law in force in Ireland to be taken by any such surety.

3. Provided always, and be it enacted, that nothing herein contained shall extend or be construed to extend to require the person or persons charged with any crime, and for whose appearance any recognizance shall be about to be entered into, or any person or persons who shall become personally bound to keep the peace, or any person or persons who shall or may hereafter become bound for the prosecution of any person or persons charged with any criminal offence, to take such part of the

Persons charged and bound to appear, or to keep the peace, or to prosecute offenders, shall be sworn only as to their residence.

said oath as relates to such person or persons being a householder, or to his, her, or their being respectively worth the sum or sums of money for which he, she, or they is and are respectively about to be bound, over and above all their just debts; but every such last-mentioned person and persons shall, in like manner and form respectively, make oath as to the place, parish, barony, or half barony, and county, and the town or city and street therein (if in a county of a town or city), in which he, she, or they usually or actually reside.

Penalty on justices, &c., neglecting to return recognizances, or to insert names, &c., £50 in addition to any fine by the judges at assize.

4. All and every justice and justices of the peace, and all and every magistrate and other person lawfully authorised to take recognizances, who shall hereafter neglect or refuse to return the recognizances taken before him alone, or before him and any other magistrate or person or persons so authorised to take the same, in manner hereinafter mentioned, or shall neglect or refuse to insert in any recognizance taken before him, solely or with any other or others as aforesaid, the proper name and names and addition or additions of the person or persons entering into the same, according to the provisions of this Act, or shall neglect or refuse to administer the oaths respectively hereinbefore directed and appointed to be administered in manner so directed, shall for every such neglect or refusal (in addition to such sum as the judge or judges of assize may think fit at the respective assizes to impose upon any such justice and justices of the peace, or such magistrate or other person aforesaid, by way of fine for such neglect or refusal) forfeit the sum of fifty pounds, to be recovered against him by bill, plaint, or information in any of His Majesty's courts of record in Dublin, by any person or persons who will prosecute or sue for the same.

## CRIMINAL LAW (IRELAND) ACT, 1828.

[9 GEO. 4, CH. 54.]

When persons charged with felony before two justices shall be committed.

1. Where any person shall be taken on a charge of felony, or suspicion of felony, before one or more justice or justices of the peace, and the charge shall be supported by positive and credible evidence of the fact, or by such evidence as if not explained or contradicted shall, in the opinion of the justice or justices, raise a strong presumption of the guilt of the person charged, such person shall be committed to prison by such justice or justices in the manner hereinafter mentioned; but if there shall be only one justice present, and the whole evidence given before him shall be such as neither to raise a strong presumption of guilt, nor to warrant the dismissal of the charge, such justice shall order the person charged to be detained in custody, and such person shall be taken before two justices at the least.<sup>1</sup>

Persons charged before one justice shall be taken before two.

## EXCISE MANAGEMENT ACT, 1834.

[4 & 5 WM. 4, CH. 51.]

Notice of information to be given, and parties to be summoned.

19. *Every information for the recovery of any penalty, or for the condemnation of any seizure, shall be exhibited before the commissioners of excise, or justice or justices of the peace respectively, within four calendar months next after the offence or offences alleged in such information shall have been committed, or the goods, commodities, chattels, or things therein alleged to have been forfeited shall have been seized*; and a notice in writing

<sup>1</sup> The above section is the only section of the statute which it is deemed necessary to print. Some of the other sections, dealing with offences near the boundaries of counties, are dealt with in other parts of the work.

<sup>2</sup> Portion in brackets repealed by the Excise Act, 1848, 11 & 12 Vict. c. 118, s. 3, which substitutes for the repealed words the following enactment:—

“Every information exhibited by order of the commissioners of excise for the recovery of any penalty imposed or for the condemnation of any seizure made as forfeited under

of such information having been so exhibited shall be given to the person against whom the same shall have been exhibited within one week next after the exhibiting of such information; and the commissioners of excise, or justice or justices of the peace, before whom any such information shall be exhibited, are hereby respectively authorised and required to summon every person against whom any such information shall have been exhibited to appear and plead to and to attend the hearing of such information at a time and place to be named in such summons, which summons shall be served upon every such person or persons ten days at the least before the time appointed in such summons, and which summons may be added to or may include such notice as aforesaid, or may be separate and apart therefrom, and be served at another and different time, subsequent to the delivery of such notice, at the option of the prosecutor: Provided always, that where such information shall be exhibited for the recovery of double the value of any duty or duties neglected to be paid or cleared off, it shall be sufficient if such summons be served twelve hours at the least before the time appointed in such summons: And provided also, that in all cases it shall be deemed and taken to be sufficient delivery and service of any such notice and summons as aforesaid if a copy of the same be left at or upon the place used or occupied by any such person or persons respectively for carrying on his or their trade or business, or at the building or place where any such offence shall have been committed or such seizure made, or at the place of residence, or with the wife or child or servant of any such person or persons, the same being directed to such person or persons by the right or assumed name or names of such person or persons; or where any such offence shall have been committed or discovered in transit, or any seizure made in transit, and the place of business or residence of the offender shall be unknown to the person discovering such offence or making such seizure, it shall be sufficient if such notice and summons, or a copy thereof, be affixed at or upon such conspicuous part of the office of excise next to where such offence shall have been committed or discovered, or seizure made, directed to such offender or offenders by his or their right or assumed name or names, if the same shall be known to the prosecutor, and if not known, without any name or names.

Service of notice and summons.

20. Nothing in the said recited Act, or in any other Act or Acts relating to the revenue of excise, shall be construed to authorise or empower any justices of the peace, on the hearing and determining of any information for the recovery of double the value of any duty or duties of excise neglected to be paid or cleared off, to mitigate the said penalty of the double value of such duties, but the said justices shall in all cases convict the defendant or defendants in the full penalty of double the value of the duties which shall be proved to have been neglected to be paid and cleared off, and shall give judgment accordingly; and no justice of the peace before whom any person having been arrested and detained under any Act or Acts relating to the revenue of excise, and liable to the payment of any penalty, and in default of the immediate payment thereof to be committed to prison for a limited period, shall have any power or authority to mitigate such penalty, except where a special power for the mitigation of such penalty shall be given; anything in the said recited Act, or any other Act or Acts relating to the revenue of excise, notwithstanding.

Commissioners of excise and justices not authorised to mitigate the penalty of double duty for non-payment of excise duties.

22. Where in any case any information for the recovery of any penalty incurred, or the condemnation of any goods, commodities, articles, or things forfeited, under any law or laws relating to the revenue of excise, shall by order of the commissioners of excise be exhibited before the commissioners of excise, or before any justice or justices of the peace, and the officer of excise by whom or in whose name such information shall be or

In case of the death, removal, or absence of any officer of excise in whose name any information may have been exhibited, the proceedings may be carried on by any other officer.

or by virtue of any Act or Acts relating to any duties under the collection and management of the commissioners of excise or the commissioners of customs, may be exhibited before the justice or justices of the peace at any time within six calendar months after the offence or offences alleged in such information have been committed, or the goods, commodities, chattels, or things therein alleged to have been forfeited have been seized, and all such proceedings shall be afterwards had thereupon as by law directed, anything in any other Act or Acts of Parliament to the contrary thereof notwithstanding."



shall have been exhibited shall die, or be removed or discharged, or at the time of hearing may be absent, such information shall not, by such death, removal, or discharge, or by the absence of such officer, abate or be diminished, but all the proceedings on such information shall be continued and may be proceeded on by any other officer of excise in the name of the officer by whom the same shall have been exhibited; and the said commissioners of excise and the justices shall, on the day named and appointed in the summons to be issued in that behalf, proceed to hear and determine the matter of such information, and shall examine all such witnesses as shall be tendered to them for examination by any officer of excise in support of such information, notwithstanding such death, removal, or discharge, or the absence of the officer of excise by whom or in whose name such information shall be or shall have been exhibited; and all the proceedings on such information, and all proceedings for recovery of any penalty awarded thereon, or for the arrest and imprisonment of any defendant for non-payment of such penalty, or for condemnation of any goods, commodities, articles, or things, shall be good, valid, and effectual.

If there shall not be twenty days between giving notice of appeal and the next quarter sessions, the appeal shall be to the following sessions.

23. If there shall not be twenty days between the time of any judgment being given by any justices of the peace on any information exhibited to them and the next general quarter sessions of the peace, and the party against whom such judgment shall be given shall appeal against the same, then such appeal may be to the quarter sessions next after the expiration of twenty days from the giving of such judgment; and any notice of appeal shall be given by any officer of excise who shall attend and conduct the proceedings on the part of the revenue of excise, notwithstanding such officer may not be the officer named in the information as informing or exhibiting the same; and it shall be lawful for any court of quarter sessions before whom any appeal shall be brought to adjourn the hearing thereof to the next quarter sessions, then to hear and finally to determine the same.

Offences under the customs laws may be sued for by order of commissioners of excise, and in the name of officers of excise.

28. Any penalty or forfeiture incurred under any Act or Acts of Parliament relating to the revenue of customs may be sued for and recovered by order of the commissioners of excise, and in the name of an officer of excise, as well as by order of the commissioners of customs, and in the name of an officer of customs; and where any election or option is or shall be given by any such Act or Acts to the commissioners of customs, which of two penalties shall be sued for, such election or option may be exercised by the commissioners of excise, and may be averred in the information to have been made by such last-mentioned commissioners, and such averment shall be deemed and taken to be sufficient proof of such order and of such election or option, without any further evidence thereof.

## DUBLIN POLICE ACT, 1842.

[5 & 6 VICT. CH. 24.]

The several recited Acts to be construed together as one Act; and their enactments and provisions to apply and extend to this Act.

1. The said recited Acts<sup>1</sup> of the forty-eighth year of the reign of King George the Third, of the fifth year of the reign of King George the Fourth, of the session of Parliament holden in the sixth and seventh years of the reign of King William the Fourth, of the first year of her present Majesty's reign, and of the sessions of Parliament holden respectively in the . . . second and third, and third and fourth years of her present Majesty's reign, and this Act, shall be construed together as one Act; and that all and every the enactments and provisions therein contained shall apply and extend to this Act, and to all convictions, warrants, distresses, proceedings, and things made, taken, or done in execution of this Act, as fully to all intents and purposes as if herein

<sup>1</sup> The preamble recites the 48 Geo. 3, c. 140; the 5 Geo. 4, c. 102; the 6 & 7 Wm. 4, c. 29; the 7 Wm. 4, and 1 Vict. c. 25; the 2 & 3 Vict. c. 78, and the 3 & 4 Vict. c. 103.

repeated and re-enacted, save in so far as such enactments and provisions are inconsistent with or contrary to this Act, or as such enactments and provisions may be altered by this Act, or other enactments and provisions made in lieu thereof.

2. No toll shall be demanded or taken on any . . . bridge for any horse or police van passing along such road or bridge in the service of the Dublin police, provided that the rider of such horse or driver of such van shall have his dress and accoutrements according to the regulations of the police at the time of claiming the exemption; and every person who shall fraudulently claim or take the benefit of the exemption from toll herein contained, not being lawfully entitled thereunto, shall for every such offence be liable to a penalty not more than five pounds; and in all such cases the proof of exemption shall be upon the person claiming the same.

Police vans, &c.,  
exempted from  
turnpike tolls.

3. Every constable belonging to the Dublin police who shall be dismissed from or shall cease to hold and exercise his office, and who shall not forthwith deliver over all the clothing, accoutrements, appointments, and other necessities which may have been supplied to him for the execution of his duty to the commissioners of police, or to such person, and at such time and place, as shall be directed by them, shall be liable to imprisonment, with or without hard labour, for any time not exceeding one calendar month; and it shall be lawful for any justice of the peace to issue his warrant to search for and seize, to the use of Her Majesty, all the clothing, accoutrements, appointments, and other necessities which shall not be so delivered over, wherever the same may be found.

Constables dis-  
missed to deliver  
up accoutre-  
ments.

4. Every person, not being a constable of the Dublin police, who shall have in his possession any article, being part of the clothing, accoutrements, or appointments supplied to any such constable, and who shall not be able satisfactorily to account for his possession thereof, or who shall put on the dress, or take the name, designation, or character of any person appointed as such constable, for the purpose of thereby obtaining admission into any house or other place, or of doing or procuring to be done any Act which such person would not be entitled to do or procure to be done of his own authority, or for any other unlawful purpose, shall, in addition to any other punishment to which he may be liable for such offence, be liable to a penalty not more than ten pounds.

Penalty for un-  
lawful posses-  
sion of accoutre-  
ments, or for  
assuming the  
dress of con-  
stables.

5. Every person who for the purpose of protecting or preventing anything whatsoever from being seized within the police district on suspicion of its being stolen or otherwise unlawfully obtained, or of preventing the same from being produced or used as evidence concerning any felony or misdemeanour committed or supposed to be committed within the police district, shall frame or cause to be framed any bill of parcels containing any false statement in regard to the name or abode of any alleged vendor, the quantity or quality of any such thing, the place whence or the conveyance by which the same was furnished, the price agreed upon or charged for the same, or any other particular, knowing such statement to be false, or who shall fraudulently produce such bill of parcels, knowing the same to have been fraudulently framed, shall be deemed guilty of a misdemeanour.

Framing a false  
bill of parcels to  
escape detection,  
a misdemeanour.

6. Every person licensed to deal in exciseable liquors within the said police district who shall knowingly supply any sort of distilled exciseable liquor to any boy or girl apparently under the age of sixteen years, to be drunk upon the premises, shall be liable to a penalty not more than twenty shillings, and upon conviction of a second offence shall be liable to a penalty not more than forty shillings, and upon conviction of a third offence shall be liable to a penalty not more than five pounds.

Publicans pro-  
hibited from sup-  
plying liquors  
to persons under  
sixteen years  
of age.

7. Every person who shall have or keep any house, shop, room, or place of public resort within the said police district wherein provisions, liquors, or refreshments of any kind shall be sold or consumed (whether the same shall be kept or retailed therein or procured elsewhere), and who shall wilfully or knowingly permit drunkenness or other disorderly conduct in such house, shop, room, or place, or knowingly suffer any unlawful games or any gaming whatsoever therein, or knowingly permit or suffer prostitutes or persons of notoriously bad character to meet together and remain therein, shall for every such offence be liable to a penalty of not

Regulations re-  
specting public  
houses to extend  
to other houses  
of public resort.

more than five pounds : Provided always, that if the offender be licensed to sell beer by retail to be drunk on the premises, this enactment shall not be construed to exempt him from the penalties or penal consequences to which he may be liable for committing an offence against the tenor of the licence to him granted.

For preventing the keeping of places for bear-baiting, cock-fighting, &c.

8. Every person who shall keep or use or act in the management of any house, room, pit, or other place within the said police district for the purpose of fighting or baiting lions, bears, badgers, cocks, dogs, or other animals, shall be liable to a penalty not more than five pounds, or, in the discretion of the magistrate, may be committed to the house of correction, with or without hard labour, for a time not more than one calendar month ; and it shall be lawful for the commissioners of police, by order in writing, to authorise any superintendent belonging to the Dublin police, with such constables as he shall think necessary, to enter any premises kept or used for any of the purposes aforesaid, and take into custody all persons who shall be found therein without lawful excuse, and every person so found shall be liable to a penalty not more than five shillings ; and a conviction under this Act of this offence shall not exempt the owner, keeper, or manager of any such house, room, pit, or place from any penalty or penal consequences to which he may be liable for the nuisance thereby occasioned.

Commissioners empowered to authorise superintendents of police to enter gaming houses.

9. If any superintendent belonging to the said Dublin police shall report in writing to the commissioners of police that there are good grounds for believing any house or room within the said police district to be kept or used as a common gaming house, and if two or more householders dwelling within the said district, and not belonging to the said police, shall make oath in writing, to be by them taken and subscribed before a divisional justice and annexed to the said report, which oath every divisional justice is hereby empowered to administer and receive, that the premises complained of by the superintendent are commonly reported and are believed by the deponents to be kept or used as a common gaming house, it shall be lawful for the said commissioners, by order in writing, to authorise the superintendent to enter any such house or room with such constables as shall be directed by the said commissioners to accompany him, and if necessary to use force for the purpose of effecting such entry, whether by breaking open doors or otherwise, and to take into custody all persons who shall be found therein, and to seize and destroy all tables and instruments of gaming found in such house or premises, and also to seize all monies and securities for money found therein ; and the owner or keeper of the said gaming house, or other person having the care and management thereof, and also every banker, croupier, and other persons who shall act in any manner in conducting the said gaming house, shall be liable to a penalty not more than one hundred pounds, or, in the discretion of the divisional justice before whom he shall be convicted of the offence, may be committed to the house of correction, with or without hard labour, for a time not more than six calendar months ; and upon conviction of any such offender all the monies and securities for monies which shall have been seized as aforesaid shall be paid to the receiver of the police district, to be by him applied towards defraying the charge of the Dublin police ; and every person found in such premises without lawful excuse shall be liable to a penalty not more than five pounds : Provided always, that nothing herein contained shall prevent any proceeding by indictment against the owner or keeper or other person having the care or management of any gaming house, but no person shall be proceeded against by indictment and also under this Act for the same offence.

Owners or keepers thereof liable to penalty.

Not to prevent proceeding by indictment.

Proof of gaming for money, &c., not necessary in support of information.

Prohibition of nuisances by persons in public thoroughfares.

10. It shall not be necessary, in support of any information for gaming in, or suffering any games or gaming in, or for keeping or issuing or being concerned in the management or conduct of a common gaming house under this Act, to prove that any person found playing at any game was playing for any money, wager, or stake.

14. Every person shall be liable to a penalty not exceeding forty shillings who, within the limits of the police district, shall in any thoroughfare or public place commit any of the following offences ; (that is to say) :—

1. Every person who shall, to the annoyance of the inhabitants or



passengers, expose for show or sale (except in a market lawfully appointed for that purpose), or feed or fodder any horse or other animal, or show any caravan containing any animal or any other show or public entertainment; or shoe, bleed, or farry any horse or animal (except in cases of accident), or clean, dress, exercise, train, or break any horse or animal; or clean, make, or repair any part of any cart or carriage (except in cases of accident), where repair on the spot is necessary:

2. Every person who shall turn loose any horse or cattle, or suffer to be at large any unmuzzled ferocious dog, or set on or urge any dog or other animal to attack, worry, or put in fear any person, horse, or other animal:
3. Every person who by negligence or ill-usage in driving cattle shall cause any mischief to be done by such cattle, or who shall in anywise misbehave himself in the driving, care, or management of such cattle; and also every person, **not** being hired or employed to drive such cattle, who shall wantonly and unlawfully pelt, drive, or hunt any such cattle:
4. Every person having the care of any cart or carriage who shall ride on any part thereof, on the shafts, or on any horse or other animal drawing the same, without having and holding the reins, or who shall be at such a distance from such cart or carriage as not to have the complete control over every horse or other animal drawing the same:
5. Every person who shall ride or drive furiously, or so as to endanger the life or limb of any person, or to the common danger of the passengers in any thoroughfare:
6. Every person who shall cause any cart, public carriage, sledge, truck, or barrow, with or without horses, to stand longer than may be necessary for loading or unloading, or for taking up or setting down passengers, except hackney carriages standing for hire in any place not forbidden by law, or who by means of any cart, carriage, sledge, truck, or barrow, or any horse or other animal, shall wilfully interrupt any public crossing, or wilfully cause any obstruction in any thoroughfare:
7. Every person who shall lead or ride any horse or other animal, or draw or drive any cart or carriage, sledge, truck, or barrow, upon any footway or curbstone, or fasten any horse or other animal so that it can stand across or upon any footway:
8. Every person who shall roll or carry any cask, tub, hoop, or wheel, or any ladder, plank, pole, showboard, or placard, upon any footway, except for the purpose of loading or unloading any cart or carriage, or of crossing the footway:
9. Every person who, after being made acquainted with the regulations or directions which the said commissioners of police shall have made for regulating the route of horses, carts, carriages, and persons during the time of divine service, and for preventing obstructions during public processions, and on other occasions hereinbefore specified, shall wilfully disregard or not conform himself thereunto:
10. Every person who, without the consent of the owner or occupier, shall affix any posting bill or other paper against or upon any building, wall, fence, or pale, or write upon, scil, deface, or mark any such building, wall, fence, or pale with chalk or paint, or in any other way whatsoever, or wilfully break, destroy, or damage any part of any such building, wall, fence, or pale, or any fixture or appendage thereunto, or any tree, shrub, or seat, in any public walk, park, or garden:
11. Every common prostitute or night-walker loitering or being in any thoroughfare or public place for the purpose of prostitution or solicitation, to the annoyance of the inhabitants or passengers:
12. Every person who shall sell or distribute, or offer for sale or distribution, or exhibit to public view, any profane, indecent, or obscene book, paper, print, drawing, painting, or representation, or sing any profane, indecent, or obscene song or ballad,

or write or draw any indecent or obscene word, figure, or representation, or use any profane, indecent, or obscene language, to the annoyance of the inhabitants or passengers :

13. Every person who shall use any threatening, abusive, or insulting words or behaviour, with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned :
14. Every person, except the guards and postmen belonging to Her Majesty's Post Office in the performance of their duty, who shall blow any horn or use any other noisy instrument for the purpose of calling persons together or of announcing any show or entertainment, or for the purpose of hawking, selling, distributing, or collecting any article whatsoever, or of obtaining money or alms :
15. Every person who shall wantonly discharge any firearm, or throw or discharge any stone or other missile, to the damage or danger of any person, or make any bonfire, or throw or set fire to any firework :
16. Every person who shall wilfully and wantonly disturb any inhabitant by pulling or ringing any door bell or knocking at any door without lawful excuse, or who shall wilfully and unlawfully extinguish the light of any lamp :
17. Every person who shall fly any kite or play at any game, to the annoyance of the inhabitants or passengers, or who shall make or use any slide upon ice or snow in any street or other thoroughfare, to the common danger of the passengers :

And it shall be lawful for any constable belonging to the Dublin police to take into custody without warrant any person who shall commit any such offence within view of any such constable.

Drunkards  
guilty of riotous  
or indecent  
behaviour may  
be imprisoned.

15. Every person who shall be found drunk in any street or public thoroughfare within the police district, and who while drunk shall be guilty of any riotous or indecent behaviour, and also every person who shall be guilty of any violent or indecent behaviour in any police station house, shall be liable to a penalty of not more than forty shillings for every such offence, or may be committed, if the justice before whom he shall be convicted shall think fit, instead of inflicting on him any pecuniary penalty, to the house of correction for any time not more than seven days.

Persons using  
carriages  
without driver's  
consent liable  
to a penalty.

16. Every person who shall ride upon or cause himself to be carried or drawn by any carriage within the police district, without the consent of the owner or driver thereof, shall be liable to a penalty not more than five shillings, or if a child apparently under the age of twelve years it shall be lawful for the justice to cause such child to be detained until his parent or guardian can attend for the purpose of having such child delivered into his care, and if such parent or guardian do not so attend before the closing of the police office for the day it shall be lawful for the justice to order such child to be discharged.

Prohibition of  
other nuisances.

17. Every person who in any street or public place within the limits of the police district shall be guilty of any of the following offences shall be liable to a penalty not more than forty shillings for every such offence; (that is to say) :—

1. Every person who in any thoroughfare shall burn, dress, or cleanse any cork, or hoop, cleanse, fire, wash, or scald any cask or tub, or hew, saw, bore, or cut any timber or stone, or slack, sift, or screen any lime :
2. Every person who shall throw or lay in any thoroughfare any coals, stones, slates, shells, lime, bricks, timber, iron, or other materials (except building materials, or rubbish thereby occasioned, which shall be placed or enclosed so as to prevent any mischief happening to passengers) :
3. Every person who in any thoroughfare shall beat or shake any carpet, rug, or mat (except door mats before the hour of eight in the morning), or throw or lay any dirt, litter, or ashes, or any carrion, fish, offal, or rubbish, or throw or cause any such thing to fall into any sewer, pipe, or drain, or into any well, stream or watercourse, pond or reservoir for water, or cause any

offensive matter to run from any manufactory, brewery, slaughter-house, butcher's shop, or dunghill, into any thoroughfare, or any uncovered place, whether or not surrounded by a wall or fence ; but it shall not be deemed an offence to lay sand or other materials in any thoroughfare in time of frost to prevent accidents, or litter or other materials to prevent the freezing of water in pipes, or in case of sickness to prevent noise, if the party laying any such things shall cause them to be removed as soon as the occasion for them shall cease :

4. Every person who shall empty or begin to empty any privy between the hours of six in the morning and twelve at night, or remove along any thoroughfare any night soil, soap lees, ammoniacal liquor, or other such offensive matter, between the hours of six in the morning and eight in the evening, or who shall at any time use for any such purpose any cart or carriage not having a proper covering, or who shall wilfully or carelessly slop or spill any such offensive matter in the removal thereof, or who shall not carefully sweep and clean every place in which any such offensive matter shall have been placed, slopped, or spilled ; and, in default of the apprehension of the actual offender, the owner of the cart or carriage employed for any such purpose shall be deemed to be the offender : Provided always, that this enactment shall not be construed to prevent the commissioners for paving and lighting and cleansing the streets of Dublin, within the metropolitan police district aforesaid, or any person acting in their service or by their direction, from emptying or removing along any thoroughfare at any time the contents of any sewer which they are authorised to cleanse or empty :
5. Every person who shall keep any pigstye to the front of any street or road in any town within the said district, not being shut out from such street or road by a sufficient wall or fence, or who shall keep any swine in or near any street, or in any dwelling, so as to be a common nuisance :
6. Every occupier of a house or other tenement in any town within the said district who shall not keep sufficiently swept and cleansed all footways and watercourses adjoining the premises occupied by him ; and if any tenement be empty or unoccupied the owner thereof shall be deemed the occupier with reference to this enactment :
7. Every person who shall expose any thing for sale in any park or public garden, unless with the consent of the owner or other person authorised to give such consent, or upon or so as to hang over any carriageway or footway, or on the outside of any house or shop ; or who shall set up or continue any pole, blind, awning line, or any other projection from any window, parapet, or other part of any house, shop, or other building, so as to cause any annoyance or obstruction in any thoroughfare :
8. Every person who, to the danger of passengers in any thoroughfare, shall leave open any vault or cellar, or the entrance from any thoroughfare to any cellar or room under ground, without a sufficient fence or hand rail, or leave defective the door, window, or other covering of any vault or cellar, or who shall not sufficiently fence any area, pit, or sewer left open in or adjoining to any thoroughfare, or who shall leave such open area, pit, or sewer without a sufficient light after sunset, to warn and prevent persons from falling thereinto.
18. Every person who shall unlawfully cut, damage, or destroy any of the ropes, cables, cordage, tackle, headfasts, or other the furniture of or belonging to any ship, boat, or vessel lying in the River Liffey, harbour of Dublin, or harbour of Kingstown, or in any of the docks or creeks adjacent thereto respectively, with intent to steal or otherwise unlawfully obtain the same or any part thereof, shall be deemed guilty of a misdemeanour.

Cutting ropes, cables, &c.



The police to have the power of constables upon the River Liffey, &c.; and may take into custody any person who, to prevent discovery, shall wilfully let fall any articles into the river or harbour of Kingstown.

19. Every officer and constable belonging to the Dublin police shall have all the powers and privileges of a constable upon the River Liffey within or adjoining to the said district, or the several counties of Dublin, Kildare, and Wicklow, and in and on the harbour of Dublin and harbour of Kingstown, and the docks or creeks adjacent thereto; and it shall be lawful for any such constable to take into custody every person who, for the purpose of preventing the seizure or discovery of any materials, furniture, stores, or merchandise belonging to or having been part of the cargo of any ship, boat, or vessel lying in the River Liffey, harbour of Dublin, or harbour of Kingstown, or the docks or creeks adjacent thereto respectively, or of any other articles unlawfully obtained from any such ship, boat, or vessel, shall wilfully let fall or throw into the said river, or any of the said docks or creeks, or in any other manner convey away from any ship, boat, or vessel, wharf, quay, or landing place, any such article, or who shall be accessory to any such offence, and also to seize and detain any boat in which such person shall be found, or out of which any article shall be so let fall, thrown, or conveyed away; and every such person shall be deemed guilty of a misdemeanour.

Possessing instruments for unlawfully procuring and carrying away wine, &c., a misdemeanour.

20. Every person who shall be found within the police district in or upon any canal, dock, warehouse, wharf, quay, or bank, or on board any ship or vessel, having in his or her possession any tube or other instrument for the purpose of unlawfully obtaining any wine, spirits, or other liquors, or having in his or her possession any skin, bladder, or other material or utensil for the purpose of unlawfully using, secreting, or carrying away any such wine, spirits, or other liquors, and any person who shall attempt unlawfully to obtain any such wine, spirits, or other liquor, shall be deemed guilty of a misdemeanour.

Piercing casks, opening packages, &c., a misdemeanour.

21. Every person who shall within the police district bore, pierce, break, cut open, or otherwise injure any cask, box, or package containing wine, spirits, or other liquors on board any ship, boat, or vessel, or in or upon any warehouse, wharf, quay, or bank, with intent feloniously to steal or otherwise unlawfully obtain any part of the contents thereof, or who shall unlawfully drink or wilfully spill or allow to run to waste any part of the contents thereof, shall be deemed guilty of a misdemeanour.

Breaking packages with intent to spill contents, a misdemeanour.

22. Every person who shall within the police district wilfully cause to be broken, pierced, started, cut, torn, or otherwise injured any cask, chest, bag, or other package containing or prepared for containing any goods while on board of any barge, lighter, or other craft lying in the said river or either of the said harbours, or any dock, creek, quay, wharf, or landing place adjacent to the same, or in the way to or from any warehouse, with intent that the contents of such package or any part thereof may be spilled or dropped from such package, shall be deemed guilty of a misdemeanour.

Superintendents and inspectors may board vessels.

23. Any superintendent or inspector belonging to the Dublin police shall have power by virtue of his office to enter at all times with such constables as he shall think necessary, as well by night as by day, into and upon every ship, boat, or other vessel (not being then actually employed in Her Majesty's service) lying in the said river or any of the said harbours, docks, and creeks, and into every part of every such vessel, for the purpose of inspecting, and upon occasion directing the conduct of any police constable who may be stationed on board of any such vessel, and of inspecting and observing the conduct of all other persons who shall be employed on board of any such vessel in or about the lading or unlading thereof, as the case may be, and for the purpose of taking all such measures as may be necessary for providing against fire and other accidents, and preserving peace and good order on board of any such vessel, and for the effectual prevention or detection of any felonies or misdemeanours.

Superintendent, &c., having just cause to suspect felony, may enter on board vessels, &c., to take up suspected persons.

24. It shall be lawful for every superintendent, inspector, or serjeant belonging to the Dublin police, having just cause to suspect that any felony has been or is about to be committed in or on board of any ship, boat, or other vessel lying in the said river, or any of the said harbours, docks, and creeks, to enter at all times, as well by night as by day, into and upon every such ship, boat, or other vessel, and therein to take all

necessary measures for the effectual prevention or detection of all felonies which he has just cause to suspect to have been or to be about to be committed in or upon the said river or harbours, docks or creeks, and to take into custody all persons suspected of being concerned in such felonies, and also to take charge of all property so suspected to be stolen.

25. Every person who by committing any offence herein forbidden within the police district shall have caused any hurt or damage to any person or property, may be apprehended, with or without any warrant, by any constable belonging to the Dublin police, and if he shall not, upon demand, make amends for such hurt or damage to the satisfaction of the persons aggrieved, he shall be detained by the constable in order to be taken before a divisional justice, and upon conviction shall pay such a sum, not exceeding ten pounds, as shall appear to the divisional justice before whom he shall be convicted to be reasonable amends to the person aggrieved, besides any penalty to which he may be liable for the offence, and the evidence of the person aggrieved shall be admitted in proof of the offence: Provided always, that if the person aggrieved shall have been the only witness examined in proof of the offence, the sum ordered as amends shall be paid and applied in the same manner as a penalty.

Divisional justices may award compensation for hurt or damage not exceeding £10.

26. It shall be lawful for any constable belonging to the Dublin police, and for all persons whom he shall call to his assistance, to take into custody without a warrant any persons who within view of any such constable shall offend in any manner against this Act, and whose name and residence shall be unknown to such constable, and cannot be ascertained by such constable.

Constables may apprehend person offending within their view whose name and residence are not known.

27. It shall be lawful for any constable belonging to the Dublin police to take into custody without a warrant all loose, idle, and disorderly persons whom he shall find disturbing the public peace, or whom he shall have good cause to suspect of having committed or being about to commit any felony, misdemeanour, or breach of the peace, and all persons whom he shall find between sunset and the hour of eight in the morning lying or loitering in any highway, yard, or other place, and not giving a satisfactory account of themselves.

Constables may apprehend without warrant disorderly persons, &c.

28. It shall be lawful for any constable belonging to the said Dublin police to take into custody without warrant any person who within the limits of the police district shall be charged by any other person with committing any aggravated assault, in every case in which such constable shall have good reason to believe that such assault has been committed, although not within view of such constable, and that by reason of the recent commission of the offence a warrant could not have been obtained for the apprehension of the offender.

Persons charged with recent assaults may be apprehended without warrant.

29. Any person found committing any offence punishable either upon indictment, or as a misdemeanour upon summary conviction, by virtue of this Act, may be taken into custody without a warrant by any constable belonging to the Dublin police, or may be apprehended by the owner of the property on or with respect to which the offence was committed, or by his servant or any person authorised by him, and may be detained until he can be delivered into the custody of a constable, to be dealt with according to law; and every such constable may also stop, search, and detain any vessel, boat, cart, or carriage in or upon which there shall be reason to suspect that anything stolen or unlawfully obtained may be found, and also any person who may be reasonably suspected of having or conveying in any manner any thing stolen or unlawfully obtained; and any person to whom any property shall be offered to be sold, pawned, or delivered, if he shall have reasonable cause to suspect that any such offence has been committed with respect to such property, or that the same or any part thereof has been stolen or otherwise unlawfully obtained, is hereby authorised, and, if in his power, is required to apprehend and detain, and as soon as may be to deliver such offender into the custody of a constable belonging to the Dublin police, together with such property, to be dealt with according to law.

Power to police constables and persons aggrieved to apprehend certain offenders, &c.

30. It shall be lawful for any constable belonging to the police force to stop and detain, until due inquiry can be made, all carts and carriages which he shall find employed in removing the furniture of any house or

Removing furniture to evade rent.



lodging between the hours of eight in the evening and six in the following morning, or whenever the constable shall have good grounds for believing that such removal is made for the purpose of evading the payment of rent.

Horses, carriages, &c., of offenders may be detained.

31. Whenever any person having charge of any horse, cart, carriage, or boat, or any other animal or thing, shall be taken into the custody of any constable under the provisions of this Act, it shall be lawful for such constable to take charge of such horse, cart, carriage, or boat, or such other animal or thing, and to deposit the same in some place of safe custody as a security for payment of any penalty to which the person having had charge thereof may become liable, and for payment of any expenses which may have been necessarily incurred for taking charge of and keeping the same; and it shall be lawful for any divisional justice before whom the case shall have been heard to order such horse, cart, carriage, or boat, or such other animal or thing, to be sold for the purpose of satisfying such penalty and reasonable expenses, in default of payment thereof, in like manner as if the same had been subject to be distrained and had been distrained for the payment of such penalty and reasonable expenses.

Persons apprehended without warrant to be taken to the station house.

32. Every person taken into custody by any constable belonging to the Dublin police without warrant, except persons detained for the mere purpose of ascertaining their name or residence, shall be forthwith delivered into the custody of the constable in charge of the nearest station house, in order that such person may be secured until he can be brought before a divisional justice, to be dealt with according to law, or may give bail for his appearance before a divisional justice, if the constable in charge shall deem it prudent to take bail, in the manner hereinafter mentioned.

Power to take recognisances at station houses on petty charges.

33. Whenever any person charged with any offence of which he is liable to be summarily convicted before a magistrate, or with having carelessly done any hurt or damage, shall be, without the warrant of a magistrate, in the custody of any constable of the said Dublin police in charge of any station house during the time when the police offices shall be shut, it shall be lawful for such constable, if he shall deem it prudent, to take the recognisance of such person, with or without sureties, conditioned as hereinafter mentioned.

Power to bind over person making charges.

34. Whenever any person charged with any felony, or any misdemeanour, punishable by transportation, or other grave misdemeanour, shall be without warrant in the custody of any constable of the said Dublin police at any station house during the time when the police offices shall be shut, it shall be lawful for the constable in charge of the station house to require the persons making such charge to enter into a recognisance conditioned as hereinafter mentioned, and upon his or her refusal so to do it shall be lawful for such constable, if he shall deem it prudent, to discharge from custody the person so charged, upon his or her recognisance, with or without sureties, conditioned as hereinafter mentioned.

Condition of recognisances.

35. Every recognisance so taken shall be without fee or reward, and shall be conditioned for the appearance of the person thereby bound before a justice of the division in which such station house shall be situated, at his next sitting, and the time and place of appearance shall be specified in the recognisance; and the constable shall enter in a book, to be kept for that purpose at every such station house, the name, residence, and occupation of the party, and his surety or sureties (if any), entering into such recognisance, together with the condition thereof, and the sum thereby acknowledged, and shall return every such recognisance to the justice present, at the time and place when and where the party is bound to appear.

Offences for which no penalty is appointed.

36. For every misdemeanour or other offence against this Act for which no special penalty is appointed the offender shall, at the discretion of the justice before whom the conviction shall take place, either be liable to a penalty not more than five pounds, or be imprisoned for any time not more than one calendar month in any gaol or house of correction within the police district.

Not to repeal local Acts containing penalties.

37. Provided always that nothing herein contained shall be construed to prevent any person from being indicted for any indictable offence made



punishable on summary conviction by this Act, or to relieve any person from being liable under any other Act or Acts to any other or higher penalty or punishment than is provided for such offence by this Act, so (nevertheless) that no person be punished twice for the same offence.

38. Every such justice shall be empowered summarily to convict any person charged with any offence against this Act on the oath of one or more witnesses, or by his own confession, and to award the penalty or punishment herein provided for such offence; and the matter of every such complaint shall be heard and determined by one or more of the divisional justices at one of the divisional offices.

Offences: how to be tried.

39. In every case of the adjudication of a pecuniary penalty or amends under this Act, and non-payment thereof, it shall be lawful for the justice to commit the offender to any gaol or house of correction within his jurisdiction for a term not more than one calendar month where the sum to be paid should not exceed five pounds, the imprisonment to cease on payment of the sum due and the costs for the recovery thereof; and so much of every such pecuniary penalty as shall not be awarded to the informer, or other persons who have contributed to the conviction, shall be paid to the receiver of the Dublin police, for the purposes of this Act.

If penalty not paid, offender may be committed.

40. In all cases in which a constable, or other person holding office in the Dublin police, shall have contributed to the conviction, the whole of the pecuniary penalty shall be paid to the said receiver, for the purpose before mentioned.

Application of penalty when constable contributes to conviction.

46. All persons who may be hereafter appointed to supply vacancies among the divisional justices of the said district shall be barristers, each of whom shall have practised as a barrister during at least six years then last past.

Supply of vacancies among divisional justices.

47. None of the said justices shall be competent to act as a justice of the peace, either alone or with any other justice or justices, in any thing which is to be done at a special or petty sessions of all the justices acting in the division, or by justices in quarter sessions assembled.

Divisional justices not competent to act at sessions.

48. Every distress or levy warrant, or search warrant, or warrant to compel the appearance of any person, or warrant for the apprehension of any person charged with any offence, issued by any of the divisional justices, or by the commissioners of police, or either of them, in respect of any matter arising within the police district, may be served or executed out of the said district by any constable belonging to the Dublin police or constabulary force, or other peace officer to whom the same shall be directed, and shall have the same force and effect as if the same had been originally issued or subsequently endorsed by a justice or justices of the peace having jurisdiction in the place where the same shall be served or executed.

Warrant, &c., may be served out of district by any constable of the force.

49. Upon any information or complaint to be laid or made before any divisional justice of any matter which such justice is authorised to hear and determine summarily, he may summon the party charged, and if such party shall not appear according to the tenor of the summons, any one of the divisional justices, upon proof of the service of the summons, may proceed, in all cases which are not of a criminal nature, if no sufficient cause shall be shown for the non-appearance of the party, to hear and determine the case in the absence of the party, and in all criminal cases shall issue his warrant for apprehending and bringing such party before him or some other divisional justice, in order that the said information or complaint may be heard and determined.

Divisional justices may proceed by summons, and if party summoned does not appear may issue warrant.

50. Every such summons may be served by delivering a copy of the summons to the party, or by delivering at his usual place of abode a copy of the summons to the wife or servant or some inmate of the family of the party, such servant or inmate being of the age of sixteen years or upwards, and explaining the purport thereof to such wife, servant, or inmate.

How summons may be served.

51. Every such justice may, without issuing any summons, forthwith issue his warrant for the apprehension of any person charged with any offence cognisable before him, whenever good grounds for so doing shall be stated on oath before him.

Warrant for apprehension may be issued without summons, &c.

52. Any such justice may summon any witness to appear and give

Justices may enforce attendance of witnesses.

evidence before him upon the matter of any offence cognisable before such justice with which any person shall be charged before him, at a time and place appointed for hearing the information or complaint, and by warrant under his hand and seal may require any person to be brought before him who shall neglect or refuse to appear to give evidence at the time and place appointed in such summons, proof upon oath being first given of personal service of the summons upon the person against whom such warrant shall be granted, and such justice may commit any person coming or brought before him who shall refuse to give evidence to any gaol or house of correction within the police district, there to remain without bail or mainprize for any time not exceeding fourteen days, or until such person shall sooner submit himself to be examined, and in case of such submission the order of any such justice shall be a sufficient warrant for the discharge of such person.

Persons convicted of having or conveying stolen goods liable to penalty or imprisonment.

53. Every person who shall be brought before any of the divisional justices charged with having in his possession, or on his premises with his knowledge, or conveying in any manner any thing which may be reasonably suspected of being stolen or unlawfully obtained, and who shall not give an account to the satisfaction of such justice how he came by the same, shall be deemed guilty of a misdemeanour, and on conviction thereof before such justice or justices shall be liable to a penalty not more than five pounds, or, in the discretion of the justice, may be imprisoned in any gaol or house of correction within the police district, with or without hard labour, for any time not exceeding two calendar months.

On suspicion of goods being stolen or unlawfully obtained, divisional justices may grant search warrants.

54. If information shall be given on oath to any of the divisional justices that there is reasonable cause for suspecting that any thing stolen or unlawfully obtained is concealed or lodged in any dwelling house or any other place, it shall be lawful for such justice, by special warrant under his hand, directed to any constable, to cause every such dwelling house or other place to be entered and searched at any time of the day or by night, if power for that purpose be given by such warrant; and the said justice, if it shall appear to him necessary, may empower such constable, with such assistance as may be found necessary, such constable having previously made known such his authority, to use force for the effecting of such entry, whether by breaking open doors or otherwise, and if upon search thereupon made any such thing shall be found, then to convey the same before a justice, or to guard the same on the spot, until the offenders are taken before a justice, or otherwise dispose thereof in some place of safety, and moreover to take into custody and carry before the said justice every person found in such house or place who shall appear to have been privy to the deposit of any such thing, knowing or having reasonable cause to suspect the same to have been stolen or otherwise unlawfully obtained.

Party by whom stolen goods are received to be examined by the justices.

55. When any person shall be brought before any divisional justice charged with having or conveying any thing stolen or unlawfully obtained, and shall declare that he received the same from some other person, or that he was employed as a carrier, agent, or servant to convey the same for some other person, such justice is hereby authorised and required to cause every such person, and also, if necessary, every former or pretended purchaser, or other person through whose possession the same shall have passed, to be brought before him and examined, and to examine witnesses upon oath touching the same; and if it shall appear to such justice that any person shall have had possession of such thing, and had reasonable cause to believe the same to have been stolen or unlawfully obtained, every such person shall be deemed guilty of a misdemeanour, and to have had possession of such thing at the time and place when and where the same shall have been found or seized, and the possession of a carrier, agent, or servant shall be deemed to be the possession of the person who shall have employed such other person to convey the same, and shall be liable to a penalty of not less than five pounds, or, in the discretion of the justice, may be imprisoned in any gaol or house of correction within the police district, with or without hard labour, for any time not exceeding three calendar months.

56. If any goods shall be stolen or unlawfully obtained from any



person, or, being lawfully obtained, shall be unlawfully deposited, pawned, pledged, sold, or exchanged, and complaint shall be made thereof to any of the divisional justices, and that such goods are in the possession of any broker, dealer in marine stores, or other dealer in second-hand property, or of any person who shall have advanced money upon the credit of such goods within the police district, it shall be lawful for such justice to issue a summons or warrant for the appearance of such broker or dealer, and for the production of the goods, and to order such goods to be delivered up to the owner thereof, either without any payment, or upon payment of such sum and at such a time as the justice shall think fit, and every broker or dealer who being so ordered shall refuse or neglect to deliver up the goods, or who shall dispose of or make away with the same after notice that such goods were stolen or unlawfully obtained as aforesaid, shall forfeit to the owner of the goods the full value thereof, to be determined by the justice: Provided always, that no such order shall bar any such broker or dealer from recovering possession of such goods by suit or action at law from the person into whose possession they may come by virtue of the justice's order, so that such action be commenced within six calendar months next after such orders shall be made.

Justices may order delivery of stolen goods.

57. If any goods or money charged to be stolen or fraudulently obtained shall be in the custody of any constable by virtue of any warrant of a divisional justice, or in prosecution of any charge of felony or misdemeanour, in regard to the obtaining thereof, and the person charged with stealing or obtaining possession as aforesaid shall not be found, or shall have been summarily convicted or discharged, or shall have been tried and acquitted, or if such person shall have been tried and found guilty, but the property so in custody shall not have been included in any indictment upon which he shall have been found guilty, it shall be lawful for any divisional justice to make an order for the delivery of such goods or money to the party who shall appear to be the rightful owner thereof, or, in case the owner cannot be ascertained, then to make such order with respect to such goods or money as to such justice shall seem meet: Provided always, that no such order shall be any bar to the right of any person or persons to sue the party to whom such goods or money shall be delivered, and to recover such goods or money from him by action at law, so that such action shall be commenced within six calendar months next after such order shall be made.

Power to order delivery of possession of goods charged to have been stolen or fraudulently obtained, and in custody of constables.

58. When any goods or money charged to be stolen or unlawfully obtained, and of which the owner shall be unknown, shall be ordered by any divisional justice to be delivered to the receiver of the police district, it shall be lawful for the receiver, after the expiration of twelve calendar months during which no owner shall have appeared to claim the same, to sell or dispose of such goods or money for the benefit of the police fund of the said district.

Unclaimed stolen goods delivered to the receiver of the district may be sold after twelve months.

59. It shall be lawful for any divisional justice who shall hear and determine any charge or complaint, whether or not a warrant or summons shall have been issued in consequence of such charge or complaint, to award such costs as to him shall seem meet to be paid to or by either of the parties to the said charge or complaint.

Power to award costs on hearing of charge.

60. In every case in which any information or complaint of any offence shall be laid or made before any of the said divisional justices, and shall not be further prosecuted, or which, if further prosecuted, it shall appear to the justice by whom the case shall be heard that there was no sufficient ground for making the charge, the justice shall have power to award such amends, not more than the sum of five pounds, to be paid by the informer to the party informed or complained against, for his loss of time and expenses in the matter, as to the justice shall seem meet.

Amends may be awarded for frivolous informations.

61. In case any person shall lodge any information before any of the said divisional justices for any offence alleged to have been committed by which he was not personally aggrieved, and shall afterwards directly or indirectly receive, without the permission of one of the said justices, any sum of money or other rewards for compounding, delaying, or withdrawing the information, it shall be lawful for any one of the said justices to issue his warrant or summons, as he may deem best, for bringing before

Penalties on informers for compounding informations.



him the party charged with the offence of such compounding, delay, or withdrawal; and if such offence be proved by the confession of the party, or by the oath of any credible witness, such informer shall be liable to a penalty not more than ten pounds.

Power to lessen  
the shares of  
informers.

62. And whereas by divers Acts the moiety or other fixed portion of the penalties to be thereby recovered is directed to be adjudged to the informer, and the same has been found to encourage the corrupt practices of common informers; for prevention thereof be it enacted, that where by any Act now in force or hereafter to be passed a moiety or other fixed portion of the penalty or penalties thereby imposed is or shall be directed to be paid to the informer, not being the party aggrieved, it shall be lawful for any one of the said divisional justices before whom the conviction shall be had to adjudge that no part, or such part only of the penalty as he shall think fit, shall be paid to the informer.

Power to miti-  
gate penalties.

63. Where by any Act now in force or hereafter to be passed a limited penalty or term of imprisonment is imposed on conviction of an offender before a justice or justices of the peace, it shall be lawful for any one of the said divisional justices before whom such conviction shall be had to reduce or lessen such penalty or term of imprisonment, in such manner as he may think fit: Provided always, that no penalty for the infringement of any Act relating to the revenue of customs or excise, stamps or taxes, shall be reduced by any such justice below the amount or proportion allowed in that behalf by the Act or Acts specially relating thereunto, without the consent of the commissioners of customs or excise, or stamps and taxes, respectively.

Proviso as to  
Revenue Acts.

Power to re-  
mand or enlarge  
prisoners on re-  
cognisances.

64. Any one of the divisional justices, if he shall think fit, may remand any person for further examination, or may suffer to go at large any person who shall be charged before him with any felony or misdemeanour, upon his personal recognisance (with or without sureties); and every such recognisance shall be conditioned for the appearance of such person before the same or some other of the said justices for further examination, or to surrender himself to take his trial before such court, and at such day and place as shall be therein mentioned; and the justice shall be at liberty, from time to time, to enlarge every such recognisance to such further time as he shall appoint; and every such recognisance which shall not be enlarged shall be discharged, without fee or reward, when the party shall have appeared according to the condition thereof: Provided always, that whenever any justices shall take the recognisance of any person to appear and take his trial before any court of criminal jurisdiction, the justice shall be bound to return the depositions taken in the case, and to bind over the witnesses to appear and give evidence, in like manner as if he had committed the party to take his trial at such court.

Disputes be-  
tween watermen  
and others to be  
settled by divi-  
sional justices.

65. All differences, complaints, and disputes which shall happen between any bargemen, lightermen, watermen, ballastmen, coal whippers, coal porters, sailors, lumpers, riggers, shipwrights, caulkers, or other labourers who work for hire in or upon the River Liffey or harbour of Kingstown, or the docks, creeks, wharfs, quays, or places adjacent, and the owners, masters, or commanders of vessels, or their agents, on the said river or harbour, or the docks or creeks thereunto adjoining, or the owners, wharfingers, or occupiers of such wharfs or quays, or their agents or other employers, respecting wages or money due to such labourers for work or loss of time, whether the same persons be employed for any certain time or in any other manner, may be heard and determined by any of the said divisional justices; and every such justice is hereby empowered to examine upon oath any such labourer as aforesaid, or any other witness or witnesses, touching any such complaint or dispute, and to make such order for payment of so much wages or money to such labourer as to the justice shall seem just, provided that the sum ordered do not exceed five pounds, besides all reasonable costs attending the prosecution of the complaint.

Power to order  
compensation for  
wilful damage  
by tenants.

66. Every person who shall occupy or shall have occupied any house or lodging within the police district as tenant thereof, and who shall wilfully or maliciously do any damage to the premises, or to any furniture thereof, not being the property of such tenant or occupier, shall, upon

complaint made to one of the said divisional justices within one calendar month next after the commission of the offence, or the end of the tenantry or occupation, forfeit and pay such sum of money as shall appear to the justice to be a reasonable compensation for the damage done, not more than the sum of fifteen pounds, to be paid to the landlord or party aggrieved.

67. On complaint made to any of the said divisional justices by any person who shall within the police district have occupied any house or lodging by the week or month, or whereof the rent does not exceed the rate of fifteen pounds by the year, that his goods have been taken from him by an unlawful distress, or that the landlord, or his broker or agent, has been guilty of any irregularity or excess in respect of such distress, it shall be lawful for such justice to summon the party complained against; and if upon the hearing of the matter it shall appear to the justice that such distress was improperly taken or unfairly disposed of, or that the charges made by the party having distrained, or having attempted to distrain, are contrary to law, or that the proceeds of the sale of such distress have not been duly accounted for to the owner thereof, it shall be lawful for the justice to order the distress so taken, if not sold, to be returned to the tenant, on payment of the rent which shall appear to be due, at such time as the justice shall appoint, or if the distress shall have been sold, then to order payment to the said tenant of the value thereof, deducting thereout the rent which shall so appear to be due, such value to be determined by the justice; and such landlord or party complained against, in default of compliance with any such order, shall forfeit to the party aggrieved the value of such distress, not being greater than fifteen pounds, such value to be determined by the justice.

Power to deal summarily with cases of oppressive distress.

68. Upon complaint made to any of the said divisional justices by any person claiming to be entitled to the property or possession of any goods which are detained by any other person within the limits of the police district, the value of which shall not be greater than fifteen pounds, and not being deeds, muniments, or papers relating to any property of greater value than fifteen pounds, it shall be lawful for such justice to summon the person complained of, and to inquire into the title thereto or to the possession thereof; and if it shall appear to the justice that such goods have been detained without just cause, after due notice of the claim made by the person complaining, or that the person detaining such goods has a lien or right to detain the same by way of security for the payment of money, or the performance of any act by the owner thereof, it shall be lawful for such justice to order the goods to be delivered to the owner thereof, either absolutely or upon tender of the amount appearing to be due by such owner (which amount the justice is hereby authorised to determine), or upon performance, or upon tender and refusal of the performance, of the act for the performance whereof such goods are detained as security, or if such act cannot be performed, then upon tender of amends for non-performance thereof (the nature or amount of which amends the justice is hereby authorised to determine); and every person who shall neglect or refuse to deliver up the goods according to such order shall forfeit to the party aggrieved the full value of such goods, not greater than the sum of fifteen pounds, such value to be determined by the justice: Provided always, that no such order shall bar any person from recovering possession of the goods or money so delivered or forfeited, by suit or action at law, from the person to whose possession such goods or money shall come by virtue of such order, so that such action be commenced within six calendar months next after such order shall be made.

Power to order delivery of goods unlawfully detained to the owner.

69. Such fees as are contained in the Schedule (A) to this Act annexed, Fees and no other or greater fees, may be taken for any business done or proceedings had before or by any of the said justices, or by any justice or justices acting in any police office within the said police district, and a table of such fees shall be fixed in some conspicuous part of each of the said offices, and it shall be lawful for any of the said justices to refuse to do any act for which any fee shall be demandable unless such fee shall be first paid; and if any such act shall be done, and the fee due thereon shall not be paid, it shall be lawful for any of the said justices to summon the person from whom such fee shall be due, and to make order for pay-



ment of the same, with the costs of the proceedings, and in default of payment to levy the same, with the costs of the distress, by warrant under his hand.

Proceedings on  
information  
before justices.

70. All offences committed within the limits of the police district which, under this or any other Act, are punishable on summary conviction before a justice or justices of the peace, may be heard and determined by any one or more of the said divisional justices sitting at one of the divisional offices, or at any place within such district where any such justice may be directed to attend, by warrant of the chief or under secretary, as hereinbefore provided, in a summary way, within six calendar months at the farthest next after the commission of such offence, or within such shorter time as shall be limited by the Act specifying the offence, and not afterwards, whether or not any information in writing shall have been exhibited or taken by or before such justices, and all such proceedings by summons, without information in writing, shall be as valid and effectual as if an information in writing had been first exhibited in that behalf: Provided always, that a note or memorandum in writing, according to a form to be approved by the chief or under secretary of the Lord-Lieutenant or other chief governor or governors of Ireland, shall be made and kept in the office, of the substance of every charge for which a summons or warrant shall be issued: Provided also, that the justice, if he shall think fit, may require an information in writing to be laid, in every case in which it shall seem to him to be expedient, before the matter of the complaint or charge shall be brought before him: and the justice shall examine into the matter of every complaint or charge brought before him, and if upon the confession of the party accused, or on the oath of any one or more witnesses, the party accused shall be convicted of having committed the offence charged or complained of, the party so convicted shall pay such penalty as to the justice shall seem fit, not more than the greatest penalty made payable in respect of such offence, together with the costs of conviction, to be ascertained by such justice.

Recovery of  
penalties and  
forfeitures.

71. All penalties, forfeitures, and other sums of money imposed, awarded, or ordered to be paid by any of the said divisional justices under the authority of this or any other Act of Parliament, and all sums of money which any person is bound to pay under any recognisance taken before a justice, and afterwards forfeited, in case of non-payment thereof, may be levied, with the costs of such proceedings on non-payment, by distress and sale of the goods and chattels of the offender or person liable to pay the same, by warrant under the hand of such justice; and the overplus (if any) of the money so raised or recovered, after discharging, with costs, the penalty, forfeiture, or sum ordered to be paid, shall be returned, on demand, to the party whose goods and chattels shall have been distrained; and in case any such penalty, forfeiture, or sum of money shall not be forthwith paid, it shall be lawful for such justice to order the party to be detained in safe custody until the return can be conveniently made to such warrant of distress, unless such party shall give security, to the satisfaction of the justice, for his appearance at such place and time, not being more than seven days from the time of such detention, as shall be appointed for the return of the warrant of distress, and the justice is hereby empowered to take such security by way of recognisance or otherwise: but if upon the return of such warrant it shall appear that no such sufficient distress could be had whereupon to levy the said penalty, forfeiture, or sum of money, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of the justice, upon the confession of the party or otherwise, that he has not sufficient goods and chattels whereupon such penalty, forfeiture, or sum of money could be levied if a warrant of distress should be issued, it shall be lawful for the justice, by warrant under his hand, to commit such party to some gaol or house of correction within the police district, there to remain for any time not more than two calendar months where the sum to be paid shall not exceed five pounds, and not more than three calendar months in any case, the imprisonment to cease on payment of the sum due.



72. Any divisional justice before whom any information shall be laid in writing against any person, or before whom any person shall be convicted in respect of any offence under this or any other Act of Parliament, may cause the information, summons, and the conviction to be drawn up according to the forms respectively given in Schedule (B) to this Act annexed, or any other forms to the same effect, as the case may require: Provided always, that this enactment shall not invalidate any information, summons, or conviction laid or drawn in any other form which may be more specially suited to the case, or may be provided by law, and in any information in writing, and in every conviction for an offence contrary to any statute or statutes, it shall be sufficient if the offence shall be stated in the words of the statute declaring the offence or attaching any penalty thereunto.

Forms of information and conviction.

73. If any one or more of the divisional justices of the police district aforesaid, before whom any information shall be exhibited, or other proceeding shall be had or taken, or prosecuted or continued, shall die or be absent pending such information or proceeding, or before the same shall be finally disposed of, it shall and may be lawful for any other or others of the said divisional justices to entertain, hear, determine, and dispose of such information and proceeding, and to do all acts in relation thereto, in like manner, and with the like powers and authority, for all intents and purposes, as if such information had been originally exhibited or proceeding had or taken before such last-mentioned justice or justices respectively.

In case of death or absence of divisional justice.

78. Provided always, and be it enacted, that nothing in this Act contained, except the provision empowering any one of the said divisional justices to hear and determine offences now punishable on summary conviction by or before two or more justices of the peace, shall extend or be deemed or construed to extend to affect or alter any proceedings before justices of the peace for the recovery or condemnation of any penalties or forfeitures incurred under any Act or Acts relating to the revenue of customs or excise, or stamps, or to any act, matter, or thing done by any officer of customs or excise, or stamps, but that all such penalties and forfeitures shall, except as aforesaid, be sued for, recovered, mitigated, and applied under the enactments and provisions of the several Acts relating to the said revenues respectively.

Act not to affect, except in certain cases, proceedings in informations under Revenue or Stamp Acts.

79. In the construction of this Act, unless there be something in the context repugnant thereto, the expression "police district" shall be understood to signify the police district of Dublin metropolis; and the expression "commissioners of police" shall be understood to signify the justices of the peace for the police district of Dublin metropolis appointed under the authority of the hereinbefore recited Act passed in the session of Parliament holden in the sixth and seventh years of the reign of his late Majesty, and the Acts amending the same; and the expressions "divisional justice" or "divisional justices" shall be understood to signify a divisional justice or divisional justices of the police district of Dublin metropolis; and any word denoting the singular number in the male sex shall be taken to extend to any number of persons or things and to both sexes.

Interpretation clause.

## SCHEDULES to which the foregoing Act refers.

### SCHEDULE (A).

#### TABLE of FEES receivable at the several Police Offices in the Police District of DUBLIN METROPOLIS.

	£	s.	d.
Summons and copy (including copy of information when served with summons)	0	1	0
Warrant	0	1	0
Recognisance	0	2	6
Conviction	0	2	6
Engrossing information in assaults, trespasses, and all misdemeanours	0	1	0
Appeal to quarter sessions	0	2	6
Supersedeas	0	1	0

## SCHEDULE (B).

## No. 1.—FORM OF INFORMATION.

Police district of Dublin } *A. B.* of cometh before me,  
metropolis to wit. } one of the divisional justices of the said  
district, on the day of in the year of  
our Lord at within the said  
district, and giveth me to understand and be informed that *C. D.* of  
did, &c. [*here describe the offence*].  
(Signed)

## No. 2.—FORM OF SUMMONS to be used when a copy of the information is not served upon the party charged.

Police district of Dublin } To *C. D. F.* of . You are  
metropolis to wit. } hereby required personally to appear before  
any of the divisional justices of the said district who shall be present  
at in the said district on the day  
of one thousand eight hundred and at  
the hour of in the noon of the same day,  
to answer the complaint of *A. B.* of charging that you  
did, &c. [*here set forth the offence charged in the information*].  
Dated this day of  
(Signed)  
One of the Divisional Justices of  
the said District.

## No. 3.—FORM OF SUMMONS to be used when a copy of the information is served upon the party charged.

Police district of Dublin } To *C. D.* of . You are hereby  
metropolis to wit. } required personally to appear before any  
of the divisional justices of the said district who shall be present at  
in the said district on the day  
of one thousand eight hundred and at the  
hour of in the noon of the same  
day, to answer the complaint set forth in the Information, with a copy  
of which you are herewith furnished.  
Dated this day of  
(Signed)  
One of the Divisional Justices of  
the said District.

## No. 4.—FORM OF CONVICTION.

Police district of Dublin } BE it remembered, that on the  
metropolis to wit. } day of in the year of  
our Lord before me, one of the divisional justices  
of the said district, sitting at in the said district,  
*C. D.* of is convicted that he did, &c. [*here state  
the offence*]. I do therefore adjudge that the said *C. D.* [*here state the  
adjudication*]. Given under my hand the day and year first above  
written.  
(Signed)  
*J. P.*

# CHARITABLE LOAN SOCIETIES (IRELAND) ACT, 1843.<sup>1</sup>

[6 & 7 VICT. CH. 91.]

27. It shall and may be lawful to and for the trustees or managers of any society established or acting under the provisions of this Act to demand and receive from the person to whom any loan may be made, at the time of making the same, or to retain as discount for the same, the full amount of interest up to the time fixed for payment of the last instalment which would be due on the whole money so advanced, at a rate not exceeding fourpence in the pound for twenty weeks, and to receive the amount of the principal by instalments at such time or times and in such proportion or proportions as the said trustees or managers may think fit, and to take a note or security for the whole amount of the loan, the same to be sued for and recovered immediately on failure of the payment of any of the instalments.

Rate of interest payable on loans.

28. It shall be lawful for the said Loan Fund Board, if they shall see fit, to authorise any loan society to advance any portion of their funds, such portion to be limited by the said Board, in loans not exceeding ten pounds, at a rate of interest not exceeding one penny halfpenny *per* month upon each pound sterling so advanced; provided that there be an interval of not less than twenty-seven days between the time of issuing such loan and the payment of the first instalment, and a similar period at the least between each other payment; and such society shall make a separate report of such loans to the said Loan Fund Board.

Loan Fund Board may authorise any loan society to advance any portion of their funds.

30. All notes and securities entered into for the payment of such loans shall be made payable to the treasurer or secretary for the time being of the said society; and if the party or parties liable to pay the same shall fail in the payment thereof, or of any of the instalments as agreed to by the terms or conditions of the loan, according to the rules of the society, it shall and may be lawful for any one of Her Majesty's justices of the peace having jurisdiction in the county, riding, city, division, or place where such party or parties or any one of them so liable shall or may happen to be or reside, or where the office of such society is situated, and such justice is hereby required, upon complaint made by or on behalf of such treasurer or secretary as aforesaid, to summon the person or persons against whom such complaint shall be made, whether he or they do or do not reside within the jurisdiction of such justice, to appear either before himself or the justices assembled at the petty sessions, either of the district in which such loan office is situate, or of the district wherein the party or any of the parties so summoned reside; and after his, her, or their appearance, or, in default thereof, upon due proof upon oath of such summons having been duly served or left at the ordinary residence of such person, such justice or justices shall proceed to hear and determine the said complaint, and award such sum to be paid, by the person or persons respectively liable to the payment of any such note or security, to such treasurer or secretary as aforesaid as shall appear to such justice or justices to be due thereon, provided such note or security shall be in the form and on the paper issued by the said Loan Fund Board as aforesaid, but not otherwise, and including all such fines as shall have been incurred under the rules of such society in respect of such note or security, together with such a sum for costs, not exceeding the sum of two shillings, as to such justice or justices shall seem meet; and if any person or persons shall refuse or neglect to pay or satisfy such sum of money as upon such complaint as aforesaid shall be adjudged, such justice or justices shall, by warrant under his or their hand and seal or hands and seals, cause the same to be levied by distress and sale of the goods of the person or persons so neglecting or refusing as aforesaid, together with all costs and charges attending such distress and sale, and returning the overplus (if any)

Notes to be made payable to treasurer or secretary for the time being.

Recovery of loan before justices of peace.

<sup>1</sup> Portion only of this statute is here given. See also the amending statutes, 63 & 64 Vict. c. 25, and 6 Edw. 7, c. 23.



to the owner ; and no such proceedings shall be removed by certiorari or otherwise into any of Her Majesty's superior courts of record.

Summons for recovery of loan may be in form in schedule.

To be entered by petty sessions clerk, and called on in turn.

Warrant for recovery of loan may be in form given in schedule.

Goods seized under levy warrant may be sold by bailiff without a licensed auctioneer.

Treasurer of any loan society may sue on securities granted to his predecessor.

Business of a loan society not to be transacted at a public house, &c.

Accounts of loan societies to be kept in manner directed by Loan Fund Board; and all their books, &c., to be produced for inspection to officer of Loan Fund Board, upon demand, under a penalty of £5.

No clerk or servant of a loan society to receive any present from a borrower or surety, under a penalty of £20.

31. The summons to be issued for the recovery of any loan as aforesaid shall be in the Form Number 1 contained in the Schedule (B) hereunto annexed, or to the like effect, and shall be prepared and provided by the treasurer, clerk, or other officer of such loan society ; and in case the same shall be made returnable at petty sessions the clerk of such petty sessions shall enter such summons in the petty sessions book, and shall call on the same in its proper turn to be heard and disposed of, for which he shall be entitled to receive a fee of threepence, and no more, to be paid out of the costs awarded ; and if judgment shall be given upon such summons in favour of the plaintiff the warrant to be issued for the levy of any sum of money which shall by any justice or justices be adjudged to be paid as aforesaid shall be in the Form Number 2 contained in the Schedule (B) hereunto annexed, or to the like effect, and for which a fee of sixpence, and no more, shall be charged by the clerk of the petty sessions, or any other person whatever.

32. It shall and may be lawful for the constable, bailiff, or any other person or persons who may be charged with the execution of any warrant under the authority of this Act, to sell or cause to be sold the goods seized under such warrant, without employing a licensed auctioneer to conduct or effect such sale.

33. It shall and may be lawful for the treasurer or secretary for the time being of any loan society established under this Act to sue for and recover, for the use of such society, the amount of any note or other security which shall have been passed or made payable to the treasurer or secretary for the time being of such society, notwithstanding any change or changes which may have taken place in the person by whom the said office of treasurer or secretary may be filled.

38. The business of any loan society in Ireland established or acting under this Act shall not, on any account or pretence whatever, be conducted, carried on, or transacted at any hotel, tavern, public house, beer shop, or house of entertainment, or in any building occupied therewith, or situate within the curtilage thereof ; and any trustee, manager, officer, clerk, or servant of any such society who shall offend herein shall for every such offence forfeit a sum not exceeding the sum of ten pounds, to be recovered in the manner hereinafter provided.

39. The books and accounts of all loan societies in Ireland shall be kept in such manner and form as shall be directed or approved by the said Loan Fund Board ; and every loan society in Ireland, and the respective officers and servants thereof, shall from time to time, and so often as they shall be thereunto required by the said Loan Fund Board, produce to the secretary, inspector, or other person authorised by the said Board in that behalf, for his inspection and examination, all and every the books, accounts, vouchers, papers, and documents whatsoever of such loan society ; and in case any officer or servant of any loan society shall, after demand made, refuse or neglect to produce to such secretary, or other authorised officer of the said Loan Fund Board, all or any of the books, accounts, vouchers, papers, and documents of such loan society, which shall be in his possession, custody, or power, or shall not duly account for the books, accounts, vouchers, papers, or documents of such loan society which may have been in his possession, custody, or power, every person so refusing or neglecting shall for every such offence forfeit and pay a sum not exceeding the sum of five pounds, to be recovered in the manner hereinafter provided.

43. No clerk, officer, or servant of any loan society in Ireland shall directly or indirectly have, receive, or take any bonus, gratuity, or present, either in money, goods, or labour, or otherwise howsoever, from any borrower from such loan society, or from any surety ; and in case any such clerk, officer, or servant shall offend herein, or shall in any way connive at or knowingly be party to any fraud, he shall for every such offence forfeit and pay a penalty not exceeding the sum of twenty pounds, to be recovered as hereinafter mentioned.

55. All and every the penalties and forfeitures by this Act imposed

shall and may be recovered in a summary way, on conviction before a justice or justices of the peace in petty sessions for the county or place in which the offence shall have been committed, together with the costs of the proceedings for the recovery thereof, the amount whereof shall be fixed and ascertained by the justice or justices before whom such conviction shall be had.

Recovery of penalties imposed by the Act.

58. No justice of the peace who shall be a trustee or other unpaid officer or member of any loan society shall be thereby precluded from adjudicating in the matter of any loan sued for by or on behalf of such society, or of any penalty or forfeiture incurred under this Act, or from acting as such justice of the peace in any other proceeding whatsoever under this Act.

Members of loan societies to be competent witnesses, and not precluded from acting as justices in any proceeding under this Act.

SCHEDULES to which the foregoing Act refers.<sup>1</sup>

SCHEDULE (B).

No. 1.—*Form of Loan Fund Summons.*

County of  The Treasurer of the Loan Society, Plaintiff.   Defendants.  To the defendants above named.	{	to wit. You are hereby required to appear personally before me, or any other justice or justices of the peace for the said county, who shall be present at the _____ day of 184____ at the hour of _____ of the clock in the _____ noon of the same day, to answer the complaint of the plaintiff, and show cause why you neglect to pay him the sum of £_____ being the amount alleged by the plaintiff to be due to him as treasurer of the said loan society on your note bearing date the _____ day of _____ and for fines incurred under the rules of the said society; and in default of your appearance at the time and place aforesaid the case will proceed in your absence as to justice shall appertain. Dated this _____ day of _____ (Signed) Justice of the Peace, &c., for the said County.
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No. 2.—*Warrant.*

No. County of  Petty Sessions to wit. The Treasurer of the Loan Society, Plaintiff.   A., Borrower, of B., Security, of C., Security, of Defendant.	{	By _____ J.P., at the petty sessions of _____ in the county of _____  It appearing to me that a summons was duly served on the defendant, and that the defendant _____ justly indebted to the plaintiff in the sum of _____ pounds _____ shillings and _____ pence sterling, for  [Place of abode.] [Place of abode.] [Place of abode.]
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<sup>1</sup> But see 63 & 64 Vict. c. 25, s. 3 (1).

It is therefore ordered and decreed by me, that the plaintiff do recover from the defendant the said sum, together with costs. And these are therefore to authorise and command you to distrain and sell the goods and chattels of the defendant and every of them, and out of the proceeds of such sale to pay the plaintiff the said sum of pounds, and also to pay all costs and charges attending such distress and sale, returning the overplus (if any) to the defendant or to such of them as may have been the owners of the goods so seized and sold.

Given under my hand, this                      day of

J.P.

Seal

To all constables, bailiffs, and  
others to whom it may concern.

## CROWN CASES ACT, 1848.

[11 & 12 VICT. CH. 78.]

Questions of law  
may be reserved  
at sessions of the  
peace for con-  
sideration of  
judges.

1. When any person shall have been convicted of any treason, felony, or misdemeanour before any court of oyer and terminer or gaol delivery, or court of quarter sessions, the judge or commissioner, or justices of the peace before whom the case shall have been tried may, in his or their discretion, reserve any question of law which shall have arisen on the trial for the consideration of the justices of either bench and barons of the Exchequer; and thereupon shall have authority to respite execution of the judgment on such conviction, or postpone the judgment until such question shall have been considered and decided, as he or they may think fit; and in either case the court in its discretion shall commit the person convicted to prison, or shall take a recognisance of bail, with one or two sufficient sureties, and in such sum as the court shall think fit, conditioned to appear at such time or times as the court shall direct, and receive judgment, or to render himself in execution, as the case may be.

Questions re-  
served to be  
certified to the  
judges.

2. The judge or commissioner or court of quarter sessions shall thereupon state, in a case signed in the manner now usual, the question or questions of law which shall have been so reserved, with the special circumstances upon which the same shall have arisen; and such case shall be transmitted to the said justices and barons; and the said justices and barons shall thereupon have full power and authority to hear and finally determine the said question or questions, and thereupon to reverse, affirm, or amend any judgment which shall have been given on the indictment or inquisition on the trial whereof such question or questions have arisen, or to avoid such judgment, and to order an entry to be made on the record, that in the judgment of the said justices and barons the party convicted ought not to have been convicted, or to arrest the judgment, or order judgment to be given thereon at some other session of oyer and terminer or gaol delivery, or other sessions of the peace, if no judgment shall have been before that time given, as they shall be advised, or to make such other order as justice may require; and such judgment and order, if any, of the said justices and barons, shall be certified under the hand of the presiding chief justice or chief baron to the clerk of assize or his deputy, or to the clerk of the peace or his deputy, as the case may be, who shall enter the same on the original record in proper form; and a certificate of such entry, under the hand of the clerk of assize or his deputy, or the clerk of the peace or his deputy, as the case may be, in the form, as near as may be, or to the effect mentioned in the Schedule annexed to this Act, with the necessary alterations to adapt it to the circumstances of the case, shall be delivered or transmitted by him to the sheriff or gaoler in whose custody the person convicted shall be; and the said certificate shall be a sufficient warrant to such sheriff or gaoler, and all other persons, for the execution of the judgment, as the same shall be so certified to have been affirmed or amended, and execution shall be thereupon executed on such judgment, and for the discharge of the person convicted from further



imprisonment, if the judgment shall be reversed, avoided, or arrested, and in that case such sheriff or gaoler shall forthwith discharge him, and also the next court of oyer and terminer and gaol delivery or sessions of the peace shall vacate the recognisance of bail, if any; and if the court of oyer and terminer and gaol delivery or court of quarter sessions shall be directed to give judgment, the said court shall proceed to give judgment at the next session.

3. The judgment or judgments of the said justices and barons shall be delivered in open court, after hearing counsel or the parties, in case the prosecutor or the person convicted shall think it fit that the case shall be argued, in like manner as the judgments of the superior courts of common law at Westminster or Dublin, as the case may be, are now delivered.

Quorum of judges: their judgments to be delivered in open court.

4. The said justices and barons, when a case has been reserved for their opinion, shall have power, if they think fit, to cause the case or certificate to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended.

Case or certificate may be sent back for amendment.

5. Whenever any writ of error shall be brought upon any judgment on any indictment, information, presentment, or inquisition, in any criminal case, and the court of error shall reverse the judgment, it shall be competent for such court of error either to pronounce the proper judgment or to remit the record to the court below, in order that such court may pronounce the proper judgment upon such indictment, information, presentment, or inquisition.

When judgment is reversed on writ of error, record may be remitted to court below for judgment.

6. Every person who shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any certificate or copy certified by a chief justice, or any certificate of or copy certified by a clerk of assize or his deputy, or the clerk of the peace or his deputy, as the case may be, with intent to cause any person to be discharged from custody, or otherwise prevent the due course of justice, shall be guilty of felony, and being convicted thereof shall be liable to be transported for any term not exceeding ten years.

Penalty for forgery.

#### SCHEDULE.

WHEREAS at the Session of the Peace for the county of held  
on before and others their fellows, [or at the session  
of oyer and terminer and gaol delivery held for the county of  
on before, among others, Sir A. B. knight, one of the  
justices of the court of and  
here name the quorum commissioners, justices of oyer and terminer  
and gaol delivery,] A. B. late of labourer, having  
been found guilty of felony, and judgment thereupon given, that [state  
the substance], the court before whom he was tried reserved a certain  
question of law for the consideration of the justices of either bench and  
the barons of the Exchequer, and execution was thereupon respited in  
the meantime:

This is to certify, that the said justices and barons having met in  
the Exchequer Chamber at Westminster [or Dublin, as the case may be,]  
on the day of it was considered by the  
said justices and barons there that the judgment aforesaid should be  
annulled, and an entry made on the record, that the said A. B. ought not,  
in the judgment of the said justices and barons, to have been convicted  
of the felony aforesaid; and you are therefore hereby required forthwith  
to discharge the said A. B. from your custody.

To the gaoler of and the sheriff of and all others  
whom it may concern.

(Signed) E. F.  
Clerk of the Peace for the County of  
[or, Clerk of Assize for  
as the case may be].

## JUSTICES PROTECTION (IRELAND) ACT, 1849.

[12 & 13 VICT. CH. 16.]

Actions against justices for acts done in execution of duty.

1. Every action hereafter to be brought against any justice of the peace in Ireland in any of Her Majesty's superior courts of law at Dublin for any act done by him in the execution of his duty as such justice, with respect to any matter within his jurisdiction as such justice, shall be an action on the case as for a tort; and in the declaration it shall be expressly alleged that such act was done maliciously, and without reasonable and probable cause; and if at the trial of any such action the plaintiff shall fail to prove such allegation, he shall be nonsuit, or a verdict shall be given for the defendant.

Action for acts done in excess of jurisdiction.

2. For any act done by a justice of the peace in a matter of which by law he has not jurisdiction, or in which he shall have exceeded his jurisdiction, any person injured thereby, or by any act done under any conviction or order made or warrant issued by such justice in any such matter, may maintain an action against such justice in the same form and in the same case as he might have done before the passing of this Act, without making any allegation in his declaration that the act complained of was done maliciously, and without reasonable and probable cause: Provided, nevertheless, that (in any case where a conviction may be quashed either upon appeal or upon application to Her Majesty's Court of Queen's Bench) no such action shall be brought for anything done under such conviction or order until after such conviction or order shall have been quashed, either upon appeal or upon application to Her Majesty's Court of Queen's Bench; nor shall any such action be brought for anything done under any such warrant which shall have been issued by such justice to procure the appearance of such party, and which shall have been followed by a conviction or order in the same matter, until after such conviction or order shall have been so quashed as aforesaid; or if such last-mentioned warrant shall not have been followed by any such conviction or order; or if it be a warrant upon an information for an alleged indictable offence, nevertheless if a summons were issued previously to such warrant, and such summons were served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode, and he did not appear according to the exigency of such summons, in such case no such action shall be maintained against such justice for anything done under such warrant.

Provision where one justice makes a conviction and another grants a warrant.

3. Where a conviction or order shall be made by one or more justice or justices of the peace, and a warrant of distress or of commitment shall be granted thereon by some other justice of the peace *bona fide* and without collusion, no action shall be brought against the justice who so granted such warrant by reason of any defect in such conviction or order, or for any want of jurisdiction in the justice or justices who made the same, but the action (if any) shall be brought against the justice or justices who made such conviction or order.

Provision where a distress warrant for poor-rate and for the manner in which justices exercise discretionary power.

4. Where any poor-rate shall be made, allowed, and published, and a warrant of distress shall issue against any person named and rated therein, no action shall be brought against the justice or justices who shall have granted such warrant by reason of any irregularity or defect in the said rate, or by reason of such person not being liable to be rated therein; and in all cases where a discretionary power shall be given to a justice of the peace by any Act or Acts of Parliament, no action shall be brought against such justice for or by reason of the manner in which he shall have exercised his discretion in the execution of any such power.

Where justice acts under order of Queen's Bench.

5. In all cases where a justice or justices of the peace shall refuse to do any act relating to the duties of his or their office as such justice or justices, it shall be lawful for the party requiring such act to be done

to apply to Her Majesty's Court of Queen's Bench in Ireland, upon an affidavit of the facts, for a rule calling upon such justice or justices, and also the party to be affected by such act, to show cause why such act should not be done; and if after due service of such rule good cause shall not be shown against it, the said Court may make the same absolute, with or without, or upon payment of costs, as to them shall seem meet; and the said justice or justices upon being served with such rule absolute shall obey the same, and shall do the act required; and no action or proceeding whatsoever shall be commenced or prosecuted against such justice or justices for having obeyed such rule, and done such act so thereby required as aforesaid.

6. In all cases where a warrant of distress or warrant of commitment shall be granted by a justice of the peace upon any conviction or order which, either before or after the granting of such warrant, shall have been or shall be confirmed upon appeal, no action shall be brought against such justice who so granted such warrant for anything which may have been done under the same by reason of any defect in such conviction or order.

Acts done under a warrant upon it.

7. In all cases where by this Act it is enacted that no action shall be brought under particular circumstances, if any such action shall be brought it shall be lawful for a judge of the court in which the same shall be brought, upon application of the defendant, and upon an affidavit of facts, to set aside the proceedings in such action, with or without costs, as to him shall seem meet.

When action prohibited, proceedings may be set aside.

13. In all cases where the plaintiff in any such action shall be entitled to recover, and he shall prove the levying or payment of any penalty or sum of money under any conviction or order as parcel of the damages he seeks to recover, or if he prove that he was imprisoned under such conviction or order, and shall seek to recover damages for any such imprisonment, he shall not be entitled to recover the amount of such penalty or sum so levied or paid, or any sum beyond the sum of twopence as damages for such imprisonment, if it shall be proved that he was actually guilty of the offence of which he was so convicted, or that he was liable by law to pay the sum he was so ordered to pay, and (with respect to such imprisonment) that he had undergone no greater punishment than that assigned by law for the offence of which he was so convicted, or for non-payment of the sum he was so ordered to pay.

Damages.

15. This Act shall extend only to Ireland.

Act to extend only to Ireland.

18. This Act shall apply for the protection of all persons for anything done in the execution of their office, in all cases in which, by the provisions of any Act or Acts of Parliament, the several statutes or parts of statutes hereinbefore mentioned,<sup>1</sup> and by this Act repealed, would have been applicable if this Act had not passed.

Act to apply to persons protected by the repealed statutes.

## REGISTRATION (IRELAND) ACT, 1850.

[13 & 14 VICT. CH. 69.]

84. In case any sum of money by the order of any assistant barrister as aforesaid directed to be paid by any person by way of fine or of costs shall not be paid according to the terms of such order, it shall be lawful for any justice of the peace, and he is hereby required, upon proof before him that a true copy of the said order hath been served upon or left at the usual place of abode of the person in the said order directed to pay such sum, and that the said sum hath been demanded of such person, and that he hath refused or neglected to pay the same, by warrant under his hand and seal to order the said sum of money, together with the costs of and attending the said warrant, to be levied by distress and sale of the

Costs and fines imposed by barristers at registration courts how recoverable.

<sup>1</sup> *i.e.* 10 Car. 1, s. 2, c. 16 (Ir.), and 43 Geo. 3, c. 141, 143, repealed by s. 17.



goods and chattels of such person so making default which may be found within the jurisdiction of the said justice; and the overplus, if any, after the said sum of money and costs, and the charges of such distress and sale, are deducted, shall be returned, upon demand, to the owner of the said goods and chattels: Provided always, that no certiorari or other writ or process for the renewal of any such order or warrant, or of any order or warrant to be made or issued on account of a false charge of personation in the manner hereinafter provided, or any proceeding therein respectively, into any of Her Majesty's courts at Dublin shall be allowed or granted.

## POOR RELIEF (IRELAND) ACT, 1851.

[14 & 15 VICT. CH. 68.]

False evidence,  
refusal to give  
evidence, &c., at  
L.G.B. inquiry.

17. Every person who, upon any such examination as aforesaid under the authority of this Act,<sup>1</sup> shall wilfully give false evidence or wilfully make or subscribe a false declaration, shall be deemed guilty of a misdemeanour; and every person who shall refuse or wilfully neglect to attend in obedience to any such summons as aforesaid of the commissioners, or any one of the commissioners, or any inspector, or to give evidence as aforesaid, or shall wilfully alter, suppress, conceal, destroy, or refuse to produce any books, contracts, agreements, accounts, maps, plans, surveys, valuations, or writings, or copies of the same, which may be required as aforesaid to be produced for the purposes of this Act, to any person unauthorized by this Act to require the production thereof, shall be liable to forfeit a sum not exceeding five pounds, to be recovered before any justice or justices at petty sessions under his or their warrant, by distress and sale of the goods of the party so offending, returning to such party the overplus.

<sup>1</sup> That is, Local Government Board inquiries in reference to dispensaries and medical charities. A witness is not bound, by an inspector's summons, to go more than five miles from the place of his abode (s. 16).<sup>1</sup>

## FINES ACT (IRELAND), 1851.

## 14 &amp; 15 VICTORIA, CAP. 90.

1. The proper officers to make entries and render accounts of all such penal sums as aforesaid for the several courts by which such penal sums shall be ordered to be paid shall be the several officers or persons hereinafter mentioned, viz :—

Officers who shall enter and account for fines, &c.

1. The clerk of the Crown for the Crown side of the Court of Queen's Bench, and for the Crown Court at assizes;
2. The clerk of the rules for the Courts of Common Pleas and Exchequer, and for the civil side of the Court of Queen's Bench, and for the Civil Court at assizes;
3. The clerk of the peace for quarter sessions;
4. The chief clerk or such other clerk as shall be deputed by the justices for that purpose for each divisional police office of Dublin metropolis;
5. The clerk of petty sessions for each petty sessions;
6. And the person at any other court whose duty it shall be to attend and make entries of the proceedings :

And the provisions hereinafter contained shall severally apply to such respective officers and persons, or their legally authorized deputies (if any), as fully as if the more particular designation of each of such officers, persons, or deputies was repeated in each provision.

2. Whenever an order shall be made by any court or other authorized person for the imposition or levy of any such penal sum as aforesaid, the said officer of the court shall proceed as follows :

*Entry of fines.*

1. He shall forthwith enter the particulars of the said order in a book (Form A.) to be by him kept for that purpose, and shall afterwards from time to time make such further entries in the said book as may be necessary for the purpose of accounting for the said sums :
2. In every case where a fine shall be imposed upon any person for non-attendance as a juror, he shall, within fourteen days after the end of the term, assizes, quarter sessions, or sittings of the court at which such fine shall have been imposed, send a notice by post to such person, addressed to his usual place of residence, informing him of the imposition of such fine, and that if not paid within thirty days from the date of such notice a warrant will be issued for the levy of the same :

All fines, &c., to be entered in a book.

In case of fines upon jurors, officer to send notice.

And in order to enable the clerk of the rules of the superior courts the better to discharge the duty required of him under this Act, the judge's register<sup>1</sup> or other person who shall act as clerk at Nisi Prius at the Nisi Prius sittings of any of the said superior courts, or in the civil court at assizes, shall within seven days after the termination of the said Nisi Prius sittings or of the said assizes, as the case may be, certify under his hand to the clerk of the rules of the superior courts in which the proceedings in the case shall have been had, the particulars of any penal sum which shall have been imposed or ordered to be levied by the said court in such case, and said certificate shall be a sufficient authority to the said clerk of the rules to do all acts for the entry and levy of the same which he could or ought to do in case such penal sum had been imposed or ordered to be levied by such superior court.

Judge's register to certify fines to Clerk of Rules for Entry.

<sup>1</sup> *Sic.*

*Issue of warrants.*

Warrants for the execution of orders to be issued at certain periods.

3. In all cases where an order shall have been made for the imposition or levy of any such penal sum as aforesaid, the court, or the justice, or the officer competent so to act, as the case may be, shall (unless where the same shall have been remitted by the Crown or other proper authority) issue the proper warrant for the execution of such order at the following periods, viz :

1. In case of any fine imposed upon any person for non-attendance as a juror, within one week from the expiration of thirty days after notice of same shall have been sent to such person by post as hereinbefore directed :
2. In case of any order for the imposition or levy of any such penal sum by the justices of the divisional offices of police of Dublin metropolis, within one week from the making of such order :
3. In case of any like order by a justice at or out of petty sessions, at such time as shall be directed by "The Petty Sessions Act, Ireland, 1851" :
4. In all other cases, within fourteen days from the making of the order :

Form, &c., of warrant, and power to imprison in default of distress, to be as in Petty Sessions Act.

Sheriffs not to levy fines.

And it shall be lawful for the court or officer by whom any such warrant shall be issued to use the like form of warrant as is authorized by the said Petty Sessions Act for any warrant of distress issued by a justice at petty sessions, and also to direct by such warrant that in default of distress for the sum therein directed to be levied, the person against whose goods such warrant shall be issued shall be committed to gaol for the like period for which any person might be imprisoned in any like case in default of distress under the provisions of the said Petty Sessions Act<sup>1</sup>: Provided always, no warrant or process shall be issued to any sheriff to levy the amount of any forfeited recognizance, or of any other fine or penalty whatsoever, but only to the constabulary or Dublin metropolitan police, as the case may be.

*Addressing Warrants.*

4. The manner in which warrants issued to the constabulary or Dublin metropolitan police for the levy of any penal sums under this Act shall be addressed shall be subject to the following provisions:—

1. All such warrants for the levy of any such penal sums as aforesaid (not being issues), ordered to be levied by any of the superior or other courts within the police district of Dublin metropolis (other than the divisional police offices), shall be addressed to the commissioners of metropolitan police :
2. All such warrants issued from the said divisional police offices shall be addressed to the office sergeant, or such other member of the said police force as the said commissioners shall appoint for that purpose :
3. All such warrants issued from any court in Ireland not being within the police district of Dublin metropolis, shall be addressed to the sub-inspector of constabulary who shall act for the place in which such court shall be situated :
4. All such warrants issued by any justice or justices out of quarter sessions shall be addressed as required by the said Petty Sessions Act :

To whom warrants shall be addressed :

From courts in Dublin to the commissioners of police :

From divisional offices to office sergeant :

From other courts to sub-inspector of constabulary.

By justices as required by Petty Sessions Act.

Warrants to be certified and executed, &c., as under Petty Sessions Act.

And the several provisions<sup>2</sup> of the said Petty Sessions Act as to the certifying, indorsing, executing, or returning any warrant issued by a justice at petty sessions, and as to the selling of any distress or otherwise acting thereunder, shall also apply to any like warrant issued by any court officer or divisional justice under the provisions of this Act, and to the selling of any distress or otherwise acting thereunder; and in the application of the said provisions of the said Petty Sessions Act to any such warrants issued within the said police district of Dublin metropolis, whatever may be done by any head or other constable in executing any warrant addressed to any sub-inspector shall and may be done in any like case by any member of the said police force (to be named by the said commissioners or divisional justices) in executing any such warrant, addressed either to the said commissioners or to any other member of the said police force; and whatever may be done by any sub-inspector in certifying any warrant to the inspector-general of constabulary may be done by the office sergeant or other member of the said police force to whom such warrant shall be addressed, in certifying the same to the said

<sup>1</sup> See 14 & 15 Vict. c. 93, s. 22 (3) (4), and the Small Penalties (Ireland) Act, 1873.

<sup>2</sup> That is ss. 26, 27.



commissioners; and whatever may be done by the said inspector-general, or by either of the deputy inspectors-general<sup>1</sup> of constabulary, in indorsing any warrant certified by any sub-inspector, may be done by the said inspector or deputy inspector-general in indorsing any warrant, which shall be so certified to the said commissioners, or which shall be addressed to the said commissioners in the first instance: Provided that such warrant shall have been first indorsed by one of the said commissioners, and then transmitted by them to the said inspector-general.

5. The manner in which all such penal sums as aforesaid shall be collected shall be as follows:

*Collection of fines.*

1. In every case where any such sums shall be levied under a warrant, the sub-inspector or the said commissioners or office sergeant, as the case may be, to whom the said warrant shall be addressed, transmitted, or indorsed for execution, as hereinbefore provided, shall either pay over the amount direct to the said officer of the court from which the said warrant was issued, or shall transmit the same to the said officer through the person to whom the said warrant was addressed in the first instance, according as he shall be directed by the Chief or Under Secretary to the Lord Lieutenant:
2. In every case where such sums shall be paid to the keeper of any gaol or bridewell, he shall indorse on the warrant of committal the amount and date of payment, and shall within fourteen days, or within such other period as the Chief or Under Secretary shall direct, pay over the amount to the said officer of the court from which the warrant was issued; and the Board of Superintendence shall at least once in every month in the case of each gaol, and the justices of the petty sessions district shall at least once in every three months in the case of each bridewell, and any other person or persons duly authorized by the said Chief or Under Secretary in that behalf shall at any other times, examine the prison books, and shall require to see the receipt of the officer of the court from which the warrant was issued, in each case in which it shall appear that the person committed was discharged before the expiration of the period for which he was committed, and shall also compare the sum mentioned in such receipt with the amount in the warrant of committal, and shall certify in the said books that such receipt has been produced to him or them, and that such sums correspond, or otherwise, as the case may be:
3. In every case where any such penal sums shall be paid in court or to the said officer of the court (before the issue of a warrant), or shall be so paid over or transmitted to the said officer of the court (after the issue of a warrant), he shall receive the same, and shall at the time deliver or transmit a receipt for the same in the form (B. a. or b.) to the person by whom the same shall be so paid or transmitted:
4. The said officer shall out of the sums so received pay to the several parties such portion of the same as shall have been awarded to them by the court, and which shall be claimed by them either in court or at the public office of the said officer, taking from each of such parties a receipt for the same in the form (B. c.):

If levied under warrant, to be paid over to officer of court.

If paid to gaoler, to be paid over, within a certain period, to officer of court.

Board of Superintendence or justices to compare receipts and warrants with the gaol books.

Officer to receive all fines, and give receipts.

Officer to pay parties.

And it shall not be lawful for any person, other than the said officers hereinbefore mentioned respectively, or their lawfully authorized deputies (if any), save the person to whom any warrant shall be delivered for execution, or the keeper of any gaol or bridewell to which the defendant shall be committed, as the case may be, to receive any such penal sum as aforesaid, or any part of the same; and if any other officer or person than the several officers or persons hereinbefore mentioned respectively shall take or receive any such sum, or any part of same, from the person by whom the same shall be ordered to be paid, he shall, on conviction thereof, before any two justices of the county sitting in petty sessions, forfeit and pay for every such offence any sum not exceeding ten pounds.

Penalty on any persons but the proper officers or their legal deputies for receiving fines, &c.

<sup>1</sup> Or by any assistant inspector-general authorized in writing under the hand of the Lord Lieutenant (*Constabulary (Ir.) Amendment Act, 1882, 45 & 46 Vict. c. 63, s. 6*).

*Accounts of fines.*

Chief or Under Secretary may make general regulations as to accounts.

6. The manner in which all such penal sums as aforesaid shall be accounted for shall be as follows :

1. It shall be lawful for the said Chief or Under Secretary to make such general regulations as shall seem expedient for carrying into effect the provisions of this Act, for the better collection of all said sums, and the regular accounting for the same by all persons into whose hands the same shall come; and such persons shall keep and render account of said sums in such forms, and shall pay over said sums, and transmit for examination said warrant or receipt, at such times and in such manner as shall be directed by such general regulations, or as shall be at any time specially required by the said Chief or Under Secretary; and it shall also be lawful for the said Chief or Under Secretary to make such general regulations as shall seem expedient for the examination, checking, or counter-signing of any of such accounts by any of the sub-inspectors, inspectors, or other members of the constabulary or police forces, as the case may be :
2. And to every such account shall be annexed a declaration in writing under the hand of the said officer, to be made before a justice, affirming the truth and accuracy of such account; and every such officer who shall make any such declaration, knowing the said account to be false in any particular, and being thereof convicted, shall, in addition to any penalty to which he may be liable under the provisions of this Act hereinafter contained, be also liable to the penalties of wilful and corrupt perjury :

Declaration that accounts are correct.

Mode of enforcing payment of balances or sums.

And if default shall at any time be made by any such officer or person in paying over any balance on such accounts, or any of such penal sums received by him, at such times as the said Chief or Under Secretary shall direct, it shall be lawful for the said Chief or Under Secretary to certify such default to any two justices of the county, who shall thereupon issue the proper warrant for the levy of such balance or sums as shall have been so certified to be due by such officer or person, by distress and sale of his goods and chattels.

Mode of accounting by officers not being officers of courts of justice.

7. In every case in which a fine shall not be imposed by any court of justice, but by some public officer or person legally authorized in that behalf, such officer or person shall make such entries and render such accounts of same, and shall pay over such fine or balance of fines, according to law, in such manner and at such times as the said Chief or Under Secretary shall from time to time direct and require.

*Penal clause.*

Penalties for non-observance of provisions of Act.

8. Any of the officers or persons hereinafter mentioned who shall commit any of the offences or neglects hereinafter mentioned, and who shall be convicted thereof before any two justices of the county sitting in petty sessions, or at one of the said divisional police offices, shall be liable to forfeit for every such offence or neglect any sum not exceeding twenty pounds; that is to say :

Officers of courts not accounting.

1. Any such officer or person who shall at any time make default in making true and correct entries of all such penal sums as aforesaid, or in rendering due accounts of all such sums passing through his hands, or in paying over the same, at such times and in such manner as shall be required under the provisions of this Act :

Constabulary or metropolitan police not accounting.

2. Any member of the constabulary or metropolitan police forces by whom any warrant shall be executed, who shall neglect to pay over the amount received or levied thereunder, or to account for such levies, at such times and in such forms and with such vouchers as shall be required under the provisions of this Act :

Keepers of gaols not accounting.

3. Any keeper of any gaol or bridewell who shall neglect or refuse to pay over any sum so as aforesaid received by him to the officer of the court from which the warrant shall have been issued, or to transmit any such receipts or warrants, or to account for the same, at such time and in such manner as shall be required under the provisions of this Act :

Officers, &c., neglecting duty.

4. Any such officer or person as aforesaid, or any other person, having any duty to perform under the provisions of this Act, who shall wilfully neglect or refuse to perform the same :

And the said justices sitting as aforesaid are hereby authorized to impose the said penalties; and a certificate by the said Chief or Under Secretary of such neglect or refusal shall be *prima facie* evidence of the same in any such proceeding before such justices.

#### Appeals.

9. It shall be lawful for any person against whom any order shall be made for payment of any such penal sum as aforesaid by any such court or officer as aforesaid, exceeding the sum of forty shillings, and in cases of fines upon jurors whatever the amount may be, to appeal for the reduction or remission thereof by petition to the court of assizes which shall be held next after such order shall be made if the same shall be made at assizes, or to one of the superior courts of law in Dublin at the next term if the same shall be made by a superior court, or to the court of quarter sessions of the county which shall be held next after such order shall be made if the same shall have been made at quarter sessions, or to the Recorder of Dublin at his next sessions if the same shall have been made at any of the divisional police offices of Dublin metropolis, or to the next quarter sessions to be held in the same division of the county where the order shall be made by any justice or justices in any petty sessions district, or to the recorder of any corporate or borough town where the order shall be made by any justice or justices in such corporate or borough town (unless when any such sessions shall commence within seven days from the date of any such order, in which case it may be made to the next succeeding sessions to be held for such division or town); and such appeal, when made against any order by the said divisional justices, or by any other justice upon summary conviction, shall be subject in all respects to the provisions of the said Petty Sessions Act, but in every other case it shall be made by petition to the court which shall have power to entertain the appeal, and shall be subject to the provisions following:—

Appeal against imposition of fine, &c., may be made to court of assize or quarter sessions, &c.;

but subject to the provisions herein mentioned.

1. The person so entitled to appeal shall not exercise such right unless he shall enter into a recognizance (Form C.), with two sureties, in double the amount of the sum ordered to be paid, before any justice, conditioned for the due prosecution of such appeal, and unless he shall also lodge with the officer of the court a certificate (Form D.), under the hand of the justice by whom such recognizance shall have been taken, and which certificate any such justice is hereby required to give, that such person has duly entered into such recognizance:
2. In every case where such certificate shall be so lodged with the said officer he shall suspend the issue of any warrant to execute the said order until such appeal shall have been decided, or until the appellant shall have failed to prosecute the same, as the case may be, or if such warrant shall have been issued he shall direct the person to whom it was addressed to suspend its execution for the like period; and in every case where such warrant shall have been issued the person to whom it was addressed shall, either upon being so directed by the said officer, or upon the said certificate being produced to him, suspend its execution for the like period; and in every case where the person against whom any such warrant shall be issued shall be in custody, or shall have been committed to gaol under the same, the court by which the order shall have been made, or the officer by whom the warrant shall have been signed, shall, upon application being made to him in that behalf, forthwith order his discharge:
3. In every case where an appeal shall be so made the judges of the said superior courts, judge of assize, or assistant barrister, or recorder, as the case may be, shall and are hereby severally authorized to hear the matter of the said petition, and to make such order thereon for confirming the original order, or for reducing or wholly remitting the fine or other penal sum, as may seem fit under all the circumstances of the case; and the proper officer of such court of appeal shall thereupon certify the said order under his hand to the officer of the court by which the original order shall have been made, who shall forthwith issue a warrant for the execution of same, if no warrant shall have been already issued, or shall indorse the same on the warrant if a warrant shall have been already issued, and direct the person to whom it shall have been addressed to proceed in

Appellant to enter into recognizance to appeal, &c.

To lodge certificate of justice.

In such case warrant not to be issued;

or, if issued, not to be executed until decision of appeal.

Party, if in custody, or gaol, to be discharged.

Court of Appeal to hear and decide appeal.

Execution of original order after appeal.



*Appeals.*

In cases of jurors' fines, party may have further appeal to superior courts.

its execution, or otherwise, according to such indorsement; and in every case where such appeal shall be dismissed, or shall not be duly prosecuted, the said proper officer of the court of appeal shall so certify under his hand to the officer of the court by which the original order shall have been made, who shall thereupon proceed as if no such appeal had been made:

4. In every case where any fine shall be imposed on any person for non-attendance as a juror, and the order imposing such fine shall not be reversed upon any such appeal, it shall be lawful for such person in like manner to make a further appeal to one of the superior courts of law in Dublin, during the term next after such first-mentioned appeal shall have been decided, and it shall be lawful for such court to hear and determine such appeal; and the several provisions hereinbefore contained as to the suspension and subsequent execution of any warrant for the levy of such fine shall also apply to such last-mentioned appeal in like manner as to such first-mentioned appeal:

Not to interfere with the power of Lord Lieutenant, &c.

Provided always, that nothing herein contained shall be deemed in any way to limit or restrain the Lord Lieutenant, or the Lords Commissioners of Her Majesty's Treasury, or the Commissioners of Inland Revenue, from reducing or remitting any fine or sum imposed, or ordered to be levied, which by law he or they may be in any way authorized to reduce or remit.

Estreat of recognizances.

On proof of non-performance of condition Court may order levy of recognizance so forfeited.

Proof of notice to be first given.

10. In every case where any person who shall enter into a recognizance to keep the peace, or to appear to answer to any complaint as to an indictable offence, or to prosecute or give evidence in any case of an indictable offence, or to perform the duties of petty sessions clerk, shall in any manner fail to perform the condition of such recognizance, it shall be lawful for the several assistant barristers, recorders of cities or boroughs, and for the chairman of quarter sessions of the county of Dublin, as the case may be, upon conviction of such person of any offence that shall be a breach of the condition of the said recognizance, or upon the production of a certificate thereof, signed and attested by the proper officer in that behalf, that the person so bound by recognizance had failed to perform the condition of the same, to order that such recognizance shall be forfeited to such amount as such assistant barrister, recorder, or chairman shall think fit, and to direct a warrant to issue to levy such amount in like manner as other penal sums are directed to be levied by this Act: Provided always, that proof shall be first made on oath before such assistant barrister, or recorder, or chairman, that notice in writing has been given to or left at the usual place of abode of the party, or each of the parties if there be more than one, against whom it shall be sought to put such recognizance in force, seven days at the least before the commencement of the sessions at which such application shall be made, and such notice shall state in substance the cause or manner on which it is intended to sustain the application.<sup>1</sup>

*Forms of Procedure.*

Forms in the schedule deemed valid. Form of book may be altered.

Receipts not to be subject to stamps.

11. The forms in the schedule to this Act contained, or forms to the like effect, shall be deemed good, valid, and sufficient in law: Provided always, that it shall be lawful for the Chief or Under Secretary to the Lord Lieutenant from time to time to alter the said form of book (A) so far as to introduce into it such further particulars as may be necessary in order to adapt it to any state of facts either new or not provided for therein.

12. No receipt, voucher, document, or instrument required to be given, made, or provided in pursuance of the provisions of this Act shall be subject to or chargeable with any stamp duty payable to the Crown.

*Application of Fines.*

Appropriation of fines and penalties;

13. In every case where the Act under which any penal sum shall be ordered to be paid as a penalty for an offence (and no sum shall be awarded to the complainant as compensation for damage), it shall be lawful for the court to award any sum not exceeding one-third of such penalty to the prosecutor or informer, and the remainder of such penalty and all other

<sup>1</sup> This section extends to sureties as well as to principal parties (Fines Act (Ir.), 1851, Amendment Act, 1874, 37 & 38 Vict. c. 72, s. 10).

penalties shall be awarded to the Crown, any Act or Acts to the contrary notwithstanding<sup>1</sup>: Provided always, that nothing herein contained shall be construed to alter the appropriation or application of any fine or penalty imposed at any of the divisional police offices of Dublin metropolis or by the justices in any corporate town, and payable to any borough fund, but the same shall continue to be appropriated and applied as is now by law authorized, and shall be paid over to the same purposes from time to time in such manner and at such times as the Chief or Under Secretary to the Lord Lieutenant shall direct.

*Application of Fines.*

Saving as to fines at divisional police offices, or by justices in corporate towns.

14. All fines or penalties payable to the Crown, not being fines or penalties imposed at any of the said divisional police offices or by the justices in any corporate town as aforesaid, and the amount levied under any forfeited recognizance, shall be from time to time lodged in the Bank of Ireland by the said several officers into whose hands the same shall come, in such manner as shall be from time to time directed by the Chief or Under Secretary to the Lord Lieutenant, to the credit of the same fund, and for the same purposes to which all fines and penalties payable to the Crown are now by law directed to be lodged.

Crown fines, &c., to be lodged in bank.

15. It shall be lawful for the Lord Lieutenant to charge the said fund with the payment of such expenses as may be necessarily incurred in the examination of the accounts to be rendered under the provisions of this Act, and in the supply of books for the entry of orders at petty sessions, and in otherwise carrying the provisions of this Act and of the said Petty Sessions Act into effect.

Lord Lieutenant to charge expenses of audit, &c., on the fund.

16. The several chief clerks of the said several divisional police offices, or such other clerks as may be deputed as aforesaid at the said divisional police offices, shall give such security for the proper accounting for all fines or other moneys which may pass through their hands, under the provisions of this Act, as the said Chief or Under Secretary shall direct, in like form and manner as is required to be given by each clerk of petty sessions under the provisions of the said Petty Sessions Act.<sup>2</sup>

*Miscellaneous Provisions.*

Clerks of divisional police offices to give security.

17. An abstract account of all fines and other penal sums accounted for under the provisions of this Act shall be annually laid before both Houses of Parliament as soon as the accounts for each year shall have been examined and declared.

Annual account to be laid before Parliament.

18. In the interpretation of this Act, save where there is anything in the subject or context repugnant to such construction, the word "county" shall be deemed to include "riding of a county"; the words "Lord Lieutenant" shall include any other "chief governor or governors of Ireland"; the word "justice" shall mean justice of the peace, and include a justice of the divisional police office of Dublin metropolis; the word "gaol" shall include any "house of correction" or "bridewell" or other legal place of imprisonment of the county: the words "keeper of the gaol" shall include the governor, gaoler, or other keeper of any such gaol or bridewell; the word "goods" shall include "chattels"; and the reference to forms by letters shall be deemed to be to the forms in the schedule to this Act.

*Interpretation of terms.*

[19. *Repealed by S.L.R. Act, 1875.*]

20. In citing this Act in other Acts of Parliament, or in any legal or other instruments or proceedings, it shall be sufficient to use the expression "The Fines Act (Ireland), 1851."

Short title.

[21. *Repealed by S.L.R. Act, 1875.*]

22. This Act shall extend to Ireland only, except so far as relates to the backing and execution of warrants.

Act to extend to Ireland only.

23. The schedule to this Act annexed shall be deemed and understood to be part of this Act.

Schedule to be part of Act.

<sup>1</sup> See 14 & 15 Vict. c. 93, s. 22, cl. 8.

<sup>2</sup> See 14 & 15 Vict. c. 93, ss. 2, 3, 4; 21 & 22 Vict. c. 100, ss. 4, 11; and 44 & 45 Vict. c. 18, s. 3.

## SCHEDULE.

FORM (A.)—OFFICERS' FINES ACCOUNT BOOK.

Court of —

County of \_\_\_\_\_

[illegible]



## FORM (B.)—RECEIPTS.

(B a.) Receipt for Sums paid to Officer of Court by Parties.

Plaintiff. }  
 Defendant. }

Court of  
 County of

I have received from *C. D.* the sum of \_\_\_\_\_ under an order of the above Court,  
 made on the \_\_\_\_\_ day of \_\_\_\_\_

Sum, £ : :

Costs, £ : :

Signed, \_\_\_\_\_, Officer of said Court of

This \_\_\_\_\_ day of \_\_\_\_\_, 18 .

(B b.) Receipt for Sums paid to Officer of Court by Gaolers.

Plaintiff. }  
 Defendant. }

Court of  
 County of

I have received from \_\_\_\_\_, Keeper of [gaol], at \_\_\_\_\_, the sum of \_\_\_\_\_,  
 stated to be the sum in a warrant under which *C. D.* was committed on the  
 day of \_\_\_\_\_, under the order of the above Court to the said gaol.

Sum, £ : :

Costs, £ : :

Signed, \_\_\_\_\_, Officer of said Court,

This \_\_\_\_\_ day of \_\_\_\_\_, 18 .

(B c.) Receipt for sums paid to Parties by Officer of Court.

Plaintiff. }  
 Defendant. }

Court of  
 County of

I have received from \_\_\_\_\_, the Officer of the above Court, the sum of \_\_\_\_\_,  
 awarded to me on the \_\_\_\_\_ day of \_\_\_\_\_

Sum, £ : :

Costs, £ : :

Signed,

Witness,

\_\_\_\_\_ of Constabulary.

This \_\_\_\_\_ day of \_\_\_\_\_, 18 .

## FORM (C.)—RECOGNIZANCE.

Plaintiff. }  
 Defendant. }

Court of  
 County of

Whereas an order was made on the \_\_\_\_\_ day of \_\_\_\_\_, by the above Court,  
 that \*

The undersigned principal party to this recognizance hereby binds himself to perform the following obligation, viz. : \_\_\_\_\_ \* Order of Court against which party appeals.

To attend the \_\_\_\_\_ to be held at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, The Court of Assizes, or

at \_\_\_\_\_ o'clock in the forenoon, and there to prosecute his appeal against the said order. \_\_\_\_\_ Quarter Sessions, or  
 And the said principal party, together with the undersigned sureties, hereby severally acknowledge themselves bound to forfeit to the Crown the sums following, viz. :—the said principal party the sum of \_\_\_\_\_, and the said sureties the sum of \_\_\_\_\_ other Court of Appeal.

Signed, \_\_\_\_\_ }  
 \_\_\_\_\_ } Principal Party.  
 \_\_\_\_\_ } Sureties.

Taken before me this day of \_\_\_\_\_, at \_\_\_\_\_ Signed, \_\_\_\_\_ Justice.

I certify that the said \_\_\_\_\_ has not performed the above obligation.

This \_\_\_\_\_ day of \_\_\_\_\_, 18 .

*Certificate of  
 forfeiture.*

I order that the sum of \_\_\_\_\_ be levied off the goods of the said principal party, and \_\_\_\_\_ the sum of \_\_\_\_\_ off the goods of each of the said sureties. \_\_\_\_\_ *Order to estreat.*

Signed,  
 This \_\_\_\_\_ day of \_\_\_\_\_, 18 .

## FORM (D.)—CERTIFICATE OF RECOGNIZANCE TO APPEAL.

*Plaintiff.* }  
*Defendant.* }

Court of  
 County of

Whereas an order was made by the Court of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_

\*Order of Court against which party appeals.

of \_\_\_\_\_, to the following effect, viz. :—\*  
 I certify that he has duly entered into a recognizance in the sum of \_\_\_\_\_ with two sureties in the sum of \_\_\_\_\_ each, conditioned to prosecute his appeal against the said order.

Signed, \_\_\_\_\_ Justice.

This \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_.

## SUMMARY JURISDICTION (IR.), ACT, 1851.

14 & 15 VICTORIA, CAP. 92.

Justices may decide cases under this Act on evidence of witnesses or confession.

1. It shall be lawful for any justice or justices sitting in petty sessions (or for any two justices sitting out of petty sessions, when the offender shall be unable to procure bail for his appearance at petty sessions) within his or their respective jurisdictions to hear and determine, either on the oath of one or more credible witnesses, or on the confession of the person against whom the complaint shall be made, all complaints relating to any offences, claims, or other matters under the provisions of this Act, and to order such fine, imprisonment, compensation, expenses, and sums, or to make such other order relating to each offence or other matter as such person shall be liable to under the said provisions; and all proceedings as to compelling the appearance of any such person or of any witness, and as to the hearing and determination of such complaints, and as to the making and executing of such orders, shall be subject in all respects to the provisions of the "Petty Sessions Act, Ireland, 1851" (when the case shall be heard in any petty sessions district), and to the provisions of the Acts relating to the divisional police offices (when the case shall be heard in the police district of Dublin metropolis), so far as the said provisions shall be consistent with any special provisions of this Act.

[Sections 2, 3, 4, and 5 repealed by 24 & 25 Vict. c. 95.]

*Stealing by juvenile offenders.*

6. Any person who shall commit any of the next following offences (and whose age at the time of the commission thereof shall not, in the opinion of the justices, exceed the age of fourteen years) shall be liable to the punishment<sup>1</sup> hereinafter specified.

Any person not exceeding 14 years of age committing larceny shall be fined or imprisoned.

1. Any such person who shall commit, or attempt to commit, or who shall aid or abet the commission of any offence which now is or hereafter shall or may be by law deemed or declared to be simple larceny, or punishable as simple larceny, shall, upon conviction thereof before the justices sitting in petty sessions and in open court, be liable to a fine not exceeding three pounds, or to be imprisoned for a period not exceeding three months:

And, if a male, may be whipped.

2. If a male, such person shall, if the justices shall see fit, be liable to be once privately whipped, either instead of or in addition to such imprisonment; and the justices shall from time to time appoint some fit and proper person to inflict said punishment of whipping, when ordered to be inflicted out of prison:

<sup>1</sup> See Summary Jurisdiction over Children (Ir.) Act, 1884, 47 & 48 Vict. c. 19, *verbatim, post.*

3. And if the justices, upon the hearing of any such case, shall deem the offence not to be proved, or that it is not expedient to inflict any punishment, they shall dismiss the person charged, on his finding a surety or sureties for his future good behaviour, or without such sureties, if the said justices shall so think fit :

*Seating  
by juvenile  
offenders.*

If offence be not proved, &c., justices may dismiss the person with or without sureties for good behaviour. No other forfeiture, but justices may order restitution of property; or, if it be not forthcoming, may order compensation.

If the charge is thought fit for indictment, &c., case to be dealt with at sessions.

And no conviction of any such juvenile offender for any such offence shall be attended with any forfeiture, save as hereinbefore mentioned; but whenever any such person shall be convicted of such offence, it shall be lawful for the justices to order restitution of the property in respect to which such offence shall have been committed to the rightful owner; or if such property shall not then be forthcoming, the justices, whether they shall award punishment or dismiss the complaint, may, if they shall think fit, order payment of the value of such property in money to the rightful owner by the person convicted: Provided always, that if the justices shall be of opinion, before any such person shall have made his defence, that the charge is from any circumstance a fit subject for prosecution by indictment (or if the parent or next friend of such person shall, upon his being called upon to answer the charge, object to the case being summarily disposed of under the provisions of this Act), the justices shall, instead of summarily adjudicating thereupon, deal with the case as one to be prosecuted by indictment at assizes or quarter sessions.

7. Any person who shall commit any of the next following offences shall be liable to the punishment hereinafter specified in each case :

*Frauds as to  
provisions.*

Offering adulterated corn, &c., for sale.

1. Any person who shall sell or offer for sale any wheat, rye, meslin, peas, beans, barley, bere, oats, shillin, cutlings, meal, flour, malt, or other corn which shall in the whole or in part be spoiled or adulterated by wetting or mixing therewith any sand, gravel, dirt, or rotten or damaged corn, grain, malt, meal, or flour, or grown or blighted corn, or other kind of stuff, or which shall not be in quality of equal goodness to that produced to the view of the intended buyer or buyers thereof, or shall use any other fraud or deceit therein, in order to make such corn, grain, malt, meal or flour appear heavier than it would have been without such mixture, fraud, or deceit, shall forfeit all such corn, grain, malt, meal, or flour, to be disposed of as the justices shall direct, and shall also be liable to a fine not exceeding forty shillings, or to be imprisoned for any term not exceeding one month :
2. Any person who shall exhibit for sale any unwholesome or fraudulently prepared meat, fish, or other provisions or food of any kind for man or beast, or shall practise any deceit or fraud in respect to the quality of any such meat, fish, or other provisions, shall forfeit all such meat, fish, or other provisions, to be disposed of as the justices shall direct, and shall also be liable to a fine not exceeding forty shillings, or be imprisoned for any term not exceeding one month.

Offering unwholesome or fraudulently prepared meat, &c., for sale.

And it shall be lawful for any justice to seize or cause to be seized any of the articles hereinbefore last-mentioned as to which any such offence shall have been committed; and the said justice may, if he shall deem it expedient, either proceed at once to hear and determine the case, or may adjourn the hearing thereof to the next petty sessions of the district.

8. Any person who shall commit any of the next following offences shall be liable to a fine not exceeding ten shillings, and in default of payment thereof at such time as the justices shall fix shall be liable to be imprisoned for a period not exceeding one week :

*Trespass of  
persons.*

1. Any person who shall wilfully trespass in any field, garden, pleasure-ground, wood, plantation, or other place, and shall neglect or refuse to leave any such place after he shall have been warned to do so by the owner, or by the caretaker or servant of the owner, or by any person authorized in that behalf by the owner :

Tre-spas on fields, &c., and refusing to leave.

2. Any person who shall again trespass in any such place within three months from the time when any such warning shall have been so given to him.

Repetition of trespass after warning.



*Trespass of persons.*

But not to extend to certain cases of trespass:

nor to prevent right of civil action.

*Injuries to public roads.*

Omitting to scour ditches after notice, or to have drains under passages in and out of roads.

Building houses within 30 feet of the centre of the road.

Deepening ditches or altering fences, &c., without consent of county surveyor:

or altering fences.

"Centre of road."

Scraping roads, without consent of Co. surveyor; drawing timber, &c., so as to injure road; or riding on footpath

Provided always that nothing herein contained shall extend to any case where the party trespassing acted under a fair and reasonable supposition that he had a right to go into or upon any such place, nor to any trespass (not being wilful or malicious) committed in hunting, fishing, or the pursuit of game; but nothing herein contained shall prevent any person from maintaining any civil action or suit for any such trespass, instead of proceeding under this Act.

9. Any person who shall commit any of the next following offences on or relating to any public road shall be liable to the punishment hereinafter specified in each case:

1. Any owner or occupier of any lands contiguous to any public road who shall omit to scour any ditch or drain<sup>1</sup> leading from such road, so as to allow the water to pass away, within ten days after notice shall have been given to him so to do by the county surveyor, or by the contractor for the repair of such road, or who shall suffer the passage of the water to be obstructed by making or leaving any way or passage from any road into the adjoining lands, or into his house, without a sufficient pipe, sewer, or gullet underneath it, shall be liable to a fine not exceeding twenty shillings.<sup>2</sup>
2. Any person who shall build or cause to be built any house or part of a house within thirty feet of the centre of any public road, except in the streets of corporate or market towns,<sup>3</sup> or where a house now stands, shall be liable to a fine not exceeding ten pounds, and to a further sum of ten shillings a week from the time of his conviction until the same shall be pulled down or removed.<sup>4</sup>
3. Any person who shall scour, deepen, widen, or fill up any ditch or drain on the side of any public road, or who shall alter the fences of any public road<sup>5</sup>; or who shall build any wall, or make any ditch, drain, or watercourse, or dig any pit or hollow, on any public road, or within thirty feet of the centre thereof (save upon or within any ancient fence adjoining such road); or who shall otherwise break up the surface of any road or footpath, unless with the consent of the county surveyor, or by the authority of any presentment, shall be liable to a fine not exceeding twenty shillings (and the centre of the road for the purposes of this Act shall be deemed to be the centre of the part thereof made with gravel or stones<sup>6</sup>):
4. Any person who shall, without the consent of such surveyor or contractor, scrape any public road, or who shall draw any timber or stones along any part of a public road, without being supported by wheels from

<sup>1</sup> The defendant was the occupier of lands adjoining a highway, and separated therefrom by a bank three feet in width. A drain, or eye, which had been in existence for twenty-nine years, and by means of which surface water from the highway was discharged on to the defendant's lands, passed through the bank. There was no evidence as to the origin of the drain, nor was there any defined channel on the defendant's lands into which the water so discharged could flow, nor any evidence that there had ever been such a channel. *Held*, that the court ought to presume a legal origin for the drain, and that the defendant was therefore bound to scour it (*King's Co. County Co. v. Kennedy*, (1910) 2 I.R. 544).

<sup>2</sup> The occupier of land adjoining a public road stopped up a gap in the ditch separating his land from the road, through which gap the water off the road had been accustomed to flow. *Held*, that this was not an obstruction which he could be compelled to remove under the above section, it not being an obstruction of the specific character mentioned in the section (*Scannell v. French*, (1860) 11 I.C.L.R. 275).

<sup>3</sup> Dalkey is not within the exception, not being a corporate town, because a corporate town is not one that is governed by a corporation, but a town that has received incorporation by charter, and is not a market town, inasmuch as no market has been established there, though the local Act empowered that to be done (*Dalkey U.D.C. v. Horner*, (1903) 37 I.L.T.R. 83, 2 N.I.J.R. 124).

<sup>4</sup> For statement of offence under this section, see *R. (Cust) v. Tipperary J.F.*, (1865) 17 I.C.L.R. 564.

<sup>5</sup> The fact that the fence is the property of the defendant is immaterial, and it was held that the unauthorized erection of a barbed-wire fence by the owner of the land was an offence within the section (*Collen v. Ellis*, (1893) 32 L.R.I., 491): see *Barbed Wire Act, 1893*.

<sup>6</sup> As to what constitutes the road, see s. 25.

touching the same, or who shall ride or drive any horse or other animal willingly and unnecessarily on any footpath, shall be liable to a fine not exceeding twenty shillings.<sup>1</sup>

*Injuries to public roads.*

5. Any county surveyor or road contractor, or other person who shall dig, raise, and carry away any gravel, stones, sand, or other materials from the side of any public road, or from any beach or sea-shore, whereby a public road or bulwark or defence to any bridge or like building, or any land within the fences of any such road, may be injured, shall be liable to a fine not exceeding five shillings for every cartload of such gravel, stones, sand, or other materials so dug, raised, or carried away: Taking materials to the injury of roads, &c.
6. Any person who shall wilfully damage or destroy any pay-gate . . . or any post, rail, wall, chain, bar, or other fence of any kind whatsoever, which shall be used to prevent passengers from passing by without paying the toll payable by virtue of any Act of Parliament, or any toll-house for the use of any such pay-gate . . . , or who shall forcibly rescue or attempt to rescue any person or persons, being lawfully in custody of any constable or other person for any such offences, shall be liable to a fine not exceeding forty shillings, or to be imprisoned for any term not exceeding two months. Destroying pay-gate, fence, &c.
7. Any person who shall wilfully prevent or assault, or threaten to prevent or assault, any county surveyor or road contractor in the execution of his duty, or any person or persons employed by proper authority in surveying or measuring or laying out any line intended for a new road, or who shall wilfully destroy, pull up, deface, or injure any surveyor's instruments or implements used in making or laying out any public road, or any milestone, milepost, or direction post, or any bridge, battlement, wall, railing, mound, or fence belonging to any public road, or who shall wilfully break, deface, pull down, or take away stones out of any such battlement, wall, mound, or fence, or out of any bridge, pipe, arch, or gullet belonging to any public road, shall be liable to a fine not exceeding ten pounds, or to be imprisoned for a term not exceeding three months. Assaulting engineers, surveyors, or contractors on public roads.
8. It shall be lawful for any two justices of the county, upon application of the county surveyor, to forbid any person or persons from riding or driving any kind of beast or carriage on any new road for such space of time as shall to them appear necessary, not exceeding six months, after such new road shall have been made, and the expenditure thereon duly accounted for at special sessions; and any person who shall wilfully disobey such order (the same being duly notified by a notice affixed to a board or boards erected upon such road) shall be liable to a fine not exceeding twenty shillings. Justices may forbid the using of a new road for certain time after making.

And if the county surveyor or the contractor for the repairing of any public road in any county shall think that such road is prejudiced by any of such neglects or offences as aforesaid, or by the shade of any hedges or trees except those planted for ornament or shelter of any dwelling-house, courtyard or garden, or that any obstruction is caused in any public road by any hedge or tree, it shall be lawful for such surveyor or contractor, by notice in writing,<sup>2</sup> to require the person who shall be guilty of any such neglect or offence, or the owner of the land on which such hedges or trees are growing, as the case may be, to fill up any ditch or drain which shall have been so scoured, deepened, or widened, or to scour any drains which have been so filled on the side of any public road without the consent of the said county surveyor or the authority of a presentment, or to scour or deepen any drain or ditch leading from any road which shall be omitted to be scoured or deepened after due notice by such surveyor or contractor, or to remove any way or passage from any road into any adjoining land, or to any house which may obstruct the free passage of the water, or to remake the same by building a

*Surveyor or contractor may require owners of land to remove obstructions, &c., and to prune hedges or trees injuring roads.*

<sup>1</sup> See also 19 & 20 Vict. c. 63, s. 18, as adapted by the Adaptation of Enactments Order, 30th January, 1899, noted p. 1032, *post*.

<sup>2</sup> The service of this notice is not necessary to sustain a prosecution for the offence, but only where proceedings are taken to recover the expenses of remedying the matters complained of (*R. (Cust) v. Tipperary Jf.*, (1865) 17 I.C.L.R. 564).

*Injuries to public roads.*

Owner not complying to be summoned before justices at petty sessions who may order obstructions, &c., to be removed; and, on refusal of owner, surveyor or contractor may do work at expense of owner. Expenses may be levied by distress and sale.

gutter, sewer, or arch therein, or to pull down any wall or fill up any ditch or drain the building of which shall have been an offence against the provisions of this Act, or to cut or plash such hedges, or to prune or lop such trees, so as that such road may not be prejudiced or obstructed by the same; and if such person or owner shall not comply with such request within ten days after such notice, it shall be lawful for such surveyor or contractor as aforesaid to summon such person or owner before the justices assembled at any petty sessions of such county, to show cause why he has not complied with such request; and upon the hearing of such case it shall be lawful for such justices, if they shall see fit, to order that such person or owner shall act as required by such notice as aforesaid; and if the said person or owner shall not obey such order within ten days after the making of the same, it shall be lawful for such surveyor or contractor, if so directed by the justices, to do all or any of the said acts so required by such notice, for the benefit and improvement of such road, or to remove such obstruction as aforesaid, to the best of his skill and judgment, and at the expense of such person or owner; and it shall be lawful for such justices, upon complaint of such surveyor or contractor as aforesaid, and upon proof of the expenses incurred, to issue their warrant for the levy of such expenses by distress and sale of the goods and chattels of such person or owner: Provided always, that no person shall be compelled, nor any such surveyor or contractor as aforesaid permitted, to cut or prune any hedge at any other time than between the last day of September and the last day of March.

*Nuisances on public roads.*

Turning horses, &c., loose.

Negligence in driving cattle, &c.

Flying kites or making slides.

Leaving ploughs, harrows, &c., on the road:

or slaughtering beasts.

Laying stones, timber, &c.

10. Any person who shall commit any of the next following offences shall be liable to the punishment hereinafter specified in each case:

1. Any person who shall in any public road or street of a town turn loose any horse or cattle, or set on or urge any dog or other animal to attack or worry any person, horse, or other animal, or who by negligence or ill-usage in driving cattle, shall in any public road or any street of a town cause any mischief to be done by such cattle, shall be liable to a fine not exceeding ten shillings.
2. Any person who shall fly any kite, or play at any game, or make or use any slide upon ice or snow, on any public road or in any street of a town, to the danger of the passengers; or who shall cast or throw any fireworks or discharge any fire arms on any public road, or within sixty feet of the centre thereof, or in any street or passage of a town, or who shall cast, throw, or discharge the same, or suffer the same to be cast, thrown, or discharged from out of his house, shop, dwelling, lodging, or habitation, or from out of any place thereto belonging, into any public road, street, or passage, shall be liable to a fine not exceeding ten shillings.
3. Any person who shall leave or permit to be left on any public road any plough, harrow, cart, or other carriage, without the horse or other animal being harnessed thereto, unless such carriage shall have been accidentally broken down there, shall be liable to a fine not exceeding ten shillings.
4. Any person who shall slaughter any beast, or leave any dead beast, or skin, or permit to be skinned any beast on any public road, or within thirty feet of the centre thereof (save within any house or enclosed yard), shall be liable to a fine not exceeding ten shillings:
5. Any person who shall lay any stones, timber, dirt, dung, turf, straw, rubbish, or scourings of any ditches or drains, or other object, on any public road, or within thirty feet of the centre thereof, or in any street of a town, so as to cause danger or mischief to any passengers, and shall allow the same to remain there longer than shall be absolutely necessary, shall be liable to a fine not exceeding ten shillings; and for every cartload of dung, rubbish, scourings, clay, stones, bricks, sand, or lime, or other like materials, which shall have been so laid on any public road or street, and which shall be allowed to remain there for more than twenty-four hours after the owner thereof shall have been required by any justice or by the county surveyor, by notice in writing, to remove the same, such owner shall, in addition to the



above fine for so leaving the same there in the first instance, be also liable to a further fine not exceeding two shillings and sixpence for every day that the same shall be allowed to remain there after the expiration of the said period of twenty-four hours :

6. Any person who shall hoop, scald, or fire any cask, or bind any car or cart wheels, or beat any flax, or thresh or winnow any corn on any public road or street of a town, or within thirty feet of the centre thereof (save within any house or enclosed yard), shall be liable to a fine not exceeding ten shillings :

7. Any person who shall keep or suffer to be at large within fifty yards of any public road any dog without having such dog muzzled, or without having a block of wood fastened to the neck of such dog, of sufficient weight to prevent such dog from being dangerous, shall be liable to a fine not exceeding ten shillings : and it shall be lawful for the justices of the petty sessions district to issue a warrant to any sub-inspector, head or other constable, directing him to seize or kill any dangerous dog which shall be so kept near any public road, contrary to the provisions of this Act, and such sub-inspector, head or other constable, may accordingly seize or kill any such dog.

8. Any person who shall dry any flax, or burn any bricks or lime, or any weeds or vegetables for ashes, or make or assist in making any fires commonly called bonfires, or any other kind of fire, upon any public road or within sixty feet of the centre thereof (save within any house or inclosed yard), shall be liable to a fine not exceeding ten shillings :

9. Any person who shall lead or drive on any public road or street of a town any car or other carriage with timber, boards, or iron laid across, so that either end shall project more than two feet beyond the wheels or sides thereof, shall be liable to a fine not exceeding ten shillings :

10. Any person who shall expose upon any public road or in any street of a town any horse or other animal for show, hire, or sale, except in any fair or market or other place lawfully appointed for that purpose, shall be liable to a fine not exceeding forty shillings :

11. Any person who shall allow any swine or other beast to wander upon any public road, or about the streets or passages of any town, shall be liable to a fine not exceeding two shillings ; and in case the owner shall not be known, it shall be lawful for any person by whom any such swine or other beast shall be found wandering upon any such road, street, or passage, to impound the same, subject to the provisions hereinafter contained as to the impounding of distresses :

Provided always, that nothing herein contained shall render any county surveyor or road contractor liable to any fine for any act done by such surveyor in the discharge of the duties of his office, or by such contractor in the necessary execution or performance of his contract ; but if any such surveyor or contractor shall lay or cause to be laid any heap of stones, gravel, rubbish, or other matter whatever, upon any public road, and allow the same to remain there at night, to the danger or personal damage of any person passing thereon (all due and reasonable precautions not having been taken by him to prevent any such danger or damage), such surveyor or contractor shall be liable to a fine not exceeding five pounds.

11. Any of the persons hereinafter mentioned who shall commit any of the next following offences on any public road or in any street of a town shall (in addition to any civil action to which he may subject himself) be liable to a fine not exceeding forty shillings :

1. Any driver, owner, or guard of any coach, omnibus, car, caravan, or other carriage, by what name soever the same is or shall hereafter be called or known, which shall be employed as a public stage carriage for conveying passengers for hire, who shall permit more passengers to be carried by the same than the number for whom seats shall be respectively provided, inside or outside of the same, allowing a space of at least sixteen inches for each passenger over and above the space allotted to the driver and guard, when there is a guard ; but no

*Violences on public roads.*

*Further fine for every day after notice.*

*Scalding casks, or winnowing corn, &c.*

*Keeping dogs unmuzzled, or unmuzzled, &c.*

*Justices may order dangerous dogs to be killed.*

*Drying flax, or burning bricks or weeds.*

*Carrying timber, &c., crosswise.*

*Exposing horses, &c., for show, sale, or hire.*

*Allowing swine, &c., to wander on roads.*

*Surveyor or contractor not liable to fine except in certain cases.*

*Public stage carriages.*

*Carrying more than a certain number.*

*Public stage  
carriages.*

child under seven years of age shall be included in or counted as one of such number, and it shall be lawful for any justice, county inspector, sub-inspector, head, or other constable, to stop any such carriage which shall appear to carry a greater number of passengers than the above, and to measure the seats of same, in order to ascertain whether sufficient space has been allotted to the passengers:

Carrying  
luggage  
exceeding a  
certain height.

2. Any driver, owner, or guard of any such public stage carriage, who shall allow any passenger to sit upon the top of any luggage, or upon any part of such carriage not intended to carry passengers, or who shall carry or permit or suffer any parcel or parcels of luggage whatever exceeding two feet in height above the roof to be conveyed on any such carriage carrying inside passengers:

Omitting to  
paint number  
to be conveyed  
and names of  
proprietors on  
public  
carriages.

5. Any person who shall keep and employ any such public stage carriage, and who shall not paint or cause to be painted on the outside of the door, or of each door when there shall be more than one, of such carriage, or on some other conspicuous part of such carriage where there shall be no door, in legible letters of at least one inch in height, and in a different colour from the ground on which the same is painted, and in words at length, the number of passengers which such carriage shall be intended to carry, together with the name or names of the person or persons or firm of the company of proprietors to whom such carriage shall belong, or who shall cause any such carriage as aforesaid to be employed or used for carrying any passengers for hire without having the said words painted in such manner as is hereinbefore directed:

Misconduct of  
drivers.

4. Any driver or guard of any such public stage carriage who shall wilfully mispend or lose time on the road, or who shall use abusive or insulting language to any passengers, or who by reason of intoxication, negligence, or other misconduct, shall endanger the passengers in their lives or their property, or the property of any other person with which they may be entrusted, or who shall demand or exact more than the proper fare due from any passenger; and in any such case the justices may, in addition to the fine, order such offender to repay to any party so aggrieved any sum so exacted, or a reasonable compensation for any damage or loss caused by any such offence:

Drivers leaving  
their horses;

5. Any driver of any such public stage-carriage who shall (at any place or places where assistance can be procured) quit his horse or horses, or the box of such carriage, until a proper person or persons shall stand at the head of the horse or horses or fore horse or fore horses, or shall hold the reins so as to prevent them from running away; or any such last-mentioned person or persons who shall not remain at their head or hold the reins until the driver has returned to his box; or any driver of any such carriage who shall entrust the reins to any other person to drive such carriage, or any person who shall so take such reins and drive such carriage.

or allowing  
others to drive.

*Carts and cars.*

12. Any of the persons hereinafter mentioned who shall commit any of the next following offences on any public road, or in any street of a town, shall (in addition to any civil action to which he may subject himself) be liable to a fine not exceeding ten shillings.

Where names of  
owners are not  
painted on  
carts, &c.

1. Any owner of any cart, car, dray, or other such carriage used for the conveyance of goods, who shall use or allow the same to be used on any public road or street without having his name and residence painted upon some conspicuous part of the right or off-side of such carriage, in legible letters not less than one inch in height, and in a different colour from the ground on which the same is painted, and in words at length, or who shall paint or cause to be painted any false or fictitious name or residence on such carriage:

One driver  
taking charge  
of more than  
one cart, &c.

2. Any person who shall act as the driver, or have the sole charge of more than one such carriage as last aforesaid on any public road or street, unless in the cases where two of such carriages, and no more, shall be drawn each by one horse only, and the horse of the hinder of such carriages shall be attached by a sufficient rein to the back of the foremost of such carriages:

3. Any person having the care and charge of any such carriage as last aforesaid, who shall ride upon the same, or upon any horse drawing the same, on any public road or street, except where he shall be accompanied by some other person on foot or on horseback to guide the same, or where such carriage shall be driven with reins, and be conducted by some person holding the reins of all the horses drawing the same :
- Carts and cars.*  
Drivers of carts riding thereon.
4. Any driver of any such carriage as last aforesaid who shall negligently or wilfully be at such distance from such carriage, or in such a situation that he cannot have the direction of the horse or horses drawing the same, or who shall leave any such carriage on such road or street so as to obstruct the passage thereof :
5. Any driver of any such carriage as last aforesaid, not having the owner's name thereon as hereby required, and remaining legible thereon, who shall refuse to tell or to discover the true Christian and surname and residence of the owner of such carriage.
- Drivers leaving their carts.*  
*Drivers refusing to tell owner's name.*
13. Any person who shall on any public road or street commit any of the next following offences shall (in addition to any civil action to which he may make himself liable) be also liable to the punishment hereinafter specified in each case :
- Rules of the road.*
1. Any person driving any carriage whatsoever, or riding any horse or other animal, who, meeting any other carriage, or horse, or other animal, shall not keep his carriage, or horse, or other animal on the left or near side of the road or street, or, if passing any other carriage, or horse, or other animal going in the same direction, shall not in all cases where it is practicable go and pass to the right or off side of such other carriage, or horse, or other animal, shall be liable to a fine not exceeding ten shillings :
2. Any person riding any horse, and leading any other horse, who shall not keep such led horse on the side farthest away from any carriage or person passing him on any public road, or in any street of a town, shall be liable to a fine not exceeding ten shillings :
3. Any person who shall in any manner wilfully or by negligence or misbehaviour prevent or interrupt the free passage of any person or carriage on any public road, or street, or crossing, shall be liable to a fine not exceeding twenty shillings :
4. Any person riding any horse or animal, or driving any sort of carriage, who shall ride or drive the same furiously on any public road or street, so as to endanger any passenger or person, or who shall by carelessness or wilful misbehaviour cause any injury to any person or property on any public road or street, shall be liable to a fine not exceeding twenty shillings :
5. And no cart, dray, waggon, or other such carriage, and no hackney car or carriage, or car or carriage let on hire travelling on any public road or street, shall be driven by any person who shall not be of the full age of thirteen years, under a penalty not exceeding ten shillings, to be paid by the owner of such carriage.
- Keeping on wrong side of the road.*  
*Passing with a led horse.*  
*Obstructing free passage.*  
*Furious driving.*  
*Children under thirteen years not to drive certain vehicles.*
14. The mode of proceeding as to any of the said offences committed upon public roads or streets shall be subject to the following special provisions :
- Special provisions as to proceedings for road offences.*
1. The county and sub-inspectors,<sup>1</sup> head and other constables of the constabulary force, shall take cognizance of all such offences, and shall, in every case where the name and residence of any such offender is known or can be ascertained, summon him either before the justices of the petty sessions district in which the offence shall be committed, or before the justices of any other petty sessions district in which such offender may reside or be at the time of taking such proceeding, and such justices are hereby authorized to hear and determine such case, either upon the complaint of such county or sub-inspector,<sup>1</sup> head or other constable, or of any other person :
- Constabulary to take cognizance of offences and summon offenders.*

<sup>1</sup> Now district-inspector (Constabulary and Police (Ir.) Act, 1883, 46 & 47 Vict. c. 14, s. 12).



*Special provisions as to proceedings for road offences.*

If name not known, may be arrested.

Proceedings if offender will not discover his name.

Horses, carriages, &c., of offenders may be detained; and sold for payment of penalty, &c.

Removal of nuisances.

Compensation (not exceeding 40s.) for damage recoverable before justices from owners.

Summons for driver of stage carriage left with book-keeper, &c., to be good service.

CIVIL JURISDICTION.

*Possession of small tenements.*

Issue of summons.

2. Where the name and residence of such offender shall be unknown and cannot be ascertained, he may, with or without any warrant, be arrested by any such county or sub-inspector,<sup>1</sup> head or other constable, or any persons whom he may call to his assistance; and if any such person shall refuse to discover his name, it shall be lawful for the justice before whom he shall be taken, or to whom any such complaint shall be made, to commit him to gaol for any time not exceeding one month, or to entertain any proceeding against him for the penalty aforesaid by a description of his person and offence only, without adding any name or designation, but expressing in the proceedings that he refused to discover his name; and whenever any person, having charge of any horse or other animal, or of any cart or other carriage, shall be so taken into custody by any county inspector, sub-inspector,<sup>1</sup> head or other constable, it shall be lawful for such county or sub-inspector,<sup>1</sup> head or other constable, also to take charge of such horse, animal, cart, or carriage, and to deposit the same in some place of safe custody, as a security for payment of any penalty to which the person having had charge thereof may become liable; and it shall be lawful for the justices by whom the case shall be heard to order that, in default of such penalty, and the expenses of keeping such horse, animal, cart, or carriage being paid, the same shall be sold for the purpose of satisfying such penalty and expenses, in like manner as if the same had been subject to be distrained and had been distrained for the payment of the same:

3. It shall be lawful for the county surveyor or road contractor, or any head or other constable duly authorized in writing by any justice of the county, to remove any of the hereinbefore mentioned objects which may be left on any public road or street contrary to the provisions of this Act, at the expense of the offender; and it shall be lawful for the justices at any petty sessions of the county, upon complaint of such surveyor, contractor, or constable, and upon proof of the expense incurred, to issue a warrant for the levy of such expenses by distress and sale of the goods and chattels of the offender:

4. In every case where any hurt or damage shall have been caused by the commission of any of the said offences, the justices, upon the hearing of the complaint, may, in addition to any penalty herein provided, order the party offending, or, in case of an offence by the driver of any carriage, the owner of such carriage, forthwith to pay for compensation to the party aggrieved a sum not exceeding forty shillings (provided such amount of damage shall have been proved); and any sum which shall be so paid by the owner shall and may in like manner be recovered by him in a summary way before the justices from the driver through whose default such sum shall have been so paid, upon proof of the payment thereof pursuant to the order of the justices:

5. Any summons issued by any justice, requiring any owner, driver, or guard of any public stage-carriage to appear before him to answer any complaint for any such offence, shall be deemed good and sufficient service in case the same be left with the known or acting book-keeper, or with any other person having the care of any office where places are usually taken or parcels received for such carriage.

15. The decision of claims to the possession of small tenements in certain towns and villages shall be subject to the following provisions<sup>2</sup> :—

1. Whenever the term or interest of the tenant of any house or of any part of a house situate in any city, town, borough, or village, in which any fair or market is usually held, and which shall be held by him for any term not exceeding one month, at a rent not exceeding the rate of one pound sterling by the month shall have ended, or shall have been duly determined by a legal notice to quit, if such tenant (or where such tenant shall not himself occupy the premises, or only a

<sup>1</sup> Now district-inspector (Constabulary and Police (Ir.) Act, 1883, 46 & 47 Vict. c. 14. s. 12.

<sup>2</sup> See Chapter on "PROCEEDINGS BY LANDLORD AGAINST TENANT," p. 186, *ante*.

part thereof, if the person by whom the same, or any part thereof, shall be occupied) shall neglect or refuse to deliver up possession of the same, it shall be lawful for the landlord of the said premises, or his known agent, or for the receiver of the rents of his estate, to cause such tenant or occupier to be served with a summons in writing, signed by any justice having jurisdiction in the place in which the said premises shall be situated, to appear before the justices at the petty sessions of the district in which the said premises shall be situated, to show cause why possession of the said premises should not be delivered up:

CIVIL  
JURISDICTION.  
—  
*Possession of  
small  
tenements.*  
—

2. Such summons may be served upon such tenant or occupier, either personally or by leaving the same for him with some person in occupation of such house, or part of a house; and where the tenant of such house or part of a house shall not reside therein, either by serving the same personally upon him, or by leaving the same at his usual place of abode, four clear days before the day appointed for the hearing of the matter of the said summons; but if the person so holding over cannot be found, and admission into the premises so overheld cannot be obtained, and the place of abode of such person not residing as aforesaid shall either not be known or admission thereto cannot be obtained, the posting of the said summons on some conspicuous part of the said premises shall be deemed to be good service upon such person:

Manner in  
which summons  
shall be served.

3. If such tenant or occupier shall not appear at the time and place appointed, or shall appear, but shall not show to the satisfaction of the justices reasonable cause why possession should not be given, and shall still neglect or refuse to deliver up the possession of the said premises to the said landlord, agent, or receiver, it shall be lawful for the justices, upon proof of the holding, and of the end or determination of the tenancy, with the time and manner thereof (and, where the title of the landlord shall have accrued since the letting of the premises, upon proof of the right by which he claims the possession), to issue a warrant to the sub-inspector<sup>1</sup> of the district within which such premises shall be situated, or to any other person as a special bailiff in that behalf, requiring and authorizing him within a period to be therein named, not less than seven or more than ten clear days from the date of such warrant, to give possession of the premises to such landlord, agent, or receiver; and such warrant shall be a sufficient warrant to the said sub-inspector<sup>1</sup> or bailiff to enter upon the premises, with such assistants as he shall deem necessary, and to give possession accordingly; but such entry shall not be made on a Sunday, Good Friday, or Christmas Day, or at any time except between the hours of nine in the morning and four in the afternoon:

On proof of  
right, justices  
may issue  
warrant to  
deliver posses-  
sion.

4. But if such tenant or occupier shall appear before the justices, and shall give an undertaking (to be entered in writing by the clerk of petty sessions) quietly and peaceably to deliver up, within fourteen days from the date thereof, possession of the premises of which he shall be such tenant or occupier, in good order and repair, to such landlord, agent, or receiver, and in the meantime to pay all rent and arrears of rent claimed by such landlord in respect to such premises, the justices shall not issue their warrant for giving possession till the expiration of such period of fourteen days; and if such tenant or occupier shall at the expiration of such period continue in possession or occupation of the said premises, save by the permission of such landlord, agent, or receiver, it shall be lawful for the justices, at the instance of such landlord, agent, or receiver, to issue a warrant for giving possession of the same as aforesaid, and such warrant shall be executed forthwith, without further notice to such tenant or occupier:

If party under-  
takes to deliver  
up possession  
and pay arrears  
in fourteen days,  
no warrant to  
issue.

If party con-  
tinues in pos-  
session, justice  
may issue  
warrant.

Provided always that nothing herein contained shall be deemed to protect any person, by whom any such warrant to deliver possession of any such premises shall be sued out as aforesaid, from any action which may be brought

But Act not to  
protect persons  
who have no  
legal rights to  
recover posses-  
sion.

<sup>1</sup> Now district-Inspector (Constabulary and Police (Ir.) Act, 1883, 46 & 47 Vict. c. 14, s. 12).

CIVIL  
JURISDICTION.  
—

against him by any such tenant or occupier for or in respect of such entry and taking possession, where such person had not, at the time of suing out the same as aforesaid, lawful right to the possession of the said premises.

*Master and  
Servant.*  
—

16. The decision of certain disputes between employers and the persons employed by them shall be subject to the following provisions:—

Justice may  
order payment  
of sums due:  
For wages:

For the hire of  
horses, carts,  
&c.;

For tuition,  
demand not  
exceeding £10.

Compensation  
(not exceeding  
40s.) for loss of  
time in recover-  
ing wages.

How servants  
shall recover  
their wages  
where business  
entrusted to  
steward, &c

1. It shall be lawful for the justices to hear and determine any disputes concerning any sums which shall be due for wages by any master to his apprentice, or by any employer to any artificer, labourer, servant, or other person employed by him to do any species of work or labour whatsoever (whether he shall find materials for the performance of the same or not, and whether such wages shall be due in respect to any day's work or to any labour done or performed by task, job, or contract); or which shall be due by any person for the hire of any horse, ass, mule, bullock, or other animal for draught, or of any cart, dray, car, plough, harrow, or vehicle drawn by any such animal for the purpose of any labouring work (and not being for the carriage of any passenger or passengers), or for the hire of any boat for the purpose of any labouring work (and not being for the carriage of any passenger or passengers), and whether such hire shall be by the day, or by contract, or otherwise; or which shall be due to any schoolmaster or teacher for the teaching of any child in any school or other place, and whether the engagement shall be for a payment by the day or for any other period, or in any other manner (provided that the amount of the demand for such wages, hire, or tuition, in any of such cases, whether originally greater or not, shall not exceed ten pounds); and to make such order as they shall see fit for payment of such sums as shall appear to be justly due to the complainant by his master or employer, or in case of any sum claimed for the teaching of any child by the parent or other person who shall have engaged the complainant to teach such child:
2. Whenever it shall appear to the satisfaction of the justices that any schoolmaster, teacher, servant, artificer, labourer, or other person so employed as aforesaid, has been or is likely to be detained from his home or usual place of residence, or has suffered or is likely to suffer any additional loss by reason of the non-payment of any sum which such justices shall so adjudge to be due to him, it shall be lawful for such justices to order that there shall be paid to him by such master or employer, not only the sum so due to him, but also such further sum as compensation, not exceeding the sum of forty shillings, for the time during which he shall have been so detained from his usual place of residence, or for the loss suffered or likely to be suffered, as such justices shall think to be reasonable, having regard to the length of such detention, the diligence or remissness of either party, the usual earnings of such schoolmaster, teacher, servant, artificer, labourer, or person, and the sum which within the time of such detention he did earn, or under all the circumstances of the case might have earned:
3. In every case where any such master or employer shall intrust his business to the management and superintendence of any steward, agent, bailiff, foreman, or manager, it shall be lawful for the justices to summon such steward, agent, bailiff, foreman, or manager to appear at petty sessions, and to hear and determine the matter of the complaint in such and the like manner as complaints of the like nature against any master or employer, and to make an order for the payment by such steward, agent, bailiff, foreman, or manager, to the complainant, of such sum or compensation as shall be justly due to him; and in case of refusal or non-payment of any such sum or compensation at such time as shall be directed by such justices, it shall be lawful for them to issue a warrant to levy the same by distress and sale of the goods of such master or employer:



5. Any servant or other person who shall hire or engage with any master or other person under any false or forged discharge or certificate of character, shall be liable to forfeit all the wages which shall be due to him by such master or person at the time of his conviction, and shall also be liable to a fine not exceeding five pounds, and in default of payment to be imprisoned for a term not exceeding three months :

CIVIL  
JURISDICTION.

Master and  
Servant.

Hiring under  
false discharges.

17. The decision and regulation of certain matters relating to fairs and markets shall be subject to the following provisions :—

Fairs and  
markets.

1. Whenever any dispute shall arise between any buyer and seller relating to the terms of sale, delivery, price, or payment for any article, matter, or thing which shall be exhibited for sale in any fair or market (and which shall not be of a greater value than five pounds), it shall be lawful for any justice within his jurisdiction either to proceed at once to hear and determine such dispute (upon the complaint of either party, and in presence of both parties, and after causing all parties to be brought before him for that purpose), or to adjourn the hearing thereof to the next petty sessions of the district; and it shall be lawful for such justice or the justices at such petty sessions, having examined into the said complaint upon the oath of either of the parties or of any witness or witnesses, to make an award thereon according to the merits of the case; and such award shall be in writing, and shall have the like force and effect as any order made at petty sessions.
 

Justices may make awards as to disputes at sales in fairs or markets where value does not exceed £5.
  2. It shall be lawful for the town commissioners acting under an Act of the ninth year of King George the Fourth, chapter eighty-two, and for the commissioners acting under any other local or special Acts giving them like powers in their respective towns, not being corporate towns, and for the justices at petty sessions in other market towns, not being corporate towns, from time to time to appoint, by order in writing, such place or places in such towns as they shall think fit for any public or hackney car or carriage to stand in for hire; and also to make (and vary from time to time) such regulations as they shall see fit for keeping or causing to be kept free and clear from obstruction all passages or thoroughfares in and through the said markets, and for keeping or causing to be kept all said markets, and all passages therein and thereto, clear and free from any dirt or nuisances of any kind whatever, and for preventing all indecencies being committed therein: Provided that no such regulations shall interfere with or impede the due accommodation of persons lawfully exposing goods or wares for sale therein; and it shall be lawful for the said town commissioners or justices, as the case may be, to give due notice of such regulations, by causing the same to be painted on a board, and affixed in some conspicuous place in any such market, in like manner as schedules of tolls and customs in markets are now required by law to be affixed,
 

Town Com-  
missioners and  
justices to  
appoint stands  
for cars, &c.

And to make  
regulations as  
to thoroughfares  
in markets.
- And any person who shall commit any of the next following offences shall be liable to the punishment hereinafter specified :
3. Any person who shall offend against any of the said regulations, by exhibiting goods or wares in any such market in any place other than that appointed for the sale of the same, or by refusing to remove the same when required so to do, or by obstructing the passages or thoroughfares in and through such market, or by placing or leaving any impediment of any kind therein, or by leaving or causing to be left any dirt or nuisance of any kind therein, or who shall commit any indecency in said market or in the passages thereto, shall be liable to a fine for a first offence not exceeding five shillings, and for a second offence not exceeding ten shillings :
  4. Any person who shall, within any city, borough, or market town in Ireland, or within a quarter of a mile from the boundary thereof, cause any cart, dray, waggon, or other such carriage, or any public or hackney car or carriage, to stand in any public road or street
 

Punishment for  
offences  
against these  
provisions.

Leaving  
vehicles stand-  
ing in the street.

CIVIL  
JURISDICTION.

longer than may be reasonable or necessary for loading or unloading, or for taking up or setting down passengers (except any cart, dray, waggon, or other such carriage lawfully standing in any place customarily used for such purpose in any public market or fair, and except any public or hackney car or carriage standing for hire in any place which shall be fixed as a standing for that purpose in manner aforesaid), shall be liable to a fine not exceeding twenty shillings.

[Section 18 *Repealed.*]*Impounding  
distresses.*

19. The decision and regulation of certain matters relating to the establishment and use of pounds for the impounding of distresses, or of animals found trespassing, wandering, or straying, shall be subject to the following provisions:—

Establishment  
of pounds.

1. It shall be lawful for the justices of each petty sessions district, whenever there shall be no pound, or an insufficient number of pounds, established therein, to authorize the establishment of such pound or pounds in such place or places in such district (not being within any manor in which a manor pound shall have been already established) as they shall think necessary; and it shall be lawful for the grand jury of the county,<sup>1</sup> upon the requisition of any three or more of such justices, to present such sum, not exceeding ten pounds, as they shall think fit (to be levied off the county in like manner as any other sums presented by the grand jury), for the erection, part erection, or repair of any pound, upon such condition as they shall fix as to the keeper of such pound, paying to the treasurer of the county, for the use of the county, any sum not exceeding forty shillings as an annual rent for the same; and it shall be lawful for the said justices from time to time to appoint some fit person to be the keeper, during their pleasure, of any pound upon which any sum so presented shall have been expended:

Appointment of  
pound-keepers.No persons to  
act as pound-  
keepers unless  
when licensed  
by the justices.

2. It shall not be lawful for any person to act as the keeper of any pound now or hereafter to be established (except of a manor pound), unless he shall be authorized so to act by the justices of the petty sessions district in which such pound shall be situated, by licence in writing, signed by any two or more of them, and which licence such justices are hereby authorized to give, and also from time to time to withdraw in case of the neglect or misconduct of such person: Provided always, that every pound so to be licensed shall be of such area as the said justices shall think fit, and that the walls thereof shall be at least seven feet high, and securely built, either of stones or bricks, or of such other material as the said justices shall think sufficiently substantial:

Pound-keeper  
to enter into  
recognizance.

3. Any person so licensed shall, before acting as such pound-keeper, enter into recognizance (in like form and manner as any clerk of petty sessions is required to do under the said Petty Sessions Act), himself in such sum not less than ten pounds, with two sureties in such sum not less than five pounds each, as the justices shall fix, conditioned for the due discharge of his duties as pound-keeper under this Act, and shall from time to time renew the same when required by such justices:

Pound fees to be  
as follows.

4. Every pound-keeper shall be entitled to receive from the person by whom any animal shall be impounded in such pound, or from the owner when such animal shall be delivered up to such owner by proper authority, the following pound fees;—

For any one horse, mare, mule, or horned beast, for any time not exceeding seventy-two hours . . . . . 6*d.*  
And for any greater number of same, for same period, each . . . . . 3*d.*  
And if impounded for longer than seventy-two hours, one-half of the above sums for every additional seventy-two hours;

<sup>1</sup> This duty is now transferred to the County Council by the Local Government (Ireland) Act, 1898, 61 & 62 Vict. c. 37, s. 4.

For any one sheep, calf, lamb, goat, or pig, for any period not exceeding seventy-two hours . . . . . 2*d*.  
 And for any greater number of same, for the same period, each . . . . . 1*d*.  
 And if impounded for longer than seventy-two hours, one-half of the above sums for every additional seventy-two hours :

CIVIL  
JURISDICTION.  
*Impounding  
distresses.*

He shall also be entitled to demand and receive from the like owner or person, as the case may be, such sum for the sustenance of any such animals, for the time during which they shall be so impounded, as the said justices shall fix as the proper rates of sustenance for animals impounded in such pound, and which they are hereby required to do by writing under their hands :

Rates of sustenance to be fixed by justices.

5. The pound-keeper shall post, and continue posted, in a conspicuous place on or close to his pound, a table of the scale of the pound fees authorized by this Act, and also a table of the rates which shall be so fixed by the justices for the sustenance of animals impounded therein :
6. No animals (except in cases of distresses for rent) shall be impounded in any other place than in the nearest pound of the county so licensed (or in the pound of the manor), unless where any assault shall be threatened or made upon the person impounding or proceeding to impound any animal, or where any rescue of such animal shall be attempted or threatened, and the impounding in any other place shall be necessary, for the detention of such animal, or the safety of such person :
7. Whenever any animal shall be impounded in any pound, the person by whom such animal shall be impounded shall at the time give notice to the pound-keeper, and also to the owner of such animal (when known), specifying the parish and townland in which such animal shall have been seized, and the reasons for impounding the same ; and when given to the owner, he shall specify the pound in which such animal shall have been impounded :
8. And whenever any animal found wandering or straying shall be impounded in any pound, the pound-keeper shall immediately give a notice to the sub-inspector,<sup>1</sup> head, or other constable of the nearest constabulary station describing such animal, and stating the parish, and townland where such animal shall have been seized (unless where such animal shall have been impounded by any member of the constabulary force), and such sub-inspector,<sup>1</sup> head, or other constable shall post such notice (or a like notice when the animal shall have been impounded by any member of the constabulary force), and keep the same posted at such station until such animal shall be claimed or otherwise disposed of according to law : and whenever the owner of such animal cannot be discovered, it shall be lawful for the justices of the petty sessions district, upon being satisfied that all possible means have been adopted for the discovery of the owner, and that he cannot be discovered, to direct that the same shall be sold by the sub-inspector<sup>1</sup> of constabulary of the district in like manner as any animal may be sold under any warrant of distress (due notice of such sale, and of the parish and townland where such animal shall have been seized, having been previously posted by such sub-inspector<sup>1</sup> at the constabulary station, and also in some conspicuous place in the parish where such animal shall have been seized, and also at the place where impounded forty-eight hours at the least before the time of sale) ; and the proceeds of such sale after paying to the keeper of the pound the amount due to him for pound fees, and for the rates of sustenance of such animal, shall be paid over to the treasurer of the county, to the credit of the county, in any case when the grand jury of such county shall have presented any sum for the erection of any pound therein ; but when no sum shall have been so presented, such surplus proceeds shall be applied in like manner as any penal sums payable to the Crown, or, with the

Tables of fees and rates to be posted.

Animals to be impounded in a licensed pound, except in case of emergency, &c.

Notice of impounding to owner, &c.

Public notice of impounding to be given by pound-keeper and constabulary.

Sale of impounded animals.

<sup>1</sup> Now district-inspector (Constabulary and Police (Ir.) Act, 1883, 46 & 47 Vict. c. 14, s. 12).



CIVIL  
JURISDICTION.*Impounding  
distresses.*

consent of the Chief or Under Secretary to the Lord Lieutenant, may be applied by the said justices in the erection or repair of any pounds within the petty sessions district.

And any person who shall be guilty of any of the next following neglects or offences shall be liable to the punishment hereinafter specified :

Punishment for  
offences.

9. Any pound-keeper who shall act as such without being duly authorized by the justices, and without having duly entered into a recognizance in manner aforesaid, or who shall neglect to keep such pound clean and well supplied with wholesome water, and in such a secure and wholesome state as shall ensure the due forthcoming and health of the animals impounded, or who shall demand or receive any sum for the keeping or sustenance of any animals in such pound greater than the sums fixed by this Act or by the justices as aforesaid, as the case may be, or who shall neglect to feed any animal impounded in such pound, or who shall omit to post in a conspicuous place any such table or notice, or to give any such notice as is directed by this Act, or who shall without due authority liberate or permit to be liberated from such pound any animal impounded therein, or who shall refuse or neglect, when required by the justices, to give up to them any pound built in the whole or in part at the expense of the county, shall be liable to a fine not exceeding ten pounds :

Rescuing  
impounded  
animals, or  
injuring pounds.

10. Any person who shall rescue or attempt to rescue any animal out of any such pound or out of any other place in which any animal shall be impounded for greater safety, under the circumstances hereinbefore mentioned, or who shall break down or injure any such pound or place, or do any act by means of which any animal impounded therein shall escape or be unlawfully liberated therefrom, shall be liable to pay the amount of the injury done, and also a fine not exceeding ten pounds ; but in every case of the commission of any such offence in rescuing or attempting to rescue any distress, or in breaking or injuring any pound, the justices shall, if they shall so think fit, abstain from adjudicating summarily thereon, and deal with the same as a case to be tried by indictment at the assizes or quarter sessions :

Impounding  
elsewhere than  
in licensed  
pound, or  
omitting to  
give notice of  
impounding.

11. Any person who shall impound any animal (except in cases of distresses for rent) in any other place than in a manor pound, or in such pound as shall be licensed under the provisions of this Act (except under the circumstances hereinbefore mentioned), or who shall omit to give such notice to the pound-keeper or to the owner of any animal impounded, as is required by this Act, or who shall wilfully damage or injure any animal while driving or conveying the same to any pound, shall be liable to a fine not exceeding five pounds :

Saving as to  
manor pounds.

Provided always that nothing herein contained shall interfere with the right of any lord of a manor to establish or continue any manorial pound for the impounding of distresses made in such manor which he is now by law entitled to establish or continue, or to appoint from time to time any person to be keeper of such pound ; but the regulation of such pound, and the duties of such pound-keeper, shall in all other respects be subject to the provisions of this Act, in like manner and to the like extent as any pound established or any pound-keeper licensed by the justices at petty sessions in manner aforesaid.

*Trespass of  
animals.*

20. The decision and regulation of certain matters relating to the trespass of animals shall be subject to the following provisions :—

No impounding  
where owner of  
animals known.

1. It shall not hereafter be lawful to impound any animal found trespassing upon any land when the owner of such animal shall be known, but the occupier of such land or the person by whom such animal shall be found trespassing, shall either deliver up such animal to the owner, or to his steward, herdsman, caretaker, or other servant, or he shall show such animal in the act of trespassing to such owner, steward, herdsman, caretaker, or other servant, and allow such animal to be taken away by him ; and the owner of such animal shall thereupon be liable to pay to the occupier of such land the rate of

trespass fixed by the following scale (or according to such scale as the justices at quarter sessions shall from time to time fix, and which they are hereby authorized to do if they shall see fit):

CIVIL  
JURISDICTION.  
*Trespass of  
animals.*

Where the trespass shall be on any common pasture land, or on any arable uncropped land, the rate shall be :

	s.	d.	Rates of trespass.
For every horse, mare, pony, mule, ass, bull, cow, bullock, heifer, or pig . . . . .	0	6	
For every calf, sheep, or lamb . . . . .	0	2	
For every goose . . . . .	0	1	
For every other fowl . . . . .	0	0½	
For every goat . . . . .	3	0	

And where the trespass shall be upon any fattening pasture or meadow land, or upon any land cropped with corn, peas, flax, vetches, turnips, rape, potatoes, green crop, or other cultivated vegetable, or by any goat in a plantation, the rates shall be double the amount of the preceding rates :

2. But when the owner of any such animal shall not be known, it shall be lawful for the occupier of such land, or for his servant, or for any other person on his behalf, to impound such animal in the nearest pound of the county (or in the pound of the manor), specifying in the notice which he is required to give to such pound-keeper (under the provisions hereinbefore contained relating to the impounding of animals) the nature of the land or crop in which such animal shall have been found trespassing; and such pound-keeper shall afterwards deliver up such animal to the owner, if known, or to any person on his behalf, either upon being so authorized in writing by any justice, or upon being paid by such owner or person the amount legally due for pound fees and rates of sustenance, and also the amount due under the above scale of rates, for a trespass on any land or crop of the nature specified in such notice; and such pound-keeper shall thereupon pay over the amount of such rate of trespass to the person by whom such animal shall have been impounded, unless when required by any justice, or by such occupier by notice in writing, to hold over the same until any dispute as to the same shall have been decided at petty sessions.

Where owner  
unknown,  
animal may be  
impounded.

Pound-keeper  
to deliver  
animal to  
owner, on  
authority of  
justice, or on  
payment of  
rates.

3. Whenever either the occupier of such land or the owner of such animal shall not be satisfied with the amount of such rates (whether paid at the time or not), it shall be lawful for the justices at petty sessions, upon complaint of such occupier or owner, to investigate the case, and to make such award against either party as shall seem just, under all the circumstances; and the principle upon which they shall make such award shall be, that the owner of such animal shall be deemed liable to pay to such occupier the above rate for a first trespass, and double the above rate for a second trespass, and treble the above rate for a third or subsequent trespass (whether any actual damage shall have been done or not), unless they shall be satisfied that such trespass was caused by any neglectful conduct on the part of such occupier, or that there are any other justifying circumstances, in which case they may declare him to be entitled either to no rates or to a part only of the rates; and in any case where any actual damage shall have been done by such trespass, it shall be lawful for the justices to award a like payment of such further sum as, together with any rates awarded, shall be equal to the value of such damage as shall be proved to their satisfaction to have been actually caused by such trespass; and in making any such award the justices shall allow credit to the owner of such animal for the amount of any rate of trespass paid by him at the time; or where they shall award either no rates or a lesser amount than any sum so paid at the time, they may order that the whole or a part of such sum, as the case may be, shall be refunded to such owner :

When parties  
are not satis-  
fied, justices  
to investigate  
the case, and  
make award.

Actual damage  
may be awarded.

4. Whenever it shall appear, in any case in which any complaint of trespass shall be so made, that the trespass shall have been caused by the bad or imperfect state or destruction of any fences, it shall be lawful for

Justices may  
order repair of  
fences by person  
who ought to  
repair the same.

CIVIL  
JURISDICTION.*Trespass of  
animals.*

the justices at petty sessions by order in writing to direct that the occupier of the land to which such fences shall belong shall repair the same when wholly on his land, or join in repairing the same when partly on his land, within such reasonable time as they shall fix for that purpose; and in default of his so doing within such time, it shall be lawful for such justices, by a like order in writing, to authorize such fences to be repaired by the person who shall have been aggrieved by any such trespass, who may thereupon enter and repair the same; and afterwards, upon proof of the expenses incurred by such person in making such repairs beyond what he may be himself bound to expend in case of fences common to both parties, it shall be lawful for such justices to order that the same shall be paid (to any amount not exceeding two shillings per perch) by such occupier, unless it shall be shown that the person under whom such fences in repair, in which case such amount shall be paid by such person; and in default of such payment it shall be lawful for such justices to order that such amount shall be levied by distress of the goods of such occupier or person, as the case may be, and paid over to the person by whom such repairs shall have been made.

Punishment for  
offences.

And any person who shall be guilty of any of the next following neglects or offences shall be liable to a fine not exceeding five pounds:

Impounding  
where owner  
known.

5. Any person who shall impound any animal found trespassing, where the owner of such animal shall be known to him, or who shall impound any animal without giving to the pound-keeper the notice required by this Act:

Pound-keeper  
neglecting to  
liberate  
animals.

6. Any pound-keeper who shall neglect or refuse to deliver up any animal so impounded to the owner, when authorized in writing by any justice so to do, or upon such owner paying to him the amount of the pound fees and rates of sustenance legally due and the amount legally due for the trespass, or who shall neglect (except when any justice shall authorize him to hold over the same until the decision of any dispute as to the same at petty sessions) to pay over to the person entitled to receive the same the amount which shall be paid to him for the trespass upon the liberation of any such animal:

Provided always, that in all such proceedings under this Act it shall be lawful for the justices to adopt such means as they shall see fit, either by the employment of a valuator or arbitrators or otherwise, for the purpose of informing themselves as to the amount of any damage done, or as to any other circumstances proper to be inquired into on the spot, or as to any other facts of the case upon which they shall be required to decide: and they may (if they shall think it necessary) order the parties, or either of the parties, to pay to any person so employed such reasonable sum as they shall fix, not exceeding two shillings and sixpence per day, as remuneration for his trouble.

*General  
Provisions.*

The justices  
may discharge  
the offender in  
certain cases.

21. Whenever any person shall be convicted of any offence against this Act, and it shall be a first conviction, it shall be lawful for the justices, if they shall so think fit, to discharge the offender from his conviction, upon his making such satisfaction to the party aggrieved for damages and costs, or either of them, as shall be ascertained by the justices.

Pardon for  
non-payment  
of money.

22. It shall be lawful for the Lord Lieutenant to extend the royal mercy to any person imprisoned by virtue of this Act, although he shall be imprisoned for non-payment of money to some party other than the Crown.

In what cases  
appeals shall be  
permitted.

23. In any case where an order shall be made under the provisions of this Act for the payment of any penal or other sum exceeding twenty shillings, or for any term of imprisonment exceeding one month, or for doing anything at a greater expense than twenty shillings but in no other case, either party (whether he shall be the complainant or defendant, in cases of a civil nature, or the person against whom any such order shall have been made in other cases, shall be entitled to appeal to the next quarter sessions to be held in the same division of the county when the order shall be made by any justice or justices in any petty sessions district, or to the Recorder at his next sessions



when the order shall be made by the said divisional justices in the police district of Dublin metropolis, or to the recorder of any corporate or borough town when the order shall be made by any justice or justices in such corporate or borough town (unless when any such sessions shall commence within seven days from the date of any such order, in which case, if the appellant sees fit, the appeal may be made to the next succeeding sessions to be held for such division or town); and it shall be lawful for such court of quarter sessions or recorder, as the case may be, to decide such appeal, if made in such form and manner, and with such notices as are required by the said Petty Sessions Act as to appeals against orders made by justices at petty sessions; and all the provisions of the said Petty Sessions Act as to making appeals, and as to executing the orders made on appeal, or the original orders where the appeals shall not be duly prosecuted, shall also apply to any appeal or like order to be made under the provisions of this Act.

CIVIL  
JURISDICTION.  
General  
provisions.

Decision of  
appeal.

24. No order made under the provisions of this Act, nor any adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by certiorari or otherwise into any of Her Majesty's superior courts of record.

No order, &c.,  
shall be quashed  
for want of form.

25. In the interpretation of this Act, save where there is anything in the subject or context repugnant to such construction, the word "justice" shall mean "justice of the peace"; and shall include a "divisional justice" of the police district of Dublin metropolis, or "chief magistrate" of any corporate town; the words "county surveyor" shall include and mean any district surveyor in the county of Dublin; the word "petty sessions" shall include a "divisional police office" of Dublin metropolis; the word "gaol" shall include any "house of correction" or "bridewell" of the county to which any person may be legally committed by any justice; the word "road" shall include highway or other public thoroughfare, and "street" shall include any lane or passage in any town; and the word "horse" shall include any other animal of any kind commonly used or employed in drawing any kind of carriage.

Interpretation.

[Sections 26 and 27 repealed by the S.L.R. Act, 1875 (38 & 39 Vict. c. 66).]

28. This Act shall extend and be construed to extend to Ireland only.

29. In citing this Act in other Acts of Parliament, or in any legal instrument or proceedings, it shall be sufficient to use the expression, "The Summary Jurisdiction (Ireland) Act, 1851."

## PETTY SESSIONS (IR.) ACT, 1851.

14 & 15 VICTORIA, CAP. 93.

1. The several petty sessions districts into which any county or riding of a county in Ireland is now divided, and the places and times at which petty sessions are now appointed to be held therein, shall, until altered in the manner hereinafter provided, be the several districts, places, and times in such county or riding for the purposes of this Act; but whenever it shall appear to the justices at quarter sessions that any of the said districts, places, and times now fixed (or which shall hereafter be fixed) in any county or riding require alteration, or whenever they shall be called upon so to do, either by the Lord Lieutenant or by a requisition signed by any seven or more of the justices of any county or riding, they shall proceed at the next quarter sessions which

Petty sessions  
districts.

Existing  
districts, &c., to  
continue where  
they do not  
require  
alteration.

Revision, where  
alteration  
required.

*Petty sessions  
districts.*

shall be held for such county or riding, or at any adjournment of the same for that purpose, to revise the said districts, places, and times, subject to the following provisions :—

1. They shall divide such county or riding into convenient petty sessions districts for the purposes of this Act, and shall declare the several parishes or townlands of which each of such districts shall consist ; and in so doing it shall be lawful for them, with the concurrence of the justices of any adjoining county assembled at any like quarter sessions, or at any adjournment of the same, to include in any of such districts any townlands of such adjoining county, where it shall be conducive to the public convenience, and where no part of such townlands shall be at a greater distance than seven miles from the place where petty sessions shall be held for the district to which same shall be annexed :
2. They shall also fix some one convenient place within each district at which petty sessions shall be held for the same :
3. They shall also fix the times when petty sessions shall be regularly held in each district ; but it shall be lawful for the justices of each district afterwards to fix the particular days in each week upon which such petty sessions shall be held :

And whenever any of the said districts, places, and times shall have been so fixed or altered, the clerk of the peace shall forthwith enter all particulars as to the same in the Crown-book, and shall transmit a certified copy of such entries to the secretary of the grand jury, to be laid before such grand jury at the then next ensuing assizes (and in the county of Dublin at the then next ensuing presentment term), and the same shall be printed with the presentments : Provided always, that when it shall appear to such justices at quarter sessions that such alteration is required, or whenever a requisition for the consideration of an alteration shall be received from the Lord Lieutenant, or from seven or more justices as aforesaid, the clerk of the peace of the county shall transmit a notice in writing of the intended consideration of such alteration to every justice of the county or riding, as the case may be, and such notice, stating the time and place appointed for the consideration of such alteration, shall be transmitted at least one month before the time so appointed.

[*Ss. 2, 3, and 4, dealing with appointment of petty sessions clerks, repealed by the Petty Sessions Clerks (Ir.) Act, 1854, s. 4. See now s. 7 of that Act.*]

Duties of clerk  
of petty  
sessions.

5. The clerk of petty sessions shall perform the following duties :—

1. He shall make, when required by any of the justices, a minute of all special proceedings taken either in or out of petty sessions, in a book to be kept for that purpose, to be called the "Minute-book," and shall also make such entries in the "Order-book" (Form D.),<sup>1</sup> hereinafter mentioned, as the justices shall direct :
2. He shall also have the care and custody of such books, subject to their being kept at the court-house or place where the petty sessions shall be held, or otherwise as the justices shall direct, and also subject to their being at all times open to the inspection of the justices and of any other person or persons whom the Lord Lieutenant may at any time appoint to examine the same :
3. He shall also prepare, under the directions of the justices, all informations, summonses, examinations, warrants, recognizances, and other documentary forms of proceeding :
4. He shall retain, or (if so directed by the justices) shall copy or cause to be copied into a book to be kept for the purpose, all orders or circulars, or opinions of the law officers or advisers of the Crown, addressed or transmitted to the justices, and shall also make copies of all informations, depositions, or examinations, when so directed by

<sup>1</sup> Schedule Form D. repealed S.L.R. Act, 1893. The form in force is a form prescribed by the Lord Lieutenant pursuant to section 36. See also the Petty Sessions Clerks and Fines (Ir.) Act, 1878, 41 & 42 Vict. c. 69, s. 11 (printed *post*), empowering the Lord Lieutenant to alter the form of the Order-book.

the justices, and shall also retain copies of all abstracts or schedules of documents transmitted to the clerks of the Crown and peace as hereinafter provided:

*Petty sessions districts.*

5. He shall enter all cases in the order in which the summonses shall be issued at petty sessions, or if issued out of petty sessions then in the order in which the application shall be made to him by the complainant or his agent to enter the same:
6. He shall enter a true account of all sums paid into court under any orders of justices, and of all warrants issued for the execution of any such orders, and of all sums levied under the same and paid over to him (whether the said sums shall be in the nature of penalties for offences, or sums awarded in cases of a civil nature), and shall otherwise account and act as to the same, as required by the provisions of "The Fines Act (Ireland), 1851," as to any penal sums:
7. He shall also make such returns of the proceedings at petty sessions as the Chief or Under Secretary of the Lord Lieutenant shall from time to time require, and shall observe such general regulations in respect to the discharge of his several duties as the Lord Lieutenant shall from time to time prescribe:

And when required by the clerks of the Crown or peace, as the case may be, the clerk of petty sessions shall attend the assizes or quarter sessions to which any informations, examinations, or recognizances shall be returned by him, or to which any informations, examinations, or recognizances prepared by him shall be returned, and as to which any complaint shall have been made against him for neglect to answer such inquiries respecting the same as shall be made by the court: and in case it shall appear that such clerk shall have committed any wilful default or neglect in preparing or in transmitting the same, or shall have improperly divulged the contents of such informations or examinations, it shall be lawful for the judge of assize or for the justices at quarter sessions, as the case may be, for every such offence to impose a penalty not exceeding twenty pounds on the said clerk, and in default of payment of the same to commit him to gaol for any term not exceeding three months.

6. Whenever a vacancy shall occur by reason of the death, resignation, suspension, or dismissal of any clerk of petty sessions, the sub-inspector<sup>1</sup> of constabulary, or the head-constable of the district, or such other person as the justices shall authorize, shall take charge of all books, papers, and other effects belonging to the said petty sessions, and shall retain them in his care and custody until a successor shall be appointed to such clerk; and it shall be lawful for any justice, upon being satisfied upon oath that any such books, papers, or other effects as aforesaid are, or are suspected to be, in the possession of any person who shall refuse to deliver up the same to such sub-inspector,<sup>1</sup> head-constable, or other person so authorized, to issue a warrant to any sub-inspector,<sup>1</sup> head or other constable, to search the house of such person for the same, and to seize and detain the same if discovered therein; and such sub-inspector,<sup>1</sup> head or other constable, so authorized by any such warrant, may, upon the refusal of such person to open his door for that purpose, break it open.

On death or dismissal of clerks, district-inspector to take charge of all books, &c.

7. The powers of justices and others to act in and for different localities shall be subject to the following provisions:—

*Local jurisdiction.*

1. A justice for any county may act as such in all matters arising within such county, although he may at the time happen to be in an adjoining county, provided he shall be also a justice for such adjoining county.
2. A justice for any county may in like manner act as such in all matters arising within such county, although he may at the time happen to be in any city, town, or place, being a county of itself, situated within, or adjoining to such first-mentioned county, whether he shall be a justice of such city, town, or place, or not; but nothing herein

Justice may act for one county whilst in adjoining county of which he is also a justice, &c.

City, &c., being county of itself.

<sup>1</sup> Now district-Inspector, 46 & 47 Vict. c. 14, s. 12.



contained shall extend to empower any justice for any county not being also justice for any such city, town, or place as aforesaid, or any person acting under him, to act or intermeddle in any matters arising within any such city, town, or place.

3. The inspector-general, or either of the deputy-inspectors-general<sup>1</sup> of constabulary, being a justice of any county, may act in all matters arising within such county, wherever he may happen to be at the time :
4. Whenever any townland belonging to one county shall be included in any petty sessions district of the adjoining county under the provisions of this Act, any justice having jurisdiction in such petty sessions district shall have the like jurisdiction in such townland, although he may not be a justice of the county to which such townland belongs ; and any committal to any gaol or bridewell of such last-mentioned county, or any other magisterial act done by any such justice, in any case in which the offence or cause of complaint shall have arisen in such townland, shall have the like force and effect as if such justice was also a justice of such last-mentioned county :

And all constables or other persons apprehending any person whom they lawfully may and ought to apprehend, by virtue of their office or otherwise, in any such county or place as aforesaid, may lawfully convey such person before any justice for such county or place, whilst such justice shall be in such adjoining county or place as aforesaid, and such constables or other persons are hereby authorized and required in all such cases to act in all things as if such justice were within the county or place for which he shall so act.

8. The places where justices shall sit in the discharge of their duties shall be subject to the following provisions :—

1. Whenever a public court-house shall be maintained by county presentment at any place fixed for the holding of petty sessions, the petty sessions shall be held therein, if not inconvenient to the public ; but whenever no such public court-house shall be so maintained, or the holding of petty sessions therein would be inconvenient to the public, it shall be lawful for the grand jury of the county to present an annual sum not exceeding ten pounds for the rent of a public justice-room in which the petty sessions shall be held, and of a lock-up : Provided that such room shall not be in a house where spirituous or fermented liquors are sold, or in a constabulary barrack, or in any building maintained in the whole or in part at the public expense, and that it shall be proved to the satisfaction of the county presentment sessions where application shall be made for such rent, that at least four meetings of justices shall have been held in such room during the four months next preceding such application :
2. It shall not be lawful for any justice or justices to hear and determine any cases of summary jurisdiction out of petty sessions, except cases of drunkenness, or vagrancy, or fraud in the sale of goods, or disputes as to sales in fairs or markets<sup>2</sup> : but it shall be lawful for two justices, if they shall see fit, to hear and determine out of petty sessions any complaint as to any offence when the offender shall be unable to give bail for his appearance at petty sessions.<sup>3</sup>

Provided always that nothing herein contained shall be construed to prevent any justice or justices acting out of petty sessions from making any order (not being in the nature of a conviction, or of an adjudication upon a complaint), which a justice or justices may be authorized or required by law to make.

9. The right of the public to have access to the place in which justices shall sit shall be subject to the following provisions :

1. In all cases of summary proceedings the place in which any justice or justices shall sit to hear and determine any complaint shall be

<sup>1</sup> Now including the assistant-inspectors-general (see p. 3).

<sup>2</sup> See 14 & 15 Vict. c. 42, s. 7, ante.

<sup>3</sup> See also 25 & 26 Vict. c. 30, s. 2, post.

deemed an open court, to which the public generally may have access, so far as the same can conveniently contain them: and the parties by and against whom any complaint or information shall there be heard shall be admitted to conduct or make their full answer and defence thereto respectively, and to have the witnesses examined and cross-examined by themselves, or by counsel or attorney on their behalf:<sup>1</sup>

*Publicity of  
proceedings.*

Parties may  
plead by counsel  
or attorney, &c.

2. In all cases of proceedings for indictable offences the place in which any justice or justices shall sit to take any examination or statement relating to any such offence shall not be deemed an open court for that purpose, but it shall be lawful for such justice or justices, in his or their discretion, to order that no person (the counsel or attorney of any person then being in such court as a prisoner only excepted) shall have access to or be or remain in such place without the consent or permission of such justice or justices, if it appear to him or them that the ends of justice will be thereby best answered:

Place in which  
examination for  
indictable  
offences are  
taken not to be  
deemed an open  
court.

And if any person shall wilfully insult any justice or justices so sitting in any such court or place, or shall commit any other contempt of any such court, it shall be lawful for such justice or justices by any verbal order either to direct such person to be removed from such court or place, or to be taken into custody, and at any time before the rising of such court by warrant to commit such person to gaol for any period not exceeding seven days, or to fine such person in any sum not exceeding forty shillings.

Power to  
commit and fine  
for contempt of  
court.

10. Whenever information shall be given to any justice that any person has committed or is suspected to have committed any treason, felony, misdemeanour, or other offence, within the limits of the jurisdiction of such justice, for which such person shall be punishable either by indictment or upon a summary conviction, or that any person has committed or is suspected to have committed any such crime or offence elsewhere out of the jurisdiction of such justice, either in Great Britain or Ireland, or in the Isles of Man, Jersey, Guernsey, Alderney, or Sark, and such person is residing or being, or is suspected to reside or be, within the limits of the jurisdiction of such justice; or that any person has committed, or is suspected to have committed, any crime or offence whatsoever on the high seas, or in any creek, harbour, haven, or other place in which the admiralty of England or Ireland have or claim to have jurisdiction, or on land beyond the seas for which an indictment can be legally preferred in any place in the United Kingdom of England and Ireland, and such person is residing or being, or is suspected to reside or be, within the limits of the jurisdiction of such justice; or whenever a complaint shall be made to any justice as to any other matter arising within the limits

*Information  
and  
complaints.*

Justice may  
receive  
information.

<sup>1</sup>In *Webb v. Catchlove*, 1886, 50 J.P. 73, Denman, J., thought "it a most unfortunate practice for police officers to be allowed to act the part of advocates in courts of justice. When witnesses, they should be mere witnesses, and not be allowed to take up the position of advocates"; and Hawkins, J., said that he thought "it a very bad practice to allow a policeman to act as an advocate before any tribunal, so that he would have to bring forward only such evidence as he might think fit and keep back anything that he might consider likely to tell in favour of any person placed upon his trial." In *Denman v. Jones*, 1886, 51 J.P. 130, Lord Coleridge, C.J., said, "As regards the observations made in the case of *Webb v. Catchlove*, I should concur. These were general observations arising out of that case, where a police officer had been conducting a case and refused to answer a question most pertinent to the inquiry, and it led the learned judges to observe that it was a very bad practice for police constables to conduct cases, for they were apt to keep back important witnesses who might tell against them, and their own duty is to stand indifferent in the matter at issue." The following, however, is a copy of a circular issued to justices in Ireland, dated 2nd August, 1876:—"A question having arisen respecting the right of a member of the Royal Irish Constabulary Force, without professional assistance, to conduct cases before magistrates and to examine and cross-examine the witnesses, I am directed by the Lord Justices to inform you that the Law Officers of the Crown are of opinion that in cases of summary proceedings the Constabulary have such right when they are themselves the complainants, but not otherwise; but that in cases of proceedings for indictable offences, whether they be the complainants or informants or not, they not only have the right, but it is their duty, as representing the Crown, to conduct the case, and to examine and cross-examine the witnesses without the intervention or assistance of any professional man."

*Informations  
and  
complaints.*

Information may be verbal, and without oath, in certain cases.

It must be in writing, and on oath, in certain cases.

Binding informant to prosecute.

Limitation of time.

In cases of summary jurisdiction, defendant entitled to copy of information when in writing.

*Process to  
enforce  
appearance.*

In cases of indictable offences a warrant shall issue in the first instance.

But in certain cases summons shall issue.

In cases of summary jurisdiction, summons to issue in the first instance;

of his jurisdiction, upon which he shall have power to make a summary order, it shall be lawful for such justice to receive such information or complaint, and to proceed in respect to the same, subject to the following provisions :

1. Whenever it is intended that a summons only shall issue to require the attendance of any person, the information or complaint may be made either with or without oath, and either in writing or not, according as the justice shall see fit :
2. But whenever it is intended that a warrant shall issue for the arrest or committal of any person, the information or complaint shall be in writing, and on the oath of the complainant, or of some person or persons on his behalf :
3. Whenever any such information shall have been taken on oath and in writing that any person has committed, or is suspected to have committed, any indictable crime or offence (or any offence for which such person shall be punishable upon summary conviction, and for whose arrest the justice shall issue a warrant), it shall be lawful for the justice, if he shall see fit, to bind the informant or complainant by recognizance (A. a.\*) or (C.) to appear at the court or place where the defendant is to be tried or the complaint is to be heard, to prosecute or give evidence, as the case may be, against any such person :
4. In all cases of summary jurisdiction the complaint shall be made, when it shall relate to the non-payment of any poor-rate, county-rate, or other public tax, at any time after the date of the warrant authorizing the collection of the same ; and when it shall relate to the non-payment of money for wages, hire, or tuition, within one year from the termination of the term or period in respect of which it shall be payable ; and when it shall relate to any trespass, within two months from the time when the trespass shall have occurred ; and in any other case within six months from the time when the cause or complaint shall have arisen, but not otherwise :

And in all cases of summary jurisdiction any person against whom any such information or complaint shall have been made in writing shall, upon being amenable or appearing in person or by counsel or attorney, be entitled to receive from the clerk of petty sessions a copy of such information or complaint, on payment of the sum of sixpence to such clerk ; and such clerk shall in no case allow the original information or complaint to be taken out of his possession.

11. The manner in which persons against whom any such informations or complaints as aforesaid shall have been received by any justice shall be made to appear to answer to the same shall be subject to the following provisions :

1. In all cases of indictable crimes and offences (where an information that any person has committed the same shall have been taken in writing and on oath) the justice shall issue a warrant (B. b.) to arrest and bring such person before him, or some other justice of the same county, to answer to the complaint made in the information (and which warrant may be issued or executed on a Sunday as well as on any other day) ; or if he shall think that the ends of justice would be thereby sufficiently answered, it shall be lawful for him, instead of issuing such warrant, to issue a summons in the first instance to such person, requiring him to appear and answer to the said complaint ; but nothing herein contained shall prevent any justice from issuing a warrant for the arrest of such person at any time before or after the time mentioned in such summons for his appearance ; and whenever such person shall afterwards appear or be brought before any such justice, he shall proceed according to the provisions hereinafter contained as to taking the evidence against such person, and committing such person for trial :
2. In all cases of summary jurisdiction the justice may issue his summons (B. a.) directed to such person, requiring him to appear and answer to the complaint, and it shall not be necessary that such justice shall be the justice or one of the justices by whom the complaint shall be



afterwards heard and determined; and in all cases of offences where such persons shall not appear at the required time and place, and it shall be proved on oath, either that he was personally served with such summons or that he is keeping out of the way of such service (the complaint being in writing and on oath), the justice may issue a warrant to arrest and bring such person before him or some other justice of the same county, to answer to the said complaint; and when such person shall afterwards be arrested under such warrant the justice before whom he shall be brought may either by warrant (E. b.) commit him to gaol until the hearing of the complaint, or may discharge him upon his entering into a recognizance (C.) with or without sureties, at the discretion of the justice, conditioned for his appearance at such hearing:

*Process to enforce appearance.*

in certain cases a warrant may issue.

And each summons or warrant shall be signed by the justice or one of the justices issuing the same, and it shall state shortly the cause of complaint, and no summons or warrant shall be signed in blank; and in every case where the offence shall have occurred or the cause of complaint shall have arisen within the petty sessions district for which the justice issuing any such summons or warrant shall act, but the party or witness to whom such summons shall be directed, or against whom such warrant shall be issued, shall reside in an adjoining county, it shall be lawful for such justice to compel the appearance of such party or witness at the hearing of the charge or complaint within such district, in like manner as if such party or witness resided in such district, although such justice may be a justice of such adjoining county.

Summons or warrant to be signed, but not in blank, &c.

Summons or warrant may run into an adjoining county.

12. The manner in which summonses shall be served shall be subject to the following provisions:

*Service of summonses.*

1. It shall be lawful for the justices of each petty sessions to appoint some one or more persons who shall be able to read and write, to act as summons-server or servers of the district during the pleasure of such justices.<sup>1</sup>

Justices to appoint a summons-server.

2. In cases of offences prosecuted by the constabulary, the summons shall be served by a head or other constable, but in all other cases it may be served by the summons-server of the district, or (if the justice issuing the same shall so direct or permit) by any other person whom the complainant shall employ, and who shall be able to read and write, but in no case by the complainant himself:

By whom summons to be served.

3. Every summons shall be served upon the person to whom it is directed by delivering to him a copy of such summons, or if he cannot be conveniently met with, by leaving such copy for him at his last or most usual place of abode,<sup>2</sup> or at his office, warehouse, counting-house, shop, factory, or place of business, with some inmate of the house not being under sixteen years of age, a reasonable time before the hearing of the complaint; and such last-mentioned service shall be deemed sufficient service of such summons in every case except where personal service shall be specially required by this Act; and in every case the person who shall serve such summons shall indorse on the same the time and place where it was served, and shall attend with the same at the hearing of the complaint to depose, if necessary, to such service:

What shall be due service.

*Proof of service.*

Provided always, that nothing herein contained shall be construed to affect the provisions of any Act authorizing the substitution of service in particular cases.

<sup>1</sup> Remainder of sub-section, dealing with remuneration of summons-servers, repealed S.L.R. Act, 1893. Substituted provisions are enacted by 41 & 42 Vict. c. 69, s. 10, *post*.

<sup>2</sup> R, who usually resided with his father, lodged with O for about six weeks while employed in doing a piece of work for O in a different part of the country. At the end of that time he returned to his father's house. Two days after his departure from O's house a summons was left for him at O's house charging him with an assault alleged to have been committed eight days prior to his leaving O's house. R never received or heard of the summons. *Held*, that O's house was not R's last or most usual place of abode, and that his conviction should be quashed (*R. (Regan) v. Cork Jf.*, (1911) 2 I.R. 258; 45 I.L.T.R. 7). See also *R. v. Lilly*, (1911) 75 J.P. 95, noted in ADDENDA ET CORRIGENDA.

*Witnesses.*

Justices may  
force witnesses  
to attend.

13. Whenever it shall be made to appear to any justice that any person within the jurisdiction of such justice is able to give material evidence for the prosecution in cases of indictable offences, or for the complainant or defendant in cases of summary jurisdiction, and will not voluntarily appear for the purpose of being examined as a witness, such justice may proceed as follows:—

Issue of  
summons.

1. He may issue a summons (B. a.) to such person, requiring him to appear at a time and place mentioned in such summons, to testify what he may know concerning the matter of the information or complaint, and (if the justice shall see fit) to bring with him and produce for examination such accounts, papers, or other documents as shall be in his possession or power, and as shall be deemed necessary by such justice; but in any case of an indictable crime or offence, whenever the justice shall be satisfied by proof upon oath that it is probable that such person will not attend to give evidence without being compelled so to do, then (the information or complaint being in writing and on oath), instead of issuing such summons as aforesaid, he may issue a warrant (B. b.) in the first instance for the arrest of such person:

In cases of  
indictable  
offences,  
warrant may  
issue in the  
first instance.

If summons be  
not obeyed,  
warrant may  
issue.

2. And in any case when any person to whom a summons shall be issued in the first instance shall neglect or refuse to appear at the time and place appointed by such summons, and no just excuse shall be offered for such neglect or refusal, then (the information or complaint being in writing and on oath) after proof upon oath that such summons was personally served upon such person, or that such person is keeping out of the way of such service, and that he is able to give material evidence in the case, the justice before whom such person should have appeared may issue a warrant (B. b.) to arrest such person, and to bring him at the time and place appointed for the hearing of the case, to testify and to produce such accounts, papers, and documents as may be required as aforesaid:

What persons  
shall be compe-  
tent witnesses.

3. In all cases of prosecutions for offences the evidence of the informer or party aggrieved shall be admissible in proof of the offence; and in all cases of complaints on which a justice can make an order for the payment of money, or otherwise, the evidence of the complainant shall be admissible in proof of his complaint; and in cases of wages, hire, or tuition, the evidence of the master or employer may, in the discretion of the justices, be admitted in proof against the complaint:

Witnesses to be  
examined on  
oath.

4. All witnesses shall be examined upon oath,<sup>1</sup> and any justice before whom any such witness shall appear for the purpose of being so examined shall have full authority to administer to every such witness the usual oath:

Witnesses  
refusing to be  
examined may  
be committed.

5. Whenever any person shall appear as a witness, either in obedience to a summons or by virtue of a warrant (or shall be present, and shall be verbally required by the justice or justices to give evidence), and he shall refuse to be examined upon oath concerning the matter of the information or complaint, or shall refuse to take such oath, or, having taken such oath, shall refuse to answer such questions concerning the said matter as shall then be put to him, or shall refuse or neglect to produce any such accounts, papers, or documents as aforesaid (without offering any just excuse for such refusal), the justice or justices then present may adjourn the proceedings for any period not exceeding eight clear days, and may, in the meantime, by warrant (E. b.) commit the said witness to gaol, unless he shall sooner consent to be sworn or to testify as aforesaid, or to produce such accounts, papers, or documents, as the case may be; and if such witness, upon being brought up upon such adjourned hearing, shall again refuse to be sworn, or to testify as aforesaid, or to produce such accounts, papers, or documents, as the case may be, the said justices, if they shall see fit, may again adjourn the proceedings, and commit the witness for the like period, and so again, from time to time until

<sup>1</sup> See chapter on EVIDENCE, *ante*, p. 259, as to when an affirmation may be made instead of an oath.

he shall consent to be sworn or to testify as aforesaid, or to produce such accounts, papers, or documents, as the case may be (provided that no such imprisonment shall in any case of summary jurisdiction exceed one month in the whole); but nothing herein contained shall be deemed to prevent the justice or justices from sending any such case for trial, or otherwise disposing of the same in the meantime, according to any other sufficient evidence which shall have been received by him or them :

*Witnesses.*

6. Whenever in cases of indictable offences the justice or justices shall see fit, they may bind the witnesses by recognizances<sup>1</sup> (A. b.\*.) or (C.) to appear at the trial of the offender, and give evidence against him; and whenever any witness shall refuse to be so bound, it shall be lawful for the justice or justices by warrant (E. b.) to commit him to the gaol of the county or place in which the person accused is to be tried, there to be imprisoned until the trial of the person accused, unless in the meantime such witness shall duly enter into recognizance (C.) before some justice of the county in which such gaol shall be situated; but if afterwards, from want of sufficient evidence or other cause, the justice or justices before whom the person accused shall have been brought shall not commit him or hold him to bail, it shall be lawful for such justice or justices, or any other justice of the county by warrant (E. d.) to order the keeper of the gaol to discharge such witness :

In cases of indictable offences, witnesses may be bound to give evidence.

7. In all cases of summary jurisdiction it shall be lawful for the justices by whom any order for payment of money, not being in the nature of a penalty for an offence, shall be made, to order the party at whose instance any witness shall have been summoned to pay to such witness such sum, not exceeding two shillings and sixpence, as to such justices shall seem fit, for his expenses or loss of time for each day of attending to give evidence, and in default of payment thereof at such time as such justice shall appoint, then to issue a warrant to levy the amount thereof by distress of the goods of such party :

Justices may order payment to witnesses in civil cases.

And no person who shall be summoned to attend before any court of petty sessions, or before any justice out of petty sessions, as a witness, shall be liable to arrest for debt whilst at such court, or at the place where such justice shall sit, or whilst proceeding to or returning from the same, provided he shall proceed and return by the most direct road without unnecessary delay; and it shall be lawful for the court out of which the writ or process shall have issued to order the discharge of any person who shall be so arrested.

Witnesses not liable to arrest for debt.

<sup>1</sup> It is submitted that there is no power to require a witness to find sureties for his appearance. The above sub-section, no doubt, gives the justices the option of using either Form A. b, or C., and the Form C. contemplates the possibility of a surety. But Form C. is, after all, merely a general form of recognizance, which may be used either where sureties are or are not required, and, therefore, no inference can be drawn from the power to use this form in the alternative, such alternative being merely given apparently for the purpose of having the recognizance in an altogether separate form. The form of warrant E. b. merely recites a refusal by the witness "to enter into recognizance to give evidence . . . unless he shall in the meantime enter into such recognizance." Therefore, on the wording of the statute as well as the forms prescribed, it is suggested that no power to commit a witness for failure to obtain sureties to appear is conferred. Apart from the section, the better opinion seems to be that there is no such power (see Taylor, 10th ed., p. 886; Nun & Walsh, 2nd ed., p. 429; 5 Burn, J., 30th ed., p. 407, citing Graham, B., *Bodmin Summer Assizes*, 1817, as quoted in Burn, J., 24th ed., 1013; *Evans v. Reeves*, (1840) 12 A. & E. 55; Archbold, 24th ed., p. 478), but see, contra 4 Chit. C.L. pp. 49, 50, which gives a form of commitment for want of sureties where the party has no settled place of abode or property, and see also *Bennett v. Watson*, (1814) 3 M. & S. 1). Once the witness has entered into the recognizance, it is submitted that there is no jurisdiction to commit him pending the trial, even if it is apprehended that he will not appear. Thus in *R. v. Crawford*, (1854) 6 Cox 481, it was held that the court could not issue a bench warrant to bring up a witness although it was sworn that he was keeping out of the way collusively, and that his evidence was so material to the prosecution that the case could not go on without him, and that the course to be adopted was to postpone the trial to allow the witness's recognizance to be estreated on his failure to appear.



*Taking the  
evidence.—  
Indictable  
offences.*

Justices to take  
depositions.

Depositions of  
witnesses who  
have died.

Depositions to  
be read to  
prisoner.

Justices to  
caution prisoner,  
and then take  
down his state-  
ment.

But prosecutor  
may give any  
other statement  
of prisoner in  
evidence.

Remanding  
prisoner.

Prisoner entitled  
to copies of  
depositions.

*Disposal of the  
prisoner.—  
Indictable  
offences.*

When evidence  
completed,  
justices to

14. The manner in which the evidence shall be taken in proceedings for indictable offences shall be subject to the following provisions:—

1. In every case where any person shall appear or be brought before any justice or justices charged with any indictable crime or offence, such justice or justices, before committing such person for trial or admitting him to bail, shall, in the presence of such person, who shall be at liberty to put questions to any witness produced against him, take the depositions (A. b.) on oath and in writing of those who shall know the facts of the case, and such depositions shall be read over to and signed respectively by the witnesses who shall have been so examined, and shall also be signed by the justice or one of the justices who shall take the same; and if upon the trial of the person so accused it shall be proved by the oath of any credible witness that any person whose deposition shall have been so taken is dead, and that such deposition was taken in the presence or hearing of the person accused, and that he or his counsel or attorney had an opportunity of cross-examining such witness, it shall be lawful to read such deposition as evidence on the trial, without further proof thereof, unless it shall be proved that the same was not signed by the justice purporting to have signed the same:

2. Whenever the examination of the witnesses on the part of the prosecution shall have been completed, the justice or one of the justices present shall (without requiring the attendance of the witnesses) read or cause to be read to the person accused the several depositions, and then take down in writing the statement (A. c.) of such person (having first cautioned him that he is not obliged to say anything unless he desires to do so, but that whatever he does say will be taken down in writing, and may be given in evidence against him on his trial); and whatever statement the said person shall then make in answer to the charge shall, when taken down in writing, be read over to him, and shall be signed by the said justice or one of the justices present, and shall be transmitted to the clerk of the Crown or peace, as the case may be, along with the depositions, and afterwards, upon the trial, may, if necessary, and if so signed, be given in evidence against the person accused, without further proof thereof, unless it shall be proved that it was not signed by the justice purporting to sign the same; but nothing herein contained shall prevent the prosecutor from giving in evidence any admission or confession, or other statement made at any time by the person accused, and which would be admissible by law as evidence against such person:

But if, from the absence of any witnesses, or from any other reasonable cause, it shall become necessary or advisable to defer the examination or further examination of the witnesses for any time, it shall be lawful for the justice before whom the person accused shall appear or be brought, either to admit such person to bail in manner hereinafter provided, or by warrant E. b.) from time to time to remand such person to gaol for such time as the justice shall deem expedient, not exceeding eight clear days; but any such justice may order the said person to be brought before him or some other justice of the county, at any time before the expiration of the period for which he shall have been so remanded: provided always, that at any time after the examinations in any proceedings for an indictable offence shall have been completed, and on or before the first day of the assizes or sessions or other first sitting of the court at which any person, committed to gaol or admitted to bail is to be tried, such person may require, and shall be entitled to receive from the officer or person having the custody of the same, copies of the depositions on which he shall have been committed or bailed (or copies of depositions taken at any inquest in case of murder or manslaughter), on payment of a reasonable sum for the same, not exceeding a sum at the rate of three halfpence for each folio of ninety words:

15. The manner in which the person accused shall be disposed of when the evidence shall have been taken in proceedings for indictable offences shall be subject to the following provisions:—

1. Whenever the offence shall have been committed within the jurisdiction of the justice or justices present, and he or they shall be of opinion

that the evidence is not sufficient to put such accused person on his trial, he or they shall forthwith order such accused person, if in custody, to be discharged as to the information then under inquiry; but if in the opinion of such justice or justices such evidence is sufficient to put such person on his trial, or if such evidence raises a strong or probable presumption of guilt, then such justice or justices shall either by warrant (E. b.) commit him to gaol, to be kept there until his trial for the said offence, or shall admit him to bail in manner hereinafter provided, according as he or they shall see fit:

*Disposal of the prisoner.—Indictable offences.*

—  
discharge, or commit, or bail.

2. Whenever any person shall appear or be brought before any justice, charged with any offence alleged to have been committed by him in any county or place in Ireland wherein such justice shall not have jurisdiction, it shall be lawful for such justice, and he is hereby required, to examine such witnesses, and receive such evidence in proof of such charge as shall be produced before him within his jurisdiction; and if in his opinion such evidence shall be sufficient proof of the said charge, such justice shall thereupon, either by a like warrant (E. b.) commit the person accused to the gaol of the county or place wherein the offence shall be alleged to have been committed, or shall admit him to bail, according as such justice shall see fit; but if in his opinion such evidence shall not be sufficient to put the accused party on his trial, then such justice shall bind over the prosecutor, if he shall have appeared, and the witnesses, to give evidence when required so to do, and shall thereupon, by warrant (E. c.) order such person to be taken before some justice of the county in which and near the place where the offence is alleged to have been committed, and shall at the same time deliver to the person having the execution of such warrant the information, depositions, and recognizances (if any) so taken, to be delivered to the justice before whom the accused person shall be taken in obedience to such warrant, and such information, depositions, and recognizances shall be treated to all intents as if they had been taken before such last-mentioned justice:

Justice of one county may examine as to offence in another county, and if evidence sufficient, shall commit or bail prisoner.

If evidence not sufficient justice may send prisoner to county where offence committed.

Provided always, that if such last-mentioned justice shall not think the evidence against such accused party sufficient to put him on his trial, and shall discharge him without holding him to bail, any recognizance so taken by the said first-mentioned justice shall be null and void.

16. The admission to bail of persons charged with indictable offences shall be subject to the following provisions:

*Bailing prisoner.—Indictable offences.*

1. In every case where any person shall be charged before any justice in manner aforesaid with any felony (save as hereinafter excepted), or with any assault with intent to commit any felony, or with any attempt to commit any felony, or with any offence against an Act of the first and second years of his late Majesty King *William the Fourth*, intituled '*An Act to amend an Act passed in the Parliament of Ireland in the fifteenth and sixteenth years of the reign of his Majesty King George the Third, intituled An Act to prevent and punish tumultuous risings of persons within this kingdom, and for other purposes therein mentioned*', or with obtaining or attempting to obtain property by false pretences, or with a misdemeanour in receiving property stolen or obtained by false pretences, or with perjury or subornation of perjury, or with concealing the birth of a child by secret burying or otherwise, or with wilful or indecent exposure of the person, or with riot, or with assault in pursuance of a conspiracy to raise wages, or assault upon a peace officer in the execution of his duty, or upon any person acting in his aid, or with neglect or breach of duty as peace officer, or with any misdemeanour for the prosecution of which the costs may be allowed out of the county rate or funds, it shall be lawful either for the justice before whom such charge shall be made, at any time before such person shall be committed to gaol, or for the justice by whom the warrant to commit shall have been signed, at any time afterwards, and before the first day of the sitting of the court before which he shall have been committed to be tried (if having regard to the nature

Persons charged with certain crimes may be admitted to bail in discretion of justices.

*Bailing  
prisoners.—  
Indictable  
offences.*

Persons charged  
with other  
crimes shall be  
admitted to bail  
as of right.

Mode of pro-  
ceeding when  
sureties cannot  
attend.

Warrant for  
discharge where  
prisoner  
committed,  
afterwards  
bailed.

But no bail in  
case of treason  
or of felony  
under 11 & 12  
Vict. c. 12.

Where party  
is about to  
abscond justice  
may, on appli-  
cation of surety,  
order arrest, or  
require new  
bail.

Warrant to  
arrest a person  
against whom

of the charge, and the cogency of the evidence adduced in support of it), it appears to him to be a case in which bail ought to be taken, to admit such accused person to bail by recognizance (C.), with one or more sufficient sureties, at the discretion of the justice, conditioned that he will appear at the time and place when and where he is to be tried for such offence, and that he will then surrender and take his trial, and not depart the court without leave; and whenever in any such case the accused person shall not be so admitted to bail, if the committing justice shall be of opinion that he ought to be admitted to bail, he shall certify (I. c.) on the warrant of commitment his consent to his being bailed, stating also the amount of bail which ought to be required; and any justice of the county attending or being at the gaol where such accused party shall be in custody, on production of such certificate at any time before the first day of the sitting of the court before which he shall have been committed to be tried may admit such accused person to bail in manner aforesaid.

2. In every case where any person shall be charged before any justice with any indictable misdemeanour other than those hereinbefore mentioned, such justice, after taking the examinations, instead of committing him to prison, shall upon the application of such person (and upon being satisfied as to the sufficiency of the bail offered), admit him to bail in manner aforesaid; or if he shall have been committed to gaol, and shall apply to any justice for the same county to admit him to bail at any time before the first day of the sitting of the court before which he shall have been committed to be tried, such justice shall admit him to bail in manner aforesaid:

And whenever it shall not be convenient for the surety or sureties in any case to attend at the gaol to join with the accused person in the recognizance of bail, then the committing justice or the justice by whom such person can be admitted to bail, as the case may be, shall make a duplicate of such certificate (I. c.) as aforesaid, and upon the same being produced to any justice for the same county, it shall be lawful for such last-mentioned justice, before such time as aforesaid, to take the recognizance of the surety or sureties in conformity with such certificate; and upon such recognizance being transmitted to the keeper of such gaol, and produced to any justice attending or being at such gaol, it shall be lawful for such last-mentioned justice, before such time as aforesaid, to take the recognizance of such accused person in like manner as if the sureties were present; and in all cases where a justice shall admit to bail any person who shall then be in any gaol charged with the offence for which he shall be so admitted to bail, such justice shall send to or cause to be lodged with the keeper of such gaol a warrant (E. d.), requiring the said keeper to discharge the person so admitted to bail, if he be detained for no other offence or under no civil process, and upon such warrant being delivered to such keeper he shall forthwith obey the same: Provided always, that no justice shall admit any person to bail for treason, or for any felony under an Act of the eleventh year of her present Majesty's reign, intituled *An Act for the better security of the Crown and Government of the United Kingdom*, nor shall any such last-mentioned person be admitted to bail except by order of the Lord Lieutenant or his Chief Secretary, or by Her Majesty's Court of Queen's Bench at Dublin.

17. Whenever any person charged with any such indictable crime or offence as aforesaid shall have been bailed in manner aforesaid, it shall be lawful for the justice by whom he shall have been bailed, or for any other justice, if he shall see fit, upon the application of the surety or of either of the sureties of such person, and upon information being made in writing and on oath by such surety, or by some person on his behalf, that the person so bailed is about to abscond for the purpose of evading justice, to issue his warrant for the arrest of such person so bailed; and afterwards, upon being satisfied that the ends of justice would otherwise be defeated, to commit such person when so arrested to gaol until his trial, or until he shall produce another sufficient surety or other sufficient sureties, as the case may be, in like manner as before.

18. Whenever an indictment shall have been found by the grand jury in any Court of Oyer and Terminer or general gaol delivery, or at any general or



quarter sessions of the peace in Ireland, against any person who shall then be at large, and who shall not already have appeared and pleaded to such indictment (and whether such person shall have been bound by recognizance to answer to the same or not), the person who shall act as clerk of the Crown at such court, or as clerk of the peace at such sessions, shall, at any time after the end of the assizes or sessions at which such indictment shall have been found, upon application of the prosecutor or of some person on his behalf, and free from charge, grant unto such prosecutor or person a certificate (I. b.) of such indictment having been found; and upon production of such certificate to any justice for the county in which the offence shall be alleged in such indictment to have been committed, or in which the person thereby indicted shall reside or be, or be suspected to reside or be, such justice shall issue his warrant to arrest such person, and to cause him to be brought before him, or some other justice for the same county, to be dealt with according to law; and upon such person being so brought before such justice, and upon its being proved on oath that the person so arrested is the same person who is charged and named in such indictment, such justice shall, without further inquiry, either commit him for trial or admit him to bail, in manner aforesaid; and in any such case as last aforesaid, if the person so indicted shall at any time be confined in any gaol for any other offence than that charged in such indictment, such justice shall, upon like proof on oath that the person so confined is the same person who is so charged in such indictment, issue his warrant (E. b.) to the keeper of such gaol, commanding him to detain such person in his custody until he shall be discharged therefrom by due course of law; but nothing herein contained shall be deemed to prevent any clerk of the Crown or peace or other officer from issuing any warrant in any such case for the arrest of any such person which he might otherwise by law issue.

*Bailing  
prisoner.—  
Indictable  
offences.*

indictment  
found.

Not to interfere  
with bench  
warrants.

19. The manner in which informations, examinations, statements of accused parties, and recognizances in proceedings for indictable offences, shall be disposed of, when taken, shall be subject to the following provisions:

*Disposal of the  
informations,  
&c.—  
Indictable  
offences.*

1. Every such information, examination, statement, and recognizance sworn, taken, or acknowledged by or before any justice not sitting in petty sessions shall, with all convenient despatch, and at the latest before the petty sessions then next ensuing for the district where the case may have arisen, be transmitted by him to the justices at such petty sessions, except in cases where the person accused shall not have been committed or shall not be amenable, and such justice shall deem it expedient to retain such documents for a longer period.
2. The justices at petty sessions shall transmit or cause the clerk of petty sessions to transmit every such information, examination, statement, or recognizance so received from any justice out of petty sessions, or which shall be sworn, taken, or acknowledged at petty sessions to the clerk of the Crown of the county where the same shall relate to any matter to be tried at the assizes, or to the clerk of the peace where same shall relate to any matter to be tried at quarter sessions, with all convenient dispatch, or at latest within seven days from the holding of each petty sessions where the party shall have been committed or shall be amenable (or at least seven days before the assizes or quarter sessions, as the case may be, where the party shall not have been committed or shall not be amenable), except in cases of indictable offences where the party shall not have been committed, or shall not be amenable, and the justices shall deem it expedient to retain such documents for a longer period:
3. In every case where any such documents, whether taken in or out of petty sessions, shall be so retained by any justice for a longer period than is hereinbefore provided, he shall indorse on the same his reason for such retention:

*Informations,  
&c., taken  
before justice  
out of petty  
sessions to be  
transmitted to  
petty sessions,  
&c.*

*Informations,  
&c., to be trans-  
mitted to the  
clerks of the  
Crown and  
peace.*

And in all cases where the justices shall deliver to the clerk of petty sessions any such information, examination, statement, or recognizance to transmit to the clerks of the Crown or peace, the said clerk of petty sessions shall forthwith make an abstract or schedule of the same, specifying the dates of the same, and the dates when the same were received by him; and (when

*Mode of trans-  
mitting informa-  
tions, &c.*

*Disposal of the  
informations,  
&c.—  
Indictable  
offences.*

there shall be no more convenient or safe mode of transmission), and he shall be so directed by the justices, he shall transmit such schedule, together with the informations, examinations, and recognizances therein referred to, to the said clerks of the Crown or peace, as the case may be, through the General Post Office, prepaying the same, and obtaining a receipt from the postmaster where the same shall be posted, specifying the date of such posting, and for which the postmaster by whom the same shall be delivered shall in like manner obtain a like receipt from the clerk of the peace, or clerk of the Crown, as the case may be, and which receipts such postmaster and such clerk of the Crown or peace are hereby required to give; and the grand jury<sup>1</sup> of the county shall at the assizes<sup>1</sup> present to be paid to such clerks of petty sessions the amount of the postage prepaid by them for the transmission of such documents as aforesaid; and the sums so presented shall be levied as other moneys presented by such grand jury.

*Hearing the  
case.—  
Summary  
jurisdiction.*

20. In all cases of summary jurisdiction the proceedings upon the hearing of the complaint shall be subject to the following provisions:

1. Whenever the defendant or his agent shall be present the substance of the complaint shall be stated to him, and if he thereupon admit the truth of the complaint, then the justices shall, if they shall see no sufficient reason to the contrary, convict or make an order against him accordingly; but if he do not admit the truth of the complaint, then the justices shall proceed to hear such evidence as may be adduced in support of the complaint, and also to hear the defence and such evidence as may be adduced on behalf of the defence, and also such evidence as the complainant may adduce in reply, if such defendant shall have given any evidence other than as to his (the defendant's) general character; but the complainant or his agent shall not be entitled to make any observations in reply upon the evidence given by the defendant, nor shall the defendant or his agent be entitled to make any observations in reply upon the evidence given by the complainant in reply; and if the information or complaint shall negative any exemption, exception, proviso, or condition in the statute on which the same shall be framed, it shall not be necessary for the complainant to prove such negative, but the defendant may prove the affirmative thereof, if he will have advantage of the same:
2. Whenever the defendant or his agent shall not appear at the time and place mentioned in the summons, and it shall appear to the justices on oath that the summons was duly served a reasonable time<sup>2</sup> before the time therein appointed for appearing, and no sufficient grounds shall be shown for an adjournment, the justices may either proceed *ex parte* to hear and determine the complaint, or may adjourn the hearing to a future day:
3. Whenever the defendant or his agent shall appear at the time and place appointed in the summons, or shall be brought before the justice by virtue of any warrant, then if the complainant (having in the case of a warrant had due notice of the defendant's arrest) do not appear by himself or his agent, the justices may either dismiss such complaint, or may adjourn the hearing to a future day:

<sup>1</sup> For "grand jury" and "assizes" read "county council" and "its quarterly meeting" (Adaptation of Irish Enactments Order, 1899—Article 3 (4) of Sch.).

<sup>2</sup> As to what is a reasonable time, see p. 49, *ante*. The following case has been decided since the earlier part of this volume went to press:—

The defendant, a barrister, resided with his mother near Omagh, but left Ireland on the 3rd June, 1910, to attend training in connection with his duties as officer of territorials, and remained in England until 27 June, 1910. The summons was served at his mother's residence on the 6th June, 1910, to appear at Letterkenny Petty Sessions on the 9th June, 1910. The defendant who was convicted of the offence charged, heard nothing of the summons until the 13th June, 1910. No explanation was sent by his relatives, who were aware of the summons, to the convicting justices, who were not aware of the defendant's absence. *Held*, that the summons had not been well served within the section (*R. (Dickie) v. Donegal Jfz.*, 28 October, 1910, 44 I.L.T.R. 222). On matters constituting a condition precedent to the jurisdiction, the court will, upon certiorari, consider all the facts, including facts that may not have been brought before the justices (*ib.*). As to other cases on service, see p. 49, *ante*.

Where both  
parties appear,  
how case to be  
heard.

Where complain-  
ant does not  
appear.

4. Whenever any justices shall proceed to hear and determine any complaint or information as to an offence, they, or one of them, shall, when required so to do by either party or his agent, take or cause to be taken a note in writing of the evidence, or of so much thereof as shall be material, in a book to be kept for that purpose by the clerk of petty sessions, and which book shall be signed by one of the justices by whom such information or complaint shall have been heard on the day on which the same shall have been determined.

*Hearing the case.—  
Summary jurisdiction.*

Justices to take evidence in offence cases in writing, if required.

And whenever all the cases shall have not been heard and determined on any court day, the justices then present may adjourn the remaining cases either to the next court day or to such other day as they shall see fit; and whenever, either before or during the hearing of any complaint, it shall appear advisable, the justices present may, in their discretion, adjourn the hearing of the same to a certain time or place to be then appointed and stated in the presence and hearing of the party or parties or their agents; and all persons whose attendance shall have been required by any summons in any of the cases so adjourned shall take notice of such adjournment, and shall be obliged to attend on the day to which such adjournment shall take place, without the issue or service of any further summons; and in all cases of such adjournments the said justices may suffer the defendant to go at large, or, in prosecutions for offences (where there shall be an information in writing and on oath that the defendant is guilty of the offence), may commit him to gaol by warrant (E. b.), or may discharge him upon his entering into a recognizance (C.), with or without sureties, at the discretion of the justices, conditioned for his appearance at the time and place to which such hearing or further hearing shall be adjourned.

Justices may adjourn the court or particular cases.

21. In all cases of summary jurisdiction the justices, having heard what each party shall have had to say, and the evidence adduced by each, shall either make such order as shall be authorized by the Act under which the complaint shall be made, or shall dismiss the complaint either upon the merits or without prejudice to its being again made, and the entry of the order so made shall be as follows:

*Adjudication of case.—  
Summary jurisdiction.*

Justices either to convict or dismiss on the merits, or without prejudice.

Entry of order.

1. One of the justices then present shall thereupon enter or cause the clerk to enter the particulars of such case and the substance of the decision thereon in a book to be kept for that purpose, to be called the "Order Book," (D.) (and shall, in case of a dismissal, state whether the same is upon the merits or without prejudice to a further complaint); and such entry, when one of the justices present shall have signed his name opposite to it or after it (which one of the said justices is hereby required to do), shall be deemed to all intents and purposes a conviction or order, as the case may be:
2. Whenever any justice or justices shall have made any such conviction or order out of petty sessions, in the cases permitted by this Act to be decided out of petty sessions, he or they shall either enter the same in the order-book in manner aforesaid, or shall enter the substance of the decision in the form of certificate (I. a.), and shall, forthwith, or at furthest before the next court day, deliver or forward such certificate to the clerk of petty sessions of the district, who shall enter the same in the proper order-book (with a special note that he has so done), and shall submit such entry for signature to the justices or one of the justices by whom the order shall have been made upon the next day of his attendance at petty sessions; but in case such justice shall not sign the same, the clerk shall make a special entry to that effect in the order-book opposite to such case, and shall preserve the original certificate as a record of the proceeding:
3. The sub-inspector<sup>1</sup> of constabulary of the district shall make a return to the justices at each petty sessions of the particulars of any cases of summary jurisdiction in which any justices of the said petty sessions shall have made any order or issued any warrant out of petty sessions, and in which any head or other constable of such district shall have been engaged since the next preceding petty sessions:

Entry of orders made out of petty sessions.

Return of constabulary cases decided out of petty sessions.

And it shall not hereafter be necessary to return to quarter sessions copies of the summary convictions so made and entered at petty sessions; but, if either

Copies of convictions need not be returned to quarter sessions.

<sup>1</sup> Now district-inspector, 46 & 47 Vict. c. 14, s. 12.



*Adjudication of  
case.—  
Summary  
jurisdiction.*  
Certificate of  
order.

party shall require it, a certificate (Form I. a.) of any order so made (signed by the justice who shall have made the same, or by any other justice of the same petty sessions), shall be delivered to him at any time, and such certificate shall operate to all intents as a good form of conviction or order, as the case may be, for any purpose for which any form of conviction or order may now by law be required; and in case of a dismissal, where the same shall be stated therein by the justice to have been a dismissal on the merits, or that any assault was of a trifling or justifiable nature (and which he is hereby required to state if the case be so), such certificate upon being produced shall be a bar to any subsequent information or complaint for the same matter against the same party: and in any such case such certificate shall, on proof of the signature of the justice to the same, be received as good evidence of the conviction or order in all courts of justice.

General  
powers in  
adjudicating.

22. In all cases of summary jurisdiction it shall be lawful for the justices in adjudicating thereon to exercise the following general powers, whether the same shall be authorized by the Act under which the complaint shall be made or not:

Fixing time of  
payment.

1. In every case where the justices shall be authorized to award any penal or other sum, they may order that the same shall be paid either forthwith or at such time as they shall see fit to fix for that purpose<sup>1</sup> and, in cases of a civil nature, that such sum may be paid either at once or by instalments:

Ordering  
distress.

2. In every case where the justices shall award any penal or other sum to be paid, they may order that, in default of the said sum being paid at the time and in the manner directed by their order, the goods of the person against whom the said order shall be made shall be distrained<sup>2</sup> for such sum, or for so much of such sum as shall remain unpaid at the time fixed, and also for the costs of such distress:

Imprisonment  
in default, in  
offence cases.

3. In every case of an offence where they shall order that a distress shall be made in default of payment of any penal sum, they may order that in default of the said sum being paid as directed, the said person shall be imprisoned for any term not exceeding the period specified in the following scale<sup>3</sup> :—

For any sum	The imprison- ment not to exceed
Exceeding five pounds, but not exceeding ten pounds, . . .	three months.
Exceeding the last, but not exceeding thirty pounds. . .	four months.
Exceeding the last, but not exceeding fifty pounds, . . .	six months.
Exceeding the last, . . . . .	one year.

And any such imprisonment shall be determinable upon payment of the said sum and costs, and any costs of the distress where a distress shall have been made; and such imprisonment may be directed in the same warrant as such distress; but if the said person shall admit, or if it shall be otherwise proved on oath, that he has no goods, or that a distress would be ruinous to him or his family, they may order that such person shall be imprisoned in the first instance for the like period for which he might be imprisoned in default of distress:

Substitution of  
distress for  
committal, and  
*vice versa*.

4. In every case of an offence, where the order shall only have directed distress in default of payment of a penal sum, and it shall afterwards be found impossible to execute a warrant of distress, it shall be lawful for the justices at petty sessions to order a warrant to issue to commit the person against whom such order shall have been made to gaol for such period as might have been directed by the original order; and in like manner where the order shall have only directed imprisonment, and it shall be found impossible to execute a warrant

<sup>1</sup> This does not apply to penalties under the Illicit Distillation Act, 1831, 1 & 2 Wm. 4, c. 55 (Inland Revenue Act, 1867, 30 & 31 Vict. c. 90, s. 14).

<sup>2</sup> But see now Small Penalties (Ireland) Act, 1873, 36 & 37 Vict. c. 82.

<sup>3</sup> Small Penalties (Ir.) Act, 1873, substitutes other terms of imprisonment in case of penalties not exceeding £5, and the first portion of the scale is repealed by the S.L.R. Act, 1893.

of committal, it shall be lawful for the justices at petty sessions to order a warrant to issue to levy by distress of the goods of such person such penal sum as might have been awarded by the original order; and in all such cases a note of such proceeding shall be made by the justices in the order-book:

*Adjudication of case.—  
Summary jurisdiction.*

5. In every case of an offence, where the Act shall authorize the justices to order imprisonment,<sup>1</sup> they may adjudge by their order that the said imprisonment shall be either with or without hard labour, according as they shall see fit:
6. In every case of an offence, where the person against whom an order to imprison shall be made shall then be in prison undergoing imprisonment upon a conviction for any other offence, it shall be lawful for the justice issuing the same, if he shall think fit, to order therein that the imprisonment shall commence at the expiration of the imprisonment to which such person shall have been previously sentenced:<sup>2</sup>
7. In every case where any sum shall be awarded under the provisions of any Act as compensation for damage, or as the value of any article, or as the amount of any injury done, such sum shall be paid to the party or public body aggrieved; but where the party aggrieved is unknown, such sum shall be applied in like manner as any penalties awarded to the Crown; and where several persons join in an offence, and are severally punished each in the amount of the injury done, no more than one of such sums shall be paid to the party aggrieved, and the rest shall be applied as other penalties awarded to the Crown:
8. In every case where the Act under which any penal sum shall be ordered to be paid as a penalty for an offence (and no sum shall be awarded to the complainant as compensation for damage), it shall be lawful for the justices to award any sum not exceeding one-third of such penal sum to the prosecutor or informer, and the remainder of such sum, and all other penal sums, shall be awarded to the Crown, any Act or Acts to the contrary notwithstanding:
9. In all cases the justices may order that the defendant shall pay to the complainant, or, in case of a dismissal, that the complainant shall pay to the defendant, such sum, not exceeding twenty shillings, for costs, as to such justices shall seem fit, and the same shall be recoverable in the same manner as any penal or other sum adjudged to be paid by the justices:

Power to award hard labour in offence cases,

Imprisonment may commence at expiration of imprisonment under previous conviction.

Payment of compensation.

Appropriation of fines and penalties.

Power to award costs.

Provided always, that every person who shall aid, abet, counsel, or procure the commission of any offence which is or shall be punishable on summary conviction, shall be liable to be proceeded against and convicted for the same, either together with the principal offender, or before or after his conviction, and shall be liable on conviction to the same forfeiture and punishment to which such principal offender shall be by law liable (except where the age of such aider or abettor shall exceed fourteen years, in which case he shall be liable to the same forfeiture and punishment to which any principal offender whose age shall exceed fourteen years shall be liable), and may be proceeded against and convicted either in the county where such principal offender may be convicted, or in that in which such offence of aiding, abetting, counselling, or procuring, may have been committed.

Aiders and abettors.

23. In all cases of summary jurisdiction, whenever an order shall be made upon the conviction of any person for an offence, the justices shall issue the proper warrant for its execution forthwith, when the imprisonment is to take place immediately, or at the time fixed by the order for the imprisonment to take place, where it is not to be immediate, or directly upon the non-payment of any penal sum or the non-performance of any condition at the time and in the manner fixed by the order for that purpose, or at furthest upon the next court-day after the expiration of the time so fixed for the imprisonment, payment, or performance of a condition, as the case may be, unless the

*Enforcement of orders.—  
Summary jurisdiction.*

In offence cases warrant to issue.

<sup>1</sup> It is submitted that this power applies to statutes passed since 1851, unless the particular statute otherwise direct (see *Fines Act (Ir.)*, 1874, s. 5).

<sup>2</sup> Notwithstanding *R. v. Cuthbush*, (1867) L.R. 2 Q.B. 379, noted p. 68, *ante*, the right to impose, at the same time, consecutive sentences is not free from doubt; and it is clear that not more than two such sentences can be ordered (see *R. v. Martin*, (1911) 27 T.L.R. 460).

*Enforcement of  
order.—  
Summary  
jurisdiction.*

In civil cases  
warrant to issue  
on application  
of party.

Stay of execu-  
tion pending  
appeal.

Order for dis-  
charge pending  
appeal.

imprisonment or penal sum shall have been remitted by the Crown or other competent authority in the interval; and whenever an order shall be made in any case of a civil nature, and the same shall not be obeyed, the justice shall issue the proper warrant for its execution at any time after the time fixed for compliance with its directions, where required so to do by the person in whose favour such order shall have been made, or by some person on his behalf; and it shall not be necessary that the justice by whom any such warrant shall be issued shall be the justice or one of the justices by whom the order shall have been made: Provided always, that in every case where the party being entitled to appeal against any such order shall have duly given notice thereof, and entered into a recognizance to prosecute the same in the manner hereinafter provided, it shall not be lawful for any justice to issue any warrant to execute the said order until such appeal shall have been decided, or until the appellant shall have failed to perform the condition of such recognizance, as the case may be (except where any Act shall expressly authorize or direct the levy of any sum to be made notwithstanding the appeal): and in any case where any person shall be in custody, or shall have been committed to gaol, or any warrant of distress shall have been issued or executed under any such order, the justice by whom the warrant shall have been issued, or any other justice of the same county, shall, upon an application being made to him in that behalf, forthwith order the discharge of such person from custody or from gaol, or that such warrant of distress shall not be executed, or that if executed the distress shall be returned to the owner, as the case may be.

*Appeals.—  
Summary  
jurisdiction.*

In what cases  
appeals shall be  
permitted.

24. In any case of summary jurisdiction, where an order shall be made by the justices for payment of any penal or other sum exceeding twenty shillings, or for any term of imprisonment exceeding one month, or for the doing of anything at a greater expense than forty shillings, or for the estreating of any recognizance to a greater amount than twenty shillings (but in no other case), either party (whether he shall be the complainant or defendant) in cases of a civil nature, or the party against whom the order shall have been made in other cases, shall be entitled to appeal to the next quarter sessions to be held in the same division of the county when the order shall have been made by any justice or justices of any petty sessions district (or to the recorder of any corporate or borough town at his next sessions when the order shall have been made by any justice or justices of such corporate or borough town) unless when any such sessions shall commence within seven days from the date of the order, in which case the appeal may be made to the next succeeding sessions of such division or town); and such appeal shall be subject to the following provisions:

Three days'  
notice.

Recognizance.

Form of appeal

Recognizance,  
&c., to be trans-  
mitted to clerk  
of peace.

1. The appellant shall serve notice in writing of his intention to appeal upon the clerk of petty sessions, within three days from the date of the order against which the appeal shall be made:
2. He shall also within three days after such notice as aforesaid enter into a recognizance, according to the form (C.), with two solvent sureties, conditioned<sup>1</sup> to prosecute such appeal, and the amount of such recognizance shall be double the amount of the sum and costs ordered to be paid where payment only is ordered, or of such reasonable amount as the justices shall see fit, where imprisonment is ordered:
3. Whenever the appellant shall have given such notice and entered into such recognizance, there shall be delivered to him the form of appeal (H.), containing a certificate of the order against which he shall appeal (signed by the justice who shall have made the same, or by any other justice of the same petty sessions); and it shall also be therein certified by the clerk of petty sessions that the said notice was duly given, and that the said recognizance was duly entered into, if the fact shall be so:
4. In every case where an appeal shall be so made, the clerk of petty sessions shall transmit the recognizance entered into to prosecute such appeal and all other proceedings in such case to the clerk of the peace of the county, or to the proper officer of the recorder's

<sup>1</sup> See now 40 & 41 Vict. c. 56, s. 72. As to recognizance under Fisheries Acts, see CATALOGUE OF SUMMARY OFFENCES, "FISHERIES."



court, at least seven days before the commencement of the sessions to which the appeal shall be made, or as soon afterwards as may be practicable, in the same manner as is hereinbefore provided for the transmission of informations as to indictable offences :

*Appeals.—  
Summary  
jurisdiction.*

5. The appellant shall give notice in writing to the opposite party of his intention to prosecute his appeal, at least seven clear days before the commencement of the sessions to which the appeal shall be made :
 

Appellant to give notice to opposite party.
6. Whenever an appeal shall have been so made, and such last-mentioned notice shall have been duly given, it shall be lawful for the said court of quarter sessions (or recorder, as the case may be) to entertain the same, and to confirm, vary, or reverse the order made by the justices (as so certified in such form of appeal, and to award to either party any sum not exceeding forty shillings for the costs of such appeal ; and whenever the said court of appeal shall have decided any such appeal, the clerk of the peace or proper officer of the recorder's court, as the case may be, shall certify such decision at foot of the form of appeal, and return the same and the said proceedings to the justices of the petty sessions at which the order shall have been made, within seven days after such appeal shall have been decided ; and whenever any such appeal shall not have been duly prosecuted, the clerk of the peace or proper officer of the recorder's court, as the case may be, shall so certify upon such recognizance, and return the same to the justices of the petty sessions from which the same shall have been transmitted (in the same manner and subject to the same provisions as are hereinbefore contained as to the transmission of informations for indictable offences) within seven days after the termination of the sessions at which such appeal ought to have been prosecuted, and which certificate shall be free from any charge :
 

Court of quarter sessions may decide.  
  
May award costs.  
Certificate of result of appeal.  
  
Certificate of non-prosecution of appeal.
7. And whenever it shall appear from such certificate that such appeal has not been duly prosecuted, or that the original order has been confirmed upon appeal, the justices who shall have made the original order, or any other justice of the same petty sessions shall issue the proper warrant for the execution of the same as if no such appeal had been brought : and in every case in which it shall appear from such certificate that the court of appeal shall have varied the original order, the said justices shall forthwith issue the proper warrant for the execution of the order so made by the court of appeal, in like manner as they might have issued a warrant for the execution of the original order in case no appeal had been prosecuted ; and if upon any such appeal either party shall be ordered to pay costs, it shall be lawful for such justices to enforce payment of the same, in like manner as any costs awarded by the original order ; and in any case where any order by which any person shall be adjudged to be imprisoned shall be confirmed on appeal, such person shall be liable to be imprisoned for the period adjudged by the original order, where he shall not have been apprehended under the original order ; or where he shall have so been apprehended and discharged, then for such period as together with the time during which he shall so have been in custody shall be equal to the period adjudged by the original order.<sup>1</sup>

If order is not varied, justices shall issue warrant for execution.  
  
Execution if order varied.  
  
Costs of appeal, how recovered.  
  
If order of imprisonment confirmed.

25. The persons to whom warrants shall be addressed for execution shall be as follows :—

*Addressing  
warrants.*

1. All warrants in proceedings as to offences, punishable either by indictment or upon summary conviction, which shall be issued in any petty sessions district, shall be addressed to the sub-inspector<sup>2</sup> or head-constable of constabulary who shall act for the place where the petty sessions for such district shall be held.
 

To whom to be addressed in offence cases.
2. All warrants in other cases shall be addressed either to the sub-inspector<sup>2</sup> or head-constable of constabulary in manner aforesaid, or to such other person or persons (not being the complainant or a party interested), as the justices issuing the same shall see fit.
 

In other cases.

<sup>1</sup> Remainder of section repealed, S.L.R. Act, 1893.

<sup>2</sup> Now district-inspector, 46 & 47 Vict. c. 14, s. 12.

*Addressing warrants.*

Warrants of committal need not be addressed to gaoler.

And it shall not be necessary to address any warrant of committal to the keeper of the gaol; but upon the delivery of any such warrant by the person charged with its execution to the keeper of the gaol to which the committal shall be made, such keeper shall receive and detain the person named therein (or shall detain him if already in his custody) for such period and in such manner as it shall appear from the warrant that the said person is to be imprisoned; and in cases of adjournments or remands such keeper shall bring the said person at the time and place fixed by the warrant for that purpose, before such justices as shall be there.

*By whom warrants may be executed.*

Executing constabulary warrants in the district.

Execution in other districts of same county.

Certifying out of the county.

Execution in case of emergency.

*Backing warrants.*

Constabulary warrants. To any constabulary district in Ireland.

26. The execution of warrants so addressed to the sub-inspector<sup>1</sup> or head-constable of constabulary shall be subject to the following provisions:—

1. Whenever the person against whom any warrant so addressed shall have been issued shall be to be found<sup>2</sup> in case of committal, or shall have goods in case of distress in any place for which such sub-inspector<sup>1</sup> or head-constable shall act, it shall be lawful for the sub-inspector<sup>1</sup> or head-constable who shall act for the time being for such place, or for any head or other constable to be appointed by him, to execute the same.
2. Whenever it shall appear that the said person or his goods, as the case may be, are not to be found in any place for which such sub-inspector<sup>1</sup> shall act, but that they are to be found elsewhere in the same county, the said sub-inspector<sup>1</sup> or head-constable shall certify on the warrant, according to the form (G. b.) the place where he believes that the said person or his goods are to be found, and also (having first satisfied himself as to the fact) that he believes the signature to the warrant to be genuine, and shall forthwith transmit the said warrant to the sub-inspector<sup>1</sup> or head-constable who shall act for such last-mentioned place, and the same shall be executed in like manner as any warrant addressed to him in the first instance.
3. Whenever it shall appear that the said person or his goods, as the case may be, are not to be found in the county to which such sub-inspector<sup>1</sup> or head-constable shall belong, but that such person or his goods, as the case may be, are to be found elsewhere out of the said county, the said sub-inspector<sup>1</sup> or head-constable shall, as before, certify on the warrant, according to the form (G. b.), and forthwith transmit the same to the inspector-general of the constabulary force, to be backed as hereinafter mentioned:

Provided always that in any case which shall appear to the justice by whom any warrant shall be issued, to be a case of emergency, he may address such warrant to any constable of the county; and it shall be lawful for such constable to execute such warrant at any place within the county in which the justice issuing such warrant shall have jurisdiction, or, in case of fresh pursuit of an offender, at any place in the next adjoining county; but the constable to whom any such warrant shall be so addressed shall, if the time will permit, show or deliver the same to the sub-inspector<sup>1</sup> or head-constable under whose command the said constable shall be, who shall proceed in respect to the same, according to the Acts regulating the constabulary force.

27. Whenever any warrant addressed to the sub-inspector<sup>1</sup> of constabulary, or to any head or other constable, shall be so certified and transmitted to the said inspector-general, the manner in which it shall be backed for execution elsewhere shall be as follows:

1. Whenever it shall appear that the said person or his goods are to be found in any place in Ireland (not being within the police district of Dublin metropolis), it shall be lawful for the said inspector-general or for either of the deputy inspectors-general<sup>3</sup> of constabulary to indorse the said warrant according to the form (G. c.), and to transmit the same to the sub-inspector<sup>1</sup> who shall act for such place, and the same shall be executed in like manner as any warrant addressed to him in the first instance.

<sup>1</sup> Now district-inspector, 46 & 47 Vict. c. 14, s. 12.

<sup>2</sup> *Sic.*

<sup>3</sup> Or by any assistant-inspector-general, if authorized in writing under the hand of the Lord Lieutenant (Constabulary (Ir.) Amendment Act, 1882, 45 & 46 Vict. c. 63, s. 6).

2. Whenever it shall appear that the said person or his goods are to be found in the police district of Dublin metropolis, it shall be lawful for the said inspector-general, or for either of the said deputy inspectors-general, to indorse the said warrant according to the form (G. c.), and to transmit the same to the commissioners of metropolitan police, and the same shall be executed in like manner as any warrant addressed to them in the first instance. *Backing warrants.*  
To the police district of Dublin metropolis.
3. Whenever it shall appear that the said person or his goods are to be found in some place in England or Scotland, or in the Isles of Man, Guernsey, Jersey, Alderney, or Sark, it shall be lawful for the said inspector-general, or for either of the said deputy inspectors-general, in like manner as before, to indorse the warrant according to form (G. c.), and it shall thereupon be lawful for any justice or officer having power to issue any warrant, or process in the nature of a warrant, for the arrest of offenders in any of the said places, upon proof on oath of the handwriting either of the inspector or deputy inspector-general by whom the same shall have been indorsed, or of the justice by whom the warrant shall have been issued, to indorse the same according to the form (G. c.), authorizing its execution within the jurisdiction of the said justice or officer by the person bringing the same, or by any constable or other peace officer of the county or place where it shall be so indorsed: *To England, &c.*

And the said provisions shall also apply to cases in which the sub-inspector<sup>1</sup> shall only certify that the signature to the warrant is genuine, but in which the place where the said person or his goods are to be found shall appear by other means than the said certificate.

28. Whenever a warrant shall be addressed to any other person or persons than the constabulary, and it shall appear that the person against whom the same shall have been issued or his goods, as the case may be, are not to be found within the county in which the justice issuing the same shall have jurisdiction, but in some other place in Ireland, or in any of the places out of Ireland hereinbefore mentioned, it shall be lawful for any justice or other such officer as aforesaid of such place, upon proof on oath of the handwriting of the justice who shall have signed the warrant, to indorse the same for execution in such place in like manner as is hereinbefore provided as to any warrant indorsed by the inspector-general of constabulary. *Warrants addressed to persons other than the constabulary.*

29. Whenever any person against whom any warrant shall be issued by any justice or other such officer as aforesaid in England or Scotland, or in the Isles of Man, Guernsey, Jersey, Alderney, or Sark, for any crime or offence shall reside or be, or be suspected to reside or be, in any place in Ireland, it shall be lawful for the said inspector-general, or for either of the said deputy inspectors-general, or for any justice of the said last-mentioned place, to indorse the same in like manner and upon like proof as aforesaid, authorizing the execution of the same within his jurisdiction. *Backing warrants from England, &c., to Ireland.*

30. The aforesaid provisions as to the indorsement of warrants shall equally apply to any warrants for the arrest of any person charged with any indictable crime or offence for which he is punishable by law, whether the same shall be signed or indorsed or issued by a justice of the peace, or by a judge of her Majesty's Court of Queen's Bench, or justices of Oyer and Terminer and general gaol delivery, in England or Ireland, or by the lord justice-general, lord justice clerk, or any of the lords commissioners of judiciary, or by any sheriff, depute, or substitute, in Scotland, or by the Chief or Under Secretary to the Lord Lieutenant. *The above provisions to apply also to judges' warrants.*

31. Whenever any warrant, addressed either to the constabulary or to any other person, shall be so indorsed by the said inspector-general, or by either of the said deputies inspector-general, or by any justice or other such officer as aforesaid, it shall be a sufficient authority to the person bringing such warrant, and also to all constables or peace officers of the county or place where such warrant shall be so indorsed, to execute the same by *Warrants so backed to be valid for execution.*

<sup>1</sup> Now district-inspector, 46 & 47 Vict. c. 14, s. 12.



*Backing  
warrants.*

But if witnesses  
on the spot,  
examination  
may be taken  
before a justice  
of the county.

arrest, committal, or levy, as the case may be, within the jurisdiction of the said justice or officer, and in case of a warrant to arrest any person, to convey him, when arrested, before the justice or officer by whom the same was issued, or before some other justice or officer of the same county or place, to be dealt with according to law: Provided always, that if the prosecutor, or any of the witnesses for the prosecution, in cases of indictable offences, shall then be in the county or place where any person shall have been arrested under any warrant so backed as aforesaid, the constable or other person who shall have arrested such person shall, if so directed by the justice who shall have indorsed the warrant, bring the person so arrested before him or some other justice of the same county or place, who may thereupon take the examinations of such prosecutor or witnesses, and proceed in every respect as hereinbefore directed with respect to persons charged before a justice with an indictable crime or offence alleged to have been committed in any other county or place than that in which such person shall have been arrested.

*Execution of  
warrants.*

Accounting for  
sums levied, &c.

32. The manner in which distresses and committals under warrants shall be made shall be as follows:

Distress may be  
sold within a  
certain time.

1. Whenever any warrant to levy any penal or other sum by distress shall be addressed to the constabulary, the sums levied under it shall be accounted for under the provisions of the "Fines Act, Ireland, 1851"; but whenever any such warrant shall be addressed to any other person than the constabulary, such person shall pay over the sum levied under it to the person who shall appear by such warrant to be entitled to the same, or in such other manner, and subject to such account of the same, as the justices shall direct:

On payment of  
penalty, &c.,  
no distress.

2. In every case where a distress shall be made under any such warrant, it shall be lawful for the person charged with its execution to sell the said distress within such period as shall be specially fixed by the said warrant; or if no period shall be so fixed, then within the period of three days from the making of the distress, unless the sum for which the warrant was issued, and also the reasonable charges of taking and keeping the said distress shall be sooner paid; and in every case where he shall sell any such distress, he shall render to the owner the overplus (if any) after retaining the amount of the said sums and charges:

Distress may be  
sold by auction  
without licence.

3. In every case where any person against whom any such warrant shall be issued shall pay or tender to the person having the execution of the same the sum in such warrant mentioned, or shall produce the receipt of the officer of the court for the same, and shall also pay the amount of the expenses of such distress up to the time of such payment or tender, such person shall refrain from executing the same:

If sum paid  
after committal,  
prisoner to be  
discharged.

4. In every case where any sub-inspector<sup>1</sup> or member of the metropolitan police force shall be empowered to distrain any goods under such warrant, he may and is hereby authorized to sell or cause the same to be sold by auction by any head-constable of the said constabulary force, or by any member of the said metropolitan police force, as the case may be, without procuring any licence to act as an auctioneer, and may deduct out of the amount of such sale all reasonable costs and charges actually incurred in effecting the same:

Gaoler to give  
receipt for  
prisoners.

5. In every case where any person who shall be apprehended under any such warrant shall pay or cause to be paid to the keeper of the gaol in which he shall be imprisoned the sum in the warrant mentioned, the said keeper shall receive the same, and shall thereupon discharge such person, if he be in his custody for no other matter:

6. Whenever the warrant shall be to commit any prisoner to gaol, the head or other constable or other person whose duty it shall be to convey such prisoner to gaol shall deliver over the said warrant and the said prisoner to the keeper of the gaol, who shall thereupon give to such head or other constable or other person a receipt for such prisoner (Form F.), setting forth the state and condition in which he shall have been delivered into the custody of such keeper.

<sup>1</sup> Now district-inspector, 46 & 47 Vict c. 14, s. 12.

7. In any case of summary jurisdiction in which a justice shall order any person to be committed to gaol for any period, either in default of payment of any sum, or in default of distress, or as a punishment for any offence, such committal shall be to the county gaol, district bridewell, or house of correction of the county in which the party shall be arrested, unless where such arrest shall be made in any county adjoining to that in which the warrant shall have been issued, in which case the committal shall be to any of the said prisons of such last-mentioned county; and whenever any justices shall order any person to be committed on account of any adjournment of the hearing, or until the return of a warrant of distress, or for any like temporary purpose, such committal shall be either to the gaol or house of correction, district bridewell, or to any bridewell or lock-up of the county, built or supported by county presentment, according as shall appear to the justices most convenient for that purpose.

*Execution of warrants.*

To what prisons offenders shall be committed in summary proceedings.

33. Whenever the person to whom any warrant shall be so addressed, transmitted, or indorsed for execution, shall be unable to find the person against whom such warrant shall have been issued, or his goods, as the case may be, or to discover where such person or his goods are to be found, he shall return such warrant to the justices by whom the same shall have been issued within such time as shall have been fixed by such warrant (or within a reasonable time where no time shall have been so fixed), and together with it a certificate (G a.) of the reasons why the same shall not have been executed; and it shall be lawful for such justice to examine such person on oath touching the non-execution of such warrant, and to re-issue the said warrant again, or to issue any other warrant for the same purpose from time to time as shall seem expedient.

*Return of unexecuted warrants.*

34. Whenever any person shall be bound to appear, or to keep the peace, it shall be done by a separate recognizance (C.); but whenever any person shall be bound to prosecute or to give evidence as a witness, it may be done either by recognizance at foot of his deposition (A b.), or by a separate recognizance at the discretion of the justice; and the taking of every recognizance shall be subject to the following provisions:

*Recognizances.*

*Mode of binding.*

1. It shall be in such amount as the justice shall, in his discretion, think expedient, except in cases of appeal, in which the amount shall be as hereinbefore provided: *Amount.*

2. It shall particularly specify the profession, trade, or occupation of every person entering into the same, together with his Christian and surname, and the name of the parish and townland or town in which he resides, and if he resides in a town the name of the street, and the number (if any) of the house in which he resides, and whether he is owner or tenant thereof, or a lodger therein<sup>1</sup>: *Particular description of parties bound.*

3. Every recognizance so taken according to the form in the schedule to this Act, or to the like effect, either at foot of the deposition or by a separate form, shall have the like force and effect in binding the lands, tenements, goods and chattels of the persons acknowledging the same, and in all other respects, which any recognizance now by law has: *To be in form in schedule.*

And whenever the condition of any such recognizance shall be to appear at assizes or quarter sessions, or at any place other than before any justice or justices, or to perform the duties of petty sessions clerk, it shall be forwarded to the Clerk of the Crown or Peace as hereinbefore provided, and shall be liable, upon any breach of the condition thereof, to be estreated in the same manner as any forfeited recognizance to appear is now by law liable to be estreated by the court before which the principal party thereto shall have been bound to appear: But whenever the condition of such recognizance shall be to keep the peace, or to appear before any justice out of quarter sessions, or to perform the duties of a pound keeper, it shall be deposited with the clerk of petty sessions of the district by the justice by whom it shall have been taken; and upon non-performance of the condition thereof any justice who may then be there present may certify on the recognizance the non-performance of the said condition, and it shall thereupon be lawful for

*Estreating recognizances (1) to appear at assizes, &c.*

*(2) to appear before justices or to keep the peace.*

<sup>1</sup> The recognizance is not vitiated by the omission of the particulars, the section being directory only (*R. (McCabe) v. Louth J.J.*, 31 Oct., 1896, unreported).

*Recognizances.*

the justices sitting at the petty sessions of the district, and in open court, upon proof of the non-performance of the said condition, to make an order to estreat such recognizance to such amount as they shall see fit, and thereupon to issue a warrant (E a.) to levy such amount by distress and sale of the goods of the parties who shall have acknowledged the same<sup>1</sup>: Provided always, that in every case where any justices shall order any such recognizance to be estreated, proof shall be first made on oath that notice in writing (stating the general grounds on which it is intended to sustain the application) was left at the usual place of abode of the party, or of each of the parties if more than one, against whom it is sought to put such recognizance in force, at least seven days before the day on which the application to estreat such recognizance shall be made.

Penalties  
incurred by  
officials.

35. Any of the officers or persons hereinafter mentioned who shall commit any of the offences or neglects hereinafter mentioned, and who shall be convicted thereof before any two justices of the county sitting at petty sessions, shall be liable to forfeit for every such offence or neglect the penalties hereinafter mentioned (that is to say):

Any clerk of petty sessions who shall neglect or refuse to enter any summons in the order required under the provisions of this Act, shall be liable to a penalty not exceeding forty shillings:

Any clerk of petty sessions who shall demand or receive any other or different fees, or any greater amount of fees, as to any proceedings in any case, than he can legally demand or receive under this Act, shall be liable to a penalty not exceeding five pounds:

Any person who, whilst he shall hold the office of petty sessions clerk, shall practise as solicitor in any case at such petty sessions or at the quarter sessions of the division of the county in which such petty sessions shall be situated (or who shall act as the clerk of any solicitor so practising, or as the clerk of a poor law union, or as a collector of any public tax, or as a pound-keeper, or as the keeper or partner in keeping any inn or public-house, or who shall engage in any other business or occupation which the justices or the Lord Lieutenant shall have forbidden as inconsistent with his duties as petty sessions clerk), shall be liable to a penalty not exceeding twenty pounds:

Any summons-server or other person who shall make any wilful default in serving any summons shall be liable to a penalty not exceeding forty shillings:

Any sub-inspector<sup>2</sup>, head or other constable, or other person who shall wilfully neglect to return any unexecuted warrant at the time required by the justices, or who shall commit any wilful default in respect to the execution of the same, shall be liable to a penalty not exceeding five pounds.

Any person in whose possession any books, papers, or other effects belonging to the justices at petty sessions, or relating to such court, shall be, upon or after the death, resignation, suspension, or dismissal of any petty sessions clerk, and who shall refuse to deliver up the same to the sub-inspector<sup>2</sup> or head-constable or other person directed by the justices under the provisions of this Act to demand the same, shall be liable to a penalty not exceeding ten pounds:

Any person who shall oppose or hinder any search under any warrant issued by the justices for the discovery of any such books, papers, or other effects shall be liable to a penalty not exceeding five pounds:

Any person having any other duty to perform under the provisions of this Act, and who shall wilfully neglect to perform the same, shall be liable to a penalty not exceeding five pounds.

And it shall be lawful for the said justices to award the said penalties; and if the same shall be imposed upon any member of the constabulary force, the amount shall be deducted from his pay; but if imposed on any other person, then in default of payment thereof forthwith, or at such time as the justices

<sup>1</sup> The warrant may order that, in default of sufficient distress, the person ordered to pay such amount may be imprisoned for the period prescribed in respect of such amount by the Petty Sessions Act (*R. (Carroll) v. Westmeath J̄s.*, K.B.D., 24th April, 1911, as yet unreported. This decision is confirmatory of the view suggested on p. 39, *ante*).

<sup>2</sup> Now district-inspector, 46 & 47 Vict. c. 14, s. 12.



shall fix, such person may be committed to prison for the like period, in proportion to the amount of the penalty imposed, for which the justices are authorized to commit any offender in default of distress for any other penalty under the provisions of this Act. Recognizances.

36. In all proceedings under this Act the several forms in the schedule to this Act contained,<sup>1</sup> or forms to the like effect, shall be deemed good, valid, and sufficient in law, and shall be the proper forms to be used, even in cases in which other and different special forms shall be or shall have been provided by the particular act or acts under which the information or complaint shall be made; but no departure from any of the said first-mentioned forms, or omission of any of the particulars required thereby, or use of any other words than those indicated in such forms, shall vitiate or make void the proceeding or matter to which the same shall relate, if the form used be otherwise sufficient in substance and effect, and the words used clearly express the intention of the person who shall use the same; and it shall be sufficient in any of the forms provided by this Act to state sums of money either in words or figures, according as the person using the same shall see fit: Provided always, [*that it shall be lawful for the Lord Lieutenant, from time to time, with the advice and consent of the Privy Council, to extend the said form of order-book (D.) so far as to adapt it to any like proceedings either new or not provided for therein: Provided also,*]<sup>2</sup> that the sealing of any warrant or other form of procedure under this Act shall not be necessary in addition to the signature of the justice by whom the same shall be signed.<sup>1</sup> Forms of procedure.  
Forms in the schedule to be deemed valid.

37. And with a view to simplify forms, the prosecutor or party at whose instance the proceedings shall take place, may be termed in such forms the "complainant," whether he shall be an informant, or prosecutor, or otherwise; and the matter of the proceeding may be termed the "complaint," whether founded on an information or otherwise; and in summary proceedings the decision of the justices may be termed their "order," whether the same shall be a conviction or otherwise. General terms to be used.

38. It shall be sufficient, in any information or complaint, or the proceedings thereon, to describe the property belonging to or in the possession of partners, joint-tenants, parceners, or tenants in common, as the property of any one of such persons who shall be named, and of another or others, without naming them as the case may be; and any work or building made, maintained, or repaired at the expense of any county or place, or any materials for the making, altering, or repairing of the same, as the property of the inhabitants of such county or place respectively; and any goods provided by guardians of the poor or their officers respectively for the use of the poor, as the goods of the guardians of the poor of the union to which the same belong, without naming any of them; and any property of any persons described in any Act of Parliament, or in any charter or letters of incorporation, as commissioners, directors, trustees, or by any other general designation whatsoever, as the property of such commissioners, directors, trustees, or persons described by such other general designation, without naming them; and whenever it may be necessary to mention any of such persons or parties in any suit, information, or complaint it shall be sufficient to describe them in manner aforesaid. Description of the property of partners, &c.

39. In cases of summary proceedings no variance between the information or complaint and the evidence adduced in support thereof, as to the time at which the offence or cause of complaint shall be alleged to have been committed or to have arisen, shall be deemed material, if it be proved that such information or complaint was in fact laid or made within the time limited by law for laying or making the same; and any variance between such information or complaint and the evidence adduced in support thereof, as to the place in which the same shall be alleged to have been committed or to have arisen, shall not be deemed material: Provided that the said offence or cause be proved to have been committed or to have arisen within the jurisdiction of the justice or justices by whom such information or complaint shall be heard and determined; and no objection shall be taken or allowed in any proceedings to No objection to be allowed for any variance, defect, &c.

<sup>1</sup> As to the power of the Lord Lieutenant to vary the form of the Order Book, see 41 & 42 Vict. c. 69, s. 11, which now replaces the repealed part (*infra*) of the section.

<sup>2</sup> Words in italics repealed by the S.L.R. Act, 1893.

*Forms of  
procedure.*

any information, complaint, summons, warrant, or other form of procedure under this Act, for any alleged defect therein in substance or in form, or for any variance between any information, complaint, or summons, and the evidence adduced on the part of the complainant or prosecutor at the hearing of the case in summary proceedings, or at the examination of the witnesses by a justice or justices in proceedings for indictable offences: Provided always, that if any such variance or defect shall appear to the justice or justices at the hearing to be such that the defendant has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day, and in the meantime, in cases of proceedings for offences, to commit the said defendant to gaol, or to discharge him, upon his entering into a recognizance conditioned for his appearance at the time and place to which such hearing shall be so adjourned.

*Miscellaneous  
provisions.*

Receipts not to  
be subject to  
stamp duty.

40. No receipt required to be given under the provisions of this Act shall be subject to any stamp-duty payable to the Crown.

Act not to  
extend to  
Dublin  
metropolis.

41. Nothing in this Act shall extend to the police district of Dublin metropolis, or alter or affect in any manner whatsoever any of the provisions or enactments contained in any Act regulating the powers and duties of justices of the peace or of the police of the district of Dublin metropolis, or be deemed applicable in any way to the same, save so far as relates to the backing or executing of any warrants, or to alter the provisions of any Act or Acts whereby any part of any county is annexed for the purpose of criminal proceedings to any other county, or whereby any offences committed in one county are authorized to be tried in any other county.

Act shall not  
extend to  
revenue, &c.,  
cases except as  
to forms of  
procedure.]

42. Nothing in this Act shall extend or be construed to extend to any information or complaint or other proceeding under or by virtue of any of the Acts relating to Her Majesty's revenue of excise or customs, stamps, taxes, or post office, or relating to the preservation of game, except that all proceedings as to the same may be in the forms of procedure required by this Act or as near thereto as the circumstances of the case will admit.

[43. *Section 43, repealing 7 & 8 Geo. 4, c. 67; 6 & 7 Wm. 4, c. 34; 12 & 13 Vict. cc. 69, 70, and all other Acts inconsistent with the Statute, is repealed by S.L.R. Act, 1875. As to effect of this repeal on 12 & 13 Vict. c. 69, so far as Dublin is concerned, see p. 319.*]

Interpretation  
of terms.

44. In the interpretation of this Act, and of the schedules thereto annexed, save where there is anything in the subject or context repugnant to such construction, the word "county" shall be deemed to include "riding of a county"; the expression "summary jurisdiction" shall be deemed to mean any case as to which a summary conviction or order may be made by a justice or justices out of quarter sessions; and "summary proceedings" shall mean any proceedings in respect to such case; the word "complaint" shall include "information," and "complainant" shall include "informant" or "prosecutor"; the word "order" shall include "conviction"; the words "quarter sessions" shall include any general sessions of the peace for the county; the word "justice" shall mean "justice of the peace," and shall include the "chief magistrate" for the time being, or the "borough justices" of any corporate town; the word "constabulary" shall mean the constabulary force of Ireland; the words "proper officer of the recorder's court," shall mean the town-clerk where there shall be a town-clerk; and where there shall be no town-clerk, the person whose duties it shall be to make entries of the proceedings; the word "gaol" shall include any "house of correction" or "bridewell," or other "place" of imprisonment of the county; the words "keeper of the gaol" shall include "bridewell keeper," or the keeper or governor of any other prison; the word "goods" shall include "chattels"; and the references in this Act by letters to the forms to be used shall be to the forms in the schedule to this Act annexed.

Short title of  
Act.

45. In citing this Act in other Acts of Parliament, or in any legal or other instruments or proceedings, it shall be sufficient to use the expression "The Petty Sessions (Ireland) Act, 1851."

[46. *Repealed by the S.L.R. Act, 1875.*]

47. This Act shall extend and be construed to extend to Ireland only, save and except the several provisions herein-before contained respecting the backing and execution of warrants and the taking of examinations; and nothing in this Act shall be deemed to alter or affect the jurisdiction or practice of the Court of Queen's Bench in Ireland.

*Miscellaneous provisions.*

Act to extend to Ireland only.

48. The schedule to this Act annexed shall be deemed to be part of the Act.

Schedule to be part of Act.

## SCHEDULE.

SCHEDULE.

### FORMS (A.)—PROOFS.

#### (A a.) *Information.*

*Complainant.* } Petty Sessions District of  
*Defendant.* } County of

The information of *A. B. of M. N.* who saith on his <sup>(1)</sup> that <sup>(2)</sup>

Taken before me this day of in the year  
Eighteen Hundred and Fifty at in the  
said county.

Signed Justice of said County.

#### (A b.) *Deposition of a Witness.*

*Complainant.* } Petty Sessions District of  
*Defendant.* } County of

The deposition of *X. Y. of M. N.*, taken in the presence and hearing of *C. D.*, who stands charged that <sup>(1)</sup>

The said deponent saith on his <sup>(2)</sup> that <sup>(3)</sup>\*

#### (A c.) *Statement of the Accused.*

*Complainant.* } Petty Sessions District of  
*Defendant.* } County of

A charge having been made against *C. D.* before the undersigned justices that <sup>(1)</sup>

and the said charge having been read to the said *C. D.*, and the witnesses for the prosecution having been severally examined in his presence, and the said *C. D.* having been first duly cautioned that he was not obliged to say anything, but that whatever he did say might be given in evidence against him upon his trial, saith as follows: <sup>(2)</sup>

Taken before me this day of in the year  
Eighteen Hundred and Fifty at in said  
county.

Signed Justice of said County.

\* \* In all forms of procedure the name and description of each party is to be specified in like manner and with the same particulars as is required by this Act (Section 34), as to any party bound by a recognizance.

\* The informant or witness may be bound to prosecute or give evidence by the following form of recognizance at foot of his information or deposition:—

“And the said informant [or deponent] binds himself to attend at on the to prosecute [or to give evidence against] the said *C. D.* for the said offence, or otherwise to forfeit to the Crown the sum of

“Signed Informant [or Deponent].

“Taken before me this day of in the year Eighteen Hundred and Fifty at in the said county.

“Signed Justice of said County.”

\* \* The words in the margin Form (A.) in *italics*, or words to the like effect, are to be used according to the circumstances of each case.

(1) *Oath or Affirmation.*

(2) State CAUSE OF COMPLAINT with time and place.

Adding:—

For the Arrest of a Witness.

And he further saith that *X. Y.* can give material evidence, but is not likely to attend voluntarily; or (and is keeping out of the way of personal service of summons); or, for sureties for the peace, and he makes this information for the safety of his person and property, and not from malice or revenge against the said *C. D.*

(1) CAUSE OF COMPLAINT, with time and place.

(2) *Oath or Affirmation.*

(3) DEPOSITION as nearly as possible in the words of the witness, and to be signed by him, if he will.

(1) CAUSE OF COMPLAINT, with time and place.

(2) STATEMENT of Prisoner in his very words, or as nearly so as possible, and to be signed by him if he will.



## SCHEDULE.

Form (A.).

(A d.) *Solemn Declaration.*

*Complainant.* } Petty Sessions District of  
*Defendant.* } County of

I, *A. B.*, do solemnly and sincerely declare that <sup>(1)</sup>

(1) *MATTER of Declaration.*

and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of [an Act passed in the sixth year of the reign of his late Majesty King William the Fourth, chapter sixty-two, for the abolition of unnecessary Oaths.]

Signed

Made and subscribed before me this      day of  
 in the year Eighteen Hundred and

Signed      Justice of said County.

Form (B.).

FORMS (B.).—PROCESS TO ENFORCE APPEARANCE.

(B a.) *Summons.*

*Complainant.* } Petty Sessions District of  
*Defendant.* } County of

Whereas a complaint has been made to me that <sup>(1)</sup>

(1) *CAUSE OF COMPLAINT*, with time and place.

This is to command you to appear as a <sup>(2)</sup>

(2) Insert: *Defendant* or *Witness*.

on the hearing of said complaint at      on the  
 day of      at      o'clock, before such justices as  
 shall be there.

Signed      Justice of said County,

To      of      This      day of      185 .

(B b.) *Warrant to Arrest.*

*Complainant.* } Petty Sessions District of  
*Defendant.* } County of

Whereas a complaint has been made on oath and in writing that <sup>(1)</sup>

(1) *CAUSE OF COMPLAINT*, with time and place.and <sup>(2)</sup>

(2) If the case be so add—

This is to command you to whom this warrant is addressed to arrest the said

For defendant,

*Whereas the said C. D. has neglected to appear in obedience to a summons.*

<sup>(3)</sup> \_\_\_\_\_  
 of \_\_\_\_\_

For witness,

*Whereas Oath has been made that X. Y. can give material evidence, but will not attend voluntarily; or is purposely keeping out of the way of personal service of a summons.*

and to bring him before me or some other justice of the county to answer to the said complaint.

If after indictment—

*It has been certified to me that (state as in certificate of clerk of Crown or peace).*

Signed      Justice of said County,

(3) *PERSON* against whom warrant is issued.

This      day of      185 .

To <sup>(4)</sup>      of(4) *ADDRESS.*

*The Sub-Inspector\* of Constabulary,* or name of person who is to execute the warrant.

\* Now district-inspector, 46 &amp; 47 Vict. c. 14, s. 12.

## FORM (C.)—RECOGNIZANCE (to appear, &amp;c.).

SCHEDULE.

Form (C.).

Complainant. } Petty Sessions District of  
 Defendant. } County of

Whereas <sup>(1)</sup>

The undersigned principal party to this recognizance hereby binds himself to perform the following obligation, viz., to <sup>(2)</sup>

And the said principal party, together with the undersigned sureties, hereby severally acknowledge themselves bound to forfeit to the Crown the sums following, viz.:—The said principal party the sum of , and the said sureties the sum of each, in case the said principal party fails to perform the above obligation.

Signed { *M. N.* Principal Party.  
           { *O. P.* Sureties.  
           { *Q. R.*

Taken before me this        day of        at

Signed        Justice of said County.

I certify that the said *M. N.* has not performed the above obligation. <sup>(3)</sup>

Signed        Justice (or Clerk of the Peace, &c.)

This        day of        185 .

I order that the sum of        be levied off the goods of the said *M. N.*, and the sum of        off the goods of each of the said sureties, *O. P.* and *Q. R.* <sup>(4)</sup>

Signed        Justice of said County.

This        day of        185 .

(1) In binding a party, &c., state CAUSE OF COMPLAINT, with time and place:

In binding petty sessions clerk, or pound-keeper, state fact of his appointment.

(2) OBLIGATION.

To attend (the court of assize or quarter sessions, or petty sessions) at        on the

day of        at        o'clock, and there:—

To prefer (or prosecute, or give evidence upon) a bill of indictment against the said C. D. for the said offence;

or

To surrender himself to the keeper of the gaol at F., and plead to any indictment found against him for said offence, and take his trial for the same;

or

To prosecute (or answer) to said complaint;

or

To prosecute his appeal against the order made on the day of upon the said complainant and not depart the Court without leave;\*

or

To keep the peace (and be of good behaviour) towards all Her Majesty's subjects, and particularly towards A. B., for the space of        ;

or

To perform faithfully and diligently the several duties required of him as petty sessions clerk under the provisions of "The Petty Sessions Act (Ireland), 1851";

or

To perform faithfully and diligently the several duties required of him as pound-keeper under the provisions of "The Summary Jurisdiction Act (Ireland), 1851."

(3) FORFEITURE.

(4) ESTREAT.†

[Form D (Order Book) was never used, and the part of the Schedule containing it was repealed by the S.L.R. Act, 1893. On the two succeeding pages is given the Form used instead of Form D.]

Form (D.).

\* But see now 40 & 41 Vict. c. 56, s. 72.

† See 40 & 41 Vict. c. 56, s. 75.

ORDER BOOK, as approved of by the Lord Lieutenant (with the advice and consent

County of \_\_\_\_\_

1	2	3	4	5	6	7
No.	Date of Order.	Name or Names of Justice or Justices by whom Order made; and if made out of Petty Sessions, or if entry in this Book made from a Certificate, same to be stated here.	PARTIES—COMPLAINANT AND DEFENDANT.  (The Christian and Surname, Rank, Occupation, or other addition, and Residence, stating Parish and Township, to be given, and the parties to be distinguished by prefixing their appellation—Complainant or Defendant.)	Names of Witnesses examined, and whether for Complainant or Defendant.	Cause of Complaint, as set forth in Summons.	PARTICULARS OF ORDER OR DISMISSAL.  If Dismiss, whether with or without prejudice, and whether with or without Costs, &c. In Ejectment; when to be evicted, and from what and Premises, &c. If to be Whipped, whether in or out of Prison, &c. (Where money ordered to be paid by or to any person, this amount to be written in words at full length in this column, as well as to be entered in Figures in the Money Column.)
			Complainant.	Defendant.		

NOTE.—No erasure to be, on any account, made; and every interlineation, or other change, to be initialed by the Justice



*Petty Sessions of* \_\_\_\_\_

8	9	10	11	12	13				14	15
Act under which Order made.	When and how Amount ordered to be paid, and nature of Warrant to issue in Default, whether Distress, Commitment, or otherwise.	IMPRISONMENT. Term of, whether with or without Hard Labour in addition to fine, &c., or in default of Payment, &c., and name of Gaol or Bridewell.	Name, Description, and Residence of Person to whom Compensation (if any) ordered to be paid.	Names of Defendants against whom order made.	AMOUNT ORDERED TO BE PAID.				Portion of <i>Fine</i> (if any) awarded to Complainant.	SIGNATURE OF JUSTICE. (If entry in this Book from a Certificate, and entry not signed by the Justice or one of the Justices who made the Order, a special note of the circumstances to be made by the Clerk. <i>Vide</i> secs. 21 and 22.)
					IN CIVIL CASES.		IN PENAL CASES.			
					Sum to Complainant.	Costs to Complainant or Defendant.	Fine.	Compensation.	Costs to Complainant or Defendant.	
					£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.

who affixes his Signature to the Order. The greatest care to be taken that the cases be kept distinct from each other.

## SCHEDULE.

## FORMS (E.)—WARRANTS.

Form (E.).

(E a.) *Warrant of Execution (Summary Jurisdiction).*

Complainant. } Petty Sessions District of  
 Defendant. } County of

Whereas upon the hearing of a complaint that <sup>(1)</sup>

(1) CAUSE OF COMPLAINT, with time and place. In ejectments, the defendant has refused to give up to the plaintiff possession of situate at on the termination of his tenancy.

an order was made on the day of by the justices present against the said

(2) \_\_\_\_\_

of \_\_\_\_\_

to the following effect, viz. : <sup>(3)</sup>

And whereas <sup>(4)</sup>

And whereas the said order has not been complied with. This is to command you to whom this warrant is addressed to execute the said order against the said person as follows :—<sup>(5)</sup>

And for this the present warrant shall be a sufficient authority to all whom it may concern.

The sum levied to be paid to <sup>(6)</sup>

The warrant to be returned in days if not executed.

Signed Justice of said County.

This day of 185 .

To <sup>(7)</sup> of

(2) PERSON against whom order was made.

(3) ORDER.  
 Fine or debt. To pay for fine (or debt) the sum of and for costs the sum of (forthwith), or (in days). And also in addition or And in default of payment (or distress). Imprisonment. To be imprisoned for the period of with (or without) hard labour: Ejectment. To be ejected from said premises in days, and pay the sum of to the complainant for costs.

Dismissal. That his complaint be dismissed on the merits (or without prejudice), and that he do pay the sum of to the defendant for costs.

(4) RECITALS.  
 After Appeal. The Court of Appeal decided on the day of that (order).

No distress. He has (or admits that he has, or it has been returned to a warrant of distress that he has) no goods.

Distress ruinous. A distress would be ruinous to him (or to his family).

(5) EXECUTION.  
 Committal in addition or default. To distrain. To levy said sums by distress and sale of his goods. And in addition, or And in default of distress, To commit. To lodge him in the gaol at F., to be imprisoned there for the period of with (or without) hard labour (unless said sums be sooner paid).

To eject. To enter and give possession of said premises to the complainant or his agent in days.

(6) PAYMENT.  
 In all warrants to constabulary insert "clerk of petty sessions." In all other warrants insert name of person to whom sum was ordered to be paid, if the justices so think fit.

(7) ADDRESS.  
 "The sub-inspector\* (or head constable) of constabulary," or name of person who is to execute the warrant.

\*Now district-inspector, 46 & 47 Vict. c. 14, s. 12.

(E.b.) *Warrant to commit (or detain) for Trial, &c.*SCHEDULE.  
Form (E.).

Complainant. } Petty Sessions District of  
 Defendant. } County of

Whereas a complaint was made on the  
 day of \_\_\_\_\_ on the oath of X. Y.  
 that <sup>(1)</sup>

(1) CAUSE OF COMPLAINT, with  
 time and place.

and <sup>(2)</sup>

(2) RECITALS.  
 If indictment found—  
*Whereas a bill of indictment has  
 been found against the said C. D.  
 for the said offence.*

Adjournments—  
*Whereas the hearing of the said  
 complaint has been adjourned to  
 the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_.*

Remands on arrest—  
*Whereas the said C. D. has been  
 brought before me under a warrant  
 of arrest, and the said complaint is  
 to be heard on the \_\_\_\_\_ day of \_\_\_\_\_  
 at \_\_\_\_\_.*

This is to command you to whom this warrant is  
 addressed to lodge the said

Refractory witness—  
*Whereas X. Y., a material wit-  
 ness, has, without just excuse, re-  
 fused to make oath as a witness (or  
 to answer certain questions) or to  
 enter into recognizance to give evi-  
 dence on the trial of the said C. D.  
 in that behalf.*

<sup>(3)</sup> \_\_\_\_\_

(3) NAME of person to be com-  
 mitted.

of \_\_\_\_\_

in the gaol at F., there to be imprisoned by the  
 keeper of said gaol, as follows :—<sup>(4)</sup>

(4) PERIOD of imprisonment.  
 For trial—  
*Until his trial for said offence  
 and he shall be discharged by due  
 course of law.*

For witness—  
*Until the trial of the said C. D.  
 unless he shall in the meantime  
 enter into such recognizance as  
 required (or until the \_\_\_\_\_ day of \_\_\_\_\_,  
 unless he shall in the meantime  
 consent to answer as required).*

For adjournments—  
*Until the above time of adjourn-  
 ment (or hearing) when he shall  
 have him at the above place.*

And for this the present warrant shall be a  
 sufficient authority to all whom it may concern.

Signed Justice of said County.

This day of

(5) ADDRESS—  
*The sub-inspector\* (or head  
 constable) of constabulary, or name  
 of person who is to execute the  
 warrant.*

To <sup>(5)</sup> of

\* Now district-inspector, 46 & 47 Vict. c. 14, s. 12.



SCHEDULE.  
Form (E.).

(E c.) *Warrant to convey before a Justice of another County.*

*Complainant.* } Petty Sessions District of  
*Defendant.* } County of

Whereas a complaint was made that <sup>(1)</sup>

<sup>(1)</sup> CAUSE OF COMPLAINT, with time and place.

And whereas I have taken the deposition of *X. Y.* as to the said offence.

And whereas the other witnesses reside in the county of

This is to command you to convey the said

<sup>(2)</sup> \_\_\_\_\_

<sup>(2)</sup> NAME of accused person.

of \_\_\_\_\_

before some justice of the last-mentioned county, near the above place, and to deliver to him this warrant and the said deposition.

Signed  
Justice of the first-mentioned county.

This day of 185 .

To <sup>(3)</sup> of

<sup>(3)</sup> ADDRESS.  
"The sub-inspector" (or head constable) of constabulary," or name of person who is to execute the warrant.

(E d.) *Warrant to discharge from Gaol.*

*Complainant.* } Petty Sessions District of  
*Defendant.* } County of

Whereas a complaint was made that <sup>(1)</sup>  
and whereas the said

<sup>(1)</sup> CAUSE OF COMPLAINT, with time and place.

<sup>(2)</sup> \_\_\_\_\_

<sup>(2)</sup> NAME of prisoner.

of \_\_\_\_\_

<sup>(3)</sup>

<sup>(3)</sup> RECITALS.  
For accused.  
*Was committed to take his trial for said offence, but has now duly entered into recognizance to appear for that purpose.*  
For witness.  
*Was committed for refusing to enter into recognizance to give evidence on the trial of C. D. for said offence, but has now done so (or, and the said C. D. for want of evidence has not been bailed or committed).*

This is to command you to discharge the said person so committed, unless he shall be in your custody for some other cause.

Signed Justice of said County.

This day of 185

<sup>(4)</sup> To the Keeper of the Gaol at

<sup>(4)</sup> ADDRESS.

(E e.) *Warrant to search.*

SCHEDULE.

*Complainant.* } Petty Sessions District of  
*Defendant.* } County of

Form (E).

Whereas it appears on the oath of *A. B.* of *M. N.*  
 that the following articles of property, viz. <sup>(1)</sup>

(1) DESCRIPTION of articles stolen.

were stolen, and that there is reason to suspect that  
 the same is concealed in at .

This is, therefore, to authorize and require you to  
 enter in the daytime into the said premises, and to  
 search for said property, and to bring the same and  
 the persons in whose possession the same may be  
 found before me or some other justice.

Signed Justice of said County.

This day of 185 .

To <sup>(2)</sup> of

(2) ADDRESS.

"The sub-inspector" (or head  
*constable*) of constabulary," or name  
 of person who is to execute the  
 warrant.

FORM (F.)—RECEIPT FOR PRISONER.

Form (F.).

County of

I hereby certify that I have received from *A. B.* <sup>(1)</sup>  
 of the body of *C. D.*, together with a warrant  
 under the hand of *Y. S.*, Esq., Justice for the County  
 of , and that the said prisoner was <sup>(2)</sup> at the  
 time he was so delivered into my custody.

(1) NAME, rank, &amp;c.

(2) "Sober," or as the case may  
 be.

Signed

Keeper of the Gaol at

This day of 185 .

FORMS (G.)—ENDORSEMENTS OF WARRANTS.

RETURN of no person or goods.

Form (G.).

<sup>(1)</sup> (G a.) I certify that after diligent search (and  
 for the following reasons):

(1) *The person,*

or  
*Sufficient goods of the person.*

against whom the within warrant was issued, cannot  
 be found.

Signed { To whom this warrant was  
 delivered for execution.

This day of 185

\* Now district-inspector, 46 &amp; 47 Vict. c. 14, s. 12.

SCHEDULE.  
Form (G.).

(G b.) I <sup>(2)</sup> that I have reason to believe that the person against whom the within warrant was issued <sup>(3)</sup>

CERTIFICATE of no person or goods.

<sup>(2)</sup> For constabulary—*certify*.

For bailiff—*make oath*.

<sup>(3)</sup> *Is to be found,*

or

*Has goods.*

at in the county of , and that I believe the signature to the within warrant to be in the hand-writing of the said justice.

Signed { To whom this warrant was delivered for execution.

This day of 185 .

To of

(G c.) It being <sup>(4)</sup> to me as above, I hereby endorse the within warrant for execution in said county of <sup>(5)</sup> (or metropolitan district or other place).

Signed

Inspector-General [or Deputy, or Justice].

This day of 185 .

To

BACKING by inspector-general or other justice.

<sup>(4)</sup> For commissioners of police or constabulary—*certified*.

For bailiff—*proved on oath*.

<sup>(5)</sup> In backing warrant to arrest, add, if so intended—

*and to bring the said person before me or some other justice of said county.*

Form (H.).

#### FORM (H.)—APPEAL.

Complainant. } Petty Sessions District of  
Defendant. } County of

I certify that upon the hearing of a complaint that <sup>(1)</sup>

<sup>(1)</sup> CAUSE OF COMPLAINT, with time and place.

an order was made on the day of by the justices present against the said

<sup>(2)</sup> \_\_\_\_\_

<sup>(2)</sup> PERSON against whom order was made.

of \_\_\_\_\_

to the following effect, viz. :—<sup>(3)</sup>

Signed Justice of said County.

This day of 185 .

The person against whom said order was made hereby appeals against the same to the next Court of Quarter Sessions [or Recorder's sessions] to be held at

Signed Appellant.

This day of 185 .

<sup>(3)</sup> ORDER.

Imprisonment in addition or default. { Fine or debt. To pay the sum of to the Crown, and the sum of to the complainant, with costs (forthwith), or (in days).

{ And in addition, or And in default of payment (or distress).

Imprisonment. To be imprisoned for the period of with (or without) hard labour.

Ejectment. To be ejected from said premises in days, and pay the sum of to the complainant for costs.

Dismissal. That his complaint be dismissed on the merits (or without prejudice), and that he do pay the sum of to the complainant for costs.



I certify that notice of said appeal was duly given.  
And that the said appellant has duly entered into  
a recognizance to prosecute said appeal.

CERTIFICATE by clerk of petty sessions. SCHEDULE.  
Form (H.).

Signed Clerk of above Petty Sessions.

This day of 185 .

I certify that upon the hearing of said appeal on  
the day of the Court of Quarter Sessions [*or*  
Recorder] ordered that [state order.]

CERTIFICATE by clerk of peace or  
officer of Recorder's Court of order  
made on appeal.

Signed

Clerk of the Peace [*or* Officer of the  
Recorder's Court].

This day of 185 .

FORMS (I.)—CERTIFICATES.

Form (I.).

(I a.) *Certificate of Order.*

Complainant, } Petty Sessions District of  
Defendant. } County of

I certify that upon the hearing of a complaint  
that <sup>(1)</sup>

(1) CAUSE OF COMPLAINT, with  
time and place. In ejectments, *the*  
*defendant had refused to give up to*  
*the plaintiff possession of* situate  
*at* on the termination of his  
tenancy.

an order was made on the day of by the  
justices present against <sup>(2)</sup> of to the  
following effect, viz.:—<sup>(3)</sup>

(2) PERSON against whom order  
was made.

(3) ORDER.

Imprisonment in { Fine or debt. *To pay for*  
addition or default. { *fine (or debt) the sum of*  
                                  { *and for costs the sum of*  
                                  { *(forthwith), or (in days).*  
                                  { *And in addition, or*  
                                  { *And in default of payment*  
                                  { *(or distress).*  
                                  { *Imprisonment. To be im-*  
                                  { *prisoned for the period of*  
                                  { *with (or without) hard labour.*  
                                  { *Ejectment. To be ejected from said*  
                                  { *premises in* days, *and pay the*  
                                  { *sum of* to the complainant *for*  
                                  { *costs.*

Signed Justice of said County.

This day of 185 .

## SCHEDULE.

Form (I.).

(I b.) *Of Indictment being found.*

County of

I hereby certify that at the <sup>(1)</sup> held at  
in the said county on the      day of      a bill of  
indictment was found by the Grand Jury against *C. D.*  
therein described as *C. D.* of *N.*, for that on the  
day of      at      <sup>(2)</sup> and that the said *C. D.* has  
not appeared or pleaded to said indictment.

(1) "*Court of Oyer and Terminer  
and general gaol delivery*" or  
"*Court of Quarter Sessions.*"

(2) OFFENCE as in indictment.

Dated this      day of

Signed      Clerk of Crown [*or Peace*]

This      day of      185 .

(I c.) *Of Consent to Bail.*

Petty Sessions District of

County of

Whereas on the      day of      *C. D.* was com-  
mitted to the gaol at      charged with <sup>(1)</sup> I hereby  
consent to the said *C. D.* being bailed by recogni-  
zance, himself in the sum of      and [two] sureties in  
the sum of      each.

(1) OFFENCE.

Signed      Justice of said County.

This      day of      185 .

SUPPLEMENTAL NOTE TO SECTION 19 OF THE SUMMARY JURISDICTION (IRELAND)  
ACT, 1851, (noted pp. 990-992, *ante*).

The following are the terms of section 18 of the Grand Jury Act, 1856, referred to  
at p. 981, n. 1, *ante* :—

18. Any road contractor or other person who, without the authority of a resolution  
of the county council, or the consent of the county surveyor where such surveyor is  
authorized by the county council to give such consent, shall cut any sods or turf on the  
sides, fences, or any other part of any public road, or dig, raise, or carry away any sods,  
turf, earth, clay, stones, gravel, or other material from the sides, or fences, or any other  
part of any public road, bridge, or wall, shall be liable to a fine not exceeding forty  
shillings, anything in section nine of the Summary Jurisdiction (Ireland) Act, 1851, to  
the contrary notwithstanding.

## CRIMINAL JUSTICE ACT, 1855.

[18 &amp; 19 VICT. CH. 126.]

1. Where any person is charged before any justices of the peace assembled at such petty sessions, as hereinafter provided, with having committed simple larceny, and the value of the whole of the property alleged to have been stolen does not in the judgment of such justices exceed five shillings, or with having attempted to commit larceny from the person or simple larceny, it shall be lawful for such justices to hear and determine the charge in a summary way; and if the person charged shall confess the same, or if such justices, after hearing the whole case for the prosecution and for the defence, shall find the charge to be proved, then it shall be lawful for such justices to convict the person charged, and commit him to the common gaol or house of correction, there to be imprisoned with or without hard labour, for any period not exceeding three calendar months; and if they find the offence not proved they shall dismiss the charge, and make out and deliver to the person charged a certificate under their hands, stating the fact of such dismissal; and every such conviction and certificate respectively may be in the forms (A) and (B) in the schedule to this Act, or to the like effect: Provided always that if the person charged do not consent to have the case heard and determined by such justices; or if it appear to such justices that the offence is one which, owing to a previous conviction of the person charged, is punishable by law with transportation or penal servitude; or if such justices be of opinion that the charge is, from any other circumstances, fit to be made the subject of prosecution by indictment rather than to be disposed of summarily, such justices shall, instead of summarily adjudicating thereon, deal with the case in all respects as if this Act had not been passed: Provided also, that if, upon the hearing of the charge, such justices shall be of opinion that there are circumstances in the case which render it inexpedient to inflict any punishment, they shall have power to dismiss the person charged without proceeding to a conviction.

Power to justices at petty sessions to try summarily persons charged with larceny where the value of the property does not exceed 5s., or with attempt to commit larceny from the person, or simple larceny.

2. Where the justices before whom any person is charged as aforesaid propose to dispose of the case summarily under the foregoing provisions, one of such justices, after the examinations of all the witnesses for the prosecution have been completed, and before calling on the person charged for any statement which he may wish to make, shall state to such person the substance of the charge against him, and shall then say to him these words, or words to the like effect: "*Do you consent that the charge against you shall be tried by us, or do you desire that it shall be sent for trial by a jury at the sessions or assizes?*" (as the case may be), and if the person charged shall consent to the charge being summarily tried and determined as aforesaid, then the justices shall reduce the charge into writing, and read the same to such person, and shall then ask him whether he is guilty or not of such charge; and if such person shall say that he is guilty the justices shall then proceed to pass such sentence upon him as may by law be passed, subject to the provisions of this Act in respect to such offence; but if the person charged shall say that he is not guilty, the justices shall then inquire of such person *whether he has any defence to make to such charge*, and if he shall state that he has a defence, the justices shall hear such defence, and then proceed to dispose of the case summarily.

Justices to ask the accused whether he consents to the charge being summarily determined.

Procedure if he does so consent.

3. Where any person is charged before any justices at such petty sessions as aforesaid with simple larceny (the property alleged to have been stolen exceeding in value five shillings), or stealing from the person, or larceny as a clerk or servant, and the evidence, when the case on the part of the prosecution has been completed, is in the opinion of such justices sufficient to put the person charged on his trial for the offence with which he is charged, such justices, if the case appears to them to be one which may properly be disposed of in a summary way, and may be adequately punished by virtue of the powers of this Act, shall reduce

Persons charged with larceny, &c., may plead guilty before justices at petty sessions, and be sentenced forthwith.



the charge into writing, and shall read it to the said person, *and shall then ask him whether he is guilty or not of the charge*; and if such person shall say that he is guilty, such justices shall thereupon cause a plea of guilty to be entered upon the proceedings, and shall convict him of such offence, and commit him to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for any term not exceeding six calendar months; and every such conviction may be in the form (C) in the schedule to this Act, or the like effect: Provided always, that the said justices, before they ask such person whether he is guilty or not, shall explain to him that he is not obliged to plead or answer before them at all, and that if he do not plead or answer before them, he will be committed for trial in the usual course.

Persons accused may have assistance of counsel, &c.

Power to remand persons charged to next petty sessions, as under 14 & 15 Vict. c. 93, s. 14.

Forfeited recognizances to be transmitted to the clerk of the peace.

Convictions and other proceedings to be returned to the quarter sessions.

Certified copies to be evidence of conviction or dismissal.

Justices may order restitution of property where the court, which would otherwise have tried the case, could do so.

Petty sessions to be an open court.

Effect of conviction under this Act.

Proceedings under this Act to be a bar to further proceedings.

4. In every case of summary proceeding under this Act the person accused shall be allowed to make his full answer and defence, and to have all witnesses examined and cross-examined by counsel or attorney.

5. Where any person is charged before any justice or justices with any offence mentioned in this Act, and in the opinion of such justice or justices the case may be proper to be disposed of by justices in petty sessions under this Act, the justice or justices before whom such person is so charged may, if they or he see fit, remand such person for further examination to the next petty sessions, in like manner in all respects as a justice or justices are authorised to remand a party accused under the Petty Sessions (Ir.) Act, 1851, s. 14.

6. If any person suffered to go at large upon entering into such recognizance as the justice or justices are authorised under the last-mentioned Act to take on the remand of a party accused do not afterwards appear pursuant to such recognizance, then the justices before whom he sought to have appeared shall certify (under the hands of two of them) on the back of the recognizance, to the clerk of the peace of the county or place, the fact of such non-appearance, and such recognizance shall be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance.

7. The justices adjudicating under this Act shall transmit the conviction, or a duplicate of a certificate of dismissal, with the written charge, the depositions of the witnesses for the prosecution and for the defence, and the statement of the accused, to the next court of general or quarter sessions for the county or place, there to be kept by the proper officer among the records of the court; and a copy of such conviction, or of such certificate of dismissal, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction or dismissal for the offence mentioned therein in any legal proceeding whatever.

8. It shall be lawful for the justices by whom any person is convicted under this Act, to order restitution of the property stolen, taken, or obtained by false pretences, in those cases in which the court before whom the person convicted would have been tried but for this Act, may be by law authorised to order restitution.

9. Every petty sessions for the purposes of this Act shall be an open public court, and shall be the petty sessions holden for a petty sessional division, and a written or printed notice of the days and hours for holding such petty sessions shall be posted or affixed by the clerk to the justices of petty sessions upon the outside of some conspicuous part of the building or place where the same are held.

11. Every conviction by justices in petty sessions under this Act shall have the same effect as a conviction upon indictment for the same offence would have had, save that no conviction under this Act shall be attended with any forfeiture.

12. Every person who obtains a certificate of dismissal or is convicted under this Act shall be released from all further or other criminal proceedings for the same cause.

13. No conviction, sentence, or proceeding under this Act shall be quashed for want of form, and no warrant of commitment upon a conviction shall be held void by reason of any defect therein, if it be therein

alleged that the offender has been convicted, and there be a good and valid conviction to sustain the same.

14. Where any charge is summarily adjudicated upon under this Act, or an offender is under this Act convicted by justices in petty sessions upon a plea of "guilty," it shall be lawful for the justices by whom such charge has been adjudicated upon or offender convicted, upon the request of any person who has preferred the charge or appeared to prosecute or give evidence against the person charged, if such justices think fit so to do, to grant a certificate to such person of the amount of the compensation which such justices may deem reasonable for his expenses, trouble, and loss of time therein, subject nevertheless to the regulations made or to be made as hereinafter mentioned, and every such certificate when granted in Ireland shall have the effect of an order of court for the payment of the expenses of a prosecution made under the 55 Geo. 3, c. 91, and the Acts amending the same; and the amount mentioned in such certificate shall be paid in like manner as the money mentioned in such order of court: Provided also that the amount of the fees payable to the clerks of the magistrates in petty sessions in respect of any proceeding under this Act, and of the fees payable to the clerks of the peace for filing the depositions, conviction, or certificate of dismissal aforesaid, and of all such expenses of apprehending the person charged, and detaining him in custody, and of such other expenses as are now by law payable when incurred before a commitment for trial, may be added to the certificate for compensation aforesaid, and paid in the like manner.

Justices may order payment of expenses of prosecutor and witnesses.

16. Any magistrate appointed to act at the police courts of the Dublin metropolitan district, and sitting at a police court within the said district, or any stipendiary magistrate appointed for any city, town, liberty, borough, or district, and sitting at a police court or other place appointed in that behalf, may, in the case of persons charged before such magistrate, do alone all acts by this Act authorised to be done by justices of the peace in petty sessions, and all the provisions of this Act referring to justices in petty sessions shall be read and construed as referring also to such magistrate.

Any metropolitan or Dublin police magistrate or stipendiary magistrate may act alone.

17. Nothing in this Act shall affect provisions of 14 & 15 Vict. c. 92; and this Act shall not extend to persons punishable under the said Acts, so far as regards offences for which such persons may be punished thereunder.

Nothing in Act to affect 14 & 15 Vict. c. 92.

22. In all cases where any justice or justices have or shall hereafter have power to order a sum of money to be forfeited and paid to the party aggrieved, as amends or compensation for any injury to property, real or personal, the right of such party to receive the money so ordered to be paid shall not be affected by such party having been examined as a witness in proof of the offence, any law or statute to the contrary notwithstanding.

In cases of injury to property, parties may recover compensation though examined as witnesses.

23. In the interpretation of this Act, "county" shall be construed to include riding, parts, liberty, and division of a county; "borough" to include city, county of a city or town, and town corporate; "property" [*shall have the same meaning as "property" has in the Larceny Act, 1861*], and in the case of any "valuable security" the value of the share, interest, or deposit to which the security may relate or of the money due thereon or secured thereby and remaining unsatisfied, or of the goods or other valuable thing mentioned in the warrant or order, shall be deemed to be the value of such security.

Interpretation.

24. This Act shall not extend to Scotland.

Extent.

<sup>1</sup> See 39 & 40 Vict. c. 20, s. 4.

Schedule.

## SCHEDULE.

## FORM A.

*Conviction.*

Sect. 1.

To wit. } BE it remembered that on the — day of — in the year  
 } of our Lord — at — in the said [county], *A. B.* being  
 charged before us the undersigned — of Her Majesty's Justices of the  
 Peace for the said [county], and consenting to our deciding upon the  
 charge summarily, is convicted before us, for that [he the said *A. B.*, &c.,  
*stating the offence, and the time and place when and where committed ;*  
 and we adjudge the said *A. B.* for his said offence to be imprisoned in the  
 [house of correction] at — in the said [county], [and there kept to  
 hard labour] for the space of —

Given under our hands and seals the day and year first above men-  
 tioned, at — in the [county] aforesaid.

*J. S.* (L.S.)  
*H. M.* (L.S.)

## FORM B.

*Certificate of Dismissal.*

Sect. 1.

To wit. } WE, — of Her Majesty's Justices of the Peace for the  
 } [county], certify that on the — day of — in the year  
 of our Lord — at — in the said [county] *A. B.* being charged before  
 us, and consenting to our deciding upon the charge summarily, for that  
 he the said *A. B.* [*stating the offence charged, and the time and place when  
 and where alleged to be committed*], we did, having summarily adjudicated  
 thereon, dismiss the said charge.

Given under our hands and seals this — day of — at — in the  
 [county] aforesaid.

*J. S.* (L.S.)  
*H. M.* (L.S.)

## FORM C.

*Conviction upon a Plea of Guilty.*

Sect. 3.

To wit. } BE it remembered that on the — day of — in the year  
 } of our Lord — at — in the said [county], *A. B.* being  
 charged before us, the undersigned — of Her Majesty's Justices of the  
 Peace for the said [county], for that he the said *A. B.* [*&c., stating the  
 offence and the time and place when and where committed*], and pleading  
 guilty to such charge, he is thereupon convicted before us of the said  
 offence; and we adjudge the said *A. B.* for his said offence to be im-  
 prisoned in the [house of correction] at — in the said [county], [and  
 there kept to hard labour] for the space of —

Given under our hands and seals the day and year first above men-  
 tioned, at — in the [county] aforesaid.

*J. S.* (L.S.)  
*H. M.* (L.S.)

## COTTIER TENANT (IRELAND) ACT, 1856.

[19 &amp; 20 VICT. CH. 65.]

*Description of  
 tenement within  
 Act.*

(1) Dwelling  
 house with or  
 without small  
 allotments.

(2) Tenure.

(3) Rent.

1. The description of tenements which shall be deemed to be within  
 this Act shall be :

- (1) Any dwelling house held with not more than half an acre (if any)  
 of land as a garden or cultivated allotment :
- (2) Of which the tenure shall have been by the year, half-year, quarter,  
 month, or week :
- (3) And of which the rent shall not have exceeded the rate of twelve  
 shillings by the month :



Provided that such tenement shall have been let by a written or printed agreement as nearly as possible of the form in the schedule to this Act, and that it shall have been expressly stated therein whether the said tenement and requisites should be maintained in good tenantable condition by the landlord or by the tenant, or what portion of the said tenements and requisites should be maintained in good tenantable condition by the landlord or by the tenant respectively.

2. The fifteenth section of the Summary Jurisdiction (Ir.) Act, 1851, shall be applicable to the delivery of the possession of any tenement within this Act, when wrongfully overheld, in the same manner as it would now apply to the delivery of the possession of any tenement within the said Act :

But no order shall be made under the said section except upon proof at the hearing of the case :

First : That the tenement had the following requisites at the commencement of the tenancy ; viz.

- (a) The walls and a sufficient chimney built of stones and mortar, or bricks and mortar :
- (b) At least two separate rooms :
- (c) A sufficient external window, with a moveable glazed sash or casement for the admission of air, in each room :
- (d) A sufficient privy :
- (e) A space at least eighteen feet wide extending immediately along the whole front of the dwelling (or, where any public thoroughfare shall pass nearer, the space (if any) between such thoroughfare and dwelling) sufficiently levelled and drained :
- (f) A sufficient space, either at the ends or in the rear of the dwelling, suited for a pigsty and also for a dunghill :

Second : And that the said requisites had been in good tenantable condition, and adapted to their proper use, at the commencement of the last period of the tenure for which the landlord shall have received any of the rent :

But this second obligation may be dispensed with when the landlord shall not have as yet received any of the rent subsequent to the commencement of the tenancy, and also when and so far as the tenantable condition of such requisites shall have been defective through the default of the tenant, and not of the landlord :

And upon further proof at the hearing of the case that, during any period of the tenure for which the landlord shall not have as yet received any of the rent, the tenant had made any default in observing the following obligations :

First : Not wilfully to permit any pigsty or dunghill to remain in front of the dwelling, within the space (if any) above required to be levelled and drained, for longer than three clear days after being served by the landlord with a notice in writing to remove the same ; and,

Second : Not wilfully to do, or wilfully to suffer others to do, any damage to the tenement :

Then the service of the summons in the case shall be deemed to have been sufficient (without other notice to quit) to have determined the tenancy at the time of such service.

3. Whenever the tenant shall have overheld the tenement (without reasonable cause) after the tenancy shall have been determined, and the possession shall have been duly demanded of him by the landlord, he shall be liable to pay to the landlord the full rent reserved for the period of the tenure during any part of which he shall have so overheld the possession, and which would have otherwise accrued due in case the tenancy had not been determined.

4. Whenever the tenant shall have sown or planted upon the tenement any growing crop, which he shall be unable to save by reason of the determination of the tenancy, the justices shall, by a distinct order, fix such sum (if any) as they shall think a fair compensation to him for the loss of such crop, after all just and proper deductions on account of any

Provided let by form of agreement.

Application of summary remedy.

For the possession.

Landlord's obligations as to requisites.

First, providing them :

(a) Walls and chimneys :

(b) Rooms :

(c) Windows :

(d) Privies :

(e) Space in front :

(f) Space for pigsty and dunghill.

Second, maintaining them.

Proof of maintenance may be dispensed with when no rent received, and when defective through tenant's default.

Tenant's obligations as to defaults.

First, Not to permit nuisances.

Second, Not to do or suffer damage.

If default made, no notice to quit necessary.

Overholding tenant liable to full rent.

Outgoing tenant to have compensation for crops.

arrear of rent due by the said tenant to the landlord for the said tenement ; and no warrant shall be issued to execute the order for possession until the landlord shall have paid or tendered to the tenant or allowed him credit for the sum so fixed by the order for compensation.

Act not to deprive landlord of other remedies at law or in equity.

Act not to affect jurisdiction in fair and market towns.

Landlord not to act as justice in his own case.

5. This Act shall not be deemed to deprive the landlord, either before or after the justices may have declined to interfere, of any remedy for the enforcement of his rights which he might otherwise have in the superior or other courts of law or equity in Ireland.

6. This Act shall not be deemed to interfere with the jurisdiction established by the said recited Act as to small tenements in certain towns and villages in Ireland.

7. The land agent of the landlord of any tenement, if a justice of the peace, shall not as such justice take any part in the hearing of any complaint, or in the making of any order under this Act, in relation to such tenement.

Appeals.

8. In case any person shall feel aggrieved by any order made by any justices under this Act, it shall be lawful for such person to appeal against the same under the twenty-fourth section of "The Petty Sessions (Ir.) Act, 1851," save that, in lieu of the seven days' notice of appeal required by said Act, a five days' notice of appeal shall be sufficient ; that the amount of the recognisance shall be such reasonable sum as to the justices shall seem fit ; and that when the appeal shall be made by the tenant, the recognisance required by the said Act shall contain the further obligations that the tenant shall not do, or suffer others to do, any waste, injury, or dilapidation to the tenement pending the appeal, that he will satisfy all rent which shall accrue due whilst he shall continue in possession, and that he will perform such order as the Court of Appeal shall make.

Act to be construed as part of recited Act.

9. This Act shall be construed subject to the interpretation and other clauses (and as if it were a part) of the said recited Act ; and the word "landlord" shall include any agent, receiver, or other person legally representing the landlord ; the expression "period of the tenure" shall mean the year, half year, quarter, month, or week, as the case may be, according to which the rent shall have been reserved.

Short title.

10. In citing this Act in any other Act, instrument, or proceeding, it shall be sufficient to use the expression "The Cottier Tenant (Ir.) Act, 1856."

Act only to apply to tenements provided by landlord.  
To extend to Ireland only.

11. This Act shall apply only to tenements which may be provided by the landlord for the use of the tenant who shall occupy the same.

12. This Act shall only extend to Ireland.

## SCHEDULE.

Section 1.

### FORM OF AGREEMENT.

This agreement witnesses

That \_\_\_\_\_, as landlord, agrees to let,  
and

That \_\_\_\_\_, as tenant, agrees to hold,

(1) Description of the tenement.

the following tenement ; viz., <sup>(1)</sup>

Situated at \_\_\_\_\_ in the county of \_\_\_\_\_  
and townland of \_\_\_\_\_.

From the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

(2) "Week," "month," &c.

By the <sup>(2)</sup>

At the rent of \_\_\_\_\_ shillings and \_\_\_\_\_ pence, <sup>(3)</sup>

(3) "Weekly," "monthly," &c.

And it has been also agreed, that such tenement having at present the several requisites specified in "The Cottier Tenant (Ireland) Act, 1856," the said tenement and the said requisites shall be maintained in good tenantable condition by the <sup>(4)</sup>

(4) Landlord or "tenant," or partly by the landlord and partly by the tenant.

And it has been also agreed, <sup>(5)</sup>

(5) Further stipulations (if any).

Signed \_\_\_\_\_ landlord, this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

Signed \_\_\_\_\_ tenant, this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

## SUMMARY JURISDICTION ACT, 1857.

[20 &amp; 21 VICT. CH. 43.]

1. In the interpretation and for the purposes of this Act, the following words shall have the meaning hereinafter assigned to them : that is to say,

Interpretation of terms.

“Superior Courts of Law” shall for England mean the Supreme Courts of Law at Westminster, and for Ireland the Supreme Courts of Law at Dublin :

“Court of Queen’s Bench” shall mean for England the Court of Queen’s Bench at Westminster, and for Ireland the Court of Queen’s Bench at Dublin.

2. After the hearing and determination by a justice or justices of the peace of any information or complaint which he or they have power to determine in a summary way, by any law now in force or hereafter to be made, either party to the proceeding before the said justice or justices may, if dissatisfied with the said determination as being erroneous in point of law, apply in writing within three days after the same to the said justice or justices, to state and sign a case setting forth the facts and the grounds of such determination, for the opinion thereon of one of the superior courts of law to be named by the party applying ; and such party, hereinafter called “the appellant,” shall, within three days after receiving such case, transmit the same to the court named in his application, first giving notice in writing of such appeal, with a copy of the case so stated and signed, to the other party to the proceeding in which the determination was given, hereinafter called “the respondent.”

Justices, on application of a party aggrieved, to state a case for the opinion of superior court.

3. The appellant, at the time of making such application, and before a case shall be stated and delivered to him by the justice or justices, shall in every instance enter into a recognisance, before such justice or justices, or any one or more of them, or any other justice exercising the same jurisdiction, with or without surety or sureties, and in such sum as to the justice or justices shall seem meet, conditioned to prosecute without delay such appeal, and to submit to the judgment of the superior court, and pay such costs as may be awarded by the same ; and the appellant shall at the same time, and before he shall be entitled to have the case delivered to him, pay to the clerk to the said justice or justices his fees for and in respect of the case and recognisances, and any other fees to which such clerk shall be entitled, which fees, except such as are already provided for by law, shall be according to the schedule to this Act annexed marked (A) until the same shall be ascertained, appointed, and regulated in the manner prescribed by the Summary Jurisdiction Act, 1848, section thirty ; and the appellant, if then in custody, shall be liberated upon the recognisance being further conditioned for his appearance before the same justice or justices ; or, if that is impracticable, before some other justice or justices exercising the same jurisdiction who shall be then sitting, within ten days after the judgment of the superior court shall have been given, to abide such judgment, unless the determination appealed against be reversed.

Security and notice to be given by the appellant.

4. If the justice or justices be of opinion that the application is merely frivolous, but not otherwise, he or they may refuse to state a case, and shall, on the request of the appellant, sign and deliver to him a certificate of such refusal : Provided that the justice or justices shall not refuse to state a case where application for that purpose is made to them by or under the direction of Her Majesty’s Attorney-General for England or Ireland, as the case may be.

Justices may refuse a case where they think the application frivolous.

5. Where the justice or justices shall refuse to state a case as aforesaid, it shall be lawful for the appellant to apply to the Court of Queen’s Bench upon an affidavit of the facts for a rule calling upon such justice or justices, and also upon the respondent, to show cause why such case should not be stated ; and the said court may make the same absolute or discharge it, with or without payment of costs, as to the court shall seem meet, and the justice or justices upon being served with such rule absolute shall state

Where the justices refuse, the Court of Queen’s Bench may by rule order a case to be stated.



a case accordingly, upon the appellant entering into such recognisance as is hereinbefore provided.

Superior court to determine the questions on the case.

6. The court to which a case is transmitted under this Act shall hear and determine the question or questions of law arising thereon, and shall thereupon reverse, affirm, or amend the determination in respect of which the case has been stated, or remit the matter to the justice or justices, with the opinion of the court thereon, or may make such other order in relation to the matter, and may make such orders as to costs as to the court may seem fit; and all such orders shall be final and conclusive on all parties: Provided always, that no justice or justices of the peace who shall state and deliver a case in pursuance of this Act shall be liable to any costs in respect or by reason of such appeal against his or their determination.

May give costs. Its decisions to be final.

Case may be sent back for amendment.

7. The court for the opinion of which a case is stated shall have power, if they think fit, to cause the case to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended.

Powers of superior court may be exercised by a judge at chambers.

8. The authority and jurisdiction hereby vested in a superior court for the opinion of which a case is stated under this Act shall and may (subject to any rules and orders of such court in relation thereto) be exercised by a judge of such court sitting in chambers.

After the decision of superior court, justices may issue warrants.

9. After the decision of the superior court in relation to any case stated for their opinion under this Act, the justice or justices in relation to whose determination the case has been stated, or any other justice or justices of the peace exercising the same jurisdiction, shall have the same authority to enforce any conviction or order, which may have been affirmed, amended, or made by such superior court, as the justice or justices who originally decided the case would have had to enforce his or their determination if the same had not been appealed against; and no action or proceeding whatsoever shall be commenced or had against the justice or justices for enforcing such conviction or order, by reason of any defect in the same respectively.

Certiorari not to be required for proceedings under this Act.

10. No writ of certiorari or other writ shall be required for the removal of any conviction, order, or other determination in relation to which a case is stated under this Act, or otherwise, for obtaining the judgment or determination of the superior court on such case under this Act.

Superior courts may make rules for proceedings.

11. The superior courts of law may from time to time, and as often as they shall see occasion, make and alter rules and orders to regulate the practice and proceedings in reference to the cases hereinbefore mentioned.

"Justices" to include a stipendiary magistrate.

12. The words "justice or justices" in this Act shall include a magistrate of the police courts of the metropolis and any stipendiary magistrate.

Recognisances, how to be enforced.

13. In all cases where the conditions, or any of them, in the said recognisance mentioned, shall not have been complied with, the justice or justices who shall have taken the same, or any other justice or justices, shall certify upon the back of the recognisance in what respect the conditions thereof have not been observed, and transmit the same to the clerk of the peace of the county, riding, division, liberty, city, borough, or place within which such recognisance shall have been taken, to be proceeded upon in like manner as other recognisances forfeited at quarter sessions may now by law be enforced, and such certificate shall be deemed sufficient *prima facie* evidence of the said recognisance having been forfeited: Provided, that where any such recognisances shall have been taken in England before a magistrate of the police courts of the metropolis, or by any stipendiary magistrate, all sums of money in which any person or persons shall be therein bound may, if the said magistrate shall think fit, be levied, upon such recognisance being forfeited, and on non-payment thereof, together with the costs of the proceedings to enforce such payment, in the same manner as a police magistrate of the metropolis is now empowered to recover any penalty, forfeiture, or sum of money, by section forty-five of the Metropolitan Police Courts Act, 1839, and that all and every the provisions and enactments contained in the said section forty-five shall extend to and be applicable to this Act, in as ample a manner as if they had been herein re-enacted and made part of the same.

14. Any person who shall appeal under the provisions of this Act against any determination of a justice or justices of the peace from which he is by law entitled to appeal to the quarter sessions shall be taken to have abandoned such last-mentioned right of appeal, finally and conclusively, and to all intents and purposes.

Appellants under this Act not to be allowed appeal to quarter sessions.

15. This Act shall not extend to Scotland.

Extent of Act.

# SCHEDULE (A).

Section 3.

## Fees to be taken by Clerks to Justices.

For drawing case and copy, where the case does not exceed five folios of ninety words each . . . . .	s. d.
Where the case exceeds five folios, then for every additional folio . . . . .	10 0
For the recognisance to be taken in pursuance of the Act . . . . .	1 0
For every enlargement or renewal thereof . . . . .	5 0
For certificate of refusal of case . . . . .	2 6
	2 0

# PETTY SESSIONS CLERK (IRELAND) ACT, 1858.

[21 & 22 VICT. CH. 100.]

1. This Act may be cited for all purposes as "The Petty Sessions Clerk (Ir.) Act, 1858."

Short title.

2. "The Petty Sessions (Ir.) Act, 1851," except so far as the same is hereby repealed, shall be incorporated with this Act.

14 & 15 Vict. c. 93, incorporated.

3. In the interpretation of this Act, except when repugnant to the context or subject-matter, the several words and expressions hereinafter mentioned shall have the several meanings appropriated to them hereby: (that is to say) the word "district" shall mean petty sessions district; the word "clerk" shall mean petty sessions clerk, and shall include the clerk of the justices of any borough save Dublin; "Under Secretary" shall mean Under Secretary of the Lord-Lieutenant; "Registrar" shall mean the clerk of fines and penalties in the Castle of Dublin, or such other person as the Lord-Lieutenant may appoint to discharge the duties prescribed by this Act for the registrar to perform; "county in which the petty sessions district is situate," and "division in which the petty sessions district is situate," shall, in the case of districts locally situate in more counties or more divisions than one, respectively mean the county or quarter sessions division, as the case may be, in which the district petty sessions are held; "stamped forms" or "forms" shall extend and apply to any paper, book, or document upon which an adhesive stamp shall have been affixed under the provisions of this Act.

Interpretation of terms.

6. It shall be lawful for the Lord-Lieutenant at any time hereafter to order and declare that from a certain time therein to be named two or more districts shall be served by one and the same person as clerk, and such order and declaration shall be published in the Dublin Gazette, and shall be notified by the Chief or Under Secretary to the clerk of the peace of the county in which the said districts are situate; and the justices assembled at the then next quarter sessions for the division of the county in which such districts shall be situate, or if the said districts shall be in more than one division, then at the quarter sessions for such division as the Lord-Lieutenant shall appoint, shall proceed to nominate and appoint some one of the persons who have filled the office of petty sessions clerk in one of the said districts immediately before the pronouncing of the said order, or in case of the unfitness of all such persons, then some other proper and fit person, to be the clerk of such districts, and such appointment shall forthwith be notified by the clerk of the peace to the registrar; and it shall be lawful for such justices to recommend to the Lord-Lieutenant the amount of annual salary which in their opinion should be paid to the

One clerk may be appointed to several districts.

Salary.

clerk so appointed for such districts, regard being had to the extent of the duties he will be called upon to perform ; and every such recommendation shall be transmitted to the Lord-Lieutenant by such clerk of the peace, and the Lord-Lieutenant, after due consideration of any recommendation which may be so transmitted to him, shall determine the class in which such clerk shall be included, and shall fix the salary to be paid to such clerk.

Appointment  
of clerks.

3 & 4 Vict.  
c. 108.

7. As often as any vacancy shall arise in the office of petty sessions clerk serving one district only, the justices of such petty sessions shall nominate and appoint some proper person to fill the said office ; and in any borough in which within the meaning of the Municipal Corporations (Ir.) Act, 1840, a commission of the peace has been or shall be granted, and in and for which borough petty sessions are and shall be holden, the clerk shall, when and so often as a vacancy shall arise, be nominated and appointed by the justices of such borough ; and as often as a vacancy shall arise in the office of petty sessions clerk serving two or more districts, the justices of such districts shall appoint some proper person to fill such office : Provided always, that notice shall be given by the clerk of the peace for the county or division in which such districts, or the greater part thereof, are situate, of the time and place at which the justices of such districts are to meet to consider such matter ; and such notice shall be published in some newspaper circulated in such county or division, and shall be served upon each such justice seven days at the least previous to such meeting, either by delivering the same personally to such justice, or by leaving the same at or transmitting it by post to his usual place of abode ; and every such appointment, when made, shall be forthwith notified by the clerk to the registrar.

Tenure of office  
and duties of  
petty sessions  
clerks.

8. Every petty sessions clerk in Ireland shall hold his office subject to the following provisions :—

1. He shall hold such office during the pleasure of the justices of the district or districts of which he shall be clerk, and of the Lord-Lieutenant :
2. He shall not practise as a barrister, or attorney or solicitor, in any case, nor shall he act as the clerk of an attorney or solicitor, or as the clerk of a poor law union, or as a collector of any public tax, or be concerned in the keeping of any hotel, tavern, eating-house, or house licensed for the sale of liquor to be consumed on the premises, nor shall he engage in any business or occupation which the Lord-Lieutenant by any general or special order shall have prohibited : but this enactment shall not apply to clerks who may be engaged in any business, profession, or occupation, or who shall hold any appointment, other than that of petty sessions clerk, at the time of the passing of this Act.
3. In addition to the duties which he shall be bound to discharge under the provisions of the fifth section of " The Petty Sessions (Ir.) Act, 1851," he shall perform the several duties expressly or impliedly imposed on him by this Act with reference to the keeping of and accounting for all sums of money received by him in his official capacity, and shall also observe and perform all the other regulations of this Act in reference to his office and the duties thereof ; and every justice who shall take any information out of petty sessions is hereby required forthwith to transmit the same to the clerk of the district to which the same shall properly belong :
4. He shall perform the duties of his office in person, and not by deputy, except in cases of sickness, unavoidable absence, or other emergency, when the justices at petty sessions may appoint some other person to act as clerk at such petty sessions for the time being ; and such substitute shall, if required by the justices, enter into security for the due discharge of his duties in such manner as the justices shall think fit.
5. In case no justice shall be in attendance for one hour after the time appointed for the holding of any petty sessions, it shall be lawful for the clerk to adjourn the holding of such petty sessions, and



the hearing of all proceedings thereat, to the next petty sessions day; and upon such adjournment being made he shall make an entry thereof in the minute-book, and post a notice thereof on the door of the petty sessions court-house: all persons summoned or under recognisance to attend at such adjourned sessions shall, without fresh summons or recognisance, be bound to attend on the day to which such adjournment shall have been made:

6. In every case of an appeal from a summary conviction for any offence, and when the appellant shall have entered into a recognisance to prosecute such appeal, the clerk shall forthwith cause a notice of such appeal having been entered into to be duly served upon the complainant, who shall be the respondent in such appeal, and the said service shall be effected in like manner as summonses are now by law required to be served; and by the said notice the respondent shall be required to attend with the necessary witnesses on the hearing of such appeal; the stamp duty on such notice and the expenses of service thereof shall be borne and paid by the appellant as part of the costs of the appeal: in case any respondent shall upon being served with such notice fail to comply with the exigency thereof, he shall be liable to a fine not exceeding five pounds, or such greater sum as the appellant may have been adjudged to pay upon such conviction, to be recovered and levied upon a prosecution by the constabulary as in other cases mentioned in the Petty Sessions (Ir.) Act, 1851: Provided always, that it shall be lawful for the justices upon the hearing of such matter to remit the whole or any part of such penalty, if they shall be of opinion that the respondent in such appeal had any sufficient excuse for such his non-compliance.
9. It shall be lawful for the justices of every petty sessions to recommend to the Lord-Lieutenant the amount of annual salary which, in their opinion, should be paid to the clerk of such petty sessions, regard being had to the extent of the duties of his office; and every such recommendation shall be transmitted to the Lord-Lieutenant by such clerk, and the Lord-Lieutenant, after due consideration of any such recommendation which may be so transmitted to him, shall determine the class in which such petty sessions clerk shall be included, and shall fix the amount of salary to be paid to such clerk; and the better to enable the Lord-Lieutenant to ascertain and fix, or, as occasion may require, to alter such salary, the justices of each petty sessions district shall, when required so to do by the Chief or Under Secretary, cause due and faithful returns to be made of the amount of business done, and of all fees and fines received in such petty sessions district, for the period required, not exceeding seven years next previous to such requisition; and the amount of salary when so fixed shall be duly notified by the Chief or Under Secretary to the registrar, and also to the justices of the petty sessions district.
10. It shall be lawful for the Lord-Lieutenant to direct that such annual or other allowance as he shall think right shall be made to each petty sessions district for the payment of postage, and for the purchase of books, stationery, court requisites, expenses of court-house, and other matters; it shall also be lawful for the Lord-Lieutenant from time to time to make such allowance as he shall consider fit and reasonable to the clerks of the justices in the borough of Cork and the town of Belfast, to enable them to provide such competent assistants as the nature and extent of their duties or the exigencies of the case may require.
11. Every person who shall be appointed or who shall act as clerk of petty sessions under the provisions of this Act shall, before entering on such his office, give security for the due discharge of his duties as such clerk; and such security shall be given by a recognisance, with two sureties to be approved of by any two of the justices of his district or districts, in double the amount of the annual salary of such petty sessions clerk; and every such recognisance may be in the form (B) in the schedule to this Act, or to the like effect, and the same shall, when perfected, be deposited by the justices with the registrar at his office in Dublin: Provided always, that, notwithstanding anything hereinbefore contained,

Lord-Lieutenant to fix salary of petty sessions clerk, upon recommendation of justices.

Allowance for contingencies.

Petty sessions clerk shall give security.

it shall be lawful for the Lord-Lieutenant to direct that the security of any guarantee society established by charter or Act of Parliament in Great Britain or Ireland may be accepted in lieu of such security by recognisance as aforesaid: Provided also, that it shall be lawful for the Lord-Lieutenant, when and so often as, from the death or insolvency of sureties or other circumstances, he shall think right so to do, to direct that new security shall be given and entered into, by recognisance or otherwise, as he shall direct, and the same shall be given and entered into accordingly.

Gratuity or provision may be given to retiring clerks.

12. Whenever, under the provisions of this Act, any person shall cease to hold the office of clerk of petty sessions, by reason of inability to perform its duties, or by reason of the consolidation of petty sessions districts, or the consolidation of the office of clerk, it shall be lawful for the Lord-Lieutenant, if he shall so think fit, upon the recommendation of the justices of the district of which such person had been the petty sessions clerk, and by an order under the hand of the Chief or Under Secretary, to direct that out of the fund at his disposal hereinafter mentioned such person shall be paid such gross sum by way of gratuity, or such annual sum by way of pension, as to the Lord-Lieutenant shall under all the circumstances appear to be just, such gratuity not in any case to exceed the amount of three years' fees, and such pension not in any case to exceed two-thirds of the salary which such person had received as clerk of petty sessions previous to his vacating office, and such pension shall in every case cease to be paid when such person shall have been appointed to the office of petty sessions clerk of any district or districts, or to any other public office or situation which shall appear to the Lord-Lieutenant to be of equal value with the office of petty sessions clerk which such person shall have ceased to hold.

All salaries, &c., to be paid by order of Lord-Lieutenant.

13. Every salary payable to any clerk of petty sessions, and every annual sum payable by way of compensation or superannuation allowance, under the provisions of this Act, as aforesaid, shall be made payable by virtue of an order of the Lord-Lieutenant, under the hand of the Chief or Under Secretary.

Stamps in lieu of fees.

14. Every document enumerated in the Schedule (C) to this Act annexed shall, after the first day of January, one thousand eight hundred and fifty-nine, be printed or written upon paper bearing a stamp denoting the amount or value set opposite to such document in that schedule; and where any document shall consist of more than one sheet, the first sheet only shall be impressed with the stamp; and no fees other than those contained in Schedule (C), nor any stamp duties, shall be payable in respect of any of the documents therein enumerated.

Commissioners of Inland Revenue to provide dies for denoting fees.

15. The Commissioners of Inland Revenue shall provide all necessary dies for denoting such fees, either by impressed or adhesive stamps; and the registrar shall, under the direction and supervision of the Chief or Under Secretary, cause a sufficient supply of the said forms in Schedule (C) to be printed; and the said commissioners shall cause any of such forms to be stamped according to this Act with proper stamps denoting the fees thereon; and the registrar shall cause the same, when so stamped, and also any adhesive stamps that may be necessary, to be from time to time furnished to the several petty sessions clerks in Ireland, and also to such of the distributors and sub-distributors of stamps in Ireland as may apply for and be willing to sell the same by retail at the price or sum impressed or denoted thereon, and he shall also cause any stamped forms of summonses, informations, and warrants, and also any adhesive stamps that may be necessary to be furnished to the several sub-inspectors or other officers of constabulary, for the use of the constabulary force under their control; and for the purposes aforesaid the said commissioners shall supply the registrar with such stamped forms and adhesive stamps for denoting any of such fees, under such rules and regulations as the Chief or Under Secretary shall from time to time make or direct; and all the costs and expenses incurred by the commissioners under this Act shall be paid by the registrar out of the moneys which shall come to his hands in respect of such fees.

16. In case the person who shall be liable, under the provisions of this Act or any other Act or Acts, to pay any of the fees denoted by stamps



upon any of the forms or proceedings set forth in Schedule (C) to this Act annexed, shall fail to make such payment, it shall be lawful for the justice or justices at petty sessions to make a summary order, on the complaint of the clerk of such petty sessions, to require the payment of such fees; and such order shall be enforced in like manner as any order of a justice or justices may now be enforced under the provisions of the "Petty Sessions (Ir.) Act, 1851."

Power of justices to enforce payment of fees in certain cases.

17. Upon every such supply being made to any petty sessions clerk as aforesaid, his receipt for the amount so supplied to him shall be taken by the registrar, and the stamped forms and adhesive stamps so supplied shall be accounted for in manner hereinafter mentioned; and the stamped forms and adhesive stamps to be supplied to the sub-inspectors or other officers of constabulary shall be sold and supplied upon payment of the amount impressed upon or denoted by the stamp; and upon the sale and supply of stamps as aforesaid to distributors and sub-distributors of stamps an allowance or discount from the amount of the stamps shall be made at and after the rate of one shilling in the pound.

Accounts and allowances.

18. The provisions contained in the several Acts for the time being in force relating to stamps under the care and management of the Commissioners of Inland Revenue shall (so far as the same are applicable and consistent with the provisions of this Act) in all cases not hereby provided for be in full force and effect with respect to the stamps to be provided under the provisions of this Act, and shall be applied and put in execution for preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully and effectually, to all intents and purposes, as if such provision had been adapted to and specially enacted by this Act in reference to the stamps hereby provided.

The provisions of the Stamp Acts, as far as applicable, to be extended to this Act.

19. It shall be lawful for the justices at petty sessions, in any case where they shall be satisfied of the inability of the party liable thereto to pay such fees, to remit, in whole or in part, the fees payable in respect of the stamped forms to be used therein; and on the occasion of every such remission some one of the justices shall by endorsement on the forms, or by a separate certificate, notify such remission accordingly, and the cause thereof.

Justices may remit fees.

20. The Lord-Lieutenant may from time to time make regulations for the allowance of such of the stamps issued under the provisions of this Act as may have been spoiled or rendered useless or unfit for the purpose intended, or for which the owner may have no use, or which, through mistake or inadvertence, may have been improperly or unnecessarily used, or where the fee has been remitted; and allowance shall be made either by giving other stamps in lieu of the stamps so allowed for, or by repaying the amount or value to the owner or holder thereof, after deducting the discount or poundage (if any) that may have been allowed for the sale or distribution of such stamps.

Allowance for stamps spoiled, &c.

21. When any of such forms or stamps shall be issued by the registrar to any sub-inspector or other officer of constabulary, he shall distribute the same as he shall think fit amongst the several constabulary stations or sub-stations within the districts to which his duties shall extend, to be used and employed only in the cases of prosecutions by the constabulary.

Stamps issued to constabulary, how to be disposed of.

22. Every petty sessions clerk shall, when required so to do, and as a part of his duty, and without charge, properly fill up all stamped forms that may be purchased of him, or brought to him for that purpose.

Petty sessions clerk shall fill up forms when required.

25. Whenever any case at petty sessions shall be prosecuted by the constabulary or any public officer on behalf of the Crown, some one of the justices at petty sessions shall, when required so to do, endorse upon each of the stamped forms used in and for the purpose of such prosecution the words "constabulary prosecution," or "public prosecution," as the case may be, and sign his name thereto; and the sub-inspector or other officer to whom the forms so used and endorsed as aforesaid may have been supplied shall, upon production thereof to the registrar, and upon his making a solemn declaration that no part thereof has been recovered as costs of prosecution, or is likely to be so recovered, be entitled to receive and shall receive other stamped forms to the nominal amount or value of those so produced as aforesaid.

Allowances in case of constabulary or other public prosecution.



Salary, to  
registrar.

26. It shall be lawful for the Lord-Lieutenant, by any writing under his hand, to direct that the registrar shall have and be allowed to retain such annual sum as the Lord-Lieutenant may think fit by way of remuneration for his trouble in performing the duties imposed on him by this Act.

Accounts of  
registrar.

27. The registrar shall make out and prepare an annual statement of his accounts under this Act at such time and in such form as the Lord-Lieutenant shall direct, and the same shall be audited by the Chief or Under Secretary; and such account, when so made out, prepared, and passed, shall be laid before Parliament within twenty days after the commencement of the then next session thereof.

The fund from  
fines, &c., to  
be at Lord-  
Lieutenant's  
disposal.  
11 & 12 Vict. :  
c. 92.

28. In addition to the fees by this Act provided, the fund arising from the collection of fines, amerciaments, and forfeited recognisances imposed or levied at petty sessions in Ireland shall be at the disposal of the Lord-Lieutenant for the several purposes of this Act, except as regards all fines, penalties, and forfeitures under the Fisheries (Ir.) Act, 1848, which shall be recovered and applied as is in the said Act provided, anything to the contrary in any Act of Parliament contained notwithstanding: Provided always, that it shall not be lawful to award to the informer more than one-third of any such fine or penalty.

Lord-Lieutenant  
to make general  
rules.

29. It shall be lawful for the Lord-Lieutenant to make such general rules as shall seem to him expedient for the purpose of carrying into effect the provisions of this Act, and from time to time to amend and vary such rules as occasion shall require.<sup>1</sup>

Limits of Act.

30. This Act shall extend to Ireland only, but nothing herein contained shall apply to the borough of Dublin or to the Dublin Metropolitan Police District.

## SCHEDULES.

### SCHEDULE (B).

Sect. 11.

#### *Form of Recognisances on Appointment of Petty Sessions Clerk.*<sup>2</sup>

County of *W.* } BE it remembered that on the — day of —, 18—,  
to wit. } *A. B.*, of —, &c., *C. D.*, of —, &c., and *E. F.*,  
of —, &c., personally came before me and acknowledged themselves  
to owe to our Lady the Queen the sum of — pounds each, to be levied  
off their goods and lands, to the use of her said Majesty, if the said *A. B.*  
shall fail in the conditions under written.

*G. H.*, one of the Justices of the Peace for the  
county of —.

Whereas the said *A. B.* hath been lately appointed to the office of petty sessions clerk for the district [*or districts*] of —, &c.: Now the condition of the above written recognisance is such, that if the said *A. B.* shall well and faithfully account for all moneys which shall come to his hands or power by virtue of such his office, and shall carefully preserve all books and other property that may be entrusted to his charge, and deliver up the same when he shall be required so to do by the Lord-Lieutenant, or the justices of the district to which such books or other property shall belong, and shall well and faithfully perform all and singular the duties by law imposed or to be imposed upon him as such petty sessions clerk as aforesaid, then the said recognisance to be void, or else to remain in full force.

<sup>1</sup> See also 41 & 42 Vict. c. 69, s. 6, *post*.

<sup>2</sup> See 44 & 45 Vict. c. 18, s. 3.

# MANOR COURTS ABOLITION (IR.) ACT, 1859. 1047

## SCHEDULE (C).

Sect. 14, Schedule (C).

### Forms.

	s.	d.
On every summons and copy . . . . .	0	6
On every information or deposition . . . . .	1	0
(The recognisance to bind the deponent to prosecute or give evidence may be added at foot, without any further stamp duty.)		
On every solemn declaration (not being a declaration as to loss of pawnbrokers' duplicates, or as to the admission of paupers into workhouses) . . . . .	1	0
On every copy of any written information or complaint in summary proceedings . . . . .	0	6
On every warrant . . . . .	0	6
On every recognisance, when not at foot of an information or deposition . . . . .	1	0
On the entry of each order . . . . .	0	6
On every certificate of order . . . . .	1	0
On every appeal, including the recognisance to prosecute . . . . .	2	0
On every notice of appeal to be served on the respondent . . . . .	1	0
On every other notice in proceedings by or before justices when such notice is drawn by the petty sessions clerk . . . . .	0	6
On every form other than the aforesaid, upon which any fee is now payable by law to the clerks of petty sessions, any sum not exceeding . . . . .	2	6

## MANOR COURTS ABOLITION (IRELAND) ACT, 1859.<sup>1</sup>

[22 VICT. CH. 14.]

5. It shall be lawful for the justice or justices at petty sessions to hear and determine causes for the recovery of debts between party and party under the value of two pounds, where the right to recover such debts shall have accrued within twelve calendar months before the day of the date of the process hereinafter mentioned, and having heard what each party shall have had to say, and the evidence adduced by each, shall either make an order for the payment of the sum claimed, or shall dismiss the complaint, either upon the merits or without prejudice, and with or without costs, not exceeding five shillings, in the form in Schedule (A), and shall direct execution by the seizure and sale of the defendant's or plaintiff's goods: Provided always, that it shall be lawful for either party to appeal from such order or decision of such justice or justices to the chairman of the quarter sessions in the civil court at the next general quarter sessions held in the same division and district of the county, the said sessions being held next immediately after such decision at petty sessions by such justice or justices when the order shall be made by the justice or justices in any petty sessions district, or to the recorder at his next sessions, when the order shall be made by the divisional justices in the police district of Dublin metropolis, or to the recorder of any corporate or borough town: Provided always that no such right of appeal shall exist unless three clear days shall elapse between the time when such order shall be made and such appeal can be heard; and if three days do not elapse the appeal shall be made to and heard at the next succeeding sessions for the division and district, which appeal the said justice or justices are hereby required to receive, and stop all proceedings on such order at petty sessions, the party appealing, if a defendant, first lodging with the clerk at petty sessions the amount ordered to be paid by the

Power to justices at petty sessions to hear and determine cases for recovery of debts not exceeding two pounds.

Power to appeal to chairman of quarter sessions.

<sup>1</sup> Commonly called the "Small Debts Act."

said justice or justices, or entering into a recognisance of appeal in manner prescribed by the Summary Jurisdiction (Ir.) Act, 1851, section twenty-four, and if a plaintiff, to deposit the sum of five shillings as and for costs on the hearing of such appeal; and such chairmen and recorders are hereby respectively required and empowered to hear such appeal, and to issue a decree and execution thereon, in like manner and form as if such appeal had been brought before such chairmen and recorders as an original civil bill under the Civil Bill (Ir.) Act, 1851, and with like costs, but without further appeal.

Forms of process to be these in Schedule (A).

6. The process to be served upon the defendant in all cases, requiring him to appear before the justice or justices at petty sessions, and the orders made thereon, shall be in the Form I. and II. in the Schedule (A) to this Act annexed, or as near thereto as the nature of the case will permit, and it shall not be necessary that such process shall be signed by any attorney, but it shall be sufficient if the same be signed by the complainant, or any person on behalf of such complainant; and the said forms shall be severally subject to the following stamp duties payable to Her Majesty, that is to say:—

	<i>s.</i>	<i>d.</i>
For every original process . . . . .	0	6
For every copy thereof served . . . . .	0	6
For every certificate on appeal . . . . .	1	0

Stamps to be used in lieu of fees at petty sessions, and to be accounted for as provided by 21 & 22 Vict. c. 100.

7. Every paper or document in respect of which any fee shall be payable at petty sessions, under the provisions of this Act, shall bear an impressed or adhesive stamp denoting the amount or value of such fee, as the same is specified in Schedule (C) of this Act; and such impressed or adhesive stamps shall be supplied and accounted for in the like manner, and shall be subject to the like provisions, rules, and regulations, so far as the same are applicable, as are provided in respect of stamped forms or adhesive stamps by the Petty Sessions Clerks (Ir.) Act, 1858.

Duties granted by this Act to be deemed stamp duties, and the provisions of the Stamp Acts to apply thereto.

8. The duties by this Act granted shall be denominated and deemed to be stamp duties, and shall be under the care and management of the Commissioners of Inland Revenue for the time being; and all powers, provisions, clauses, regulations, and directions, fines and penalties, contained in or imposed by the several Acts of Parliament relating to duties of the same kind or description in force at the time of the passing of this Act shall respectively be of full force and effect with respect to the duties by this Act granted, so far as the same are or may be applicable, as fully and effectually to all intents and purposes as if the same had been herein repeated and specially enacted with reference to the duties by this Act granted.

Process to be served by process server authorised by justices at petty sessions.

9. The process to appear shall in all cases be served by a process server, duly authorised by the justice or justices at petty sessions to serve summons, three clear days before the first day of the petty sessions at which the case shall be heard, and in no case whatsoever shall any process be served on Sundays, Good Friday, or Christmas Day, and service on any of the said days shall be absolutely void; and any such summons server shall be entitled to be paid by the complainant or person for whom he may be employed such sum not exceeding the sum of sixpence for the service of each process upon each party as the justice or justices shall fix and determine.

Defendant not to be sued, or obliged to appear, except within district of petty sessions in which he resides. Occupation of house, &c., deemed a residence.

10. No defendant shall be liable to be sued or proceeded against at petty sessions under this Act, or obliged to appear in any cause to be heard and determined at any petty sessions held in any other part of the country than at the petty sessions held . . . within the petty sessions district . . . in which the defendant or defendants reside or resides. Provided always, that if any defendant or defendants shall have and occupy any house, warehouse, counting-house, shop, factory, or office for the sale of goods, or for carrying on any business, within the district of such petty sessions district, he shall be deemed to have a residence within such petty sessions district. The several fees as set forth in Schedules (B) and (C) shall be the proper fees payable on any proceedings under the provisions of this Act.



## SCHEDULE A.

Sects. 5, 6, Schedule A.

1.

*Process**Date.*

Petty Sessions District of ——— County of ———

*A. B.* Complainant. *C. D.* Defendant.

The defendant is hereby required personally to appear before the justice [*or justices*] assembled at the Petty Sessions of ——— on the ——— day of ——— next, to answer the plaintiff's bill in an action for the sum of ———, for that the defendant is indebted to the said plaintiff in the said sum for [*goods sold, money lent, settled account, &c.*], and in default of such appearance the said justices will be required to proceed as to justice shall appertain.

(Signed) *A. B.* Plaintiff.

2.

*Decree founded on Order.**Date.**A. B.* Complainant. *C. D.* Defendant.

By the justices assembled at Petty Sessions held for the District of ———: It appearing to the court that process to appear at this present sessions was duly served on the defendant [*or defendants*], and that the defendant [*or defendants*] is [*or are*] justly indebted to the plaintiff [*or plaintiffs*] in the sum of ——— pounds [*here state cause of action*], it is therefore ordered by the court that the plaintiff do recover the sum of ——— pounds with costs, and that in default of payment thereof, and the said defendant not having appealed from such order, we order that the sum of ——— pounds and ——— pounds be levied off the goods of the said ———

(Signed) *A. B.* } Justices.  
*C. D.* }*or**E. F.* Justice.

3.

*Form of Certificate of Appeal.*

Petty Sessions District of ——— County of ———

*A. B.* Plaintiff. *C. D.* Defendant.

Whereas an order having this day been made that the defendant shall pay to the plaintiff the sum of ——— pounds [*or that the plaintiff be dismissed, as the case may be*], and the said plaintiff [*or defendant, as the case may be*] has appealed from such order, I certify that the said plaintiff [*or defendant, as the case may be*] paid into court the sum of ——— pounds [*the sum ordered to be paid, or five shillings on the dismiss*], in compliance with the said Act of ———

*A. B.* Clerk of Petty Sessions.

## SCHEDULE B.

Sect. 10, Schedule B.

*s. d.*

To plaintiff's attorney, for attending and taking instructions for		
and attending the hearing . . . . .	2	6
To defendant's attorney, for attending hearing . . . . .	2	6
To plaintiff's attorney, for attending the hearing of every appeal		
under this Act . . . . .	2	6
To defendant's attorney, for same . . . . .	2	6
To Clerk of the Peace, upon the entry of every appeal . . . . .	0	6
For signing the decree or dismiss on such appeal . . . . .	0	6

3 Y

Schedule C.

SCHEDULE C.

Sects. 7, 10.

	s.	d.
On the entry of every process at petty sessions . . . . .	0	6
On the entry of every order of the magistrates in petty sessions book . . . . .	0	6
On every certificate of appeal . . . . .	0	6

## VEXATIOUS INDICTMENTS ACT, 1859.

[22 & 23 VICT. CH. 17.]

No indictment for offences herein named to be preferred without previous authorisation.

### 1. No bill of indictment for any of the offences following ;<sup>1</sup> viz.—

Perjury ;  
Subornation of perjury ;  
Conspiracy ;  
Obtaining money or other property by false pretences ;  
Keeping a gambling house ;  
Keeping a disorderly house ; and  
Any indecent assault,

shall be presented to or found by any grand jury, unless the prosecutor or other person presenting such indictment has been bound by recognisance to prosecute or give evidence against the person accused of such offence, or unless the person accused has been committed to or detained in custody, or has been bound by recognisance to appear to answer to an indictment to be preferred against him for such offence, or unless such indictment for such offence, if charged to have been committed in England, be preferred by the direction or with the consent in writing of a judge of one of the superior courts of law at Westminster, or of Her Majesty's Attorney-General or Solicitor-General for England, or unless such indictment for such offence, if charged to have been committed in Ireland, be preferred by the direction or with the consent in writing<sup>2</sup> of a judge of one of the superior courts of law in Dublin, or of Her Majesty's Attorney-General or Solicitor-General for Ireland, or (in the case of an indictment for perjury) by the direction of any court, judge, or public functionary authorised by the Criminal Procedure Act, 1851, to direct a prosecution for perjury.

14 & 15 Vict.  
c. 100, s. 19.

In certain cases where prosecutor desires to prefer an indictment justice to take his recognisance to prosecute.

2. That where any charge or complaint shall be made before any one or more of Her Majesty's justices of the peace that any person has committed any of the offences aforesaid within the jurisdiction of such justice, and such justice shall refuse to commit or to bail the person charged with such offence to be tried for the same, then in case the prosecutor shall desire to prefer an indictment respecting the said offence, it shall be lawful for the said justice and he is hereby required, to take the recognisance of such prosecutor to prosecute the said charge or complaint, and to transmit such recognisance, information, and depositions, if any, to the court in which such indictment ought to be preferred, in the same manner as such justice would have done in case he had committed the person charged to be tried for such offence.

Act not to extend to Scotland.

### 3. This Act shall not extend to Scotland.

<sup>1</sup> The statute has also been applied to offences under the Children Act, 1908 ; the Criminal Law Amendment Act, 1885 ; the Debtors (Ir.) Act, 1872 ; the Merchandise Marks Act, 1887 ; the Newspaper Libel Act, 1881 ; the Prevention of Corruption Act, 1906 ; and the Punishment of Incest Act, 1908.

<sup>2</sup> *Quere*, would the initialed direction, usual in ordinary Crown cases, given by the Attorney-General, be held to be a sufficient consent within this section.

SUMMARY JURISDICTION (IRELAND)  
ACT, 1862.

[25 &amp; 26 VICT. CH. 50.]

2. Every offence by this Act and the said recited Acts,<sup>1</sup> respectively, made punishable on summary conviction in Ireland, may be prosecuted before any justice or justices sitting in petty sessions in Ireland, or before any two justices sitting out of petty sessions (when the offender shall be unable to procure bail for his appearance at petty sessions), or before any divisional justice of the police district of Dublin metropolis; and no stipendiary magistrate in Ireland, not being a justice of the police district in Dublin metropolis, shall have any further or other jurisdiction than any other justice of the peace in respect of any such offence.

As to prosecution of offences made punishable on summary conviction in Ireland.

3. The provisions contained in the one hundred and fifth section of the Larceny Act, 1861, and in the sixty-second section of the Malicious Damage Act, 1861, relating to the mode of compelling the appearance of persons punishable on summary conviction, shall not extend to Ireland; and whenever information shall be given to any justice or justices in Ireland that any person has committed or is suspected to have committed any offence within the limits of the jurisdiction of such justice or justices for which such persons shall be punishable upon a summary conviction, all proceedings as to compelling the appearance of any person against whom any such complaint shall have been made, or of any witness, and as to the hearing and determination of such complaints, and as to the making and executing of any orders relating thereto, shall be subject in all respects to the provisions of the Petty Sessions (Ir.) Act, 1851, as the same is amended by the Petty Sessions Clerk (Ir.) Act, 1858, when the case shall be heard in any petty sessions district, and to the provisions of the Acts relating to the divisional police offices when the case shall be heard in the police district of Dublin metropolis, so far as the said provisions shall be consistent with any special provisions of this Act.

Provisions in 24 & 25 Vict. cc. 96 and 97, relating to mode of compelling appearances not to extend to Ireland.

All such proceedings, &c., to be subject to provisions of 14 & 15 Vict. c. 93, and 21 & 22 Vict. c. 100.

4. Any person who shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, the whole or any part of any growing tree, sapling, shrub, or underwood, or any growing fruit or vegetable production, or any growing cultivated root or plant, shall (in case the value of the property stolen or the amount of injury done shall not exceed five pounds) pay to the party aggrieved the value of the property stolen or the amount of the injury done, and shall also be liable to a fine not exceeding five pounds, or to be imprisoned for any period not exceeding three months; and the offences in this and the following sections mentioned may be prosecuted summarily before one or more justices of the peace, as hereinbefore mentioned.

Penalty on stealing trees, shrubs, &c. (under the value of £5), growing anywhere.

5. Any person who shall steal, or damage with intent to steal, the whole or any part of any tree, sapling, shrub, or underwood, or any cultivated plant, root, fruit, or vegetable production severed from the soil, or any turf or peat manufactured or partly manufactured for fuel (in case the value of such article or articles stolen, or the amount of the injury done shall not exceed forty shillings), shall pay to the party aggrieved the value of the property stolen, or the amount of the injury done, and shall also be liable to a fine not exceeding five pounds, or to be imprisoned for a term not exceeding three months.

Penalty on stealing trees, plants, vegetables, &c., severed from the soil, or turf fuel not exceeding 40s. in value.

6. Whenever any credible witness shall prove upon oath, before a justice of the peace, that there is reasonable cause to suspect that any of the articles of property following: that is to say, the carcase of any sheep or lamb, or the head, skin, or any part thereof, or the fleece of any sheep, or lamb, has been stolen or unlawfully taken, and is to be found in any house or other place, it shall be lawful for such justice to issue a warrant to search such house or place for such articles of property; and any person in whose possession or on whose premises any of the said articles of property shall be found by virtue of any such search warrant (or by

Penalty on persons possessing carcasses of sheep, &c., without accounting for the same.

<sup>1</sup> That is, Larceny Act, 1861; Malicious Damage Act, 1861; Coinage Offences Act, 1861; and Offences Against the Person Act, 1861.



any member of the constabulary or metropolitan police forces when executing any warrant or otherwise acting in the discharge of his duty), and who shall not satisfy the justice before whom he shall be brought, that he came lawfully by the same, or that the same was on his premises without his knowledge or assent, may be committed by such justice to gaol until the next day of holding petty sessions for the district, unless he shall enter into a recognisance with one or more sureties to appear at such petty sessions; and if such person shall not account for the same in manner aforesaid, he shall, on summary conviction by such justice or justices as aforesaid, and at his or their discretion, either be convicted pursuant to the provisions of the Petty Sessions (Ir.) Act, 1851, to be imprisoned for a term not exceeding three months, or be liable to a fine not exceeding five pounds.

Penalty on workman making away with goods (not exceeding £5 in value) committed to his care.

7. Any artificer, workman, journeyman, apprentice, servant, or other person who shall unlawfully dispose of, or retain in his possession without the consent of the person by whom he shall be hired, retained or employed, any goods, wares, work, or materials committed to his care or charge (the value of such goods, wares, work, or materials not exceeding the sum of five pounds), shall pay to the party aggrieved such compensation as the justices shall think reasonable, and shall also be liable to a fine not exceeding forty shillings, or to be imprisoned for a term not exceeding one month.

Penalty on stealing poultry (not exceeding 5s. in value).

8. Any person who shall steal, or injure with intent to steal, any turkey, goose, or other poultry (where the value of such poultry so stolen or injured shall not exceed five shillings), shall be liable to a fine not exceeding twenty shillings, or to be imprisoned for a period not exceeding two weeks.

Assault cases may be proceeded with, although party aggrieved declines to prosecute.

9. It shall be lawful for the justices at petty sessions, if they shall so think fit, to proceed against any person or persons charged with being guilty of an assault, pursuant to the provisions of the Offences against the Person Act, 1861, section forty-two, notwithstanding that the party aggrieved may decline or refuse to prefer a complaint.

14 & 15 Vict. c. 100, s. 42.

Summary jurisdiction in cases of assault on peace officers and others.

10. And whereas by the Offences against the Person Act, 1861, section thirty-eight, certain assaults therein specified on peace officers and others are made misdemeanours, and punishable with imprisonment for a term not exceeding two years, with or without hard labour, and it is desirable also to give a summary jurisdiction in petty cases for the same offence: Be it enacted, that two justices of the peace shall have a concurrent jurisdiction to punish such assaults under the forty-second section of the said Act, if they shall consider the offence so trivial as not to require being dealt with by a superior tribunal.

Extent of Act.

11. This Act shall extend to Ireland only.

## CIVIL BILL COURTS PROCEDURE AMENDMENT ACT (IRELAND), 1864.

[27 & 28 VICT. CH. 99.]

Power to court on appeal to take fresh recognizances, in lieu of defective recognizances.

50. And whereas the Acts now in force giving a right of appeal to the courts of general quarter sessions or the chairman of the civil bill courts in Ireland frequently require a recognizance or recognizances to be entered into as a condition of such appeal, and appellants are liable to be prevented from trying their appeals upon the merits in consequence of imperfections in the taking of such recognizances: Be it enacted, that when any recognizance or recognizances which shall have been entered into within the time by law required, before any justice or justices, for the purpose of complying with any such condition of appeal, shall appear to the court before which such appeal is brought to have been insufficiently entered into, or to be otherwise defective or invalid, it shall be lawful for the court, if it shall so think fit, to permit the substitution of a new and sufficient recognizance or new and sufficient recognizances

## INDICTABLE OFFENCES ACT AMENDMENT ACT. 1053

to be entered into before such court in the place of such insufficient, defective, or invalid recognizance or recognizances, and for that purpose to allow such time, and make such examination, and impose such terms as to payment of costs to respondent or respondents, as to such court shall appear just and reasonable, and such substituted recognizance or recognizances shall be as valid and effectual to all intents and purposes as if the same had been duly entered into at any earlier time or times as required by any Act or Acts now in force.

51. And for the more effectual prevention of frivolous appeals, be it enacted that any court of general or quarter sessions of the peace, upon proof of notice of any appeal to such court having been given to the clerk of the petty sessions court, and such recognizance having been entered into as in the Petty Sessions (Ir.) Act, 1851, is in that behalf mentioned, though such appeal may not be afterwards prosecuted or entered, or though notice in writing of the intention of the party to prosecute the same shall not have been served seven clear days before the commencement of said sessions, as by said Act required, may, if it shall so think fit, at the sessions for which such notice of appeal was given, order to the party receiving the same such costs and charges not exceeding forty shillings as by the same court shall be thought reasonable and just to be paid by the party giving such notice, such costs to be recoverable in the same manner as the costs in ordinary cases of appeal are now by law recoverable.

Power to give costs when appeal not prosecuted.

## JUSTICES OF THE PEACE ACT, 1867.

[30 & 31 VICT. CH. 115.]

1. This Act may for all purposes be cited as “Justices of the Peace Act, 1867.” Short title.

2. A justice of the peace shall not be incapable of acting as a justice at any petty or special or general or quarter sessions on the trial of an offence arising under an Act to be put in execution by a municipal corporation, or a local board of health, or improvement commissioners, or trustees, or any other local authority, by reason only of—

Justices not incapable of acting in execution of Acts in cases specified.

(a) His being as one of several ratepayers, or as one of any other class of persons liable in common with the others to contribute to or to be benefited by any fund to the account of which the penalty payable in respect of such offence is directed to be carried, or of which it will form part, or to contribute to any rate or expenses in diminution of which such penalty will go.

## INDICTABLE OFFENCES ACT AMENDMENT ACT, 1868.

[31 & 32 VICT. CH. 107.]

2. This Act may be cited for all purposes as “The Indictable Offences Act Amendment Act, 1868.” Short title.

3. This Act, so far as is consistent with the tenor thereof, shall be construed as one with the said Indictable Offences Act, 1848, and any Act amending the same.

Construction of Act.

4. In the following cases, that is to say,

Where a warrant is issued against any person by any competent magistrate in Scotland or Ireland, and such person goes or is supposed to have gone into any of the Channel Islands; or

Warrants issued in Scotland or Ireland, how to be backed in the Channel Islands, and vice versa.

Where a warrant is issued against any person by any competent magistrate in any of the Channel Islands, and such person goes or is supposed to have gone into Scotland or Ireland;

any competent magistrate having jurisdiction over the place where such person is or is supposed to be, may indorse such warrant in manner provided by the Indictable Offences Act, 1848, or as near thereto as circumstances admit.

Any such warrant when so indorsed shall be a sufficient authority to the person or persons bringing the same, and to all persons to whom the same was originally directed, and also to all constables within the limits of the jurisdiction of the magistrate who indorsed the same, to execute such warrant within such last-mentioned limits, and to convey the person when apprehended to any place or places within the limits of the jurisdiction of the magistrate who issued the warrant, and to bring him before that magistrate or before any other magistrate having jurisdiction over such place or places as aforesaid; and any magistrate before whom the person so apprehended is brought may proceed in the same manner as if such person had been apprehended within his jurisdiction.

Definition of terms.

5. For the purposes of this Act "competent magistrate" shall mean—  
In Ireland—

Any justice of the peace, or any judge of Her Majesty's Court of Queen's Bench, or any justice of oyer and terminer, or of gaol delivery.

## SUMMARY JURISDICTION (IRELAND) AMENDMENT ACT, 1871.

[34 & 35 VICT. CH. 76.]

Short title.

1. This Act may be cited for all purposes as the "Summary Jurisdiction (Ir.) Amendment Act, 1871."

Extent of Act.

2. This Act shall apply to Ireland only.

Powers of divisional justices of police district of Dublin metropolis.

4. The several divisional justices of the police district of Dublin metropolis shall be deemed to have and possess, and shall have and may exercise all and the same powers for preserving the public peace within the city of Dublin as are elsewhere vested in and may be exercised by justices of the peace within the limits of their respective jurisdictions, and shall, notwithstanding anything in any Act to the contrary, to all intents and purposes whatsoever be and be deemed and taken to be justices of the peace within every part of the said police district of Dublin metropolis.

Offences against public decency within police district of Dublin metropolis.

5. Any person who within the limits of the police district of Dublin metropolis, in any thoroughfare or public place, shall wilfully and indecently expose his person or commit any act contrary to public decency, shall be liable, on conviction before any justice or justices sitting in any court within the police district of Dublin metropolis, to a fine not exceeding five pounds, or, at the discretion of such justice or justices, to be imprisoned for any period not exceeding two calendar months.

Contempt of court within police district of Dublin metropolis.

6. If any person shall wilfully insult any justice or justices sitting in any court within the police district of Dublin metropolis, or shall commit any other contempt of such court, it shall be lawful for such justice or justices, by any verbal order, either to direct such person to be removed from such court, or to be taken into custody, and at any time before the rising of such court by warrant to commit such persons to gaol for any period not exceeding seven days, or to fine such person in any sum not exceeding forty shillings.

Proceedings in case defendant does not appear.

7. Whenever at the hearing of any case of summary jurisdiction within the limits of the police district of Dublin metropolis the defendant shall not appear, and the divisional justice or justices shall be satisfied that the summons was duly served, such justice or justices may either proceed *ex parte* to hear and determine the complaint, or issue a warrant to compel the appearance of the defendant, or may adjourn the hearing to a future day.



8. Any person who within the limits of the police district of Dublin metropolis shall in any theatre or other place of public amusement be guilty of offensive or riotous behaviour, to the disturbance or annoyance of any persons present, shall, on conviction before any divisional justice, be liable to a fine not exceeding forty shillings, or to be imprisoned for any period not exceeding one month; and any person committing any such offence within view of any constable of the said police district may be arrested by him without warrant.

Penalty for offensive or riotous conduct in public places, &c., within police district of Dublin metropolis.

9. Where any person is charged before any of the divisional justices of the police district of Dublin metropolis presiding in one of the public courts of the said district with having in any manner attempted to commit suicide, if the person charged shall confess the same, it shall be lawful for the justice to convict the person charged, and commit him to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for any period not exceeding three months: Provided always, that if the person charged do not consent to have the case heard and determined by such justices, or if such justice be of opinion that the charge is fit to be made the subject of prosecution by indictment, rather than to be disposed of summarily, he shall, instead of summarily adjudicating thereon, deal with the case in all respects as if this Act had not been passed.

Summary procedure in certain cases of attempted suicide, within police district of Dublin metropolis.

10. The provisions of the Summary Jurisdiction (Ir.) Act, 1851, relating to the recovery of the possession of small tenements, shall extend and apply to all such small tenements therein described as are situate in any town or township within the police district of Dublin metropolis, although no fair or market be held therein.

Certain provisions of Summary Jurisdiction (Ir.) Act, 1851, as to recovery of small tenements, to extend to towns, &c., within the police district of Dublin metropolis.

11. It shall be lawful for any divisional justice of the police district of Dublin metropolis, with the approval of the Chief Secretary to the Lord-Lieutenant of Ireland, to appoint a deputy, who shall have practised as a barrister-at-law for at least seven years, to act for him for any time or times not exceeding six weeks in any consecutive period of twelve calendar months; and in case of sickness or unavoidable absence it shall be lawful for such justice, with the approval of the Chief Secretary to the Lord-Lieutenant, on each occasion of this power being exercised, to appoint a deputy, qualified as aforesaid, for any period not exceeding three calendar months at one time, and every such deputy during the time for which he shall be so appointed shall have all the powers and perform all the duties of the justice for whom he shall have been so appointed. There shall be paid to every such deputy by the justice, at his own charge, by whom he is appointed, such sum by way of remuneration for his services as the Chief Secretary shall direct.

Power to divisional justices to appoint a deputy.

12. Any person against whom a summary conviction or order shall be made under this Act shall have the same right of appeal as given by the twenty-fourth section of the Petty Sessions (Ir.) Act, 1851, but subject to the conditions therein contained.

Right of appeal.

## PEDLARS ACT, 1871.

[34 & 35 VICT. CH. 96.]

### *Preliminary.*

1. This Act may be cited as The Pedlars Act, 1871.

Short title.

3. In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them; that is to say,

Interpretation of certain terms in this Act.

The term "pedlar" means any hawker, pedlar, petty chapman, tinker, caster of metals, mender of chairs, or other person who, without any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town or to other men's houses, carrying to sell or exposing for sale any goods, wares, or merchandise, or procuring orders for goods, wares, or merchandise

"Pedlar."

immediately to be delivered, or selling or offering for sale his skill in handicraft :

"Police district."

The term " police district " means any of the districts mentioned in schedule one to this Act, and the term " chief officer of police " with reference to any police district means the officer mentioned in relation to that district in the said schedule, and such schedule with the notes thereto shall have effect as if it were enacted in this section :

"Court of summary jurisdiction."

The term " Court of Summary Jurisdiction " means and includes any justice or justices of the peace, sheriff, or sheriff substitute, metropolitan police magistrate, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts or any Acts therein referred to, or to proceedings before whom the provisions of the Summary Jurisdiction Acts are or may be made applicable.

*Certificates to be obtained by Pedlars.*

No one to act as a pedlar without certificate.

4. No person shall act as a pedlar without such certificate as in this Act mentioned, or in any district where he is not authorised by his certificate so to act.

Any person who acts as a pedlar without having obtained a certificate under this Act authorising him so to act shall be liable for a first offence to a penalty not exceeding ten shillings, and for any subsequent offence to a penalty not exceeding one pound.

Grant of certificate.

5. The following regulations shall be made with respect to the grant of pedlars' certificates :

1. Subject as in this Act mentioned, a pedlar's certificate shall be granted to any person by the chief officer of police of the police district in which the person applying for a certificate has, during one month previous to such application, resided, on such officer being satisfied that the applicant is above seventeen years of age, is a person of good character and in good faith intends to carry on the trade of a pedlar :
2. An application for a pedlar's certificate shall be in the form specified in schedule two to this Act, or as near thereto as circumstances admit :
3. There shall be paid for a pedlar's certificate previously to the delivery thereof to the applicant a fee of five shillings :
4. A pedlar's certificate shall be in the form specified in schedule two to this Act, or as near thereto as circumstances admit :
5. A pedlar's certificate shall remain in force for one year from the date of the issue thereof, and no longer :
6. On the delivery up of the old certificate, or on sufficient evidence being produced to the satisfaction of the chief officer of police that the old certificate has been lost, that officer may, either at the expiration of the current year, or during the currency of any year, grant a new certificate in the same manner as upon a first application for a pedlar's certificate. In Great Britain one of Her Majesty's Principal Secretaries of State, and in Ireland the Lord-Lieutenant or other chief governor or governors of Ireland for the time being, may from time to time provide for the expiration of all pedlar's certificates at the same period of each year, and in doing so shall provide for the apportionment of the fees payable in respect of any such certificate.

Effect of certificate.

For the purpose of the Markets and Fairs Clauses Act, 1847, and any Act incorporating the same, a certificate under this Act shall have the same effect, within the district for which it is granted, as a hawker's licence, and the term " licensed hawker " in the first-mentioned Act shall be construed to include a pedlar holding such a certificate.

Register of certificates to be kept in each district.

8. There shall be kept in each police district a register of the certificates granted in such district under this Act, in such form and with such particulars as may from time to time be directed in Great Britain by one of Her Majesty's principal Secretaries of State, and in Ireland by the Lord-Lieutenant.

The entries in such register, and any copy of any of such entries certified by the chief officer of police to be a true copy, shall be evidence of the fact stated therein.

9. Forms of applications for certificates shall be kept at every police office in every police district, and shall be given gratis to any person applying for the same; and all applications for certificates shall be delivered at the police office of the division or subdivision of the police district within which the applicant resides, and certificates, when duly signed by the chief officer of police, shall be issued at such office.

Forms of application to be kept at chief police office.

10. A person to whom a pedlar's certificate is granted under this Act shall not lend, transfer, or assign the same to any other person, and any person who lends, transfers, or assigns such certificate to any other person shall for each offence be liable to a penalty not exceeding twenty shillings.

Certificate not to be assigned.

11. No person shall borrow or make use of a pedlar's certificate granted to any other person, and any person who borrows or makes use of such certificate shall for each offence be liable to a penalty not exceeding twenty shillings.

Certificate not to be borrowed.

12. Any person who commits any of the following offences; (that is to say):—

Penalty for forging certificate.

1. Makes false representations with a view to obtain a pedlar's certificate under this Act:
2. Forges or counterfeits a pedlar's certificate granted under this Act:
4. Aids in making or procures to be made such forged or counterfeited certificate:
5. Travels with, produces, or shows any such forged or counterfeited certificate,

shall for the first offence be liable to a penalty not exceeding two pounds, and for any subsequent offence, either instead of or in addition to such penalty, to be imprisoned for any term not exceeding six months, with or without hard labour.

13. A person shall not be exempt from the provisions of any Act relative to idle and disorderly persons, rogues, and vagabonds, by reason only that he holds a certificate under this Act, or assists or is accompanying a pedlar holding a certificate under this Act.

No exemption from vagrant law.

14. If any pedlar is convicted of any offence under this Act, the court before which he is convicted shall indorse or cause to be indorsed on his certificate a record of such conviction.

Convictions to be indorsed on certificate.

The indorsements made under this Act on a pedlar's certificate shall be evidence of the facts stated therein.

15. If the chief officer of police refuses to grant the applicant may appeal to a court of summary jurisdiction having jurisdiction in the place where such grant was refused, in accordance with the following provisions:

Appeal against refusal of certificate by chief officer of police.

1. The applicant shall, within one week after the refusal, give to the chief officer of police notice in writing of the appeal:
2. The appeal shall be heard at the sitting of the court which happens next after the expiration of the said week, but the court may, on the application of either party, adjourn the case:
3. The court shall hear and determine the matter of the appeal and make such order thereon, with or without costs to either party, as to the court seems just:
4. An appeal under this Act to a court of summary jurisdiction in England or Ireland shall be deemed to be a matter on which that court has authority by law to make an order in pursuance of the Summary Jurisdiction Acts:
5. Any certificate, granted in pursuance of an order of the court, shall have the same effect as if it had been originally granted by the chief officer of police.

16. Any court before which any pedlar is convicted of any offence, whether under this or any other Act, or otherwise, may, if he or they think fit, deprive such pedlar of his certificate; and any such court shall deprive such pedlar of his certificate if he is convicted of begging.

Deprivation of pedlar of certificate by court.



Any court of summary jurisdiction may summon a pedlar holding a certificate under this Act to appear before them, and if he fail to appear, or on appearance to satisfy the court that he is in good faith carrying on the business of a pedlar, shall deprive him of his certificate.

*Duties of Pedlars.*

Pedlar to show certificate to certain persons on demand.

17. Any pedlar shall at all times, on demand, produce and show his certificate to any of the following persons; (that is to say):—

1. Any justice of the peace; or
2. Any constable or officer of police; or
3. Any person to whom such pedlar offers his goods for sale; or
4. Any person in whose private grounds or premises such pedlar is found:

And any pedlar who refuses, on demand, to show his certificate to, and allow it to be read and a copy thereof to be taken by, any of the persons hereby authorised to demand it, shall for each offence be liable to a penalty not exceeding five shillings.

Arrest of uncertificated pedlar or pedlar refusing to show his certificate.

18. Where a person acting as a pedlar either refuses to show his certificate or has no certificate, or refuses to allow or prevents or attempts to prevent any such opening or inspection of his pack, box, bag, trunk, or case as is authorised under this Act, it shall be lawful for any of the persons authorised to demand the production of the certificate, and also for any other person acting by his order or at his request, and in his aid, to apprehend such offender, and forthwith to convey or cause him to be conveyed before a justice of the peace. In Scotland such justice of the peace may commit such offender for trial if he think fit.

Police empowered to inspect pedlar's pack.

19. It shall be lawful for any constable or officer of police at any time to open and inspect any pack, box, bag, trunk, or case in which a pedlar carries his goods, wares, and merchandise; and any pedlar who refuses to allow such constable or officer to open or inspect such pack, box, bag, trunk, or case, or prevents or attempts to prevent him from opening or inspecting the same, shall be liable for each offence to a penalty not exceeding twenty shillings.

*Legal Proceedings.*

Summary proceedings for offences, &c.

20. In England and Ireland all offences and penalties under this Act may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts, before a court of summary jurisdiction.

Provided as follows:

1. The court of summary jurisdiction, when hearing and determining an information or complaint, shall be constituted in some one of the following manners; that is to say,

(c) In Ireland, within the police district of Dublin metropolis, of one of the divisional justices of the said district, sitting at a police court within the said district; and elsewhere, of a stipendiary magistrate sitting alone or with others, or of any two or more justices of the peace sitting in petty sessions at a place appointed for holding petty sessions.

2. The description of any offence under this Act in the words of such Act, or as near thereto as may be, shall be sufficient in law.

3. Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant or prosecutor.

4. Penalties recovered in the metropolitan police district shall be applied in manner directed by the Acts relating to the metropolitan police.

5. Penalties recovered in Ireland shall be applied according to the Fines Act (Ir.), 1851, or any Act amending the same.

Application of fees.

21. All fees received under this Act in England and Ireland shall be applied in manner in which penalties recoverable under this Act are applicable.

*Miscellaneous.*

22. Any act or thing by this Act authorised to be done by the chief officer of police may be done by any police officer under his command authorised by him in that behalf, and the term "chief officer of police" in this Act includes, in relation to any such act or thing, the police officer so authorised.

Deputy of chief officer of police.

23. Nothing in this Act shall render it necessary for a certificate to be obtained by the following persons as such; (that is to say):—  
 1. Commercial travellers or other persons selling or seeking orders for goods, wares, or merchandise to or from persons who are dealers therein and who buy to sell again, or selling or seeking orders for books as agents authorised in writing by the publishers of such books:

Certificate not required by commercial travellers, sellers of fish, or sellers in fairs.

2. Sellers of vegetables, fish, fruit, or victuals:

3. Persons selling or exposing to sale goods, wares, or merchandise in any public mart, market, or fair legally established.

24. Nothing in this Act shall take away or diminish any of the powers vested in any local authority by any general or local Act in force in the district of such local authority.

Reservation of powers of local authority.

SCHEDULE ONE.

A.D. 1871.

Police Districts.	Chief Officer of Police.
IN ENGLAND.	
The city of London, and the liberties thereof, exclusive of Southwark.	The Commissioner of Police of the City.
The Metropolitan Police District.	The Commissioner of Police of the Metropolis.
Any county, any riding, parts, division, or liberty of a county, any borough, or town maintaining a separate police force.	The chief constable or head constable or other officer, by whatever name called, having the chief command of the police in the district.
IN SCOTLAND.	
Any area maintaining a separate police force.	The chief constable, superintendent of police, or other officer, by whatever name called, having the chief command of the police in the district.
IN IRELAND.	
The police district of Dublin metropolis.	Either of the commissioners of police for the district.
Any district, whether city, town, or country, over which is appointed a sub-inspector of the Royal Irish Constabulary.	The sub-inspector.

NOTE.—All the police under one chief constable shall be deemed to constitute one police force for the purposes of this schedule.

A.D. 1871.

## SCHEDULE TWO.

## FORM A.

Sect. 5.

## FORM OF APPLICATION FOR PEDLAR'S CERTIFICATE.

1. I *A. B.* [*Christian and surname of applicant in full*] have during the last calendar month resided at \_\_\_\_\_ in the parish of \_\_\_\_\_ in the county of \_\_\_\_\_

2. I am by trade and occupation a [*here state trade and occupation of applicant, e.g., that he is a hawker, pedlar, &c.*]

3. I am \_\_\_\_\_ years of age.

4. I apply for a certificate under The Pedlars Act, 1871, authorising me to act as a pedlar within the \_\_\_\_\_ police district.

Dated the \_\_\_\_\_ day of \_\_\_\_\_

(Signed) *A. B.* [*Here insert Christian and surname of applicant.*]

## FORM B.

## FORM OF PEDLAR'S CERTIFICATE.

In pursuance of The Pedlars Act, 1871, I certify that *A. B.* [*name of applicant*] of \_\_\_\_\_ in the county of \_\_\_\_\_ aged \_\_\_\_\_ years, is hereby authorised to act as a pedlar within the police district for a year from the date of this certificate. [*To be altered, if necessary, to correspond to any order of the Secretary of State or Lord-Lieutenant of Ireland as to time of expiration of licences.*]

Certified this \_\_\_\_\_ day of \_\_\_\_\_ A.D.

(Signed) \_\_\_\_\_ [*Here insert name and description of the officer signing the certificate.*]

This certificate will expire on the \_\_\_\_\_ day of \_\_\_\_\_ A.D.

## SMALL PENALTIES (IRELAND) ACT, 1873.

[36 &amp; 37 VICT. CH. 82.]

Short title.

1. This Act may be cited for all purposes as "The Small Penalties (Ir.) Act, 1873."

Definition of "penalty."

3. The word "penalty" in this Act shall include any sum of money recoverable in a summary manner.

Recovery of small penalties.

4. Where upon summary conviction any offender is adjudged to pay a penalty not exceeding five pounds, such offender, in case of non-payment thereof, may, without any warrant of distress, be committed to prison for any term not exceeding the period specified in the following scale, unless the penalty shall be sooner paid :

For any penalty	The imprisonment not to exceed
Not exceeding ten shillings . . . . .	. Seven days.
Exceeding ten shillings and not exceeding one pound . . . . .	. Fourteen days.
Exceeding one pound but not exceeding two pounds . . . . .	. One month.
Exceeding two pounds but not exceeding five pounds . . . . .	. Two months.

Saving as to hard labour.

5. Nothing in this Act contained shall affect the power of imposing hard labour in addition to imprisonment in cases where hard labour might, on non-payment of the penalty, have been so imposed if this Act had not passed.



6. This Act shall apply to penalties, including costs, recoverable in a summary manner in pursuance of any Act of Parliament, whether passed before or after the commencement of this Act; and all provisions of any Act of Parliament authorising, in the case of non-payment of a penalty not exceeding five pounds, a longer term of imprisonment than is provided by this Act, shall be repealed.

Application of Act.

7. This Act shall not apply to any penalties recoverable by or on behalf of the commissioners of Inland Revenue.

Not to apply to proceedings by Inland Revenue.

8. This Act shall extend to Ireland only.

Extent of Act.

## FINES ACT (IRELAND), 1851, AMENDMENT ACT, 1874.

[37 & 38 VICT. CH. 72.]

1. This Act may be cited for all purposes as the Fines Act (Ir.), 1851, Short title. Amendment Act, 1874, and the said Act and this Act may be cited together for all purposes as "The Fines Acts (Ir.), 1851-1874."

2. The provisions of section ten of the Fines Act (Ir.), 1851, extend and authorise the assistant barrister, recorder, or chairman therein mentioned, whenever he orders that any recognisance which shall have been entered into by any person or persons as surety or sureties for any principal party shall be forfeited, in such order to state with respect not only to such principal party but also to such surety or sureties the amounts of such forfeiture, and to direct a warrant or warrants to issue to levy such amounts respectively from such surety or sureties in like manner as other penal sums are directed to be levied by the said Act.

Meaning of section 10 of Fines Act (Ir.), 1851, explained.

4. Every penalty recovered in respect of offences committed within the limits of the Galway Town Improvement Act, 1853, against section 12 of the Licensing Act, 1872, as applied to Ireland, shall be applied as follows:—One half of such penalty shall go to the informer, and the remainder to the town commissioners, and if the town commissioners be the informers, they shall be entitled to the whole of said penalty.

Application of penalties to town of Galway.

5. Where by any Act now in force or hereafter to be passed it is enacted that penalties, offences, or proceedings thereunder may be recovered, prosecuted, or taken in a summary manner, and no further provision with respect thereto is contained in such Act, then such penalties, offences, and proceedings shall be recoverable, may be prosecuted, or taken with respect to the police district of Dublin metropolis, subject and according to the provisions of any Act regulating the powers and duties of justices of the peace for such district, or of the police of such district; and with respect to other parts of Ireland, before a justice or justices of the peace sitting in petty sessions, subject and according to the provisions of "The Petty Sessions (Ir.) Act, 1851," and any Act amending the same.

Mode of recovering penalties, &c., in certain cases.

## EMPLOYERS AND WORKMEN ACT, 1875.

[38 & 39 VICT. CH. 90.]

1. This Act may be cited as the Employers and Workmen Act, 1875. Short title.

### PART I.

#### *Jurisdiction—Jurisdiction of County Court.*

3. In any proceeding before a county court in relation to any dispute between an employer and a workman arising out of or incidental to their relation as such (which dispute is hereinafter referred to as a dispute under this Act) the court may, in addition to any jurisdiction it might

Power of county court as to ordering of payment of money, set-off, and re-

scission of contract and taking security.

have exercised if this Act had not passed, exercise all or any of the following powers: that is to say,

1. It may adjust and set off the one against the other all such claims on the part either of the employer or of the workman, arising out of or incidental to the relation between them, as the court may find to be subsisting, whether such claims are liquidated or unliquidated, and are for wages, damages, or otherwise; and,
2. If, having regard to all the circumstances of the case, it thinks it just to do so, it may rescind any contract between the employer and the workman upon such terms as to the apportionment of wages or other sums due thereunder, and as to the payment of wages or damages, or other sums due, as it thinks just; and,
3. Where the court might otherwise award damages for any breach of contract it may, if the defendant be willing to give security to the satisfaction of the court for the performance by him of so much of his contract as remains unperformed, with the consent of the plaintiff, accept such security, and order performance of the contract accordingly, in place either of the whole of the damages which would otherwise have been awarded, or some part of such damages.

The security shall be an undertaking by the defendant and one or more surety or sureties that the defendant will perform his contract, subject on non-performance to the payment of a sum to be specified in the undertaking.

Any sum paid by a surety on behalf of a defendant in respect of a security under this Act, together with all costs incurred by such surety in respect of such security, shall be deemed to be a debt due to him from the defendant; and where such security has been given in or under the direction of a court of summary jurisdiction, that court may order payment to the surety of the sum which has so become due to him from the defendant.

#### *Court of Summary Jurisdiction.*

Jurisdiction of justices in disputes between employers and workmen.

4. A dispute under this Act between an employer and a workman may be heard and determined by a court of summary jurisdiction, and such court, for the purposes of this Act, shall be deemed to be a court of civil jurisdiction, and in a proceeding in relation to any such dispute the court may order payment of any sum which it may find to be due as wages, or damages, or otherwise, and may exercise all or any of the powers by this Act conferred on a county court: Provided that in any proceeding in relation to any such dispute the court of summary jurisdiction—

1. Shall not exercise any jurisdiction where the amount claimed exceeds ten pounds; and,
2. Shall not make an order for the payment of any sum exceeding ten pounds, exclusive of the costs incurred in the case; and,
3. Shall not require security to an amount exceeding ten pounds from any defendant or his surety or sureties.

Jurisdiction of justices in disputes between masters and apprentices.

5. Any dispute between an apprentice to whom this Act applies and his master, arising out of or incidental to their relation as such (which dispute is hereinafter referred to as a dispute under this Act), may be heard and determined by a court of summary jurisdiction.

Powers of justices in respect of apprentices.

6. In a proceeding before a court of summary jurisdiction in relation to a dispute under this Act between a master and an apprentice, the court shall have the same powers as if the dispute were between an employer and a workman, and the master were the employer and the apprentice the workman, and the instrument of apprenticeship a contract between an employer and a workman, and shall also have the following powers:

1. It may make an order directing the apprentice to perform his duties under the apprenticeship; and,
2. If it rescinds the instrument of apprenticeship, it may, if it thinks it just so to do, order the whole or any part of the premium paid on the binding of the apprentice to be repaid.

Where an order is made directing an apprentice to perform his duties under the apprenticeship, the court may, from time to time, if satisfied after the expiration of not less than one month from the date of the order that the apprentice has failed to comply therewith, order him to be imprisoned for a period not exceeding fourteen days.

7. In a proceeding before a court of summary jurisdiction in relation to a dispute under this Act between a master and an apprentice, if there is any person liable, under the instrument of apprenticeship, for the conduct of the apprentice, that person may, if the court so direct, be summoned in like manner as if he were the defendant in such proceeding to attend on the hearing of the proceeding, and the court may, in addition to or in substitution for any order which the court is authorised to make against the apprentice, order the person so summoned to pay damages for any breach of the contract of apprenticeship to an amount not exceeding the limit (if any) to which he is liable under the instrument of apprenticeship.

Order against surety of apprentice, and power to friend of apprentice to give security.

The court may, if the person so summoned, or any other person, is willing to give security to the satisfaction of the court for the performance by the apprentice of his contract of apprenticeship, accept such security instead of or in mitigation of any punishment which it is authorised to inflict upon the apprentice.

## PART II.

### *Procedure.*

8. A person may give security under this Act in a county court or court of summary jurisdiction by an oral or written acknowledgment in or under the direction of the court of the undertaking or condition by which and the sum for which he is bound, in such manner and form as may be prescribed by any rule for the time being in force, and in any case where security is given, the court in or under the direction of which it is given may order payment of any sum which may become due in pursuance of such security.

Mode of giving security.

The Lord Chancellor may from time to time make, and when made, rescind, alter, and add to, rules with respect to giving security under this Act.

9. Any dispute or matter in respect of which jurisdiction is given by this Act to a court of summary jurisdiction shall be deemed to be a matter on which that court has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Act, but shall not be deemed to be a criminal proceeding: and all powers by this Act conferred on a court of summary jurisdiction shall be deemed to be in addition to and not in derogation of any powers conferred on it by the Summary Jurisdiction Act, except that a warrant shall not be issued under that Act for apprehending any person other than an apprentice for failing to appear to answer a complaint in any proceeding under this Act, and that an order made by a court of summary jurisdiction under this Act for the payment of any money shall not be enforced by imprisonment except in the manner and under the conditions by this Act provided; and no goods or chattels shall be taken under a distress ordered by a court of summary jurisdiction which might not be taken under an execution issued by a county court.

Summary proceedings.

A court of summary jurisdiction may direct any sum of money, for the payment of which it makes an order under this Act, to be paid by instalments, and may from time to time rescind or vary such order.

Any sum payable by any person under the order of a court of summary jurisdiction in pursuance of this Act shall be deemed to be a debt due from him in pursuance of a judgment of a competent court within the meaning of the fifth section of the Debtors Act, 1869,<sup>1</sup> and may be

<sup>1</sup> In Ireland this means (see s. 15, *post*) the 6th section of Debtors Act (Ireland), 1872, which, so far as is material, is as follows:—

“Subject to the provisions hereinafter mentioned and to the prescribed rules, any



enforced accordingly; and as regards any such debt a court of summary jurisdiction shall be deemed to be a court within the meaning of the said section.

The Lord Chancellor<sup>1</sup> may at any time after the passing of this Act, and from time to time make, and when made rescind, alter, and add to, rules for carrying into effect the jurisdiction of this Act given to a court of summary jurisdiction, and in particular for the purpose of regulating the costs of any proceedings in a court of summary jurisdiction, with power to provide that the same shall not exceed the costs which would in a similar case be incurred in a county court, and any rules so made in so far as they relate to the exercise of jurisdiction under the said fifth section of the Debtors Act, 1869, shall be deemed to be prescribed rules within the meaning of the said section.

### PART III.

#### DEFINITIONS AND MISCELLANEOUS.

Definitions.

##### *Definitions.*

#### 10. In this Act—

“Workman.”

The expression “workman” does not include a domestic or menial servant, but save as aforesaid, means any person who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract be made before or after the passing of this Act, be express or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour.

court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent court, made or recovered after the passing of this Act in respect of a debt contracted after the passing of this Act. Provided—(1) That the jurisdiction by this section given of committing a person to prison shall, in the case of any court other than the superior courts of law and equity, be exercised only subject to the following restrictions; that is to say, (a) Be exercised only by a judge, and by an order made in open court, and showing on its face the ground on which it is issued; (b) Be exercised only as respects a judgment of a superior court of law or equity when such judgment does not exceed £50 exclusive of costs; (c) Be exercised only as respects a decree of a civil bill court by a chairman of quarter sessions or recorder. (2) That such jurisdiction shall only be exercised where it is proved to the satisfaction of the court that the person making default either has or has had since the date of the order or judgment the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects to pay the same. Proof of the means of the person making default may be given in such manner as the court thinks just; and for the purposes of such proof the debtor and any witnesses may be summoned and examined on oath according to the prescribed rules. For the purposes of this section any court may direct any debt due from any person in pursuance of any order or judgment of that or any other competent court to be paid by instalments, and may from time to time rescind or vary such order. No imprisonment under this section shall operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take out execution against the lands, goods, or chattels of the person imprisoned, in the same manner as if such imprisonment had not taken place. Any person imprisoned under this section shall be discharged out of custody upon a certificate signed in the prescribed manner to the effect that he has satisfied the debt or instalments of a debt in respect of which he was imprisoned, together with the prescribed costs (if any).”

An order directing the committal of a defendant for the non-payment of damages and costs adjudged under the Employers and Workmen Act, 1875, its bad on its face and will be quashed, if it omit to recite that the defendant has or has had means since the order awarding damages and costs, for the payment of the said sums (*R. (Conlan) v. Monaghan J.J.*, K.B.D. (Ir.), 20 Feb. 1911, unreported (but see INDEX OF CASES)).

<sup>1</sup> See s. 15, *post*.

11. In the case of a child, young person, or woman subject to the provisions of the Factory Acts, 1833 to 1874,<sup>1</sup> any forfeiture on the ground of absence or leaving work shall not be deducted from or set off against a claim for wages or other sum due for work done before such absence or leaving work, except to the amount of the damage (if any) which the employer may have sustained by reason of such absence or leaving work.

Set off in case of factory workers.

#### *Application.*

12. This Act in so far as it relates to apprentices shall apply only to an apprentice to the business of a workman as defined by this Act upon whose binding either no premium is paid, or the premium (if any) paid does not exceed twenty-five pounds, and to an apprentice bound under the provisions of the Acts relating to the relief of the poor.

Application to apprentices.

#### *Saving Clause.*

13. Nothing in this Act shall take away or abridge any local or special jurisdiction touching apprentices.

Saving of special jurisdiction, and seamen.

### PART V.

#### *Application of Act to Ireland.*

15. This Act shall extend to Ireland, with the modifications following : that is to say,

Application to Ireland.

The expression "county court" shall be construed to mean civil bill court :

The expression "Lord Chancellor" shall be construed to mean the Lord Chancellor of Ireland :

The expression "fifth section of the Debtors Act, 1869," shall be construed to mean "sixth section of Debtors Act (Ir.), 1872."

The following Rules for carrying into effect the jurisdiction given to Courts of Summary Jurisdiction in Ireland by the "Employers and Workmen Act, 1875," 38 & 39 Vict. c. 90, have been made by the Lord Chancellor :—

### EMPLOYERS AND WORKMEN ACT, 1875.

#### RULES.

1. A person desirous to make a complaint under the "Employers and Workmen Act, 1875," shall deliver to the clerk of the court particulars in writing of his cause of action, and the clerk of the court shall enter in the order-book (Form D), supplied under the Act 14 & 15 Vict. c. 93, the names and the last known places of abode of the parties, and the substance of the complaint ; and thereupon a summons shall be issued according to the form in the schedule, and be served on the defendant, not less than two clear days before the day on which the court shall be holden at which the complaint is to be heard ; and no misnomer or inaccurate description of any person or place in any such plaint or summons shall vitiate the same, so that the person or place be therein described so as to be commonly known.

2. The particulars shall be endorsed upon and be deemed part of the summons.

3. Such summons may issue in any district in which the defendant or one of the defendants dwelt or carried on his business or was employed at the time the cause of action arose.

4. Any summons which may be required to be served out of the district of the court from which the same shall have issued, may be served by the summons-server of any other court of summary jurisdiction, or

<sup>1</sup> Repealed, and now replaced by the Factory and Workshop Act, 1901, 1 Edw. 7, c. 22.

(if the justices issuing the same shall so direct or permit) by any other person whom the complainant shall employ, and who shall be able to read and write, but in no case by the complainant himself; any such service may be proved by affidavit of the person who served the summons; such affidavit may be made before any justice of the peace or other magistrate.

5. Every summons shall be served upon the person to whom it is directed by delivering to him a copy of such summons, or by leaving such copy for him with some person apparently sixteen years old, at his house or place of dwelling or place of business or of employment, or at the office of his employer for the time being.

#### *Hearing.*

6. No notice shall be required to be given by a defendant of any set-off or counterclaim that he may wish to advance at the hearing against the claim of the plaintiff.

7. If upon the day of the return of any summons, or at any continuation or adjournment of the said court, the plaintiff shall not appear, the cause shall be struck out, and the court may award to the defendant, by way of costs and satisfaction for his attendance, such sum as it in its discretion shall think fit.

8. If on the day named in the summons, or at any continuation or adjournment of the court, the defendant shall not appear, or sufficiently excuse his absence, or shall neglect to answer when called in court, the court, upon due proof of service of the summons, may either adjourn the cause from time to time or proceed to the hearing of the cause on the part of the plaintiff only, and the judgment thereupon shall be as valid as if both parties had attended: Provided that the court in any such case, at the same or any subsequent court, may set aside any judgment so given in the absence of the defendant, and the execution thereupon, and may grant a new trial upon such terms (if any) as it may think fit.

#### *Judgment-Summons.*

9. No order of commitment under the "Debtors Act (Ir.), 1872," shall be made unless a summons to appear and be examined on oath, hereinafter called a judgment-summons, shall have been personally served upon the judgment-debtor, which service where made out of the district may be proved by affidavit.

10. A judgment-summons may issue although no distress-warrant has been applied for.

11. Every judgment-summons shall be according to the form in the schedule, and be served not less than two clear days before the day on which the judgment-debtor is required to appear, except the judgment-debtor is stated to be about to remove, or is keeping out of the way to avoid service.

12. The hearing of a judgment-summons may be adjourned from time to time.

13. Any witness may be summoned to prove the means of the judgment-debtor, in the same manner as witnesses are summoned to give evidence upon the hearing of a complaint.

14. An order of commitment made under the "Debtors Act (Ir.), 1872," shall be according to the form in the schedule, and shall, on whatever day it may be issued, bear date on the day on which the order for commitment was made, and shall continue in force for one year from such date and no longer.

15. When an order of commitment for non-payment of money is issued, the defendant may, at any time before his body is delivered into the custody of the gaoler, pay to the officer holding such order the amount indorsed thereon as that on the payment of which he may be discharged; and on receiving such amount the officer shall discharge the defendant and shall forthwith pay over the amount to the clerk of the court.

16. The sum indorsed on the order of commitment as that upon pay-



ment of which the prisoner may be discharged may be paid to the clerk of the court from which the commitment order was issued, or to the gaoler in whose custody the prisoner is. Where it is paid to the clerk, he shall sign a certificate of such payment, and upon receiving such certificate by post or otherwise, the gaoler in whose custody the prisoner shall then be shall forthwith discharge such prisoner. And where it is paid to the gaoler, he shall, upon payment to him of such amount, together with costs sufficient to pay for transmitting by post-office order or otherwise such amount to the court under the order of which the prisoner was committed, sign a certificate of such payment, and discharge the prisoner.

17. A certificate of payment by a prisoner shall be according to the form in the schedule.

18. All costs incurred by the plaintiff in endeavouring to enforce an order shall be deemed to be due in pursuance of such order under section 6 of the "Debtors (Ir.) Act, 1872," unless the court shall otherwise order.

19. The costs which may be awarded shall not in any case exceed one pound.

#### Forms.

20. The forms given in the Schedule shall be used, with such variations as may be necessary to meet the circumstances of each case.

J. T. BALL, C.

### SCHEDULE.

#### I.

##### SUMMONS TO APPEAR.

*"Employers and Workmen Act, 1875."*

In the County of — Petty Sessions District of —

Between (1) — of —, Plaintiff; and (1) — of —, Defendant. (1) Here state

You are hereby summoned to appear on the — day of —, 18—, at the hour of — in the — noon, at —, before such justices as shall be there, to answer the plaintiff, to a claim, the particulars of which are hereon indorsed. address and description.

Signed —, Justice of said County.

This — day of —, 18—

To —, of —

#### 2.

##### SUMMONS TO WITNESS.

*"Employers and Workmen Act, 1875."*

In the County of — Petty Sessions District of —

Between —, Plaintiff, and —, Defendant.

You are hereby required to attend at —, on — the — day of —, 18—, at the hour of — in the — noon, to give evidence in the above cause on behalf of the (1) —

Signed —, Justice of said County.

This — day of —, 18—

To —, of —

(1) Plaintiff or defendant, as the case may be.

3.

## JUDGMENT FOR PLAINTIFF.

*"Employers and Workmen Act, 1875."*

In the County of — Petty Sessions District of —

Between —, Plaintiff; and —, Defendant.

It is this day adjudged that the plaintiff do recover against the defendant the sum of £ — for <sup>(1)</sup>, and £ — for costs, amounting together to the sum of £ —.

And it is ordered that the defendant do pay the same to the plaintiff <sup>(2)</sup> —; and if the same be not paid as ordered, it is hereby further ordered that the same be levied by distress and sale of the goods and chattels of the said defendant.

Signed — } Justices of said County.

This — day of —, 18—

4.

## JUDGMENT FOR DEFENDANT.

*"Employers and Workmen Act, 1875."*

In the County of — Petty Sessions District of —

Between —, Plaintiff; and —, Defendant.

Upon hearing this cause this day, it is adjudged that judgment be entered for the defendant, and that the plaintiff do pay the sum of £ — for the defendant's costs on or before the — day of —; and if the same be not paid as ordered, it is hereby further ordered that the same be levied by distress and the sale of the goods and chattels of the said plaintiff.

Signed — } Justices of said County.

This — day of —, 18—

5.

## JUDGMENT-SUMMONS.

*"Employers and Workmen Act, 1875," and "The Debtors Act (Ireland), 1872."*

In the County of — Petty Sessions District of —

Between <sup>(1)</sup> — of —, in the —, Plaintiff; and <sup>(1)</sup> — of —, in the —, Defendant.

Whereas the <sup>(2)</sup> — obtained an order against you the above-named <sup>(3)</sup> — in this court, on the — day of —, 18—, for the payment of — pounds — shillings and — pence.

And whereas you have made default in payment of the sum payable in pursuance of the said order.

You are therefore hereby summoned to appear personally in this court, at —, on the — day of —, at the hour — in the — noon, to be examined on oath by the court touching the means you have or have had since the date of the order to satisfy the sum payable in pursuance of the said order; and also to show cause why you should not be committed to prison for such default.

Signed — Justice of said County.

This — day of —, 18—

(1) Debt [or damages].

(2) On or before the — day of — [or by instalments of — for every — days; the first instalment to be paid on or before the — day of —. 18—].

(1) Here state address and description.

(2) Plaintiff [or defendant], as the case may be.

(3) Defendant [or plaintiff], as the case may be.

		£	s.	d.
Amount of order, and costs	.	.	.	.
Cost of distress against the goods, if any	.	.	.	.
		£	s.	d.
Deduct	{	Paid into court . . . . .		
		Instalments which were not re-		
		quired to have been paid before		
		the date of summons . . . . .		
Sum payable	.	.	.	.
Costs of this summons	.	.	.	.
Amount upon the payment of which no further proceedings				
will be had until default in payment of next instalment .				

6.

ORDER OF COMMITMENT.

"Employers and Workmen Act, 1875," and "The Debtors Act (Ireland), 1872."

In the County of — Petty Sessions District of —

Between —, Plaintiff; and —, Defendant.

To <sup>(1)</sup> — and all other peace officers of the county, and to the governor or keeper of the gaol at —.

Whereas the <sup>(2)</sup> — obtained an order against the <sup>(3)</sup> — in this court on the — day of —, 18—, for the payment of £ —.

And whereas the <sup>(3)</sup> — hath made default in payment of —, payable in pursuance of the said order:

And whereas a summons was, at the instance of the <sup>(2)</sup> —, duly issued out of this court, by which the <sup>(3)</sup> — was required to appear personally at this court on the — day of —, 18—, to be examined on oath touching the means he had then or had had since the date of the order to satisfy the sum then due and payable in pursuance of the order, and to show cause why he should not be committed to prison for such default.

And whereas, at the hearing of the said summons, the <sup>(4)</sup> —, and it has now been proved to the satisfaction of the court that the <sup>(3)</sup> — <sup>(5)</sup> the means to pay the sum then due and payable in pursuance of the order, and <sup>(6)</sup> — to pay the same, and the <sup>(3)</sup> — has shown no cause why he should not be committed to gaol.

Now, therefore, it is ordered that, for such default as aforesaid, the <sup>(3)</sup> — shall be committed to gaol for — days, unless he shall sooner pay the sum stated below as that upon the payment of which he is to be discharged.

These are, therefore, to require you the said — and peace officers, to take the <sup>(3)</sup> — and to deliver him to the governor or keeper of the gaol aforesaid, and you the said governor or keeper to receive the <sup>(3)</sup> — and him safely keep in the said gaol for — days from the arrest under this order, or until he shall be sooner discharged by due course of law.

Signed this — day of — 18—

— } Justices of said County.

		£	s.	d.
Total sum payable at the time of hearing of the judgment-				
summons	.	.	.	.
Hearing of summons, and cost of order	.	.	.	.
Total sum upon payment of which the prisoner will be dis-				
charged	.	.	.	.

(1) The sub-inspector [or head constable] of constabulary, or name of person who is to execute the Order of Commitment.

(2) Plaintiff [or defendant].

(3) Defendant [or plaintiff].

(4) Defendant [or plaintiff] appeared [or the summons was proved to have been personally and duly served].

(5) Now has [or has had since the date of the order].

(6) Has refused or neglected [or then refused or neglected].



## 7.

## CERTIFICATE FOR THE DISCHARGE OF A PRISONER FROM CUSTODY.

" *Employers and Workmen Act, 1875,*" and "*The Debtors Act (Ireland), 1872.*"

In the County of — Petty Sessions District of —

Between —, Plaintiff; and —, Defendant.

(1) Defendant  
[or plaintiff].

I hereby certify that the (1) — who was committed to your custody by virtue of an order of commitment under the seals of two justices of this court, bearing date the — day of — 18—, has paid and satisfied the sum of money for the non-payment whereof he was so committed, together with all costs due and payable by him in respect thereof; and that the (1) — may, in respect of such order, be forthwith discharged out of your custody.

Dated this — day of —, 18—

—, Clerk of the Court.

To the Governor or Keeper of the gaol at —

## 8.

## WARRANT OF DISTRESS FOR PAYMENT OF MONEY BY PLAINTIFF.

" *Employers and Workmen Act, 1875.*"

In the County of — Petty Sessions District of —

Between —, Plaintiff; and —, Defendant.

Whereas at a court holden at — on the — day of —, 18—, it was ordered by the court that judgment should be entered for the defendant, and that the plaintiff should pay to the defendant, on or before the — day of —, the sum of £—, for the defendant's costs of suit; and that if the same were not paid as ordered, it was further ordered that the same should be levied by distress and sale of the goods and chattels of the said plaintiff:

And whereas default has been made in payment according to the said order: These are therefore to command you forthwith to make distress of the goods and chattels of the plaintiff (excepting the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum of £—, being the amount due to defendant under the said order, together with the reasonable charges for taking and keeping the said distress; and that you do pay what you shall have so levied to the clerk of this court.

Signed this — day of —, 18—

—, Justice of said County.

(1) Sub-inspector  
[or head constable] of constabulary, or name of person who is to execute the warrant.

To the (1) —, and all other peace officers in the county.

NOTICE.—The goods and chattels are not to be sold until after the end of five clear days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said plaintiff.

## 9.

## WARRANT OF DISTRESS FOR PAYMENT OF MONEY BY DEFENDANT.

" *Employers and Workmen Act, 1875.*"

In the County of — Petty Sessions District of —

Between —, Plaintiff; and —, Defendant.

Whereas on the — day of —, 18—, the plaintiff obtained a judgment in this court against the defendant for the sum of £—; and it was thereupon ordered by the court that the defendant should pay the

same to the plaintiff <sup>(1)</sup> —; and that if the same were not paid as ordered, it was further ordered that the same should be levied by distress and sale of the goods and chattels of the said defendant:

And whereas default has been made in payment according to the said order: These are therefore to command you forthwith to make distress of the goods and chattels of the defendant (except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum of £—, being the amount due to the plaintiff under the said order, together with the reasonable charges of taking and keeping the said distress; and that you do pay what you shall have so levied to the clerk of this court.

Signed this — day of —, 18—

—, Justice of said County.

To the <sup>(2)</sup> —, and all other peace officers in the county of —.

NOTICE.—The goods and chattels are not to be sold until after the end of five clear days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the defendant.

(1) On the — day of —, or [by instalments of — for every — days].

(2) Sub-inspector [or head constable] of constabulary, or name of person who is to execute the warrant.

## 10.

### UNDERTAKING IN WRITING BY DEFENDANT TO PERFORM CONTRACT.

*"Employers and Workmen Act, 1875."*

In the County of — Petty Sessions District of —

Between —, Plaintiff; and —, Defendant.

Whereas it has been found by this court on the — of — 18—, that the defendant had broken the contract for the breach of which he was summoned:

And whereas the court would have awarded to the plaintiff the sum of £— by way of damages suffered by him in consequence of such breach, and would have ordered him to have been paid such sum, but that the defendant was willing to give security for the performance by him of so much of the contract as remains unperformed:

Now, therefore, I, the undersigned defendant, and we <sup>(1)</sup> —, do undertake that the said defendant will perform so much of the said contract as remains unperformed, that is to say <sup>(2)</sup> —

And I, the said defendant, and <sup>(3)</sup> —, hereby severally acknowledge ourselves bound to forfeit to A. B., the plaintiff, the sum of — pounds and — shillings, in case the said defendant fails to perform what he has hereby undertaken to perform.

(Signed *where not taken orally*)

C. D., Defendant.

E. F. }

G. H. }

Sureties.

(1) The undersigned sureties [or the undersigned surety].

(2) Here set out so much of the contract as remains to be performed.

(3) We [or I] the said sureties [or surety]

Taken [orally] before me this — day of —, 18—

—, Justice of said County.

NOTE.—Where the undertaking is given orally, strike out the words "undersigned" where they occur, and insert the word "orally" after "Taken."

## 11.

### ORDER ON AN APPRENTICE TO PERFORM HIS DUTIES.

*"Employers and Workmen Act, 1875."*

In the County of — Petty Sessions District of —

Between —, Plaintiff; and —, Defendant.

It is ordered that the defendant do forthwith perform the duties he has contracted to perform under his apprenticeship to the plaintiff.

Signed this — day of —, 18—

— } Justices of said County.

## 12.

## ORDER RESCINDING A CONTRACT OF APPRENTICESHIP.

In the County of — Petty Sessions District of —

Between —, Plaintiff; and —, Defendant.

(1) Plaintiff [or defendant].

(2) The whole [or a part].

(3) Defendant [or plaintiff]

It is adjudged that the instrument of apprenticeship made between the plaintiff and defendant be rescinded, and that the (1) — do pay to M. N. of —, the sum of —, being (2) — of the premium paid by the said M. N. on the binding of the (3) —, as apprentice to the (3) —.

Signed this — day of —, 18—

— } Justices of said County.  
— }

## 13.

## COMMITTAL OF AN APPRENTICE.

*"Employers and Workmen Act, 1875."*

In the County of — Petty Sessions District of —

Between —, Plaintiff; and — Defendant.

To the (1) —, and all other the Peace Officers of —

(1) Sub-inspector [or head constable] of constabulary, or name of person who is to execute the warrant.

(2) [And of G. H. of —.]

Whereas on the — day of —, 18—, it was ordered that the defendant should forthwith perform the duties he had contracted to perform under his contract of apprenticeship to the plaintiff:

And whereas it hath been made to appear to the satisfaction of the court, on the oath of the plaintiff (2) —, that the defendant has failed to comply with the requirements of the said order:

Now, therefore, it is ordered that the said defendant be committed to prison for — days.

These are therefore to require you the said — and others to take the defendant and deliver him to the governor or keeper of the gaol at —, and you the said governor or keeper to receive the defendant and him safely keep in the said gaol for — days from the arrest under this order, or until he shall be sooner discharged by due course of law.

Signed this — day of —, 18—

— } Justices of said County.  
— }

## 14.

## ACCEPTANCE OF SECURITY FOR PERFORMANCE OF CONTRACT BY AN APPRENTICE.

*"Employers and Workmen Act, 1875."*

In the County of — Petty Sessions District of —

Between —, Plaintiff; and —, Defendant; and —, Bondsman under the contract of the apprenticeship of the Defendant.

Whereas on the — day of —, 18—, it was ordered that the defendant should forthwith perform the duties he had contracted to perform under his contract of apprenticeship to the plaintiff.

(1) [And of G. H. of —.]

And whereas it hath been made to appear to the satisfaction of the court, on the oath of the plaintiff (1) —, that the defendant has failed to comply with the requirements of the said order:

And whereas by the said failure the defendant hath rendered himself liable to be committed:

(2) [Or R. S.]

And whereas the said — (2) is willing to give security to the amount of — pounds for the due performance by the defendant of his duties under his said contract of apprenticeship:



Now, therefore, the court doth direct such security to be forthwith given, and doth order that if payment of the said sum be not made on the defendant failing to perform his contract, such sum may be levied by distress of the goods and chattels of the said —, or an application be made to this court for commitment of the said —, according to the provisions of this Act.

Signed this — day of —, 18—

— } Justices of said County.  
— }

15.

#### APPLICATION FOR THE SUMMONING OF A BONDSMAN FOR AN APPRENTICE.

*" Employers and Workmen Act, 1875."*

In the County of — Petty Sessions District of —

Between —, Plaintiff ; and —, Defendant.

The plaintiff in this case applies to the court to direct that —, of —, who is liable under the instrument of the apprenticeship of the defendant to the plaintiff for the good conduct of the defendant as apprentice to the plaintiff, be summoned to attend at the hearing of the proceeding.

Signed —, Plaintiff.

It is hereby directed by the court that — be summoned accordingly.

Signed this — day of —, 18—

—, Justice of said County.

16.

#### SUMMONS TO A BONDSMAN FOR AN APPRENTICE.

*" Employers and Workmen Act, 1875."*

In the County of — Petty Sessions District of —

Between —, Plaintiff ; and —, Defendant.

To —, of —

Take notice that you are hereby summoned to attend at —, on the — day of —, 18—, at — o'clock in the — noon, to show cause why the court should not, in addition to or in substitution for any order to be made against the said defendant, order you to pay the amount of any damages which it may find that the plaintiff has suffered in consequence of the breach of the contract of apprenticeship made between you and the plaintiff and the defendant.

Signed this — day of —, 18—

—, Justice of said County.

17.

#### ORDER ON A BONDSMAN FOR AN APPRENTICE TO PAY DAMAGES.

*" Employers and Workmen Act, 1875."*

In the County of — Petty Sessions District of —

Between —, Plaintiff ; and —, Defendant ; and —, Bondsman under the contract of apprenticeship of the Defendant.

It is adjudged that the said bondsman do pay to the plaintiff, on or before the — day of —, 18—, the sum of — pounds for damages suffered by him in consequence of the breach of the contract of apprentice-

ship made between the plaintiff, defendant, and the said bondsman; and if the same be not paid as ordered, it is hereby further ordered that the same be levied by distress and sale of the goods and chattels of the said bondsman.

Signed this —— day of ——, 18——

\_\_\_\_ } Justices of said County.  
\_\_\_\_ }

18.

## PLAINT AND MINUTE BOOK.

"Employers and Workmen Act, 1875."

[illegible]

## DUBLIN TRAFFIC ACT, 1875.

[38 & 39 VICT. CH. CXCV.]

*Preliminary.*

Short title.	1. This Act may be cited for all purposes as "The Dublin Traffic Act, 1875."
Definitions.	3. The following expressions for the purposes of this Act shall, unless the context requires a different construction, have the meanings herein-after assigned to them ; that is to say,
" The city. "	" The city " shall mean the area included within the municipal boundaries of the borough of Dublin :
" Justice. "	" Justice " shall mean any divisional justice of the police district of Dublin metropolis :
" Chief Commissioner. "	" Chief Commissioner " shall mean " the Chief Commissioner of Police of the police district of Dublin metropolis " :
" Street. "	" Street " shall include any highway or other public place, whether a thoroughfare or not :
" Cattle. "	" Cattle " shall include bull, ox, cow, heifer, calf, sheep, lambs, goats, kids, and swine, also any horses, mules, or asses, driven or led together in a string or loose :
" Hackney Carriage Acts. "	" Hackney Carriage Acts " shall mean the Dublin Carriage Act, 1853, and the Dublin Amended Carriage Act, 1854, and any Act or Acts amending the same :
" Stage carriage. "	" Stage carriage " shall mean a stage carriage as defined by the Hackney Carriage Acts :
" General limits of Act. "	" The general limits of this Act " shall mean the city as defined by this Act, and such other parts of the police district of Dublin metropolis as may be declared under this Act to be within and to form part of such general limits :
" Special limits of Act. "	" The special limits of this Act " shall mean such streets and portions of streets within the general limits of this Act as may be declared to be special limits in manner by this Act provided :
" Prescribed. "	" Prescribed " shall mean prescribed by any regulation made under the authority of this Act.

*General.*

4. The Chief Commissioner may, with the approval of the Recorder of Dublin, from time to time make such regulations as may be necessary for giving effect to the provisions of this Act with respect to the following matters :

Chief Commissioner to make regulations for execution of Act.

- The driving or conducting of cattle through the streets ;
- The washing of footways and doorsteps ;
- The streets in which the removal of dead animals, untanned hides, ordure, dung, ashes, dust, or other refuse shall be prohibited at certain times ;
- The carriage of advertisements through the streets ;
- The pace and mode of traffic ;
- The cleansing and watering of certain streets ;
- The special limits of this Act ;
- The loading and unloading of coal and goods within the special limits of this Act ;
- Carriage of timber and other large articles within the special limits of this Act ;
- And generally for giving effect to the provisions of this Act ;

And when made he may with the like approval by a further regulation alter, amend, or revoke any such regulation, and may make any new regulation or regulations in addition thereto or instead thereof.

No such regulation shall be valid unless the same shall be approved by the said Recorder sitting in open court ; and no such regulation shall be submitted to the said Recorder for approval unless notice of an intention to do so has been published in one or more daily newspapers circulating within the general limits of this Act once in each of three consecutive weeks : Provided always, that the Chief Commissioner shall, as soon as may be after the making of every such regulation affecting the city of Dublin, cause a copy of the same to be delivered to the town clerk of the said city, and such town clerk shall submit the same to the town council of the said city at their next meeting, and if at the expiration of thirty days next after the delivery of such copy to the said town clerk the said town council shall have caused a notice of objection to the making of such regulation to be served upon the Chief Commissioner, the Chief Commissioner shall not submit the same to the said Recorder for his approval.

When any such regulation shall be submitted for approval to the said Recorder in manner aforesaid, he shall, after proof of compliance with the provisions of this Act in respect thereof, and after hearing any objection which may be made to such regulation by any person affected thereby, approve the same if he shall so think fit, and no such regulation shall be valid unless the same shall be approved by the said Recorder in manner aforesaid.

Every such regulation shall, when approved of by the said Recorder in manner aforesaid, be published in the Dublin Gazette, and a copy of the Dublin Gazette, purporting to be printed by the Queen's authority, containing any such regulation, shall be conclusive evidence of such regulation and of the same having been duly made and approved in manner by this Act provided.

5. No goods or other articles shall be allowed to rest on any footway or other part of a street within the general limits of this Act, or be otherwise allowed to cause obstruction or inconvenience to the passage of the public, for a longer time than may be absolutely necessary for loading or unloading such goods or other articles.

As to the deposit of goods in streets within general limits of Act.

Any person doing any act in contravention of this section shall be liable for each offence to a penalty not exceeding forty shillings.

6. No person shall drive or conduct any cattle through any street within the general limits of this Act, except in such manner and during such hours as may be prescribed with respect thereto, unless with the special permission of the Chief Commissioner.

Cattle not to be driven through streets except in prescribed manner and during prescribed hours.

Any person driving or conducting cattle in contravention of this section



shall be liable to a penalty not exceeding ten shillings for each head of cattle so driven or conducted.

Footways, &c.,  
not to be washed  
except during  
prescribed hours.

7. No person shall wash any footway or doorstep within the general limits of this Act by means of a hose or other apparatus for supplying water under pressure, except during such hours as may be prescribed.

Any person acting in contravention of this section shall be liable to a penalty not exceeding forty shillings.

Prohibition of  
removing dead  
animals, ordure,  
ashes, &c.,  
except between  
certain hours in  
certain streets.

8. No person shall, between the hours of ten in the morning and seven in the evening, cart away or remove any dead animals or any untanned hides, or any ordure, dung, ashes, dust, or refuse from any house or place in any prescribed street within the general limits of this Act.

Any person doing any act in contravention of this section shall be liable for each offence to a penalty not exceeding forty shillings.

Prohibition of  
carriage of  
advertisements.

9. No picture, print, board, placard, or notice shall, by way of advertisement, be carried or distributed in any street within the general limits of this Act by any person in any vehicle, or on any animal, or by any person on foot, except in such form and manner as may be prescribed.

Any person doing any act in contravention of this section shall be liable for each offence to a penalty not exceeding ten shillings.

This section shall not apply to the sale of newspapers.

As to pace,  
&c., of traffic  
throughout  
general limits.

10. The Chief Commissioner by regulation to be made under the authority of this Act may from time to time prescribe the pace at which, and the mode in which carriages, carts, and other vehicles shall pass through the streets within the general limits of this Act, and the manner in which the drivers of such carriages, carts, and other vehicles shall drive or conduct the same, and the pace at which horses and other animals shall be ridden or driven through the streets within the general limits of this Act.

Any person wilfully disregarding or refusing to conform to any such regulation shall incur a penalty not exceeding forty shillings for each offence; and any constable may take into custody without warrant any person who within view of such constable wilfully disregards or refuses to conform to any such regulation, and refuses to give his name and address to such constable; and any printed copy of such regulations, certified under the hand of the Chief Commissioner who made the same to be a true copy of the regulations made by him, shall be evidence of such regulations, and until the contrary is proved all such regulations shall be deemed to have been duly made.

Power for Chief  
Commissioner,  
with consent of  
corporation, to  
make regulations  
as to cleansing  
and watering  
certain streets.

11. The Chief Commissioner may from time to time, by regulation made under the authority of this Act, prohibit the cleansing and watering of any street or streets within the general limits of this Act, except within certain times specified in such regulation, and may alter, amend, or revoke any such regulation. Any person doing any act in contravention of this section shall be liable for each offence to a penalty not exceeding forty shillings.

### *Special Limits.*

Power for Chief  
Commissioner to  
make special  
limits.

12. The Chief Commissioner, by regulation made under the authority of this Act, may from time to time prescribe that any street or portion of a street within the general limits of this Act is to be deemed to be within the special limits of this Act, or that any street or portion of a street shall cease to be within the special limits of this Act.

Traffic within  
special limits.

13. The Chief Commissioner may from time to time, by order under his hand and signed by the said Recorder, regulate the route to be taken within the special limits of this Act by all carts, carriages, or other vehicles, and may prohibit any cart, carriage, or other vehicle from coming into any street or part of a street within the said limits for the purpose only of passing to its destination in some other street or part of a street; and may regulate the line to be kept by persons riding or driving within the said limits: Provided that this section shall not authorise the Chief Commissioner to limit the number of stage carriages that may pass through any street in pursuance of their ordinary trade.

Any person wilfully disregarding or refusing to conform to any such

order shall incur a penalty not exceeding forty shillings for each offence ; and any constable may take into custody without warrant any person who within view of such constable wilfully disregards or refuses to conform to any such order, and refuses to give his name and address to such constable ; and any printed copy of such order certified under the hand of the Chief Commissioner who made the same, and of the Recorder who approved the same, shall be evidence of such order, and until the contrary is proved every such order shall be deemed to have been duly made.

14. Between such hours as may be prescribed no coal shall be unloaded on or across any footway within the special limits of this Act, and between the same hours and within the same limits no goods or other articles shall be lowered or drawn up by means of ropes, chains, or other machinery passing across the footway or any part thereof.

As to the unloading of coal and goods in streets.

Any person doing any act in contravention of this section shall be liable for each offence to a penalty not exceeding forty shillings.

15. No person shall, within the special limits of this Act, and between such hours as may be prescribed, except with the permission of the Chief Commissioner,—

As to carriage of large articles.

1. Drive or conduct along any street any cart, carriage, or other vehicle laden with timber, metal, or any other article which exceeds in length thirty-five feet, or which protrudes more than eight feet six inches behind the vehicle or more than one foot from the sides of the vehicle :
2. Carry in any way along any street any ladder, scaffold pole, or other article which exceeds thirty-five feet in length or eight feet six inches in breadth :
3. Drive or conduct along any street any cart, waggon, or other vehicle used for conveying goods or merchandise, and drawn by more than four horses.

Any person acting in contravention of this section shall for each offence be liable to a penalty not exceeding forty shillings.

No penalty shall be imposed on or costs awarded against any person for acting in contravention of this section if such person prove to the satisfaction of the justice having power to impose the penalty that the act alleged to be in contravention of this section was done on the occasion of a fire or other sudden emergency with a view to prevent accident, or to save life or property.

16. Any householder within the general limits of this Act, personally or by his servant, or by any constable, may require any street musician or street singer to depart from the neighbourhood of the house of such householder on account of the illness, or on account of the interruption of the ordinary occupation or pursuits of any inmate of such house, or for other reasonable or sufficient cause ; and every street musician or street singer who shall sound or play upon any musical instrument, or shall sing in any thoroughfare or public place near any such house after being so required to depart, shall be liable to a penalty not more than forty shillings, or, in the discretion of the magistrate before whom he shall be convicted, may be imprisoned for any time not more than three days, and it shall be lawful for any constable belonging to the metropolitan police force to take into custody without warrant any person who shall offend as aforesaid : Provided always, he shall be given in custody by the person making the charge : Provided also, that the person making a charge for an offence against this section shall accompany the constable who shall take into custody any person offending as aforesaid to the nearest police station house, and there sign the charge sheet kept for such purpose.

Penalty on street musicians and street singers.

Whenever any person charged with an offence under this section shall be brought to any station house during the time when the police court shall be shut, it shall be lawful for the constable in charge of the station house to require the person making the charge to enter into a recognisance conditioned as is provided by the Act passed in the fifth and sixth years of Her Majesty, chapter twenty-four, section thirty-five, and upon the refusal of such person to do so, it shall be lawful for such constable to discharge from custody the person so charged.

*Shoeblocks and Messengers.*

As to the  
licensing shoe-  
blacks and  
messengers.

17. The Chief Commissioner may, if he thinks fit, from time to time license street shoeblocks, and commissionaires or messengers to exercise their calling, and appoint places at which they may stand to exercise their respective callings, and direct the numbers of each class who may stand at the appointed places.

Obstructions  
at standings  
prohibited.

18. Every shoeblock, and commissionaire or messenger, other than those authorised by the Chief Commissioner, who occupies the standings appointed by the Chief Commissioner, or who remains there after being required by a constable on duty to leave, and every person molesting or obstructing any authorised shoeblock, commissionaire or messenger in the exercise of his calling, and every person not being an authorised shoeblock, commissionaire or messenger who fraudulently puts on or imitates the dress, or takes the name, designation, or character, of any authorised shoeblock, commissionaire or messenger, shall for each offence be liable to a penalty not exceeding forty shillings.

*Miscellaneous.*

Publication of  
regulations  
and orders.

19. A printed copy of all regulations and orders made by the Chief Commissioner in pursuance of this Act shall be hung up for public inspection in such places as the Chief Commissioner thinks advisable; and a printed copy of any regulation made in pursuance of this Act by which it is prescribed that any street or portion of a street is to be deemed to be within the special limits of this Act shall, in addition to any other places where the Chief Commissioner shall think it advisable to hang the same, be affixed to a lamp post or otherwise placarded in some conspicuous position in or near the street or portion of a street to which such regulation relates, and such copy shall always be kept so affixed or placarded in or near every street or portion of a street, so long as such street or portion of a street continues to be within the special limits of this Act: Provided always, that it shall not be necessary in enforcing any such regulation or order as aforesaid to prove that the provisions of this section have been complied with, nor shall the non-compliance therewith invalidate any such regulation or order.

Placard, &c.,  
may be affixed  
to lamp post.

20. The Chief Commissioner may cause to be attached to any lamp post any placard or signal he may think expedient for the purpose of carrying into effect the provisions of this Act.

Prohibition  
of betting  
in streets.

21. Any three or more persons assembled together in any part of a street within the general limits of this Act for the purpose of betting shall be deemed to be obstructing the street, and each of such persons shall be liable to a penalty not exceeding five pounds.

Legal pro-  
ceedings.

22. Penalties under this Act shall be recovered in like manner and subject to the like right of appeal as penalties for offences under the Hackney Carriage Acts, and when recovered the same shall be applied in the manner directed by the said Acts.

All powers conferred by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by any other Act of Parliament, and any such other powers may be exercised as if this Act had not been passed.

Power for Lord-  
Lieutenant in  
Council to  
extend pro-  
visions of Act  
to places within  
the police district  
of Dublin  
metropol.s.

23. It shall be lawful for the Lord-Lieutenant or other chief governor or governors of Ireland for the time being, by and with the advice of Her Majesty's Privy Council in Ireland, on the application of the sanitary authority of any district within the police district of Dublin metropolis by order to be published in the Dublin Gazette, to declare that such district shall from and after the date of the publication of such order be within and form part of the general limits of this Act, and thereupon all the provisions of this Act shall extend and apply to such district as if the same had originally been within and formed part of the general limits of this Act.



# PETTY SESSIONS CLERKS AND FINES (IRELAND) ACT, 1878.

[41 & 42 VICT. CH. 69.]

1. This Act may be cited for all purposes as the Petty Sessions Clerks and Fines (Ir.) Act, 1878; and the Petty Sessions Clerk (Ir.) Act, 1858, in this Act referred to as "the principal Act," and this Act may be cited together for all purposes as the Petty Sessions Clerks (Ir.) Acts, 1858 and 1878.

Short title.  
21 & 22 Vict.  
c. 100.

## *Petty Sessions Clerks.*

2. It shall be lawful for the Lord-Lieutenant to fix, and from time to time to vary, a scale of salaries to be paid to the several petty sessions clerks in lieu of the scale set forth in the said schedule.

Scale of salaries.

3. In case any charge of neglect, incompetence, or misconduct is made against any petty sessions clerk in Ireland, it shall be lawful for the Lord-Lieutenant, if he shall think fit, to make an order suspending such petty sessions clerk from his office; or for the justices of any district, if they shall think fit, for which such petty sessions clerk acts to make an order in petty sessions suspending such clerk from his office in such district. Every such order shall continue in force until such charge shall be disposed of. Whenever any such clerk has been so suspended from his office the justices at petty sessions may appoint some other person to act as clerk at such petty sessions for the time being. When the justices at petty sessions appoint any person to act as clerk for the time being under the authority of the eighth section of the principal Act, or under the authority of this section, the person so appointed shall, if required by the justices or by the registrar, before entering upon his duties as such clerk, enter into security for the due discharge of his duties in the manner prescribed by the eleventh section of the principal Act.

Suspension  
from office.

4. It shall be lawful for the Lord-Lieutenant to order that every salary or annual sum payable to any clerk of petty sessions shall be paid at such times and in such manner as the Lord-Lieutenant shall think fit.

Time of pay-  
ment of salaries.

5. From and after the passing of this Act every petty sessions clerk, instead of accounting in the manner prescribed by the twenty-third section of the principal Act, shall account with the registrar for all stamps issued to him by the registrar since his appointment or since the period to which his last previous account may have been carried down, and such account shall be made and passed in such form and at such times and in such manner as the Lord-Lieutenant shall for that purpose direct; and all moneys received by the clerk for such stamps shall be lodged by him in the Bank of Ireland to the credit of the registrar of petty sessions clerks account at such times and in such manner as shall be from time to time prescribed by the registrar; and in case any such clerk fails to render such account, or to make such lodgments, or to make such other returns as he shall be directed by the registrar to render, and is convicted thereof before any two justices in petty sessions, he shall be liable to a penalty not exceeding twenty pounds; and a certificate by the registrar of such failure shall be *prima facie* evidence of the same in any proceeding before such justices.

Mode of  
accounting.

6. The power of making general rules conferred upon the Lord-Lieutenant by the twenty-ninth section of the principal Act shall be construed and extended so as to authorise the making from time to time of regulations defining the duties of clerks of petty sessions, and the mode of performing the same; and the Lord-Lieutenant may, if he shall think fit, provide for the making of allowances and granting remuneration to petty sessions clerks for any duties imposed on them by any such rules, to be paid out of the funds at the disposal of the Lord-Lieutenant for the purposes of the principal Act; and the Lord-Lieutenant may, if he shall think fit, by general rules, or by order in each case, direct how the salary

Extension of  
power to make  
rules for clerks.

of any petty sessions clerk suspended from his office shall be disposed of ; and may, if he shall think fit, provide for the payment of remuneration to any person appointed as a substitute for such suspended clerk, either out of the salary of such suspended clerk, or out of the funds at the disposal of the Lord-Lieutenant for the purposes of the principal Act.

All fees payable  
to clerks to be  
taken by stamps.

7. All fees and emoluments whatsoever in addition to those specified in the Schedule C. to the principal Act, which may at any time be receivable by clerks of petty sessions, under any existing or future Act, shall be denoted by stamps of the character and description mentioned in the principal Act, and shall be dealt with and accounted for as therein and herein is provided with respect to the fees therein mentioned, and all the provisions of the principal Act relating to stamps shall be applicable thereto.

#### *Fines and Stamps.*

Process to levy  
fines on jurors  
to be issued to  
constabulary.

8. After the passing of this Act, no warrant or process shall be issued to any sheriff to levy the amount of any fine imposed upon any person for non-attendance as a juror, or any issues directed to be levied ; but in every such case the warrant or process for levying the same shall be issued to the Royal Irish Constabulary or Dublin Metropolitan Police, as the case may be, and shall be subject to the several provisions of the Fines Act (Ir.), 1851, so far as the same are applicable to other warrants issued to the constabulary or Dublin Metropolitan Police.

It shall be lawful for the Lord-Lieutenant to charge the fund produced by fines on jurors with the payment to the Royal Irish Constabulary, and to the Dublin Metropolitan Police, and to such officers of the several courts by which such fines are imposed, of such remuneration for their services in respect to the imposition, and levy of such fines, as the Lord-Lieutenant shall from time to time appoint.

Masters may  
impose fines  
on jurors.

9. If any man, having been duly summoned and returned to serve as a juror upon any inquest or inquiry before the master of any division of the High Court of Justice, shall not, after being openly called three times, appear, and service of such summons be duly proved, such master shall have the same authority to impose a fine upon every man so making default as is by the forty-eighth section of the Juries Act (Ir.), 1871, given to a sheriff or coroner ; and all the provisions of the said section regarding a fine imposed by a sheriff or coroner shall apply to a fine so imposed by such master.

Fees on service  
of summons.  
Amendment of  
14 & 15 Vict.  
c. 93, s. 12.

10. Any such summons server shall be entitled to be paid by the complainant or person for whom he may be employed, such sum not exceeding the sum specified for each case in the schedule to this Act annexed, according to the distance necessarily travelled by such summons server in effecting each such service upon each party or witness (or upon any number of parties or witnesses in the same case who shall be served in the same house) as the justices shall fix.

#### *Miscellaneous.*

Form of  
Order Book.

11. The Lord-Lieutenant may from time to time, by Order made by and with the advice and consent of the Privy Council, alter the form of Order Book to be used by justices in petty sessions.

Offices of clerk  
of the Crown  
and clerk of  
the peace.

12. From and after the passing of this Act, the several powers conferred by the eighth section of the County Officers and Courts (Ir.) Act, 1877, shall extend to, and may be exercised in every case in which any one or more of the offices included or which might be included in any union of offices for the holder whereof but one salary is specified in Schedule D. to the said Act shall become or be vacant, and in each case in which but one salary is in the said schedule specified for the clerk of the Crown and peace for more than one county, the Lord-Lieutenant by Order in Council may unite the offices of clerk of the Crown and of clerk of the peace, and may assign a reasonable salary for the clerk of the Crown and peace, for each such county, and may vary any one or more of the salaries specified in the said schedule, and such salaries shall be paid in the same manner

as, but in lieu of, the salary or salaries specified in the said schedule and affected by such Order; provided that by the exercise of the powers aforesaid the salary of any officer shall not be diminished during his tenure of office, nor shall the total amount of all the salaries made payable at any time be increased beyond the total amount in the said schedule mentioned. The several powers aforesaid shall extend and may be applied to each riding of the county of Cork as a separate county, and either riding may for the purposes of the said Act, and of this section, be united with the county of the city of Cork. The duties under the said Act and under this Act of every officer appointed to any office included or which might be included in any union of offices made or which might be made under any of the powers aforesaid may be defined, distributed, prescribed, and regulated by Order of the Lord-Lieutenant made by and with the advice and consent of the Privy Council.

*Superannuation.*

13. The Lord-Lieutenant may, if he shall think fit, grant to the registrar or to any clerk or servant employed in the office of the registrar, upon his retirement from office, a pension, to be payable out of the same funds, and chargeable thereon in the same proportions respectively, upon which the salaries or other remuneration of the registrar and clerks and servants are chargeable; and in ascertaining and awarding the amount of such superannuation, the Lord-Lieutenant shall proceed according to the principles laid down by the Superannuation Act, 1859.

SCHEDULE.

*Fees payable to Summons Servers.*

	s.	d.
Where distance travelled shall not exceed four miles . . . . .	0	6
Where distance travelled shall exceed four miles . . . . .	1	0
The distance to be reckoned in each case to the place of service, from the Petty Sessions Court of the district; and the return journey is not to be taken into account.		

PETTY SESSIONS CLERKS (IRELAND)  
ACT, 1881.

[44 & 45 VICT. CH. 18.]

1. The salaries and emoluments of the petty sessions clerks in Ireland shall not after the passing of this Act be raised or lowered on account of the amount of fines levied in the court of which they are clerks, or on account of the amount of petty sessions stamps used therein, but may be raised on account of the length of service, or for merit, or for new duties attached to the office, and shall not be liable to be reduced below the amount of the salary and emoluments at which the same were fixed at the time of his appointment, or any time during his tenure of office: Provided always, that it shall be lawful to reduce the salary for the office of clerk of any petty sessions court when the office is vacant.

2. To secure the Petty Sessions Clerks Fund on which the salaries and retiring allowances are charged from variation, it shall be lawful for the registrar of petty sessions clerks to deduct from any sum or sums payable by him to local authorities in Ireland such sum or sums as the Lord-Lieutenant or Lords Justices or other Chief Governor or Chief Governors of Ireland shall for any calendar year by any order or orders determine, and to add the amount of such deduction to the Petty Sessions Clerks Fund.

Salaries of clerks of petty sessions in Ireland not to depend on amount of fines or petty sessions stamps.

Provisions for securing Petty Sessions Clerks Fund from variation.



Sureties for  
petty sessions  
clerks.

3. It shall not be necessary for a petty sessions clerk to enter into a new bond with sureties on each occasion of increase in his salary, nor, except when by reason of the death or insolvency of his sureties or for other sufficient reason the Lord-Lieutenant may consider such to be necessary, shall a new bond be required, but the original bond as against the original sureties shall remain of full force and effect notwithstanding such increase of salary.

Definition  
clause.

4. "Local authorities" shall mean the treasurers of counties and treasurers of boroughs to whom the surplus moneys arising from the sale of licences are payable under the Dogs Regulation (Ir.) Act, 1865, and any Act amending the same.

"Petty sessions clerks" shall include the registrar of petty sessions clerks and his clerks.

Superannuation.

5. The superannuation or retiring allowance of petty sessions clerks retiring from office through age or infirmity shall be estimated upon the salary of the office at the time of retiring, and shall be chargeable on the Petty Sessions Clerks Fund.

Short title.

6. This Act may be cited as the Petty Sessions Clerks (Ir.) Act, 1881.

## SUMMARY JURISDICTION OVER CHILDREN (IRELAND) ACT, 1884.

[47 & 48 VICT. CH. 19.]

Short title.

1. This Act may be cited for all purposes as the Summary Jurisdiction over Children (Ir.) Act, 1884.

Extension  
of Act.

2. This Act shall extend to Ireland only.

Summary trial  
of children  
for indictable  
offences unless  
objected to  
by parent or  
guardian.

4. (1) Where a child is charged before a court of summary jurisdiction with any indictable offence other than homicide, the court, if they think it expedient so to do, and if the parent or guardian of the child so charged, when informed by the court of his right to have the child tried by a jury, does not object to the child being dealt with summarily, may deal summarily with the offence, and inflict the same description of punishment as might have been inflicted had the case been tried on indictment:

Provided that—

- (a) A sentence of penal servitude shall not be passed, but imprisonment shall be substituted therefor; and
- (b) Where imprisonment is awarded the term shall not in any case exceed one month; and
- (c) Where a fine is awarded the amount shall not in any case exceed forty shillings; and
- (d) When the child is a male the court may, instead of any other punishment, adjudge the child to be, as soon as practicable, privately whipped with not more than six strokes of a birch rod by a constable, in the presence of an inspector or other officer of police of higher rank than a constable, and also in the presence, if he desires to be present, of the parent or guardian of the child.

(2) For the purpose of a proceeding under this section, the court of summary jurisdiction, at any time during the hearing of the case at which they become satisfied by the evidence that it is expedient to deal with the case summarily, shall cause the charge to be reduced into writing and read to the parent or guardian of the child, and then address a question to such parent or guardian to the following effect: "Do you desire the child to be tried by a jury, and object to the case being dealt with summarily?" with a statement, if the court think such statement desirable for the information of such parent or guardian, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which the child will be tried if tried by a jury.

(3) Where the parent or guardian of a child is not present when the child is charged with an indictable offence before a court of summary

jurisdiction, the court may, if they think it just so to do, remand the child for the purpose of causing notice to be served on such parent or guardian, with a view, so far as is practicable, of securing his attendance at the hearing of the charge, or the court may, if they think it expedient so to do, deal with the case summarily.

(4) This section shall not prejudice the right of a court of summary jurisdiction to send a child to a reformatory or industrial school.

(5) This section shall not render punishable for an offence any child who is not, in the opinion of the court before whom he is charged, above the age of seven years and of sufficient capacity to commit crime.

5. (1) Where a young person is charged before a court of summary jurisdiction with any indictable offence *other than homicide*,<sup>1</sup> the court, if they think it expedient so to do, having regard to the character and antecedents of the person charged, the nature of the offence, and all the circumstances of the case, and if the young person charged with the offence, when informed by the court of his right to be tried by a jury, consents to be dealt with summarily, may deal summarily with the offence, and in their discretion adjudge such person, if found guilty of the offence, either to pay a fine not exceeding ten pounds, or to be imprisoned, with or without hard labour, for any term not exceeding three months.<sup>2</sup>

Summary trial with consent of young persons.

(2) For the purpose of a proceeding under this section, the court, at any time during the hearing of the case at which they become satisfied by the evidence that it is expedient to deal with the case summarily, shall cause the charge to be reduced into writing and read to the young person charged, and then address a question to him to the following effect: "Do you desire to be tried by a jury, or do you consent to the case being dealt with summarily?" with a statement, if the court think such statement desirable for the information of the young person to whom the question is addressed, of the meaning of the case being dealt with summarily, and of the assizes or sessions (as the case may be) at which he will be tried if tried by a jury.

(3) This section shall not prejudice the right of a court of summary jurisdiction to send a young person to a reformatory or an industrial school.

6. A child on summary conviction for an offence punishable on summary conviction under this Act, or under any other Act, whether past or future, shall not be<sup>3</sup> fined a larger sum than forty shillings.

Restriction on punishment of child for summary offence.

7. If upon the hearing of a charge against children and young persons for an offence punishable on summary conviction under this Act, or under any other Act, whether past or future, the court of summary jurisdiction think that, though the charge is proved, the offence was in the particular case of so trifling a nature that it is inexpedient to inflict any punishment, or any other than a nominal punishment,—

Power of court to discharge accused children and young persons without punishment.

(1) The court, without proceeding to conviction, may dismiss the information, and, if the court think fit, may order the person charged to pay such damages, not exceeding forty shillings, and such costs of the proceeding, or either of them, as the court think reasonable; or,

(2) The court upon convicting the person charged may discharge him conditionally on his giving security, with or without sureties, to appear for sentence when called upon, or to be of good behaviour, and either without payment of damages and costs, or subject to the payment of such damages and costs, or either of them, as the court think reasonable.

8. (a) The enactments in force in the Dublin Metropolitan Police District relative to appeals in cases of summary jurisdiction, and the enactments of the Petty Sessions (Ir.) Act, 1851, relative to appeals in the like cases, shall respectively extend to cases heard and determined in such district, and elsewhere in Ireland, under this Act.

Appeals and form of conviction.

<sup>1</sup> The words in italics are substituted, for the words originally contained in the section, by the Children Act, 1908, 8 Edw. 7, c. 67, s. 133 (6).

<sup>2</sup> Remainder of section repealed (*Children Act*, 1908).

<sup>3</sup> The words "imprisoned for a longer period than one month nor" here occurring repealed (*Children Act*, 1908).

(b) Every conviction under this Act shall contain a statement, in the case of a child, as to the consent or otherwise of his parent or guardian, and, in the case of a young person, of the consent of such young person, to be tried by a court of summary jurisdiction.

Definitions for  
purposes of  
the Act.

9. In this Act the following expressions have the meanings herein-after respectively assigned to them; that is to say,

The expression "child" means a person who in the opinion of the court before whom he is brought is under the age of *twelve*<sup>1</sup> years:

The expression "young person" means a person who in the opinion of the court before whom he is brought is of the age of *twelve*<sup>1</sup> years and under the age of sixteen years:

The expression "guardian," in relation to a child or young person, includes any person who, in the opinion of the court having cognisance of any case in which a child or young person is concerned, has for the time being the charge of or control over such child or young person:

The expression "court of summary jurisdiction" shall, in the police district of Dublin metropolis, mean a court constituted of a divisional justice acting for the said district, and elsewhere in Ireland shall mean a court constituted of one or more justices of the peace sitting in petty sessions.

## CRIMINAL LAW AND PROCEDURE (IRELAND) ACT, 1887.

[50 & 51 VICT. CH. 20.]

### PRELIMINARY INQUIRY.

Inquiry by  
order of  
Attorney-  
General.

1. (1) Where a sworn information has been made that any offence to which this section applies has been committed in a proclaimed district, the Attorney-General for Ireland may, if he thinks fit, by order in writing under his hand, direct a resident magistrate, of whose legal knowledge and legal experience the Lord Chancellor shall be satisfied, to hold an inquiry under this section, and thereupon such resident magistrate may, if he so think fit, although no person may be charged before him with the commission of such crime, sit at a police court, when the offence has been committed in Dublin, or at the place where the petty sessions for the petty sessional district in which the said offence has been committed are usually held, and examine on oath concerning such offence any person whom he has reason to believe to be capable of giving material evidence concerning such offence, other than any person confessing himself or herself to be the offender or the husband or wife of such person, and shall take the deposition of such witness, and, if he see cause, may bind such witness by his own recognisance to appear and give evidence at the next petty sessions, or when called upon within three months from the date of such recognisance: Provided that no sitting of any inquiry under this section shall commence except between the hours of 10 A.M. and 6 P.M.: Provided also, that a shorthand writer shall be in attendance at such inquiries, and shall take down the questions of the magistrate, and the answers of each witness, and such questions and answers, when transcribed, shall be annexed to the deposition of the witness: Provided also, that upon any person being accused of a crime respecting which an inquiry under this section has been held, such accused person, on his being returned for trial, or his solicitor, shall forthwith be supplied with copies of all depositions taken at any inquiry under this section of any witness to be called against him.

(2) The enactments contained in the Petty Sessions (Ir.) Act, 1851, section 13, relating to the compelling of the attendance of a witness before a justice and to a witness attending before a justice and required to give evidence concerning the matter of an information or complaint for an

<sup>1</sup> Now fourteen (*Children Act*, 1908, ss. 128 (1), 133 (7)).



indictable offence or concerning the matter of an information or complaint in respect of an offence punishable upon summary conviction, as the case may be, shall apply for the purposes of this section as if they were re-enacted herein and in terms made applicable thereto : Provided that in case a warrant shall be issued for the arrest of any witness in the first instance, and without any summons having previously been served and disobeyed, such witness shall, on demand, be entitled to receive from the resident magistrate holding the inquiry a copy of the information or complaint on which the warrant for his arrest was issued.

(3) Where a witness, examined at an inquiry under this section, is under the age of twelve years, the parent or guardian of such witness, or the relative or friend with whom such witness usually resides, shall be entitled to attend at such inquiry.

(4) A resident magistrate, holding an inquiry under this section, shall himself conduct such inquiry, and shall not permit any other person to question or examine any witness.

(5) A witness examined under this section shall not be excused from answering any question on the ground that the answer thereto may criminate, or tend to criminate, himself :

Provided that—

(a) A witness who answers truly all questions which he is required to answer, shall be entitled to a certificate under the hand of the magistrate making such examination, stating that such witness has so answered, and such a certificate shall be a bar to all criminal proceedings against such witness in respect of any offence, not being a felony, as to which he has been examined in such inquiry ; and

(b) Any confession or answer by a person to a question put at such examination shall not, except in the case of any criminal proceeding for perjury committed at or after the holding of such inquiry, be, in any proceeding, civil or criminal, admissible in evidence against such person, or the husband or wife of such person ;

(c) Provided that if any person has been charged with the commission of the crime which is the subject of the inquiry, no witness, while the said charge is pending, shall be compelled to answer who has been called to give evidence for the defence of such accused person.

(6) Except with the consent of the witness under examination, no person other than the magistrate and other official person, shall be present at such inquiry.

Save as aforesaid, a witness examined under this section concerning an offence shall not be required to answer any question which he might lawfully refuse to answer on the ground of privilege, if he were being examined as a witness at the trial of a person charged with that offence.

(7) A magistrate who conducts the examination under this section of a person concerning any offence shall not, if such offence is punishable on summary conviction, take part in the hearing and determination of a charge for that offence ; and shall not, if such offence is an indictable offence, take part in the taking depositions against or committing for trial any person for such offence.

(8) In case any witness examined under this section shall not speak English, the interpreter employed shall not be a policeman.

(9) The offences to which this section applies are any felony or misdemeanour and any offence punishable under this Act, committed in a proclaimed district, whether committed before or after the passing of this Act, provided that no inquiry shall be held under this section concerning any offence punishable under this Act committed in any district before the proclamation of such district, unless such offence would have been indictable if this Act had not passed, and unless such offence was committed since the expiry of the Prevention of Crime (Ir.) Act, 1882.

(10) Every summons under this section shall be in the form in the schedule to this Act, or to the like effect.

Every warrant to commit a witness to prison for refusing to answer a

question put to him on an examination held under this section shall set out the question which the witness refused to answer.

There shall be published quarterly in the Dublin Gazette a return showing the number of inquiries held during the preceding quarter, the hours during which such inquiries have been held, the number of days occupied, the number of summonses issued, the number of witnesses examined, the names of, and the sentences on, the persons committed for contempt, and the result, if any, of each inquiry.

#### SUMMARY JURISDICTION.

Extension of  
summary  
jurisdiction.

2. Any person who shall commit an offence mentioned in subsection 3 (a) of this section anywhere in Ireland, or shall commit any of the following offences in a proclaimed district, may be prosecuted before a court of summary jurisdiction under this Act—

- (1) Any person who shall take part in any criminal conspiracy now punishable by law to compel or induce any person or persons either not to fulfil his or their legal obligations, or not to let, hire, use, or occupy any land, or not to deal with, work for, or hire any person or persons in the ordinary course of trade, business, or occupation; or to interfere with the administration of the law:
- (2) Any person who shall wrongfully and without legal authority use violence or intimidation—
  - (a) to or towards any person or persons with a view to cause any person or persons either to do any act which such person or persons has or have a legal right to abstain from doing, or to abstain from doing any act which such person or persons has or have a legal right to do; or
  - (b) to or towards any person or persons in consequence, either of his or their having done any act which he or they had a legal right to do, or of his or their having abstained from doing any act which he or they had a legal right to abstain from doing:
- (3) (a) Any person who shall take part in any riot or unlawful assembly; or
  - (b) within twelve months after the execution of any writ of possession of any house or land shall wrongfully take or hold forcible possession of such house or land or any part thereof; or
  - (c) shall assault, or wilfully and unlawfully resist or obstruct, any sheriff, constable, bailiff, process server, or other minister of the law, while in the execution of his duty, or shall assault him in consequence of such execution:
- (4) Any person who shall incite any other person to commit any of the offences hereinbefore mentioned.

#### SPECIAL JURY AND REMOVAL OF TRIAL.

Order for  
special jury.

3. Where an indictment for a crime committed in a proclaimed district has been found against a defendant, or a defendant has been committed for trial for such crime, and the trial is to be by a jury before a court in Ireland other than a court of quarter sessions, the High Court shall on an application by or on behalf of the Attorney-General for Ireland or a defendant make an order as of course that the trial of the defendant or the defendants if more than one shall be by a special jury.

Where an indictment for a crime committed in a proclaimed district has been found against a defendant, or a defendant has been committed for trial for such crime, and the trial is to be at a court of assize for any county in a proclaimed district, or at a court of quarter sessions for any county or borough in a proclaimed district, the High Court on an application by or on behalf of the Attorney-General for Ireland, and upon his certificate that he believes that a more fair and impartial trial can be had at a court of assize in some county to be named in the certificate, shall

make an order as of course that the trial shall be had at a court of assize in the county named in the certificate.

The defendant or any defendant, if more than one, may in the prescribed manner and within the prescribed time apply to the High Court to discharge or vary any such order for the removal of a trial, upon the ground that the trial can be more fairly and impartially had in a county other than the county named in the order of removal, and thereupon the High Court may order that the trial shall be had in any county in which it shall appear that the trial can be most fairly and impartially had; if the court discharge or vary any such order for the removal of a trial, the court shall award that the reasonable costs incurred by the defendant in making the application shall be paid by the Crown.

*Proclamation of Districts.*

5. The Lord-Lieutenant, by and with the advice of the Privy Council, may, from time to time, when it appears to him necessary for the prevention, detection, or punishment of crime and outrage, by proclamation declare the provisions of this Act which relate to proclaimed districts or any of those provisions to be in force within any specified part of Ireland as from the date of the proclamation; and the provisions of this Act which are mentioned in the proclamation shall after the said date be in force within such specified part of Ireland, and that part of Ireland shall be a proclaimed district within the meaning of the provisions so mentioned. Any such proclamation shall be deemed to have expired if an address is presented to Her Majesty by either House of Parliament, praying that such proclamation shall not continue in force.

Proclamation of districts for the purposes of the preceding enactments of this Act.

This section shall not apply to the provisions of this Act relating to dangerous associations.

When any of the provisions of section two of this Act, relating to summary jurisdiction, are declared by proclamation to be in force in a district, such provisions shall apply to offences committed in the district after the passing of this Act, whether before or after the date of the proclamation.

When the provisions of section three or section four of this Act, relating to special juries or change of place of trial, are declared by proclamation to be in force in a district, such provisions shall apply to crimes committed in the district before or after the passing of this Act.

DANGEROUS ASSOCIATIONS.

6. If the Lord-Lieutenant is satisfied that any association—

- (a) formed for the commission of crimes; or
- (b) carrying on operations for or by the commission of crimes; or
- (c) encouraging or aiding persons to commit crimes; or
- (d) promoting or inciting to acts of violence or intimidation; or
- (e) interfering with the administration of the law or disturbing the maintenance of law and order,

Special proclamation putting into force the enactments of this Act relating to dangerous associations.

exists in any part of Ireland, the Lord-Lieutenant, by and with the advice of the Privy Council, may from time to time by proclamation declare to be dangerous any such association or associations named or described in such proclamation.

(1) A proclamation under the authority conferred upon the Lord-Lieutenant by this section is in this Act referred to as a special proclamation.

(2) A copy of every special proclamation shall be laid before each House of Parliament within seven days after the making thereof, if Parliament is then sitting, and if not, then within seven days after the next meeting of Parliament.

(3) If within a period of fourteen days after a special proclamation has been laid before Parliament an address is presented to Her Majesty by either House of Parliament praying that such special proclamation shall not continue in force as to an association or associations named or described therein, such special proclamation shall be deemed to have expired so far as the same relates to such association or associations.



(4) Whenever any special proclamation is issued under this Act, if Parliament be then separated by such adjournment or prorogation as will not expire within twenty days, such special proclamation shall be deemed to have expired at the end of a week from the date thereof, unless during that week Parliament shall be summoned to meet within twenty days from the date of the summons.

(5) When a special proclamation expires or is revoked, the powers conferred by the seventh section of this Act shall for the time being cease to be in force in respect of the association or associations as to which such special proclamation has expired or been revoked, and any order of the Lord-Lieutenant made under such special proclamation shall also cease to be in force.

(6) The expression "crime" in this section means any felony or misdemeanour, and any offence punishable under this Act.

Prohibition  
of dangerous  
associations.

7. From and after the date of such special proclamation and as long as the same continues unrevoked or unexpired, the Lord-Lieutenant in Council may from time to time, by order to be published in the prescribed manner, prohibit or suppress in any district specified in the order any association named or described in such special proclamation, or any association which appears to the Lord-Lieutenant to be a dangerous association, and to have been, after the date of such special proclamation, formed or first employed for any of the purposes of any association named or described in such special proclamation. From and after the date of such order, and during the continuance thereof, every assembly or meeting of such association, or of the members of it as such members, in the specified district, shall be an unlawful assembly, and the association itself shall be an unlawful association; and every person calling together a meeting of such association in the specified district, or of any members thereof as such members, or knowingly taking part in any such meeting, or publishing with a view to promoting the objects of such association any notice of the calling together of any such meeting, or of the proceedings at such meeting, or contributing or receiving or soliciting in the specified district any contribution for the purposes of such association, or in any way taking part in the proceedings thereof in the specified district, or of any branch or meeting of it in such district, shall be guilty of an offence and may be prosecuted before a court of summary jurisdiction under this Act.

In this section, the term "association" includes any combination of persons whether the same be known by any distinctive name or not.

The Lord-Lieutenant in Council may from time to time wholly or in part revoke any order made under this section.

#### *Provisions as to Special Jury, and Removal of Trial.*

Special jury to  
be sworn like  
ordinary juries.  
39 & 40 Vict.  
c. 78.

9. Where under this Act a trial is had by a special jury, the special jurors shall be taken by ballot in the manner provided by the nineteenth section of the Juries Procedure (Ir.) Act, 1876, from all the jurors upon the panel returned by the sheriff from the special jurors book.

Proceedings  
on an order  
of removal  
in Ireland.

10. (1) If an order for the removal of the trial of a crime to any county in Ireland has been made under this Act before the indictment is found, such crime may be inquired of by a grand jury of, and may be heard and determined in, the county named in the order of removal in like manner as if the crime had been committed in such county, and if the order is made after the indictment is found, such crime may be heard and determined as if the indictment had been found in the court to which the trial is removed.

(2) In either case the defendant may be convicted and sentenced as if the crime had been committed in the county named in the order of removal, but the sentence of the court shall be carried into effect as if he had been tried in the county in which he would have been tried if the order had not been made, and the defendant shall, if necessary, be removed accordingly in pursuance of an order of the court in which he has been tried made for the purpose.

*Punishment, Procedure, and Definitions.*

11. (1) A person prosecuted before a court of summary jurisdiction under this Act shall be liable on conviction to imprisonment with or without hard labour for a term not exceeding six months and shall have the same right of appeal as he would have under the Summary Jurisdiction Acts in the case of any other summary conviction.

Procedure  
for offence  
against Act.

(2) If any person licensed under the Acts relating to intoxicating liquors, is convicted under this Act, such conviction shall be entered in the proper register of licences, and may be directed to be recorded on the licence of the offender in the same manner, and when so recorded shall have the same effect, as if the conviction were a conviction for an offence against those Acts.

(3) If an offence is prosecuted summarily under this Act the same shall be prosecuted before a court of summary jurisdiction in manner provided by the Petty Sessions (Ir.) Act, 1851, and subject to the provisions thereof save so far as they are altered by the provisions of this section.

(4) The proceedings for enforcing the appearance of the person charged and the attendance of witnesses for the prosecution shall be the same as if the offence were an indictable offence.

(5) Upon every proceeding before a court of summary jurisdiction for an offence under this Act, the evidence for the prosecution and defence shall be taken as depositions in the same manner as if the offence were an indictable offence, and such depositions shall be admissible in evidence on any appeal.

(6) The court of summary jurisdiction shall within the police district of Dublin metropolis be a divisional justice of that district, and elsewhere be two resident magistrates in petty sessions, one of whom shall be a person of the sufficiency of whose legal knowledge the Lord-Lieutenant shall be satisfied, and the expression "resident magistrate" means a magistrate appointed in pursuance of the Constabulary (Ir.) Act, 1836. One resident magistrate may act alone in adjourning or postponing a court, or in doing any other thing antecedent to the hearing of a charge under this Act.

(7) In hearing and determining at any quarter sessions an appeal under this Act, the county court judge and chairman of quarter sessions or the recorder shall sit and act as sole judge.

(8) Subject to rules of the High Court any jurisdiction vested by this Act in the High Court shall be exercised by the Queen's Bench Division, and may be exercised by any judge thereof.

12. (1) Any order, notice, or other document of the Lord-Lieutenant under this Act may be signified under his hand or under the hand of the Chief Secretary.

Supplemental  
provisions as  
to proclamations  
and orders.

(2) Every proclamation and every special proclamation under this Act shall provide for the manner of the promulgation thereof. Every proclamation and every special proclamation, and a notice of the promulgation thereof in the manner provided, shall be published in the Dublin Gazette.

(3) The production of a printed copy of the Dublin Gazette, purporting to be printed and published by the Queen's authority, and containing the publication of any proclamation, special proclamation, order, or notice under this Act, shall be conclusive evidence of the contents of such proclamation, special proclamation, order, or notice, and of the date thereof, and in the case of a proclamation that the district specified in such proclamation is a proclaimed district within the meaning of the provisions of this Act mentioned in the proclamation, and in the case of a proclamation or a special proclamation, that such proclamation or special proclamation has been duly promulgated, and in the case of an order that it has been duly made.

(4) A copy of every proclamation, not being a special proclamation, shall be laid before each House of Parliament within fourteen days after the making thereof, if Parliament is then sitting, and if not within fourteen days after the next meeting of Parliament.

13. The Lord-Lieutenant, by and with the advice of the Privy Council, may from time to time by a further proclamation or order revoke any

Revocation of proclamation, and of special proclamation and order.  
Allowances to witnesses and others.

Rules for procedure and matters to be prescribed.

proclamation, or any special proclamation, or any order under this Act. A copy of each such further proclamation shall be laid before Parliament within fourteen days if Parliament is then sitting, and if not within fourteen days after the next meeting of Parliament.

14. There shall be paid out of moneys provided by Parliament such allowances to officers and other persons acting in pursuance of this Act, and such expenses incurred in reference to any court exercising jurisdiction under this Act, and such expenses of persons charged, counsel, and witnesses, payable in pursuance of this Act, as the Lord-Lieutenant, with the approval of the Treasury, may from time to time direct.

15. (6) The Lord-Lieutenant may, from time to time, by and with the advice of the Privy Council, make, and when made revoke, add to, and alter rules in relation to following matters :—

- (1) In the case where a special jury is required, or where a trial is removed to any county in Ireland, in relation to the attendance, authority, and duty of sheriffs, gaolers, officers, and persons, the removal and custody of prisoners, the alteration of any writs, precepts, indictments, recognisances, proceedings, and documents, the transmission of indictments, recognisances, and documents, and the expenses of witnesses and the carrying of sentences into effect ; also, in the case where a special jury is required, the number of jurors to be returned on any panel ; and
- (2) In the case of the removal of a trial to a court of assize for a county in Ireland, in relation to due provision being made by the prescribed Crown Solicitor in the prescribed manner for the advance of money to defray the necessary costs of the defence, so far as they are occasioned by the removal of the trial, and for enabling the defendant or defendants and the witnesses required for the defence to attend the trial.
- (3) In relation to forms for the purposes of this Act, and to any matter by this Act directed to be prescribed ; and
- (4) In relation to any matters which appear to the Lord-Lieutenant, by and with the advice aforesaid, to be necessary for carrying into effect the provisions of this Act ;

and any rules made in pursuance of this Act shall be judicially noticed and be of the same validity as if they were contained in this Act.

16. Any powers or jurisdiction conferred by this Act on any court or authority in relation to any trial, offence, or matter shall be deemed to be in addition to and not in derogation of any other powers or jurisdiction of any court or authority subsisting at common law or by Act of Parliament in relation to such trial, offence, or matter :

Provided that no person shall be punished twice for the same offence.

17. Save as provided by this Act, the expiration or revocation of any proclamation or special proclamation or order shall not affect the validity of anything previously done thereunder.

18. An agreement or combination which, under the Trade Union Acts, 1871 and 1876, or the Conspiracy and Protection of Property Act, 1875,<sup>1</sup> is legal, shall not, nor shall any act done in pursuance of any such agreement or combination, be deemed to be an offence against the provisions of this Act respecting conspiracy, intimidation, and dangerous associations.

19. In this Act, unless there is something in the context repugnant thereto :—

A defendant shall be deemed to be committed for trial who has entered into a recognisance conditioned to appear and plead to an indictment or to take his trial upon any criminal charge, or who has been committed to prison there to await his trial for any offence.

The expression "Attorney-General" means the Attorney-General acting on behalf of the Crown, and includes, in the case of any vacancy in office or inability to act, the Solicitor-General so acting.

The expression "the Summary Jurisdiction Acts" means in the Dublin Metropolitan Police District the Acts regulating the powers and duties of justices of the peace and of the police in that district, and else-

<sup>1</sup> Now amended by the 6 Edw. 7, c. 47.

Power of Act to be cumulative.

Saving for proclamation.

Saving for trade unions.

Definitions.



where in Ireland means "The Petty Sessions (Ir.) Act, 1851," and the Acts amending it.

The expression "prescribed" means prescribed by rules to be made under this Act.

The expression "writ of possession" includes any decree, warrant, order, or other document issued from any court directing possession to be given, or authorising possession to be taken, of any house or land.

The expression "intimidation" includes any words or acts intended and calculated to put any person in fear of any injury or danger to himself, or to any member of his family, or to any person in his employment, or in fear of any injury to or loss of property, business, employment, or means of living.

*Short Title.*

20. This Act may be cited as the Criminal Law and Procedure (Ir.) Act, 1887.

SCHEDULE.

FORM OF SUMMONS TO WITNESS. (PRELIMINARY INQUIRY.).

Sect. 1 (10).

The Queen } Petty Sessions District of  
*v.* }  
 Persons unknown. } County of  
 Whereas it appears that [*here set out the nature of the offence*].  
 This is to command you to appear as a witness before me at  
 on the                      day of                      , at                      o'clock,  
 then and there to be examined before me touching the premises.

(Signed)      A. B., Resident Magistrate.

Dated

To C. D., of

HAWKERS ACT, 1888.

[51 & 52 VICT. CH. 33.]

1. This Act may be cited as the Hawkers Act, 1888.

Short title.

2. In this Act each of the following terms shall have the meaning assigned to it by this section unless it is otherwise expressly provided, or there is something in the subject or context inconsistent with such meaning:—

Definitions.

"Hawker"<sup>1</sup> means any person who travels with a horse or other beast bearing or drawing burden, and goes from place to place or to other men's houses carrying to sell or exposing for sale any goods, wares, or merchandise, or exposing samples or patterns of any goods, wares, or merchandise to be afterwards delivered, and includes any person who travels by any means of locomotion to any place in which he does not usually reside or carry on business, and there sells or exposes for sale any goods, wares, or merchandise in or at any house, shop, room, booth, stall, or other place whatever hired or used by him for that purpose (s. 2).

"Officer" means officer of Inland Revenue. "Justice" means justice of the peace.

<sup>1</sup> A single act of selling does not make a hawker (*R. v. Little* (1785), 1 Burr 610); but where the defendant was proved to have hired a room in a town and sold goods by auction there, and to have done the same in another town, it was held he should have been convicted (*Hudson v. Shooter* (1891), 55 J.P. 325). A shopkeeper who calls at the houses of customers with goods, which he habitually sells there, as distinguished from merely delivering goods previously ordered, is a "hawker" (*O'Dea v. Crowhurst*

Hawker's licence.

3. (1) There shall be granted and paid, for the use of His Majesty, upon an excise licence to be taken out annually by every hawker in the United Kingdom, the duty of £2.

(2) Every such licence shall be in such form as the Commissioners of Inland Revenue shall direct, shall whenever issued be granted only on payment in full of the duty, and shall expire on the 31st day of March in each year.

Exemptions.

(3) It shall not be necessary for a licence to be taken out under this Act in the following cases; that is to say—(a) By any person selling or seeking orders for goods, wares, or merchandise to or from persons who are dealers therein, and who buy to sell again. (b) By the real worker or maker of any goods, wares, or merchandise, and his children, apprentices, and servants usually residing in the same house with him, selling or seeking orders for goods, wares, or merchandise made by such real worker or maker. (c) By any person selling fish, fruit, victuals, or coal. (d) By any person selling or exposing for sale goods, wares, or merchandise in any public mart, market, or fair legally established.

Licence not to be granted without certificate.

4. (1) A hawker's licence shall not be granted to any person, otherwise than by way of renewal of a licence for the year immediately preceding, except on the production of a certificate signed by a clergyman or minister of the parish or place wherein such person resides, and two householders of such parish or place, or by a justice for the county or place, or superintendent or inspector of police for the district wherein the officer to whom application is made for the grant of a licence resides, attesting that such person is of good character and is a proper person to be licensed as a hawker.

(2) If any person forges or counterfeits any certificate for obtaining a licence under this Act, or produces or makes use of any forged or counterfeited certificate or licence, knowing the same to be forged or counterfeited, he shall incur a fine of fifty pounds; and any licence obtained on a forged or counterfeited certificate shall be void.

Provisions to be observed by hawkers and others.

5. (1) Every hawker shall keep his name and the words "licensed hawker" visibly and legibly written, painted, or printed upon every box or other package and every vehicle used for the carriage of his goods, and upon every room or shop in which his goods are sold, and upon every handbill or advertisement which he distributes or publishes.

(2) A hawker shall not let to hire or lend his licence to any person: Provided that a servant may travel with his master's licence and trade for his master's benefit.

(3) If a hawker contravenes any of the foregoing provisions of this section he shall, for every offence, incur a fine of ten pounds.

(4) If any person not having in force a licence under this Act in his own real name—

(a) Uses the words "licensed hawker" or any words importing that he carries on the trade of a hawker, or is licensed so to do; or

(b) Trades with or under colour of a licence granted to any person other than his master,

he shall, for every such offence, incur a fine of ten pounds.

6. (1) If any person does any act for which a licence is required by this Act—

(a) Without having a proper licence in force in that behalf; or

(b) Without immediately producing, upon demand by any person, a proper licence granted to him or to his master, and then in force, he shall for every such offence incur a fine of ten pounds over and above any other penalty to which he may be liable.

(2) In any proceeding for recovery of the fine imposed by this section it shall be sufficient to allege that the defendant did trade as a hawker without having in force a proper licence, and it shall not be necessary further or otherwise to describe the offence.

(3) Any officer or officer of the peace may arrest a person found committing an offence under this section—  
(1899), 19 Cox 260; see also *Holland v. Hally* (1902), 18 T.L.R. 368; but see *Philpott v. Alright* (1906), 4 L.G.R. 1013. An incorporated society may be a hawker (*Co-operative Drapery and Furnishing Society, Ltd. v. Bligh* (1902), 39 Sc. L.R. 500, 66 J.P. 215).

Hawking without licence or not producing licence.

mitting an offence against this section and convey him before a justice having jurisdiction at the place where the offence is committed, and in default of immediate payment, upon conviction, of the fine, or of the sum to which the fine may be mitigated (which mitigation is hereby authorised), the offender shall be imprisoned, with or without hard labour, for any term not exceeding one month.

7. The powers and provisions contained in any Act relating to licences and penalties under Excise Acts, and now or hereafter in force, shall respectively be of full force and effect with respect to the licences under this Act and the fines hereby imposed so far as the same are applicable and are consistent with the provisions of this Act as fully and effectually as if the same had been herein specially enacted with reference thereto.

Provisions to be applied to licences and fines under this Act.

## BARBED WIRE ACT, 1893.

[56 & 57 VICT. CH. 32.]

1. This Act may be cited for all purposes as the Barbed Wire Act, Short title. 1893.

2. In this Act—

Interpretation.

The expression “barbed wire” means any wire with spikes or jagged projections; and the expression “nuisance to a highway,” as applied to barbed wire, means barbed wire which may probably be injurious to persons or animals lawfully using such highway: . . .

In Ireland the expression “local authority” means the county surveyor,<sup>1</sup> or the city engineer, or the borough surveyor,<sup>1</sup> as the case may be, or some person duly appointed to act for any such surveyor or engineer.

3. (1) Where there is on any land adjoining a highway within the county or district of a local authority a fence made with barbed wire, or in or on which barbed wire has been placed, and such barbed wire is a nuisance to such highway, it shall be lawful for such local authority to serve notice in writing upon the occupier of such land requiring him within a time therein stated (not to be less than one month nor more than six months after the date of the notice) to abate such nuisance.<sup>2</sup>

Removal of barbed wire, where nuisance to highway.

(2) If on the expiration of the time stated in the notice the occupier shall have failed to comply therewith, it shall be lawful for the local authority to apply to a court of summary jurisdiction, and such court, if satisfied that the said barbed wire is a nuisance to such highway, may by summary order direct the occupier to abate such nuisance; and on his failure to comply with such order within a reasonable time the local authority may do whatever may be necessary in execution of the order, and recover in a summary manner the expenses incurred in connection therewith.

(3) In Ireland, sections one hundred and twelve, one hundred and fourteen, one hundred and fifteen, and two hundred and sixty-nine of the Public Health (Ir.) Act, 1878, shall apply, with the necessary modifications, where an order is made by a court of summary jurisdiction under this section, in like manner as if that order were an order under the said section one hundred and twelve.<sup>3</sup>

<sup>1</sup> It is submitted that the powers of the surveyor under this Act are not affected by s. 72 (2) of the Local Government (Ir.) Act, 1898, and do not therefore pass to the County Council.

<sup>2</sup> The erection of barbed wire on a fence adjoining the highway without the consent of the county surveyor is an alteration of a fence within s. 9 (3) of the Summary Jurisdiction Act, 1857, 14 & 15 Vict. c. 42, and probably also amounts to an offence of wilful obstruction of the free passage of persons or carriages under s. 13 (3) of the same statute (*Collen v. Ellis* (1893), 32 L.R.I. 491).

<sup>3</sup> Section 112 of the Public Health (Ir.) Act, 1878, gives power to a court of summary jurisdiction to make an order dealing with a nuisance; s. 114 enacts a penalty not exceeding 10s. per day for default, and not exceeding 20s. per day for knowingly and



Proceedings where local authority is occupier of the land.

Expenses of local authority.

4. Where the local authority are the occupiers of the land, proceedings under this Act may be taken by any ratepayer within the district of the local authority, and a notice to the local authority to abate the nuisance shall be deemed to be properly served if it is served upon the clerk of the local authority, and any ratepayer taking proceedings may do all acts and things which a local authority is empowered to do.

5. Any expenses incurred by a local authority in the execution of this Act shall be defrayed in like manner as the expenses of the local authority incurred in respect of any highways.

## POLICE (PROPERTY) ACT, 1897.

[60 & 61 VICT. CH. 30.]

Power to make orders with respect to property in possession of police.

1. (1) Where any property has come into the possession of the police in connection with any criminal charge . . . or under section one hundred and three of the Larceny Act, 1861 . . . a court of summary jurisdiction may, on application either by an officer of police or by a claimant of the property, make an order for the delivery of the property to the person appearing to the magistrate or court to be the owner thereof, or, if the owner cannot be ascertained, make such order with respect to the property as to the magistrate or court may seem meet.

(2) An order under this section shall not affect the right of any person to take within six months from the date of the order legal proceedings against any person in possession of property delivered by virtue of the order for the recovery of the property, but on the expiration of those six months the right shall cease.

Regulations with respect to unclaimed property in possession of police.

2. (1) A Secretary of State may make regulations for the disposal of property which has come into the possession of the police under the circumstances mentioned in this Act in cases where the owner of the property has not been ascertained and no order of a competent court has been made with respect thereto.

(2) The regulations may authorise the sale of any such property, and the application of the proceeds of any such sale, and the application of any money of which the owner cannot be ascertained, to all or any of the following purposes :—

- (a) The expenses of executing the regulations ;
- (b) the payment of reasonable compensation to any person by whom the property has been delivered into the possession of the police ;
- (c) the making of payments for the benefit of discharged prisoners or of persons dependent on prisoners or discharged prisoners ; or
- (d) such other purposes as the Secretary of State may consider expedient.

(3) Where the property is a perishable article or its custody involves unreasonable expense or inconvenience it may be sold at any time, but the proceeds of sale shall not be disposed of until they have remained in the possession of the police for a year. In any other case the property shall not be sold until it has remained in the possession of the police for a year.

(4) The regulations may also provide for the investment of money and for the audit of accounts.

(5) The regulations shall apply whether the property to which they relate has come into the possession of the police before or after the making of the regulations.

(6) The regulations shall be laid before Parliament as soon as may be after they are made.

Extent, repeal, and short title.

3. (2) In the application of this Act to Ireland, the Chief Secretary shall be substituted for the Secretary of State.

(4) This Act may be cited as the Police (Property) Act, 1897.

willfully acting contrary to an order of prohibition ; s. 115 gives a stay of liability on appeal ; s. 269 gives a right of appeal against any order or conviction (irrespective of amount) in manner thereby provided. See PUBLIC HEALTH, p. 694, and as to appeal, see p. 695.

## CHAFF-CUTTING MACHINES (ACCIDENTS) ACT, 1897.

[60 & 61 VICT. CH. 60.]

1. The feeding mouth or box of every chaff-cutting machine which is worked by any motive power other than manual labour shall, so far as is reasonably practicable and consistent with the due and efficient working of the machine, be of such construction or fitted with such apparatus or contrivance as to prevent the hand or arm of the person feeding the machine from being drawn between the rollers to the knives.

Feeding mouth to have fittings to secure safety.

2. The fly-wheel and knives of every chaff-cutting machine which is worked by any motive power other than manual labour shall, so far as is reasonably practicable and consistent with the due and efficient working of the machine, be kept sufficiently and securely fenced at all times during the working thereof.

Fly-wheel and knives to be securely fenced.

3. If any person permits to be worked any chaff-cutting machine belonging to him, or used for his service or benefit, which does not comply with the requirements of this Act,

Penalty for offences.

or if any foreman or other person in charge of any chaff-cutting machine, which does not comply with the requirements of this Act, works it or permits it to be worked, or if any person, during the working of any chaff-cutting machine, unnecessarily and without due cause removes any guard or thing provided in compliance with the requirements of this Act, every person so offending on any day shall be liable on summary conviction to a penalty not exceeding five pounds.

4. If in the prosecution of any person to whom the chaff-cutting machine belongs, or for whose service or benefit it is used, it is shown that the machine did not during the working thereof comply with the requirements of this Act, such person shall be deemed to have permitted the same unless he satisfy the court that he took all reasonable precautions to ensure compliance with the requirements of this Act.

In prosecutions, owner of machine to prove he has taken proper precautions.

5. Every person charged with an offence under this Act before any court of criminal jurisdiction, and the husband or wife of the person so charged, shall be competent but not compellable witnesses on every hearing at every stage of such charge.

Defendant and husband or wife to be competent witnesses.

6. Any constable acting upon the instruction of an officer of police not below the grade of inspector may at any time enter on any premises on which he has reasonable cause to believe that a chaff-cutting machine which does not comply with the requirements of this Act is being worked, for the purpose of inspecting such machine.

Constable may enter premises for inspecting machine.

8. This Act may be cited as the Chaff-Cutting Machines (Accidents) Act, 1897.

Short title.

## CHARITABLE LOAN SOCIETIES (IRELAND) ACT, 1900.

[63 & 64 VICT. CH. 25.]

1. Any promissory note current or unpaid on the first day of March one thousand eight hundred and ninety-nine, and purporting to have been made, in pursuance of the provisions of the Charitable Loan Societies (Ir.) Act, 1843 (in this Act referred to as the principal Act), to the treasurer or secretary of any loan society, shall not be invalid or incapable of being enforced in any court, or liable to stamp duty, by reason of any of the matters following:—

Cases in which charitable loans are not to be invalid or liable to stamp duty. 6 & 7 Vict. c. 91.

(a) The non-residence of the borrower, at the time of the making of the note, in the district within which the operations of such society ought to have been conducted :

- (b) The said note having been given as a renewal, in whole or in part, of, or in substitution for, any promissory note theretofore made by the borrower, or any person on his behalf, to the treasurer or secretary of such society :
- (c) A previous loan made by the said society to the borrower, or any person on his behalf or for his use, being unpaid in whole or in part at the time of the making of the loan in respect of which the said note was made :
- (d) The borrower having been at the time of the making of the loan surety for the repayment of any other loan made by the said society :
- (e) The acceptance by the said society, as surety for the repayment of any loan, of any person who was at the time of the making of the said loan a borrower from the said society :
- (f) The loan having been in the first instance for a sum exceeding ten pounds in contravention of section twenty-four of the principal Act ; or
- (g) Interest or fines in excess of the amount authorised by the principal Act having been charged against, or paid by, the borrower on account of the indebtedness in respect of which the said note was made.

Provided that every such note shall, subject to the provisions of this Act, only stand as a security for, and there shall only be recoverable thereon, such sum as would have been due thereon had such excess not been charged, and had due credit been given as against such sum for all moneys paid by, or on behalf of, the persons liable thereon, in discharge in whole or in part of such excess.

Provisions with respect to taking account.

2. (1) The treasurer of a loan society shall prepare and provide an account setting forth the particulars of the amount sought to be recovered in respect of any note under the principal Act, and that account shall be issued together with the summons for such recovery.

(2) In ascertaining the amount due in respect of any such note an account shall not be carried back for a period exceeding six years from the date of the note, and where the account is so carried back, the loan secured by the note current at the commencement of such period, or if no note was then current, by the note which last before that date became due, shall be deemed and taken to be the first loan made by the said society to the borrower.

(3) The court may, if it thinks fit, order that the amount found due on such account shall be paid by such instalments extending over such period (not exceeding three years) as the court may think fit.

(4) In taking such account there shall be no periodical rests and no sums shall be allowed in respect of compound interest.

(5) If, on taking such account, any balance is found due by the loan society, judgment for the amount of such balance shall be given in favour of the defendant.

As to forms and costs. 14 & 15 Vict. c. 93.

3. (1) In any proceedings under the principal Act the forms in the schedules to the Petty Sessions (Ir.) Act, 1851, shall, wherever applicable, be used instead of the forms in the schedules to the principal Act, and costs, which shall be in the discretion of the court, may be awarded to the amount mentioned in section twenty-two of the said Act of 1851.

(2) Out of any sum awarded in respect of costs under the foregoing enactment, the court may award such sum as it thinks fit, as remuneration for taking any account under the principal Act as amended by this Act, to be paid to such person as the court may appoint to take the account.

Power for loan societies to compromise debts.

4. A loan society acting under the principal Act may, if they think fit, accept any composition on any security, real or personal, for any debt, and may allow any time for payment for any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle, any debt, account, claim, or thing whatever, arising under the principal Act or this Act, and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things, as to them seem expedient without being



responsible for any loss occasioned by any act or thing so done by them in good faith.

5. So much of section fifty-eight of the principal Act as enables a Justice of the Peace who may be a trustee or other unpaid officer or member of a loan society to adjudicate in the matters therein mentioned shall not apply to any proceedings instituted under or by virtue of this Act. Part of 6 & 7 Vict. c. 91, s. 58, not to apply to proceedings under this Act.

6. The expression "fines" in this Act shall include any sums charged for stamps, fees, or costs in respect of summonses under the principal Act which were not in fact issued, or documents purporting to be such summonses. Definition.

7. This Act may be cited as the Charitable Loan Societies (Ir.) Act, 1900, and may be cited with the principal Act. Short title and mode of citation.

## FACTORY AND WORKSHOP ACT, 1901.

[1 EDW. 7, CH. 22.]<sup>1</sup>

### PART I.

#### HEALTH AND SAFETY.

##### (i.) *Health.*

1. (1) The following provisions shall apply to every factory as defined by this Act,<sup>2</sup> except a domestic factory:<sup>3</sup>—(a) It must be kept in a cleanly state; (b) it must be kept free from effluvia arising from any drain, water-closet, earth-closet, privy, urinal, or other nuisance; (c) it must not be so overcrowded<sup>4</sup> while work is carried on therein as to be dangerous or injurious to the health of the persons employed therein; (d) it must be ventilated in such a manner as to render harmless, so far as is practicable, all the gases, vapours, dust, or other impurities generated in the course of the manufacturing process or handicraft carried on therein, that may be injurious to health. Sanitary condition of factory.

(2) The provisions of *section ninety-one of the Public Health Act, 1875*,<sup>5</sup> with respect to a factory, workshop, or workplace not kept in a cleanly state, or not ventilated, or overcrowded, shall not apply to any factory to which this section applies.

(3) For the purpose of securing the observance of the requirements in this section as to cleanliness in factories, all the inside walls of the rooms of a factory, and all the ceilings or tops of those rooms (whether those walls, ceilings, or tops are plastered or not), and all the passages and staircases of a factory, if they have not been painted with oil or varnished once at least within seven years, shall (subject to any special exceptions made in pursuance of this section) be limewashed once at least within every fourteen months, to date from the time when they were last limewashed; and if they have been so painted or varnished shall be washed with hot water and soap once at least within every fourteen months, to date from the time when they were last washed.

(4) Where it appears to the Secretary of State that in any class of factories, or parts thereof, the provisions of this section with respect to limewashing or washing are not required for the purpose of securing therein the observance of the requirements of this Act as to cleanliness, or are by reason of special circumstances inapplicable, he may, if he thinks fit, by Special Order grant to that class of factories, or parts thereof, a special exception that the said provisions shall not apply thereto.

(5) A factory in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.<sup>6</sup>

<sup>1</sup> As to the application of this Act to laundries, see the Factory and Workshop Act, 1907.

<sup>2</sup> See s. 149.

<sup>3</sup> For definition of which see s. 115.

<sup>4</sup> Overcrowding is defined by s. 3.

<sup>5</sup> For words in italics, read "s. 107 of the Public Health (Ir.) Act, 1878." See s. 160 (13).

<sup>6</sup> For penalty, see s. 135.

Sanitary  
condition of  
workshops and  
workplaces.  
38 & 39 Vict.  
c. 55.

2. (1) The provisions of *section ninety-one of the Public Health Act, 1875*,<sup>1</sup> with respect to a factory, workshop, or workplace, not kept in a cleanly state, or not ventilated, or overcrowded,<sup>2</sup> shall apply to every factory, workshop,<sup>3</sup> and workplace,<sup>4</sup> except any factory to which the last preceding section applies.

(2) Every workshop<sup>3</sup> and every workplace within the meaning of the *Public Health Act, 1875*,<sup>1</sup> must be kept free from effluvia arising from any drain, water-closet, earth-closet, privy, urinal, or other nuisance, and unless so kept shall be deemed to be a nuisance liable to be dealt with summarily under the law relating to public health.

(3) Where on the certificate of a medical officer of health or inspector of nuisances it appears to any district council<sup>5</sup> that the limewashing, cleansing, or purifying, of any such workshop, or of any part thereof, is necessary for the health of the persons employed therein, the council shall give notice in writing to the owner<sup>3</sup> or occupier of the workshop to limewash, cleanse, or purify the same, or part thereof, as the case may require.

(4) If the person to whom notice is so given fails to comply therewith within the time therein specified, he shall be liable to a fine not exceeding ten shillings for every day during which he continues to make default, and the council may, if they think fit, cause the workshop or part to be limewashed, cleansed, or purified, and may recover in a summary manner the expenses incurred by them in so doing from the person in default.

(5) This section shall not apply to any workshop or workplace to which the *Public Health (London) Act, 1891*, applies.

3. (1) A factory shall for the purposes of this Act, and a workshop shall for the purposes of the law relating to public health, be deemed to be so overcrowded as to be dangerous or injurious to the health of the persons employed therein, if the number of cubic feet of space in any room therein bears to the number of persons employed at one time in the room a proportion less than two hundred and fifty, or, during any period of overtime, four hundred, cubic feet of space to every person.

(2) Provided that the Secretary of State may, by Special Order, modify this proportion for any period during which artificial light other than electric light is employed for illuminating purposes, and may, by like order, as regards any particular manufacturing process or handicraft, substitute for the said figures of two hundred and fifty and four hundred respectively any higher figures, and thereupon this section shall have effect as modified by the order.

(3) Where a workshop or workplace, not being a domestic workshop, is occupied by day as a workshop and by night as a sleeping apartment, the Secretary of State may by Special Order<sup>6</sup> modify the proportion of cubic feet of space prescribed by this section, and substitute therefor any higher figures, and thereupon this section shall have effect as modified by the order.

(4) There shall be affixed in every factory and workshop a notice specifying the number of persons who may be employed in each room of the factory or workshop by virtue of this section.

4. (1) If the Secretary of State is satisfied that the provisions of this Act, or of the law relating to public health in so far as it affects factories, workshops, and workplaces, have not been carried out by any district council, he may, by order, authorise an inspector to take, during such period as may be mentioned in the order, such steps as appear necessary or proper for enforcing those provisions.

54 & 55 Vict.  
c. 76.

Overcrowding  
of factory  
or workshop.

Power of  
Secretary of  
State to act  
in default of  
local authority.

<sup>1</sup> For words in italics, read "*s. 107 of the Public Health (Ir.) Act, 1878*" (*s. 160 (13)*).

<sup>2</sup> See *s. 3*.

<sup>3</sup> Defined by *s. 149*.

<sup>4</sup> Not defined. "I think that a workplace must be a place where some work is being perpetually or permanently done. I do not say that the mere presence of workmen in repairing a private house would make it a workplace" (*per* Channell, J., in *Bennett v. Harding* (1900), 2 Q.B. 397, at p. 401).

<sup>5</sup> See *s. 154*.

<sup>6</sup> Order of 17th January 1902 prescribes 400 cubic feet.

(2) An inspector authorised in pursuance of this section shall, for the purpose of his duties thereunder, have the same powers with respect to workshops and workplaces as he has with respect to factories, and he may, for that purpose, take the like proceedings for enforcing the provisions of this Act or of the law relating to public health, or for punishing or remedying any default as might be taken by the district council; and he shall be entitled to recover from the district council all such expenses in and about any proceedings as he may incur, and as are not recovered from any other person.

5. (1) Where it appears to an inspector that any act, neglect, or default, in relation to any drain, water-closet, earth-closet, privy, ashpit, water-supply, nuisance, or other matter in a factory or workshop, is punishable or remediable under the law relating to public health, but not under this Act, that inspector shall give notice in writing of the act, neglect, or default, to the district council in whose district the factory or workshop is situate, and it shall be the duty of the district council to make such inquiry into the subject of the notice, and take such action thereon, as seems to that council proper for the purpose of enforcing the law, and to inform the inspector of the proceedings taken in consequence of the notice.<sup>1</sup>

Powers of inspector as to sanitary defects in factory or workshop remediable by sanitary authority.

(2) An inspector may, for the purposes of this section, take with him into a factory or a workshop a medical officer of health, inspector of nuisances, or other officer of the district council.

(3) Where notice of an act, neglect, or default, is given by an inspector under this section to a district council, and proceedings are not taken within one month for punishing or remedying the act, neglect, or default, the inspector may take the like proceedings for punishing or remedying the same as the district council might have taken, and shall be entitled to recover from the district council all such expenses in and about the proceedings as the inspector incurs and as are not recovered from any other person, and have not been incurred in any unsuccessful proceedings.

6. (1) In every factory and workshop<sup>2</sup> adequate measures must be taken for securing and maintaining a reasonable temperature in each room in which any person is employed, but the measures so taken must not interfere with the purity of the air of any room in which any person is employed.

Temperature in factories and workshops.

(2) The Secretary of State may, by Special Order, direct with respect to any class of factories or workshops that thermometers be provided, maintained, and kept in working order, in such place and position as may be specified in the order.

(3) A factory or workshop in which there is any contravention of this section, or of any order under this section, shall be deemed not to be kept in conformity with this Act.<sup>3</sup>

7. (1) In every room in any factory or workshop<sup>4</sup> sufficient means of ventilation shall be provided, and sufficient ventilation shall be maintained.

Ventilation.

(2) The Secretary of State may, by Special Order, prescribe a standard of sufficient ventilation for any class of factories or workshops, and that standard shall be observed in all factories and workshops of that class, and an order made under this power may supersede any provision of this Act or order of the Secretary of State with respect to ventilation in cotton cloth factories.

(3) A factory in which there is a contravention of the provisions of

<sup>1</sup> Where an inspector, acting under this section, gives notice to the factory owner requiring him to erect certain specified sanitary conveniences, and on his neglect to comply with the notice summoned him before justices: *Held*, that the justices had no jurisdiction to inquire into the suitability or sufficiency of the sanitary accommodation existing at the factory, or required by the notice of the inspector; in such case, apparently, the owner's remedy is by appeal to quarter sessions under s. 7 of the Public Health Acts Amendment Act, 1890, where applied (*Tracey v. Pretty* (1901), 1 K.B. 444).

<sup>2</sup> Except men's workshops (s. 157 (1)).

<sup>3</sup> For penalty, see s. 135.

<sup>4</sup> Other than domestic factories or workshops (see s. 111 (4)), or men's workshops (see s. 157 (1)).



this section shall be deemed not to be kept in conformity with this Act, and a workshop in which there is a contravention of the provisions of this section shall be deemed to be a nuisance liable to be dealt with summarily under the law relating to public health.

(4) If the occupier of a factory or workshop (including a cotton cloth factory in which humidity of the atmosphere is artificially produced) alleges that the whole or part of the expenses of providing the means of ventilation required by this Act ought to be borne by the owner, he may by complaint apply to a court of summary jurisdiction, and that court may make such order concerning the expenses or their apportionment as appears to the court to be just and equitable under the circumstances of the case, regard being had to the terms of any contract between the parties.<sup>1</sup>

Drainage  
of floors.

8. (1) In every factory or workshop<sup>2</sup> or part thereof in which any process is carried on which renders the floor liable to be wet to such an extent that the wet is capable of being removed by drainage, adequate means shall be provided for draining off the wet.

(2) A factory in which there is a contravention of the provisions of this section shall be deemed not to be kept in conformity with this Act,<sup>3</sup> and a workshop in which there is a contravention of the provisions of this section shall be deemed to be a nuisance liable to be dealt with summarily under the law relating to public health.

Sanitary con-  
veniences in  
factories and  
workshops.

9. (1) Every factory and workshop<sup>4</sup> must be provided with sufficient and suitable accommodation in the way of sanitary conveniences, regard being had to the number of persons employed in or in attendance at the factory or workshop, and also where persons of both sexes are or are intended to be employed or in attendance, with proper separate accommodation for persons of each sex.

(2) The Secretary of State shall, by Special Order, determine what is sufficient and suitable accommodation within the meaning of this section.

(3) A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.<sup>5</sup>

(4) This section does not apply to the administrative county of London, or to any place where section twenty-two of the Public Health Acts Amendment Act, 1890, is in force.

#### (ii.) *Safety.*

Fencing of  
machinery.

10. (1) With respect to the fencing of machinery in a factory<sup>6</sup> the following provisions shall have effect:—(a) Every hoist or teagle,<sup>6</sup> and every fly-wheel directly connected with the steam or water or other mechanical power, whether in the engine-house or not, and every part of any water wheel or engine worked by any such power, must be securely<sup>7</sup>

<sup>1</sup> A court of summary jurisdiction has exclusive jurisdiction under this subsection; and in the case of a lease providing that either lessor or lessee shall pay all outgoing the court may still make such order as seems to it just (*Stuckey v. Hook* (1906), 2 K.B. 20, decided upon s. 101 (2) (8); see also *Horner v. Franklin* (1905), 1 K.B. 479, and *Month v. Arnold* (1902), 1 K.B. 761, both decided upon s. 14 (4)).

<sup>2</sup> Other than domestic factories or workshops (see s. 111 (4)), or men's workshops (see s. 157 (1)).

<sup>3</sup> For penalty, see s. 135.

<sup>4</sup> Except men's workshops (s. 157 (1)).

<sup>5</sup> Machinery used for crushing mortar was erected on a piece of ground where the respondents were erecting a new sheet mill. It was within the close, curtilage, and precincts of the respondents' factory, but was used solely by the respondents for a purpose other than the manufacturing process or handicraft carried on in their factory. An accident having occurred owing to the machinery in question being unfenced, the respondents were summoned for not having same securely fenced. The justices being of opinion that the piece of ground did not form part of the respondents' factory, and was not otherwise a "factory," dismissed the summons. *Held*, that on the facts the justices were right (*Lewis v. Gilbertson* (1904), 20 Cox 677).

<sup>6</sup> Including a hoist or teagle which is not connected with mechanical power (*Jackson v. A. G. Mulliner Motor Body Co., Ltd.* (1911), 1 K.B. 546).

<sup>7</sup> This word is to be taken in its literal sense. It is not enough that the fencing was such as is generally regarded as sufficient (*Schofield v. Schunk* (1855), 24 L.T. 253).

fenced ;<sup>1</sup> and (b) every wheel-race not otherwise secured must be securely fenced close to the edge of the wheel-race ; and (c) all dangerous<sup>2</sup> parts of the machinery,<sup>3</sup> and every part of the mill gearing, must either be securely fenced, or be in such position or of such construction as to be equally safe to every person employed or working in the factory as it would be if it were securely fenced ; and (d) all fencing must be constantly maintained in an efficient state while the parts required to be fenced are in motion or use, except where they are under repair or under examination in connection with repair, or are necessarily exposed for the purpose of cleaning or lubricating or for altering the gearing or arrangements of the parts of the machine.<sup>4</sup>

(2) A factory in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.<sup>5</sup>

11. (1) Every steam boiler used for generating steam in a factory or workshop, or in any place to which any of the provisions of this Act apply, must, whether separate or one of a range—(a) have attached to it a proper safety valve and a proper steam gauge and water gauge to show the pressure of steam and the height of water in the boiler ; and (b) be examined thoroughly by a competent person at least once in every fourteen months. Steam boilers.

(2) Every such boiler, safety valve, steam gauge, and water gauge must be maintained in proper condition.

(3) A report of the result of every such examination in the prescribed form, containing the prescribed particulars, shall within fourteen days be entered into or attached to the general register of the factory or workshop, and the report shall be signed by the person making the examination, and, if that person is an inspector of a boiler-inspecting company or association, by the chief engineer of the company or association.

(4) A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.<sup>6</sup>

(5) This section shall not apply to the boiler of any locomotive which belongs to and is used by any railway company, or to any boiler belonging to or exclusively used in the service of His Majesty.

(6) For the purposes of this section, the whole of a tenement factory or workshop shall be deemed to be one factory or workshop, and the owner shall be substituted for the occupier, and he shall register the report referred to in this section.

12. (1) In a factory erected on or after the first day of January one thousand eight hundred and ninety-six, the traversing carriage of any self-acting machine must not be allowed to run out within a distance of eighteen inches from any fixed structure not being part of the machine, if the space over which it runs out is a space over which any person is liable to pass, whether in the course of his employment<sup>7</sup> or otherwise. Regulations as to self-acting machines.

<sup>1</sup> In *Coe v. Platt* (1852), 7 Ex. 923, it was held upon s. 21 of the 7 & 8 Vict. c. 15, that machinery need be fenced only while in motion for a manufacturing purpose. That section, however, provided that the fencing should not be removed "while the parts required to be fenced are in motion by the action of the steam-engine, waterwheel, or other mechanical power for any mechanical process." Consequently *Coe v. Platt* is not now in point.

The machinery must be securely fenced whether it is or is not dangerous if left unfenced (*Doel v. Sheppard* (1856), 5 E. & B. 856).

<sup>2</sup> That is, "if, in the ordinary course of human affairs, danger may be reasonably anticipated from the use of it without protection" (*Hindle v. Birtwhistle* (1897), 1 Q.B. 192, at p. 195).

<sup>3</sup> That is to say, of any machinery in the factory (*Redgrave v. Lloyd* (1895), 1 Q.B. 876).

<sup>4</sup> "The extent of the security which must be afforded by the fencing is different [under clauses (c) and (d)]. Whilst the machinery is not under repair, or such examination or exposure as is mentioned in clause (d), the obligation is to maintain it in an efficient state ; or, in other words, in such a state as to be capable of effecting the intended object of securing the safety of the workers. During the excepted periods of repair, examination, or exposure, the obligation is under (c), and . . . is to fence so as to ensure safety so far as is reasonably practicable, having regard to the exigencies of such repair, examination, or exposure (*Scott v. Brookfield Linen Co.* (1910), 2 I.R. 509, at p. 520, *per* Palles, C.B.).

<sup>5</sup> As to the penalty, see s. 135. <sup>6</sup> For the penalty, see s. 135 (1). <sup>7</sup> See s. 152.

Provided that nothing in this subsection shall prevent any portion of the traversing carriage of any self-acting cotton spinning or woollen spinning machine being allowed to run out within a distance of twelve inches from any part of the head stock of another self-acting cotton spinning or woollen spinning machine.

(2) A person employed in a factory must not be allowed<sup>1</sup> to be in the space between the fixed and the traversing parts of a self-acting machine unless the machine is stopped with the traversing part on the outward run, but for the purpose of this provision the space in front of a self-acting machine shall not be included in the space aforesaid.

(3) A woman,<sup>2</sup> young person,<sup>2</sup> or child,<sup>2</sup> must not be allowed to work between the fixed and traversing part of any self-acting machine while the machine is in motion by the action of steam, water, or other mechanical power.

(4) A factory in which a traversing carriage is allowed to run out in contravention of this section shall be deemed not to be kept in conformity with this Act, and any person allowed to be in the space aforesaid or to work in contravention of this section shall be deemed to be employed contrary to the provisions of this Act.<sup>3</sup>

Restrictions on  
cleaning when  
machinery is  
in motion.

13. (1) A child<sup>2</sup> must not be allowed to clean<sup>4</sup> in any factory:—(a) any part<sup>5</sup> of any machinery; or (b) any place under any machinery other than overhead mill-gearing, while the machinery is in motion by the aid of steam, water, or other mechanical power.

(2) A young person<sup>2</sup> must not be allowed to clean any dangerous part of the machinery in a factory while the machinery is in motion by the aid of steam, water, or other mechanical power; and for this purpose such parts of the machinery shall, unless the contrary is proved, be presumed to be dangerous as are so notified by an inspector to the occupier of the factory.

(3) A woman<sup>2</sup> or young person<sup>2</sup> must not be allowed to clean such part of the machinery in a factory as is mill-gearing while the machinery is in motion for the purpose of propelling any part of the manufacturing machinery.

(4) A woman,<sup>2</sup> young person,<sup>2</sup> or child,<sup>2</sup> allowed to clean in contravention of this section, shall be deemed to be employed contrary to the provisions of this Act.<sup>3</sup>

Provision of  
means of  
escape in  
case of fire.

14. (1) Every factory<sup>6</sup> of which the construction was not commenced on or before the first day of January one thousand eight hundred and ninety-two, and in which more than forty persons are employed, and every workshop of which the construction was not commenced before the first day of January one thousand eight hundred and ninety-six, and in which more than forty persons are employed, must be furnished with a certificate from the district council<sup>7</sup> of the district in which the factory or workshop is situate that the factory or workshop is provided with such means of escape in case of fire for the persons employed therein as can reasonably be

<sup>1</sup> A workman employed in a factory was ordered, when a self-acting machine was stopped with the traversing portion on the outward run, to clean a part of the machine, for which purpose he had to go into the space between the fixed and traversing portions of the machine. While he was in the space the man who had given the order, thinking that he had left the space, started the machine and the workman was killed. *Held*, that the occupier of the factory, who was responsible for the order given to the workman, could not be convicted of having "allowed" the workman to be in the space when the machine was restarted (*Crabtree v. Ferns Shipping Co., Ltd.* (1902), 18 T.L.R. 91). The word "allowed" implied a knowledge of the boy's presence (*ib.*).

<sup>2</sup> Defined by s. 156.

<sup>3</sup> For penalties, see ss. 137, 138.

<sup>4</sup> This expression includes such operations as the removal of fluff, which is, and because it is, saleable (*Taylor v. Dawson* (1910), 103 L.T. 508).

<sup>5</sup> Whether in motion or not (*Pearson v. Belgian Mills Co.* (1896), 1 Q.B. 244).

<sup>6</sup> Including each of two buildings connected together by a bridge so as to form one factory, though in one of them less than forty persons are employed (*London Co. Council v. Tubbs* (1903), 1 L.G.R. 746). As to the application of the section to a building of which different flats are held by different tenants, see *Re London Co. Council v. Lewis* (1900), 82 L.T. 195; *London Co. Council v. Brass* (1901), 17 T.L.R. 504; *Toller v. Spiers & Pond* (1903), 1 Ch. 862; *Brass v. London Co. Council* (1904), 2 K.B. 336.

<sup>7</sup> This expression includes the council of a county borough (s. 154).



required under the circumstances of each case, and if the factory or workshop is not so furnished it shall be deemed not to be kept in conformity with this Act; and it shall be the duty of the council to examine every such factory and workshop, and, on being satisfied that the factory or workshop is so provided, to give such a certificate as aforesaid. The certificate must specify in detail the means of escape so provided.

(2) With respect to all factories<sup>1</sup> and workshops to which the foregoing provisions of this section do not apply, and in which more than forty persons are employed, it shall be the duty of the district council<sup>2</sup> of every district from time to time to ascertain whether all such factories and workshops within their district are provided with such means of escape as aforesaid, and, in the case of any factory or workshop which is not so provided, to serve on the owner of the factory or workshop a notice in writing specifying the measures necessary for providing such means of escape as aforesaid, and requiring him to carry them out before a specified date, and thereupon the owner shall, notwithstanding any agreement with the occupier, have power to take such steps as are necessary for complying with the requirements, and unless the requirements are complied with, the owner shall be liable to a fine not exceeding one pound for every day that the non-compliance continues.

(3) In case of a difference of opinion between the owner of the factory or workshop and the council under the last foregoing subsection, the difference shall, on the application of either party, to be made within one month after the time when the difference arises, be referred to arbitration, and thereupon the provisions of the First Schedule to this Act shall have effect, and the award on the arbitration shall be binding on the parties thereto, and the notice of the council shall be discharged, amended, or confirmed in accordance with the award.

(4) If the owner alleges that the occupier of the factory or workshop ought to bear or contribute to the expenses of complying with the requirement, he may apply to the county court<sup>3</sup> having jurisdiction where the factory or workshop is situate, and thereupon the county court, after hearing the occupier, may make such order as appears to the court just and equitable under all the circumstances of the case.<sup>4</sup>

(5) For the purpose of enforcing the foregoing provisions of this section, an inspector may give the like notice and take the like proceedings as under the foregoing provisions of this Act with respect to matters punishable or remediable under the law relating to public health but not under this Act, and those provisions shall apply accordingly.

(6) The means of escape in case of fire provided in any factory or workshop shall be maintained in good condition and free from obstruction, and if it is not so maintained the factory or workshop shall be deemed not to be kept in conformity with this Act.<sup>5</sup>

(7) For the purposes of this section the whole of a tenement factory<sup>6</sup> or workshop<sup>6</sup> shall be deemed to be one factory or workshop, and the owner shall be substituted for the occupier.

(8) All expenses incurred by a district council<sup>2</sup> in the execution of this section shall be defrayed:—(a) In the case of an urban district council, as part of their expenses of the general execution of the *Public Health Act, 1875*; <sup>7</sup> and (b) in the case of a rural district council, as special expenses incurred in the execution of the *Public Health Act, 1875*; <sup>7</sup> and those expenses shall be charged to the contributory place in which the factory or workshop is situate.

15. Every district council<sup>2</sup> shall, in addition to any powers which they possess with reference to the prevention of fire, have power to make

Bye-laws for means of escape from fire.

<sup>1</sup> See n.<sup>6</sup>, p. 1102.

<sup>2</sup> This expression includes the council of a county borough (s. 154).

<sup>3</sup> He cannot take proceedings in any other court whatever (*Horner v. Franklin* (1905), 1 K.B. 479).

<sup>4</sup> The county court judge may exercise his jurisdiction under the section notwithstanding any covenant by the occupier to pay all outgoing (s. 154) (*Monk v. Arnold* (1902), 1 K.B. 761).

<sup>5</sup> For the penalty, see s. 135.

<sup>6</sup> For definitions, see s. 149, and notes thereon.

<sup>7</sup> For words in italics, read "Public Health (Ir.) Act, 1878" (s. 160 (13)).

bye-laws providing for means of escape from fire in the case of any factory<sup>1</sup> or workshop, and *sections one hundred and eighty-two to one hundred and eighty-six of the Public Health Act, 1875*, shall apply to any bye-laws so made.<sup>2</sup>

Doors of factory or workshop to open from inside.

16. (1) While any person employed in a factory<sup>1</sup> or workshop is within the factory or workshop for the purpose of employment or meals, the doors of the factory or workshop, and of any room therein in which any such person is, must not be locked or bolted or fastened in such a manner that they cannot be easily and immediately opened from the inside.

(2) In every factory or workshop the construction of which was not commenced before the first day of January one thousand eight hundred and ninety-six, the doors of each room in which more persons than ten are employed, shall, except in the case of sliding doors, be constructed so as to open outwards.

(3) A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.<sup>3</sup>

Power to make order as to dangerous machine.

17. (1) A court of summary jurisdiction<sup>4</sup> may, on complaint by an inspector, and on being satisfied that any part of the ways, works, machinery, or plant used in a factory<sup>1</sup> or workshop (including a steam boiler used for generating steam), is in such a condition that it cannot be used without danger to life or limb, by order, prohibit its use, or, if it is capable of repair or alteration, prohibit its use until it is duly repaired or altered.

(2) Where a complaint has been made under this section, the court or a justice may, on application *ex parte* by the inspector, and on receiving evidence that the use of any such part of the ways, works, machinery, or plant, involves imminent danger to life, make an interim order prohibiting, either absolutely or subject to conditions, the use thereof until the earliest opportunity for hearing and determining the complaint.

(3) If there is any contravention of an order under this section, the person entitled to control the use of the part of the ways, works, machinery, or plant, shall be liable to a fine not exceeding forty shillings a day during the contravention.

Power to make order as to unhealthy or dangerous factory or workshop.

18. (1) A court of summary jurisdiction<sup>4</sup> may, on complaint by an inspector, and on being satisfied that any place used as a factory<sup>1</sup> or workshop or as part of a factory or workshop is in such a condition that any manufacturing process or handicraft carried on therein cannot be so carried on without danger to health or to life or limb, by order, prohibit the use of that place for the purpose of that process or handicraft, until such works have been executed as are in the opinion of the court necessary to remove the danger.

(2) Provided that proceedings shall not be taken under this section in cases where proceedings might be taken by or at the instance of any district council under the provisions of the law relating to public health, unless the inspector is authorised to take proceedings under the foregoing provisions of this Act with respect to the enforcement of sanitary provisions in workshops, or with respect to matters punishable or remediable under the law relating to public health but not under this Act.

(3) If there is any contravention of an order under this section, the occupier of the place shall be liable to a fine not exceeding forty shillings a day during the contravention.

### (iii.) Accidents.

[Section 19, as to notice of accidents, repealed by Notice of Accidents Act, 6 Edw. 7, c. 53, s. 7 (1) and sch., which Act contains substituted provisions.]

Investigation of and report on accidents by certifying surgeon.

20. (1) Where a certifying surgeon receives in pursuance of this Act notice of an accident in a factory or workshop, he shall, with the least possible delay, proceed to the factory or workshop, and make a full investigation as to the nature and cause of the death or injury caused

<sup>1</sup> Excluding men's workshops (s. 157 (1)).

<sup>2</sup> For words in italics, read "219-223 of the Public Health (Ir.) Act, 1878" (s. 160 (13)).

<sup>3</sup> For the penalty, see s. 135 (1).

<sup>4</sup> As to which see s. 160 (8).

by that accident, and within the next twenty-four hours send to the inspector a report thereof.

(2) The certifying surgeon, for the purpose only of an investigation under this section, shall have the same powers as an inspector,<sup>1</sup> and shall also have power to enter any room in a building to which the person killed or injured has been removed.

21. (1) Where a death has occurred by accident in a factory or workshop,<sup>2</sup> the coroner shall forthwith advise the district inspector<sup>3</sup> of the time and place of holding the inquest, and, unless an inspector or some person on behalf of the Secretary of State is present to watch the proceedings, the coroner shall adjourn the inquest, and shall, at least four days before holding the adjourned inquest, send to the inspector notice in writing of the time and place of holding the adjourned inquest.

Inquest in case of death by accident in factory or workshop.

Provided that, if the accident has not occasioned the death of more than one person, and the coroner has sent to the inspector notice of the time and place of holding the inquest at such time as to reach the inspector not less than twenty-four hours before the time of holding the inquest, it shall not be imperative on him to adjourn the inquest in pursuance of this section, if the majority of the jury think it unnecessary so to adjourn.

(2) Any relative of any person whose death may have been caused by the accident with respect to which the inquest is being held, and any inspector, and the occupier of the factory or workshop in which the accident occurred, and any person appointed by the order in writing of the majority of the workpeople employed in the factory or workshop, shall be at liberty to attend at the inquest, and, either in person or by his counsel, solicitor, or agent, to examine any witness, subject nevertheless to the order of the coroner.

22. Where it appears to the Secretary of State that a formal investigation of any accident occurring in a factory or workshop and its causes and circumstances is expedient, the Secretary of State may direct that such an investigation be held, and with respect to any such investigation the following provisions shall have effect:

Power to direct formal investigation of accidents.

- (1) The Secretary of State may appoint a competent person to hold the investigation, and may appoint any person or persons possessing legal or special knowledge to act as assessor or assessors in holding the investigation:
- (2) The person or persons so appointed (hereinafter called "the court") shall hold the investigation in open court in such manner and under such conditions as the court may think most effectual for ascertaining the causes and circumstances of the accident, and enabling the court to make the report in this section mentioned:
- (3) The court shall have for the purpose of the investigation all the powers of a court of summary jurisdiction when acting as a court in hearing informations for offences against this Act, and all the powers of an inspector under this Act, and in addition the following powers, namely:—(a) Power to enter and inspect any place or building the entry or inspection whereof appears to the court requisite for the said purpose; (b) power, by summons signed by the court, to require the attendance of all such persons as it thinks fit to call before it and examine for the said purpose, and for that purpose to require answers or returns to such inquiries as it thinks fit to make; (c) power to require the production of all books, papers, and documents which it considers important for the said purpose; (d) power to administer an oath and require any person examined to make and sign a declaration of the truth of the statements made by him in his examination:
- (4) Persons attending as witnesses before the court shall be allowed such expenses as would be allowed to witnesses attending before

<sup>1</sup> As to which see s. 118 (8).

<sup>2</sup> Other than in a men's workshop (s. 157 (1)).

<sup>3</sup> Appointed under the Act (see s. 118 (8)).



a court of record; and in case of dispute as to the amount to be allowed, the same shall be referred by the court to a master of one of His Majesty's superior courts, who on request, signed by the court, shall ascertain and certify the proper amount of the expenses:

- (5) The court holding an investigation under this section shall make a report to the Secretary of State, stating the causes of the accident and its circumstances, and adding any observations which the court thinks right to make:
- (6) All expenses incurred in and about an investigation under this section (including the remuneration of any person appointed to act as assessor) shall be deemed to be part of the expenses of the Secretary of State in the execution of this Act:
- (7) Any person who without reasonable excuse (proof whereof shall lie on him) either fails, after having had the expenses (if any) to which he is entitled tendered to him, to comply with any summons or requisition of a court holding an investigation under this section, or prevents or impedes the court in the execution of its duty, shall for every such offence be liable to a fine not exceeding ten pounds, and in the case of a failure to comply with a requisition for making any return or producing any document shall be liable to a fine not exceeding ten pounds for every day that such failure continues.

The Secretary of State may cause any special report of an inspector or any report of a court under this Part of this Act to be made public at such time and in such manner as he may think fit.

## PART II.

### EMPLOYMENT.

#### (i.) *Hours and Holidays.*

**23.** A woman, young person, or child shall not be employed in a factory or workshop<sup>1</sup> except during the period of employment hereinafter mentioned.<sup>2</sup>

**24.** With respect to the employment of women and young persons in a textile factory,<sup>3</sup> the following regulations shall be observed:

- (1) The period of employment, except on Saturday, shall either begin at six o'clock in the morning and end at six o'clock in the evening, or begin at seven o'clock in the morning and end at seven o'clock in the evening;
- (2) The period of employment on Saturday shall begin either at six o'clock or at seven o'clock in the morning;
- (3) Where the period of employment on Saturday begins at six o'clock in the morning, that period—(a) If not less than one hour is allowed for meals, shall end at noon as regards employment

<sup>1</sup> Other than a domestic factory or domestic workshop (s. III (1)).

<sup>2</sup> For penalties, see ss. 137, 138. As to what is employment in the case of women, young persons, and children, see s. 152 (1).

Two women, weavers in a linen factory, twenty minutes before 6 A.M. (the statutory hour for beginning work), voluntarily dusted and otherwise regulated their spinning looms for their own satisfaction and comfort in accordance with a practice known to the occupiers of the factory. Adequate provision for the cleaning and regulation of the looms by other persons had been made by the occupiers of the factory. The occupiers being charged with a contravention of sections 23 and 24 of the Factory and Workshop Act, 1901: *Held*, that the women had not been employed before the statutory hour (*Paterson v. Duke* (1901), 6 F. (Just. Cas.) 53. See also *Robinson v. Melville* (1890), 17 Pettie (Just. Cas.), another Scotch decision to the like effect. But in *Prior v. Slaithwaite Spinning Co.* (1898), 1 Q.B. 1898, where a young person was found oiling machinery during a statutory meal-time contrary to s. 17 (2) of the repealed statute 41 & 42 Vict. c. 16 (which prohibited his employment at such time), it was held that he was "employed," though he acted against orders and merely for his own amusement.

<sup>3</sup> Not being a domestic factory (s. III (1)).

Restrictions  
on period of  
employment of  
women, young  
persons, and  
children.  
Hours of  
employment  
in textile  
factories—  
young persons  
and women.

in any manufacturing process, and at half-past twelve o'clock in the afternoon as regards employment for any purpose whatever; and (b) if less than one hour is allowed for meals, shall end at half-past eleven o'clock in the forenoon as regards employment in any manufacturing process,<sup>1</sup> and at noon as regards employment for any purpose whatever;

- (4) Where the period of employment on Saturday begins at seven o'clock in the morning, that period shall end at half-past twelve o'clock in the afternoon as regards any manufacturing process, and at one o'clock in the afternoon as regards employment for any purpose whatever;
- (5) There shall be allowed for meals during the said period of employment in the factory—(a) on every day except Saturday not less than two hours, of which one hour at the least, either at the same time or at different times, shall be before three o'clock in the afternoon; (b) on Saturday not less than half an hour;
- (6) A woman or young person shall not be employed continuously for more than four hours and a half, without an interval of at least half an hour for a meal.

25. With respect to the employment of children<sup>2</sup> in a textile factory<sup>3</sup> the following regulations shall be observed:—

Hours of employment in textile factories—children.

- (1) Children shall not be employed except on the system either of employment in morning and afternoon sets, or of employment on alternate days only.
- (2) The period of employment for a child in a morning set shall, except on Saturday, begin at the same hour as if the child were a young person, and end either—(a) at one o'clock in the afternoon; or (b) if the dinner time begins before one o'clock, at the beginning of dinner time; or (c) if the dinner time does not begin before two o'clock, at noon.
- (3) The period of employment for a child in an afternoon set shall, except on Saturday, begin either—(a) at one o'clock in the afternoon; or (b) at any later hour at which the dinner time terminates; or (c) if the dinner hour does not begin before two o'clock, and the morning set ends at noon, at noon; and shall end at the same hour as if the child were a young person.
- (4) The period of employment for any child on Saturday shall begin and end at the same hour as if the child were a young person.
- (5) A child shall not be employed in two successive periods of seven days in the morning set, nor in two successive periods of seven days in an afternoon set, and a child shall not be employed on two successive Saturdays, nor on Saturday in any week if on any other day in the same week his period of employment has exceeded five hours and a half.
- (6) When a child is employed on the alternate day system the period of employment for such child and the time allowed for meals shall be the same as if the child were a young person, but the child shall not be employed on two successive days, and shall not be employed on the same day of the week in two successive weeks.
- (7) A child shall not on either system be employed continuously for more than four hours and a half without an interval of at least half an hour for a meal.

26. With respect to the employment of women and young persons in a non-textile factory, and a workshop,<sup>4</sup> the following regulations shall be observed:—

Hours of employment in non-textile factories and workshops—women and young persons.

- (1) The period of employment, except on Saturday, shall (save as is in this Act specially excepted) either begin at six o'clock in the morning and end at six o'clock in the evening, or begin at seven o'clock in the morning and end at seven o'clock in the

<sup>1</sup> As to what is included in this expression, see *Crabtree v. Commercial Mills, &c.* (1910), 130 L.T.J. 55.

<sup>2</sup> Defined by s. 156.

<sup>3</sup> Not being a domestic factory (s. 111 (1)).

<sup>4</sup> Excluding domestic factories and domestic workshops (s. 111 (1)).

evening, or begin at eight o'clock in the morning and end at eight o'clock in the evening.

- (2) The period of employment on Saturday shall (save as is in this Act specially excepted) begin at six o'clock in the morning and end at two o'clock in the afternoon, or begin at seven o'clock in the morning and end at three o'clock in the afternoon, or begin at eight o'clock in the morning and end at four o'clock in the afternoon.
- (3) There shall be allowed for meals during the said period of employment in the factory or workshop—(a) on every day except Saturday not less than one hour and a half, of which one hour at the least, either at the same time or at different times, shall be before three o'clock in the afternoon; and (b) on Saturday not less than half an hour.
- (4) A woman or a young person in a non-textile factory and a young person in a workshop shall not be employed continuously for more than five hours without an interval of at least half an hour for a meal.

27. With respect to the employment of children<sup>1</sup> in a non-textile factory and workshop,<sup>2</sup> the following regulations shall be observed:—

- (1) Children shall not be employed except either on the system of employment in morning and afternoon sets, or (in a factory or workshop in which not less than two hours are allowed for meals on every day except Saturday) on the system of employment on alternate days only.
- (2) The period of employment for a child in the morning set on every day, including Saturday, shall begin at six or seven or eight o'clock in the morning and end either—(a) at one o'clock in the afternoon; or (b) if the dinner time begins before one o'clock at the beginning of dinner time; or (c) if the dinner time does not begin before two o'clock, at noon.
- (3) The period of employment for a child in an afternoon set on every day, including Saturday, shall begin either—(a) at one o'clock in the afternoon; or (b) at any hour later than half-past twelve at which the dinner time terminates; or (c) if the dinner time does not begin before two o'clock and the morning set ends at noon, at noon; and shall end on Saturday at two o'clock in the afternoon, and on any other day at six or seven or eight o'clock in the evening, according as the period of employment for children in the morning set began at six or seven or eight o'clock in the morning.
- (4) A child shall not be employed in two successive periods of seven days in a morning set, nor in two successive periods of seven days in an afternoon set, and a child shall not be employed on Saturday in any week in the same set in which he has been employed on any other day of the same week.
- (5) When a child is employed on the alternate day system—(a) The period of employment for such a child shall, except on Saturday, either begin at six o'clock in the morning and end at six o'clock in the evening, or begin at seven o'clock in the morning and end at seven o'clock in the evening, or begin at eight o'clock in the morning and end at eight o'clock in the evening; (b) the period of employment for such child shall on Saturday begin at six or seven o'clock in the morning, and end at two o'clock in the afternoon, or begin at eight o'clock in the morning, and end at four o'clock in the afternoon; (c) there shall be allowed to such child for meals during the said period of employment not less, on any day except Saturday, than two hours, and on Saturday than half an hour; but (d) the child shall not be employed in any manner on two successive days, and shall not be employed on the same day of the week in two successive weeks.

Hours of  
employment  
in non-textile  
factories and  
workshops—  
children.

<sup>1</sup> Defined by s. 156.

<sup>2</sup> Excluding domestic factories and domestic workshops (s. III (1)).



- (6) A child shall not on either system be employed continuously for more than five hours without an interval of at least half an hour for a meal.

28. In print works and bleaching and dyeing works<sup>1</sup> the period of employment for a woman, young person, and child, and the times allowed for meals, shall be the same as if the works were a textile factory, and the regulations of this Act with respect to the employment of women, young persons, and children in a textile factory shall apply accordingly, as if print works and bleaching and dyeing works were textile factories; save that nothing in this section shall prevent the continuous employment of a woman, young person, or child in the works for five hours without an interval of half an hour for a meal.

Hours of employment in print works and bleaching and dyeing works.

29. (1) In a workshop<sup>2</sup> which is conducted on the system of not employing therein either children or young persons, and the occupier of which has served on an inspector notice of his intention to conduct his workshop on that system—(a) The period of employment for a woman shall, except on Saturday, be a specified period of twelve hours taken between six o'clock in the morning and ten o'clock in the evening, and shall on Saturday be a specified period of eight hours, taken between six o'clock in the morning and four o'clock in the afternoon; and (b) there shall be allowed to a woman for meals and absence from work during the period of employment, a specified period not less, except on Saturday, than one hour and a half, and on Saturday than half an hour.

Special provisions as to employment in women's workshops.

(2) Where the occupier of a workshop<sup>2</sup> has served on an inspector notice of his intention to conduct that workshop on the system of not employing children or young persons therein, the workshop shall be deemed to be conducted on that system until the occupier changes it, and no change shall be made until the occupier has served on the inspector notice of his intention to change the system, and until the change a child or young person employed in the workshop shall be deemed to be employed contrary to the provisions of this Act. A change in the system shall not be made oftener than once a quarter, unless for special cause allowed in writing by an inspector.

30. In a non-textile factory<sup>3</sup> or workshop<sup>4</sup> where a woman or young person has not been actually employed for more than eight hours on any day in a week, and notice of such non-employment has been affixed in the factory or workshop and served on the inspector, the period of employment on Saturday in that week for that woman or young person may be from six o'clock in the morning to four o'clock in the afternoon, with an interval of not less than two hours for meals.

Special provisions as to eight hours' employment of women and young persons.

31. (1) A child must not, except during the period of employment, be employed in the business of a factory or workshop<sup>5</sup> outside the factory or workshop on any day during which the child is employed in the factory or workshop.

Restriction on employment inside and outside factory or workshop on same day.

(2) A woman or young person must not, except during the period of employment, be employed in the business of a factory or workshop<sup>5</sup> outside the factory or workshop on any day during which the woman or young person is employed in the factory or workshop both before and after the dinner hour.

(3) For the purposes of this section a woman, young person, or child to or for whom any work is given out, or who is allowed to take out any work to be done by him or her outside a factory or workshop,<sup>5</sup> shall be deemed to be employed outside the factory or workshop on the day on which the work is so given or taken out.

(4) If a woman or young person is employed by the occupier of a factory or workshop<sup>5</sup> on the same day, both in the factory or workshop, and in a shop, then—(a) The whole time during which that woman or young person is employed shall not exceed the number of hours permitted

<sup>1</sup> But not in domestic factories (s. 111 (1)).

<sup>2</sup> Not being a domestic workshop (s. 111 (1)).

<sup>3</sup> Except print works, bleaching and dyeing works (s. 28), and domestic factories (s. 111 (1)).

<sup>4</sup> Except domestic workshops (s. 111 (1)).

<sup>5</sup> Excluding domestic factories and domestic workshops (s. 111 (1)).

by this Act for her or his employment in the factory or workshop on that day; and (b) if the woman or young person is employed in the shop, except during the period of employment fixed by the occupier, and specified in a notice affixed in the factory or workshop in pursuance of this Act, the occupier shall make the prescribed entry in the general register with regard to her or his employment.

(5) This Act shall apply as if any woman, young person, or child employed in contravention of this section were employed in a factory or workshop contrary to the provisions of this Act.<sup>1</sup>

Notice fixing  
hours of em-  
ployment, &c.

32. (1) The occupier of every factory and workshop<sup>2</sup> may fix within the limits allowed by this Act, and shall, subject to any special exceptions made by or in pursuance of this Act, specify in a notice which must be affixed in the factory or workshop—(a) The period of employment; (b) the times allowed for meals; and (c) whether the children are employed on the system of morning and afternoon sets or of alternate days.

(2) In a factory or workshop where such a notice is required to be affixed, the period of employment, the times allowed for meals, and the system of employment for all the children in the factory or workshop, shall be those for the time being specified in the notice.

(3) A change in the said period or times or system shall not be made until the occupier has served on an inspector, and affixed in the factory or workshop, notice of his intention to make the change, and shall not be made oftener than once a quarter, unless for special cause allowed in writing by an inspector.

(4) Where an inspector, by notice in writing, names a public clock, or some other clock open to public view, for the purpose of regulating the period of employment in a factory or workshop, the period of employment and the times allowed for meals in that factory or workshop shall be regulated by that clock.

Meal times to  
be simultaneous,  
and employment  
during meal  
times forbidden.

33. With respect to meals the following regulations shall (save as in this Act specially excepted) be observed in a factory and workshop:—

(1) All women, young persons, and children employed therein shall have the times allowed for meals at the same hour of the day; and (2) a woman, young person, or child shall not during any part of the times allowed for meals in the factory or workshop, be employed<sup>4</sup> in the factory or the workshop, or be allowed to remain in a room in which a manufacturing process or handicraft is then being carried on.

Prohibition  
of Sunday  
employment.

Annual holidays  
and half  
holidays.

34. A woman, young person, or child shall not (save as in this Act specially excepted) be employed on Sunday in a factory or workshop.<sup>5</sup>

35. (1) Subject to any special exceptions made by or in pursuance of this Act, the occupier of a factory or workshop<sup>6</sup> shall allow in each year to every woman, young person, and child employed in the factory or workshop the following holidays:—

In Ireland there shall be allowed—(a) Christmas Day; (b) any two of the following days, fixed by the occupier, namely, the seventeenth of March (when it does not fall on a Sunday), Good Friday, Easter Monday, and Easter Tuesday; (c) six half holidays, fixed by the occupier, but a whole holiday, fixed by the occupier, may be allowed in lieu of any two half holidays.

(2) At least half of the said whole holidays or half holidays shall be allowed between the fifteenth day of March and the first day of October in every year.

(3) A notice of every whole holiday or half holiday must be affixed in the factory or workshop during the first week in January, and a copy thereof must on the same day be forwarded to the inspector for the district, and unless the notice has been so affixed and sent cessation from

<sup>1</sup> For penalties, see ss. 137, 138.

<sup>2</sup> Other than a domestic factory or domestic workshop (s. III (1)).

<sup>3</sup> Other than a domestic factory or a domestic workshop (s. III (4)). See also s. 40.

<sup>4</sup> See note to s. 23.

<sup>5</sup> But see ss. 42, 48. Domestic factories and domestic workshops are excluded (s. III (1)).

<sup>6</sup> Other than a domestic factory or a domestic workshop (s. III (4)). See also s. 41 (1) (2).

work shall not be deemed to be a whole holiday or a half holiday: Provided that<sup>1</sup>—(b) any such notice may be changed by a subsequent notice affixed and sent in like manner not less than fourteen days before the holiday or half holiday to which it applies.

(4) A half holiday shall comprise at least one half of the period of employment for women and young persons on some day other than Saturday, or a day substituted for Saturday.

(5) A woman, young person, or child who—(a) on a whole holiday fixed by or in pursuance of this section for a factory or workshop is employed in the factory or workshop; or (b) on a half holiday fixed in pursuance of this section for a factory or workshop is employed in the factory or workshop during the portion of the period of employment assigned for that half holiday; shall be deemed to be employed contrary to the provisions of this Act.<sup>2</sup>

(6) If in a factory or workshop such whole holidays or half holidays as are required by this section are not fixed in conformity therewith, the occupier of the factory or workshop shall be liable to a fine not exceeding five pounds.

(ii.) *Special Exceptions as to Hours and Holidays.*

36. Where it is proved to the satisfaction of a Secretary of State that the customs or exigencies of the trade carried on in any class of non-textile factories or workshops, or parts thereof, either generally or when situate in any particular locality, require that the special exception hereafter in this section mentioned should be granted, and that the grant can be made without injury to the health of the women, young persons, and children, affected thereby, he may, by Special Order, grant to that class of factories or workshops or parts thereof, a special exception that the period of employment for women and young persons therein, if so fixed by the occupier and specified in the notice, may on any day except Saturday begin at nine o'clock in the morning and end at nine o'clock in the evening, and in that case the period of employment for a child in a morning set shall begin at nine o'clock in the morning, and the period of employment for a child in an afternoon set shall end at eight o'clock in the evening.

Employment between 9 A.M. and 9 P.M. in certain cases.

37. (1) In the part of a textile factory in which a machine for the manufacture of lace is moved by steam, water, or other mechanical power, the period of employment for any male young person above the age of sixteen years may be between four o'clock in the morning and ten o'clock in the evening, if he is employed in accordance with the following conditions; namely:—(a) Where he is employed on any day before the beginning or after the end of the ordinary period of employment, there must be allowed him for meals and absence from work between the above-mentioned hours of four in the morning and ten in the evening not less than nine hours; and (b) where he is employed on any day before the beginning of the ordinary period of employment, he must not be employed on the same day after the end of that period; and (c) where he is employed on any day after the end of the ordinary period of employment, he must not be employed next morning before the beginning of the ordinary period of employment.

Employment of male young persons above sixteen in lace factories.

(2) For the purpose of this exception the ordinary period of employment means the period of employment for women or young persons under the age of sixteen years in the factory, or, if none are employed, means such period as can under this Act be fixed for the employment of women and young persons under the age of sixteen years in the factory, and notice of such period shall be affixed in the factory.

38. (1) In the part of a bakehouse in which the process of baking bread is carried on, the period of employment for any male young person above the age of sixteen years may be between five o'clock in the morning and nine o'clock in the evening, if he is employed in accordance with the following conditions; namely:—(a) Where he is employed on any day

Employment of male young persons above sixteen in bakehouses.

<sup>1</sup> Clause (a) does not apply to Ireland.

<sup>2</sup> For penalties, see ss. 137, 138.



before the beginning or after the end of the ordinary period of employment, there must be allowed him for meals and absence from work between the above-mentioned hours of five in the morning and nine in the evening not less than seven hours ; and (b) where he is employed on any day before the beginning of the ordinary period of employment, he must not be employed on the same day after the end of that period ; and (c) where he is employed on any day after the end of the ordinary period of employment, he must not be employed next morning before the beginning of the ordinary period of employment.

(2) For the purposes of this exception the ordinary period of employment means the period of employment for women or young persons under the age of sixteen years in the bakehouse, or, if none are employed, means such period as can under this Act be fixed for the employment of women and young persons under the age of sixteen years in the bakehouse, and notice of that period shall be affixed in the bakehouse.

Five hours' spell in certain textile factories.

39. (1) In any of the textile factories to which this exception applies, a woman, young person, or child may, between the first day of November and the last day of March next following, be employed continuously for five hours without an interval for a meal ; provided that—(a) The period of employment fixed by the occupier and specified in the notice begins at seven o'clock in the morning ; and (b) the whole time between that hour and eight o'clock is allowed for meals.

(2) This exception applies to textile factories solely used for—(a) the making of elastic web ; or (b) the making of ribbon ; or (c) the making of trimming.

(3) Where it is proved to the satisfaction of the Secretary of State that in any class of textile factories, either generally or when situate in any particular locality, the customary habits of the persons employed therein require the extension thereto of this exception, and that the manufacturing process carried on therein is of a healthy character, and the extension can be made without injury to the health of the women, young persons, and children, affected thereby, he may, by Special Order, extend this exception accordingly. The limitation of this exception to the period between the first day of November and the following last day of March shall not, if the Secretary of State by Special Order so directs, apply to hosiery factories.

Different meal times for different sets, and employment during meal times.

40. (1) The provisions of this Act which require that all the women, young persons, and children employed in a factory or workshop must have the times allowed for meals at the same hour of the day shall not apply to the following factories, namely :—(i.) Blast furnaces, or (ii.) iron mills, or (iii.) paper mills, or (iv.) glass works, or (v.) letter-press printing works.

(2) The provisions of this Act which require that a woman, young person, or child shall not during the times allowed for meals be employed or be allowed to remain in a room in which a manufacturing process or handicraft is being carried on shall not apply to the following factories, namely :—(i.) Iron mills, or (ii.) paper mills, or (iii.) glass works (except any part in which the materials are mixed, and, in the case of glass works where flint glass is made, any part in which the work of grinding, cutting, or polishing is carried on), or (iv.) letter-press printing works.

(3) In that part of any print works or bleaching and dyeing works in which the process of dyeing or open-air bleaching is carried on—(i.) A male young person may have the times allowed him for meals at different hours of the day from other young persons and women and children employed in the factory ; (ii.) a male young person may during the times allowed for meals to any other young person or to any woman or child be employed or be allowed to remain in a room in which a manufacturing process is carried on ; and (iii.) during the times allowed for meals to a male young person any other young person or any woman or child may be employed in the factory or be allowed to remain in a room in which a manufacturing process is carried on.

(4) Where it is proved to the satisfaction of the Secretary of State that in any class of factories or workshops or parts thereof it is necessary, by reason of the continuous nature of the process or of special circum-

stances affecting that class, to extend thereto both or either of the following exceptions, namely :—(a) An exception permitting the women, young persons, and children employed in the factory or workshop to have the times allowed for meals at different hours of the day ; or (b) an exception permitting women, young persons, and children, during the times allowed for meals in the factory or workshop, to be employed in the factory or workshop or to be allowed to remain in a room in which a manufacturing process or handicraft is being carried on, and that the extension can be made without injury to the health of the women, young persons, and children, affected thereby, he may, by Special Order, extend both or either of those exceptions accordingly.

41. (1) The provisions of this Act as to period of employment, times for meals, and holidays, shall not apply to young persons and women engaged—(a) In processes in the preserving and curing of fish which must be carried out immediately on the arrival of the fishing boats in order to prevent the fish from being destroyed or spoiled ; or (b) in the process of cleaning and preparing fruit so far as is necessary to prevent the spoiling of the fruit immediately on its arrival at a factory or workshop during the months of June, July, August, and September, but this exception shall be subject to such conditions as the Secretary of State may by Special Order prescribe.

Special exceptions as to fish and fruit preserving.

(2) Where an occupier avails himself of this exception, the notice required to be served and affixed by an occupier of a factory or workshop availing himself of any special exception, need not specify the hours for the beginning and end of the period of employment, or the times to be allowed for meals.

42. In the case of creameries in which women and young persons are employed, the Secretary of State may, by Special Order, vary the beginning and end of the daily period of employment of those women and young persons, and the times allowed for their meals, and allow their employment for not more than three hours on Sundays and holidays : Provided that the order shall not permit any excess over either the daily or the weekly maximum number of hours of employment allowed by this Act.

Special exceptions as to creameries.

43. Where it is proved to the satisfaction of the Secretary of State that the customs or exigencies of the trade carried on in any class of non-textile factories or workshops, either generally or when situate in any particular locality, require some other day in the week to be substituted for Saturday as regards the hour at which the period of employment for women, young persons, and children is required by this Act to end on Saturday, he may, by Special Order, grant to that class of factories or workshops a special exception, authorising the occupier of every such factory and workshop to substitute by a notice affixed in his factory or workshop some other day for Saturday, and in that case this Act shall apply in the factory or workshop in like manner as if the substituted day were Saturday, and Saturday were an ordinary work day. In the case of newspaper printing offices, he may by such order authorise the substitution of some other day for Saturday in respect of some of the young persons therein employed.

Substitution of another day for Saturday.

44. In the process of Turkey red dyeing the period of employment for women and young persons on Saturday may extend until half-past four o'clock in the afternoon, but the additional number of hours so worked shall be computed as part of the week's limit of work, which must in no case be exceeded.

Saturday employment in Turkey red dyeing.

45. Where it is proved to the satisfaction of the Secretary of State that the customs or exigencies of the trade carried on in any class of non-textile factories or workshops, either generally or when situate in any particular locality, require that the special exception hereafter in this section mentioned should be granted, he may, by Special Order, grant to that class of factories or workshops a special exception authorising the occupier of any such factory or workshop to allow all or any of the annual whole holidays or half holidays on different days to any of the women, young persons, and children employed in his factory or workshop, or to any sets of those women, young persons, and children, and not on the same days.

Holidays on different days for different sets.

Employment  
inside and  
outside on  
the same day.

46. Where it is proved to the satisfaction of the Secretary of State that the customs or exigencies of the trade carried on in any class of factories or workshops, or parts thereof, either generally or when situate in any particular locality, require that that trade should be excepted from the operation of the provisions of this Act relating to employment inside and outside a factory or workshop on the same day, he may, by special order, grant to that class of factories or workshops, or parts thereof, such special exception as may be necessary.

Hours and  
holidays in  
factory or  
workshop of  
Jewish occupier.

47. Where the occupier of a factory or workshop is a person of the Jewish religion—(1) If he keeps his factory or workshop closed on Saturday until sunset, he may employ women and young persons on Saturday from after sunset until nine o'clock in the evening; or (2) if he keeps his factory or workshop closed on Saturday both before and after sunset, he may employ women and young persons one hour on every other day in the week (not being Sunday), in addition to the hours allowed by this Act, so that such hour be at the beginning or end of the period of employment, and be not before six o'clock in the morning or after nine o'clock in the evening.

Sunday em-  
ployment of  
Jews in factory  
or workshop of  
Jewish occupier.

48. Where the occupier of a factory or workshop is a person of the Jewish religion, a woman or young person of the Jewish religion may be employed on Sunday, subject to the following conditions:—(1) The factory or workshop must be closed on Saturday and must not be open for traffic on Sunday;<sup>1</sup> and (2) the occupier must not avail himself of the exception authorising the employment of women and young persons on Saturday evening, or for an additional hour during any other day in the week.

Where the occupier avails himself of this exception, this Act shall apply to the factory or workshop in like manner as if in the provisions thereof respecting Sunday the word Saturday were substituted for Sunday, and in the provisions thereof respecting Saturday the word Sunday, or, if the occupier so specify in the notice, the word Friday were substituted for Saturday.

#### *Overtime.*

Overtime em-  
ployment of  
women for press  
of work.

49. (1) In the non-textile factories and workshops or parts thereof and warehouses to which this exception applies, the period of employment for women on any day except Saturday, or any day substituted for Saturday, may be between six o'clock in the morning and eight o'clock in the evening, or between seven o'clock in the morning and nine o'clock in the evening, or between eight o'clock in the morning and ten o'clock in the evening, if they are employed in accordance with the following conditions, namely:—(a) There must be allowed to every woman for meals during the period of employment not less than two hours, of which half an hour must be after five o'clock in the evening; and (b) a woman must not be so employed in the whole for more than three days in any one week; and (c) overtime employment under this section must not take place in a factory or workshop on more than thirty days in the whole in any twelve months, and in reckoning that period of thirty days, every day on which any woman has been employed overtime is to be taken into account.

(2) This exception applies to the non-textile factories and workshops and parts thereof and warehouses specified in the Second Schedule to this Act, except that it does not apply to a workshop or part thereof which is conducted on the system of not employing any young person or child therein.

(3) Where it is proved to the satisfaction of the Secretary of State

<sup>1</sup> The occupier of a workshop, wherein young persons of the Jewish religion were employed on Sunday, carried on there the business of making button-holes for tailors on garments delivered to him by them for that purpose. The workshop was open to his customers on Sunday for the purpose of enabling them to send or fetch away garments in pursuance of contracts previously made, but not for the purpose of their giving fresh orders. *Held*, that the workshop was not thereby "open for traffic on Sunday" (*Goldstein v. Vaughan* (1897), 1 Q.B. 549).



that in any class of non-textile factories or workshops or parts thereof it is necessary, by reason of the material which is the subject of the manufacturing process or handicraft therein being liable to be spoiled by the weather, or by reason of press of work arising at certain recurring seasons of the year, or by reason of the liability of the business to a sudden press of orders arising from unforeseen events, to employ women in manner authorised by this exception, and that such employment will not injure the health of the women affected thereby, he may, by Special Order, extend this exception to those factories or workshops or parts thereof.

50. (1) In the factories and workshops and parts thereof to which this exception applies, the period of employment for a woman may on any day except Saturday, or any day substituted for Saturday, be between six o'clock in the morning and eight o'clock in the evening, or between seven o'clock in the morning and nine o'clock in the evening, if she is employed in accordance with the following conditions, namely :—  
 (a) There must be allowed her for meals not less than two hours, of which half an hour must be after five o'clock in the evening ; and (b) she must not be so employed in the whole for more than three days in any one week ; and (c) overtime employment under this section must not take place in a factory or workshop on more than fifty days in the whole in any twelve months ; and in reckoning that period of fifty days, every day on which any woman has been employed overtime is to be taken into account.

Overtime employment of women on perishable articles.

(2) This exception applies to every factory and workshop or part thereof in which is carried on—(a) The process of making preserves from fruit ; or (b) the process of preserving or curing fish ; or (c) the process of making condensed milk.

(3) Where it is proved to the satisfaction of the Secretary of State that in any class of non-textile factories or workshops or parts thereof it is necessary, by reason of the perishable nature of the articles or materials which are the subject of the manufacturing process or handicraft, to employ women in manner authorised by this exception, and that such employment will not injure the health of the women employed, he may, by Special Order, extend this exception to those factories or workshops or parts thereof.

51. (1) If in any factory or workshop or part thereof to which this exception applies, the process in which a woman, young person, or child is employed, is in an incomplete state at the end of the period of employment of the woman, young person, or child, the woman, young person, or child may on any day except Saturday, or any day substituted for Saturday, be employed for a further period not exceeding thirty minutes :

Overtime employment on incomplete process.

Provided that those further periods, when added to the total number of hours of the periods of employment of the woman, young person, or child in that week, do not raise that total above the number otherwise allowed under this Act.

(2) This exception applies to the factories and workshops following, namely :—(a) Bleaching and dyeing works ; (b) print works ; (c) iron mills in which male young persons are not employed during any part of the night ; (d) foundries in which male young persons are not employed during any part of the night ; and (e) paper mills in which male young persons are not employed during any part of the night.

(3) Where it is proved to the satisfaction of the Secretary of State that in any class of non-textile factories or workshops or parts thereof the time for the completion of a process cannot by reason of the nature thereof be accurately fixed, and that the extension to that class of factories or workshops or parts thereof of this exception can be made without injury to the health of the women, young persons, and children, affected thereby, he may, by Special Order, extend this exception accordingly.

52. Where it appears to the Secretary of State that factories driven by water power are liable to be stopped by drought or flood, he may, by Special Order, grant to those factories a special exception permitting the employment of women and young persons during a period of employment from six o'clock in the morning until seven o'clock in the evening, on such conditions as he thinks proper, but so as that no person shall be

Overtime employment in factories driven by water.

deprived of the meal hours by this Act provided, nor be so employed on Saturday, or any day substituted for Saturday, and that as regards factories liable to be stopped by drought, the special exception shall not extend to more than ninety-six days in any period of twelve months, and as regards factories liable to be stopped by floods, the special exception shall not extend to more than forty-eight days in any period of twelve months. This overtime shall not extend in any case beyond the time already lost during the previous twelve months.

Overtime employment in Turkey red dyeing and open-air bleaching.

53. A woman or young person may on any day except Saturday, or any day substituted for Saturday, be employed beyond the period of employment, so far as is necessary for the purpose only of preventing any damage which may arise from spontaneous combustion in the process of Turkey red dyeing, or from any extraordinary atmospheric influence in the process of open-air bleaching.

#### *Night Work.*

Night employment of male young persons of fourteen.

54. (1) In the factories and workshops to which this exception applies, a male young person of fourteen years of age and upwards may be employed during the night, if he is employed in accordance with the following conditions, namely—(a) The period of employment must not exceed twelve consecutive hours, and must begin and end at the hours specified in the notice in this Act mentioned; and (b) the provisions of this Part of this Act with respect to the allowance of times for meals shall be observed with the necessary modifications as to the hour at which the meal times are fixed; and (c) a young person employed during any part of the night must not be employed during any part of the twelve hours preceding or succeeding the period of employment; and (d) he must not be employed on more than six nights, or in the case of blast furnaces or paper mills seven nights, in any two weeks; provided that this condition shall not prevent the employment of male young persons in three shifts of not more than eight hours each, if there is an interval of two unemployable shifts between each two shifts of employment; and (e) in the case of blast furnaces, iron mills, letter-press printing works, or paper mills, he must not be employed during the night in any process other than a process incidental to the business of the factory as described in Part I. of the Sixth Schedule to this Act.

(2) The provisions of this Act with respect to the period of employment on Saturday, and with respect to the allowance to young persons of whole or half holidays, shall not apply to a male young person employed in day and night turns in pursuance of this exception.

(3) This exception applies to the following factories, namely :—(a) Blast furnaces, (b) iron mills, (c) letter-press printing works, and (d) paper mills.

(4) Where it is proved to the satisfaction of the Secretary of State that in any class of non-textile factories or workshops, or parts thereof, it is necessary by reason of the nature of the business requiring the process to be carried on throughout the night to employ male young persons of sixteen years of age and upwards at night, and that such employment will not injure the health of the male young persons employed, he may, by Special Order, extend this exception to those factories or workshops or parts thereof so far as regards young persons of the age of sixteen years and upwards.

Night employment of male young persons of fourteen in glass works.

55. In glass works a male young person of fourteen years of age and upwards may work according to the accustomed hours of the works, if he is employed in accordance with the following conditions, namely :—(a) The total number of hours of the periods of employment must not exceed sixty in any one week; and (b) the periods of employment must not exceed fourteen hours in four separate turns per week, or twelve hours in five separate turns per week, or ten hours in six separate turns per week, or any less number of hours in the accustomed number of separate turns per week, so that the number of turns do not exceed nine; and (c) he must not work in any turn without an interval of time not less than one full turn; and (d) he must not be employed continuously for

more than five hours without an interval of at least half an hour for a meal; and (e) he must not be employed on Sunday.

56. In a factory or workshop in which the process of printing newspapers is carried on on not more than two nights in the week, a male young person above the age of sixteen years may be employed at night during not more than two nights in a week, as if he were no longer a young person: Provided that he must not in pursuance of this exception be employed more than twelve hours in any consecutive period of twenty-four hours.

Night employment of male young persons of sixteen in printing newspapers.

*Intermittent Employment.*

[Section 57, as to exemption for certain flax scutch mills, repealed, *Employment of Women Act, 1907, 7 Edw. 7, c. 10.*]

*Supplemental.*

58. (1) Where it appears to the Secretary of State—(a) That the adoption of any special means or provision for the cleanliness or ventilation of a factory or workshop is required for the protection of the health of women, young persons, or children, employed, in pursuance of an exception under this Part of this Act, either for a longer period than is otherwise allowed by this Act, or at night; or (b) that the adoption of a special provision as to the total number of hours of employment in each week, the periods of employment, and the intervals between such periods, is required for the protection of the health of any women or young persons employed in pursuance of such an exception at night, he may, by Special Order, direct that the adoption of the means or provision shall be a condition of such employment.

Power to impose sanitary requirements as condition of special exceptions.

(2) If it appears to the Secretary of State that the adoption of any such means or provision is no longer required, or is, having regard to all the circumstances, inexpedient, he may, by Special Order, rescind the order directing the adoption without prejudice to the subsequent making of another order.

59. Where an exception has been granted or extended under this Act by an order of the Secretary of State, and it appears to the Secretary of State that the exception is injurious to the health of the women, young persons, or children employed in, or is no longer necessary for the carrying on of the business in, the class of factories or workshops or parts thereof to which the exception was so granted or extended, he may, by Special Order, rescind the grant or extension, without prejudice to the subsequent making of another order.

Power to rescind orders as to special exceptions.

60. (1) An occupier of a factory or workshop,<sup>1</sup> not less than seven days before he avails himself of any special exception made by or in pursuance of this Act, shall serve on the inspector for the district, and affix in his factory or workshop, notice of his intention so to avail himself, and whilst he avails himself of the exception shall keep the notice so affixed.

Notices, registers, &c., relating to special exceptions.

(2) Before the service of the notice on the inspector the special exception shall not be deemed to apply to the factory or workshop, and after the service of the notice on the inspector it shall not be competent in any proceeding under this Act for the occupier to prove that the exception does not apply to his factory or workshop, unless he has previously served on the inspector for the district notice that he no longer intends to avail himself of the exception.

(3) The notice so served and affixed must, except as otherwise provided by this Act, specify the hours for the beginning and end of the period of employment, and the times to be allowed for meals to every woman, young person, and child where they differ from the ordinary hours or times.

(4) An occupier of a factory or workshop shall enter in the prescribed register and report to the inspector for the district the prescribed particulars respecting the employment of a woman, young person, or child

<sup>1</sup> Other than a domestic factory or domestic workshop (s. 111 (4)).



in pursuance of a special exception; and, in the case of employment overtime, he shall also cause a notice containing the prescribed particulars respecting the employment to be kept affixed in the factory or workshop during the prescribed time, and he shall send the report required by this subsection to the inspector not later than eight o'clock in the evening on which any woman, young person, or child is employed overtime in pursuance of the exception.<sup>1</sup>

(5) Where the occupier of a factory or workshop avails himself of a special exception made by or in pursuance of this Act, and a condition for availing himself of that exception (whether specified in this Act, or in an order of the Secretary of State made under this Act) is not observed in that factory or workshop, then—(a) If the condition relates to the cleanliness, ventilation, or overcrowding of the factory or workshop, the factory or workshop shall be deemed not to be kept in conformity with this Act; and (b) in any other case a woman, young person, or child, employed in the factory or workshop, in alleged pursuance of the exception, shall be deemed to be employed contrary to the provisions of this Act.

(6) Where an occupier of a factory or workshop<sup>2</sup> has served on an inspector a report in pursuance of this section of his intention to employ any persons overtime by virtue of a special exception, the report shall, unless withdrawn, be *prima facie* evidence in any proceedings under this Act that the occupier has in fact employed persons overtime in accordance with the report.<sup>3</sup>

### (iii.) *Fitness for Employment.*

Prohibition of employment of women after childbirth.

Prohibition of employment of children under twelve.

Certificates of fitness for employment of young persons under sixteen and children in factories.

61. An occupier of a factory or workshop shall not knowingly allow a woman or girl to be employed therein within four weeks after she has given birth to a child.<sup>4</sup>

62. A child under the age of twelve years must not be employed in a factory or workshop unless lawfully so employed at the commencement of this Act.<sup>4</sup>

63. (1) In a factory<sup>5</sup> a young person under the age of sixteen years or a child must not be employed for more than seven, or if the certifying surgeon for the district resides more than three miles from the factory thirteen, work days, unless the occupier of the factory has obtained a certificate, in the prescribed form, of the fitness of the young person or child for employment in that factory.<sup>6</sup>

(2) When a child becomes a young person a fresh certificate of fitness must be obtained.

(3) The occupier shall, when required, produce to an inspector at the factory in which a young person or child is employed the certificate of fitness of that young person or child for employment.

64. With respect to a certificate of fitness for employment for the purposes of this Act, the following provisions shall have effect:—

(1) The certificate shall be granted by the certifying surgeon<sup>7</sup> for the district. (2) The certificate must not be granted except upon personal examination of the person named therein. (3) A certifying surgeon shall not examine a young person<sup>8</sup> or child<sup>8</sup> for the purpose of the certificate or sign the certificate elsewhere than at the factory where the young person<sup>8</sup> or child<sup>8</sup> is or 'is about to be employed, unless the number of young persons and children<sup>8</sup> employed in that factory is less than five, or unless for some special reason allowed in writing by an inspector.

Regulations as to grant of certificate of fitness.

<sup>1</sup> This subsection does not apply to a domestic factory or domestic workshop except where prescribed by the Secretary of State (s. 111 (2)).

<sup>2</sup> Other than a domestic factory or domestic workshop (s. 111 (4)).

<sup>3</sup> See also, as to laundries, &c., Factory and Workshop Act, 1907, 7 Edw. 7, c. 39.

<sup>4</sup> For penalties, see ss. 137, 138.

<sup>5</sup> Other than a domestic factory (s. 111 (3)).

<sup>6</sup> For penalty, see ss. 137, 138. It appears to be doubtful whether the occupier is liable to a penalty for breaches of ss. 62 and 63, where a child or young person has misrepresented his age and where the occupier has acted in good faith. See *Carty v. Nicoll* (1878), 6 R. (Ct. of Sess.) 194.

<sup>7</sup> See s. 122.

<sup>8</sup> For definitions, see s. 156.

(4) The certificate must be to the effect that the certifying surgeon is satisfied, by the production of a certificate of birth or other sufficient evidence, that the person named in the certificate is of the age therein specified, and has been personally examined by him and is not incapacitated by disease or bodily infirmity from working daily for the time allowed by law in the factory named in the certificate.<sup>1</sup> (5) The certificate may be qualified by conditions as to the work on which a child or young person<sup>2</sup> is fit to be employed, and if it is so qualified the occupier shall not employ the young person or child otherwise than in accordance with the conditions. (6) A certifying surgeon shall have the same powers as an inspector for the purpose of examining any process in which a child or young person<sup>3</sup> presented to him for the grant of a certificate is proposed to be employed. (7) All factories in the occupation of the same occupier and in the district of the same certifying surgeon, or any of them, may be named in the certificate, if the surgeon is of opinion that he can truly give the certificate for employment therein. (8) The certificate of birth (which may be produced to a certifying surgeon) shall either be a certified copy of the entry in the register of births, kept in pursuance of the Acts relating to the registration of births, of the birth of the young person or child (whether that copy is obtained in pursuance of the *Elementary Education Act*, 1876,<sup>3</sup> or otherwise), or be a certificate from a local authority within the meaning of the *Elementary Education Act*, 1876,<sup>3</sup> to the effect that it appears from the returns transmitted to that authority in pursuance of the said Act by the registrar of births and deaths that the child was born at the date named in the certificate. (9) Where the certificate is to the effect that the certifying surgeon has been satisfied of the age of a young person or child by evidence other than the production of a certificate of birth, an inspector may, by notice in writing, annul the surgeon's certificate if he has reasonable cause to believe that the real age of the young person or child named in it is less than that mentioned in the certificate, and thereupon that certificate shall be of no avail for the purposes of this Act. (10) Where a certifying surgeon refuses to grant a certificate for any person examined by him, he shall when required give in writing and sign the reasons for his refusal.

65. In order to enable occupiers of workshops<sup>4</sup> to better secure the observance of this Act, and prevent the employment in their workshops of young persons under the age of sixteen years and children who are unfitted for that employment, an occupier of a workshop may obtain, if he thinks fit, from the certifying surgeon for the district, certificates of the fitness of young persons under the age of sixteen years and children for employment in his workshop, in like manner as if that workshop were a factory, and the certifying surgeon shall examine the young persons and children, and grant certificates accordingly.

66. (1) Where it appears to the Secretary of State that by reason of special circumstances affecting any class of workshops<sup>4</sup> it is expedient for protecting the health of the young persons under the age of sixteen years, and of the children employed therein, to extend thereto the prohibition in this section mentioned, he may, by Special Order, extend to that class of workshops the prohibition in this Act of the employment of young persons under the age of sixteen years and children without a certificate of the fitness of the young person or child for employment, and thereupon the provisions of this Act with respect to certificates of fitness for employment shall apply to the class of workshops named in the order in like manner as if they were factories.

(2) If the prohibition is proved to the satisfaction of the Secretary of State to be no longer necessary for the protection of the health of the young persons under the age of sixteen years and the children employed in any class of workshops<sup>4</sup> to which it has been extended under this section, he may, by Special Order, rescind the order of extension, without prejudice to the subsequent making of another order.

<sup>1</sup> As to tenement factories, see s. 89.

<sup>2</sup> For definitions, see s. 156.

<sup>3</sup> For words in italics, read "Irish Education Act, 1892" (see s. 160 (3)).

<sup>4</sup> Which term here includes domestic factories (s. 111 (3)).

39 & 40 Vict.  
c. 79.

Power to obtain  
certificates of  
fitness for em-  
ployment in  
workshops.

Power to  
require cer-  
tificates of  
fitness for  
employment in  
certain  
workshops.

Power of  
inspector to  
require surgical  
certificate of  
capacity for  
work.

67. Where an inspector is of opinion that a young person under the age of sixteen years or a child is by disease or bodily infirmity incapacitated for working daily for the time allowed by law in the factory or workshop<sup>1</sup> in which he is employed, he may serve written notice thereof on the occupier of the factory or workshop, requiring that the employment of that young person or child be discontinued from the period named therein, not being less than one nor more than seven days after the service of the notice, and the occupier shall not continue after the period named in the notice to employ that young person or child (notwithstanding that a certificate of fitness has been previously obtained for the young person or child), unless the certifying surgeon for the district has, after the service of the notice, personally examined the young person or child, and has certified that the young person or child is not so incapacitated as aforesaid.

### PART III.

#### EDUCATION OF CHILDREN.<sup>2</sup>

Attendance  
at school of  
children  
employed in  
factory or  
workshop.

68. (1) The parent<sup>3</sup> of a child<sup>4</sup> employed in a factory or workshop shall cause that child to attend some recognised efficient school<sup>4</sup> (which school may be selected by the parent), as follows:—(a) The child, when employed in a morning or afternoon set,<sup>5</sup> must in every week, during any part of which he is so employed, be caused to attend on each work day for at least one attendance; and (b) the child, when employed on the alternate day system, must on each work day preceding each day of employment be caused to attend for at least two attendances; (c) an attendance for the purposes of this section shall be an attendance as defined for the time being by the Secretary of State with the consent of the *Board of Education*,<sup>6</sup> and be between the hours of eight in the morning and six in the evening:

Provided as follows:—(i.) A child shall not be required by this Act to attend school on Saturday or on any holiday or half holiday allowed under this Act in the factory or workshop in which the child is employed: (ii.) the non-attendance of a child shall be excused on every day on which he is certified by the teacher of the school to have been prevented from attending by sickness or other unavoidable cause, and when the school is closed during the ordinary holidays or for any other temporary cause: (iii.) where there is not within the distance of two miles, measured according to the nearest road, from the residence of the child, a recognised efficient school which the child can attend, attendance at a school temporarily approved in writing by an inspector, although not a recognised efficient school, shall for the purposes of this Act be deemed attendance at a recognised efficient school<sup>4</sup> until such recognised efficient school as aforesaid is established, and with a view to such establishment the inspector shall immediately report to the *Board of Education*<sup>6</sup> every case of the approval of a school by him under this section.

(2) A child who has not in any week attended school for all the attendances required by this section must not be employed in the following week until he has attended school for the deficient number of attendances.

(3) The *Board of Education*<sup>6</sup> shall, by the publication of lists or of notices or otherwise as they think expedient, provide for giving to all persons interested information of the schools in each school district which are recognised efficient schools.

Obtaining of  
school attend-  
ance certificate  
by occupier.

69. (1) The occupier of a factory or workshop in which a child is employed shall on Monday in every week (after the first week in which the child began to work therein), or on some other day appointed for that purpose by an inspector, obtain from the teacher of the recognised efficient school<sup>4</sup> attended by a child a certificate (according to the prescribed form and directions) respecting the attendance of the child at school in accordance with this Act.

<sup>1</sup> Which term here includes domestic factories (s. 111 (3)).

<sup>2</sup> See also EDUCATION, p. 427.

<sup>4</sup> For definition, see s. 160 (2).

<sup>3</sup> For definition, see s. 156 (1).

<sup>5</sup> See ss. 25, 27.

<sup>6</sup> For the words in italics, read "Lord-Lieutenant in Council" (s. 160 (7)).



(2) If a child is employed without such certificate being obtained as is required by this section, the child shall be deemed to be employed contrary to the provisions of this Act.<sup>1</sup>

(3) The occupier shall keep every such certificate for two months after the date thereof, if the child so long continues to be employed in his factory or workshop, and shall produce the same to an inspector when required during that period.

70. The persons who manage a recognised efficient school<sup>2</sup> attended by a child employed in a factory or workshop, or some person authorised by them, may (if fees for children may be charged in that school) apply in writing to the occupier of the factory or workshop to pay a weekly sum specified in the application, not exceeding threepence and not exceeding one-twelfth part of the wages of the child, and after that application the occupier, so long as he employs the child, shall be liable to pay to the applicants, while the child attends their school, that weekly sum, and the sum may be recovered as a debt, and the occupier may deduct the sum so paid by him from the wages payable for the services of the child.<sup>3</sup>

Payment by occupier of sum for schooling.

71. (1) When a child of the age of thirteen years has obtained from a person authorised by the *Board of Education*<sup>4</sup> a certificate of having attained such standard of proficiency in reading, writing, and arithmetic, or such standard of previous due attendance at a *certified efficient school*<sup>5</sup> as is mentioned in this section, that child shall be deemed to be a young person for the purposes of this Act.

Employment as young person of child of thirteen on obtaining educational certificate.

(2) The standards of proficiency and due attendance for the purposes of this section shall be such as may be from time to time fixed for the purposes of this Act by the Secretary of State, with the consent of the *Board of Education*,<sup>4</sup> and the standards so fixed shall be published in the *London Gazette*,<sup>6</sup> and shall not have effect until the expiration of at least six months after such publication.

(3) Attendance at a certified day industrial school shall be deemed for the purposes of this section to be attendance at a certified efficient school.<sup>7</sup>

[Section 72 (1), defining "*certified efficient school*," does not apply to Ireland. See s. 160 (1) (2).]

(2) An inspector shall immediately report to the *Board of Education*<sup>4</sup> every school recognised by him as giving efficient elementary education.

## PART IV.

### DANGEROUS AND UNHEALTHY INDUSTRIES.

#### (i.) *Special Provisions.*

73. (1) Every medical practitioner attending on or called in to visit a patient whom he believes to be suffering from lead, phosphorus, arsenical or mercurial poisoning, or anthrax, contracted in any factory or workshop, shall (unless the notice required by this subsection has been previously sent) send to the Chief Inspector of Factories at the Home Office, London, a notice stating the name and full postal address of the patient and the disease from which, in the opinion of the medical practitioner, the patient is suffering, and shall be entitled in respect of every notice sent in pursuance of this section to a fee of two shillings and sixpence, to be paid as part of the expenses incurred by the Secretary of State in the execution of this Act.

Notification of certain diseases contracted in factory or workshop.

(2) If any medical practitioner, when required by this section to send a notice, fails forthwith to send the same, he shall be liable to a fine not exceeding forty shillings.

(3) Written notice of every case of lead, phosphorus, or arsenical or

<sup>1</sup> For penalties, see ss. 137-138.

<sup>2</sup> See s. 160 (2).

<sup>3</sup> See s. 160 (4).

<sup>4</sup> For words in italics, read "Lord-Lieutenant in Council" (s. 160 (7)).

<sup>5</sup> As to the meaning of this expression, see s. 160 (1).

<sup>6</sup> For words in italics, read "Dublin Gazette."

<sup>7</sup> See *Stevenson v. Goldstraw* (1906), 2 K.B. 298.

mercurial poisoning, or anthrax, occurring in a factory or workshop, shall forthwith be sent to the inspector and to the certifying surgeon for the district; and the provisions of this Act with respect to accidents shall apply to any such case in like manner as to any such accident as is mentioned in those provisions.

(4) The Secretary of State may, by Special Order, apply the provisions of this section to any other disease occurring in a factory or workshop, and thereupon this section and the provisions referred to therein shall apply accordingly.

Provision as to ventilation by fan in certain factories and workshops.

74. If in a factory or workshop<sup>1</sup> where grinding, glazing, or polishing on a wheel, or any process is carried on by which dust, or any gas, vapour, or other impurity is generated and inhaled by the workers to an injurious extent,<sup>2</sup> it appears to an inspector that such inhalation could be to a great extent prevented by the use of a fan or other mechanical means, the inspector may direct that a fan or other mechanical means of a proper construction for preventing such inhalation be provided within a reasonable time; and if the same is not provided, maintained, and used, the factory or workshop shall be deemed not to be kept in conformity with this Act.<sup>3</sup>

Lavatories and meals in certain dangerous trades.

75. (1) In every factory or workshop<sup>1</sup> where lead, arsenic, or any other poisonous substance is used, suitable washing conveniences must be provided for the use of the persons employed in any department where such substances are used.

(2) In any factory or workshop<sup>1</sup> where lead, arsenic, or other poisonous substance is so used as to give rise to dust or fumes, a person shall not be allowed to take a meal, or to remain during the times allowed to him for meals, in any room in which any such substance is used, and suitable provision shall be made for enabling the persons employed in such rooms to take their meals elsewhere in the factory or workshop.

(3) A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.<sup>3</sup>

Restrictions as to employment in wet-spinning.

76. (1) A woman, young person, or child must not be employed in any part of a factory in which wet-spinning is carried on, unless sufficient means are employed and continued for protecting the workers from being wetted, and, where hot water is used, for preventing the escape of steam into the room occupied by the workers.

(2) A factory in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.<sup>3</sup>

Prohibition of employment of young persons and children in certain factories and workshops.

77. (1) In the part of a factory or workshop in which there is carried on—(a) The process of silvering of mirrors by the mercurial process; or (b) the process of making white lead, a young person or child must not be employed.

(2) In the part of a factory in which the process of melting or annealing glass is carried on a female young person or a child must not be employed.

(3) In a factory or workshop in which there is carried on—(a) The making or finishing of bricks<sup>4</sup> or tiles not being ornamental tiles; or (b) the making or finishing of salt, a girl under the age of sixteen years must not be employed.

(4) In the part of a factory or workshop in which there is carried on—(a) any dry grinding in the metal trade; or (b) the dipping of lucifer matches, a child must not be employed.

(5) Notice of a prohibition contained in this section must be affixed in the factory or workshop to which it applies.

Prohibition of taking meals in certain parts of factories and workshops.

78. (1) A woman, young person, or child must not be allowed to take a meal or to remain during the times allowed for meals in the following factories or workshops, or parts of factories or workshops; that is to say—(a) in the case of glass works, in any part in which the materials are mixed; and (b) in the case of glass works where flint glass is made, in any part in which the work of grinding, cutting, or polishing is carried on; and (c) in the case of lucifer-match works, in any part in which any

<sup>1</sup> Other than "men's workshops" (s. 157 (3)).

<sup>2</sup> It is not necessary to prove that actual injury has been caused; it is sufficient to show that, in the long run, injury will result (*Hoare v. Ritchie* (1901), 1 K.B. 434).

<sup>3</sup> For penalty, see s. 135.

<sup>4</sup> See *Squire v. Stanley* (1901), 84 L.T. 535.

manufacturing process or handicraft (except that of cutting the wood) is usually carried on; and (d) in the case of earthenware works, in any part known or used as dippers house, dippers drying room, or china scouring room.

(2) If a woman, young person, or child is allowed to take a meal or to remain during the times allowed for meals in a factory or workshop or part thereof in contravention of this section, the woman, young person, or child shall be deemed to be employed contrary to the provisions of this Act.<sup>1</sup>

(3) Notice of the prohibition in this section shall be affixed in every factory or workshop to which it applies.

(4) Where it appears to the Secretary of State that by reason of the nature of the process in any class of factories or workshops or parts thereof not named in this section the taking of meals therein is specially injurious to health, he may, if he thinks fit, by Special Order, extend the prohibition in this section to the class of factories or workshops or parts thereof.

(5) If the prohibition in this section is proved to the satisfaction of the Secretary of State to be no longer necessary for the protection of the health of women, young persons, and children in any class of factories or workshops or parts thereof to which it has been so extended, he may, by Special Order, rescind the order of extension, without prejudice to the subsequent making of another order.

#### (ii.) *Regulations for Dangerous Trades.*

79. Where the Secretary of State is satisfied that any manufacture, machinery, plant, process, or description of manual labour, used in factories or workshops, is dangerous or injurious to health or dangerous to life or limb, either generally or in the case of women, children, or any other class of persons, he may certify that manufacture, machinery, plant, process, or description of manual labour, to be dangerous; and thereupon the Secretary of State may, subject to the provisions of this Act, make such regulations as appear to him to be reasonably practicable, and to meet the necessity of the case.<sup>2</sup>

Power to make regulations for safety of persons employed in dangerous trades.

80. (1) Before the Secretary of State makes any regulations under this Act, he shall publish, in such manner as he may think best adapted for informing persons affected, notice of the proposal to make the regulations, and of the place where copies of the draft regulations may be obtained, and of the time (which shall be not less than twenty-one days) within which any objection made with respect to the draft regulations by or on behalf of persons affected must be sent to the Secretary of State.

Procedure for making regulations.

(2) Every objection must be in writing and state—(a) The draft regulations or portions of draft regulations objected to; (b) the specific grounds of objection; and (c) the omissions, additions, or modifications asked for.

(3) The Secretary of State shall consider any objection made by or on behalf of any persons appearing to him to be affected which is sent to him within the required time, and he may, if he thinks fit, amend the draft regulations, and shall then cause the amended draft to be dealt with in like manner as an original draft.

(4) Where the Secretary of State does not amend or withdraw any draft regulations to which any objection has been made, then (unless the objection either is withdrawn or appears to him to be frivolous) he shall, before making the regulations, direct an inquiry to be held in the manner hereinafter provided.

81. (1) The Secretary of State may appoint a competent person to Inquiries.

<sup>1</sup> For penalties, see ss. 137–138.

<sup>2</sup> A regulation made under this section directed that suitable and convenient accommodation in which to keep the workers' clothing should be provided. The occupier had provided hooks on walls sheeted with wood in the factory, and the justices have found this to be sufficient accommodation. *Held*, that the finding of the justices, being one of fact, could not be interfered with (*R. (Eraut) v. Ross Brothers Ltd.* (1910), 2 I.R. 591).



hold an inquiry with regard to any draft regulations, and to report to him thereon.

(2) The inquiry shall be held in public, and the chief inspector and any objector and any other person who, in the opinion of the person holding the inquiry, is affected by the draft regulations, may appear at the inquiry either in person or by counsel, solicitor, or agent.

(3) The witnesses on the inquiry may, if the person holding it thinks fit, be examined on oath.

(4) Subject as aforesaid, the inquiry and all proceedings preliminary and incidental thereto shall be conducted in accordance with rules made by the Secretary of State.

(5) The fee to be paid to the person holding the inquiry shall be such as the Secretary of State may direct, and shall be deemed to be part of the expenses of the Secretary of State in the execution of this Act.

Application of regulations.

82. (1) The regulations made under the foregoing provisions of this Act may apply to all the factories and workshops in which the manufacture, machinery, plant, process, or description of manual labour, certified to be dangerous, is used (whether existing at the time when the regulations are made or afterwards established), or to any specified class of such factories or workshops. They may provide for the exemption of any specified class of factories or workshops either absolutely or subject to conditions.

(2) The regulations may apply to tenement factories and tenement workshops, and in such case may impose duties on occupiers who do not employ any person, and on owners.

(3) No person shall be precluded by any agreement from doing, or be liable under any agreement to any penalty or forfeiture for doing, such acts as may be necessary in order to comply with the provisions of any regulation made under this Act.

Provisions which may be made by regulations.

83. Regulations made under the foregoing provisions of this Act may, among other things—(a) prohibit the employment of, or modify or limit the period of employment of, all persons or any class of persons in any manufacture, machinery, plant, process, or description of manual labour certified to be dangerous; and (b) prohibit, limit, or control the use of any material or process; and (c) modify or extend any special regulations for any class of factories or workshops contained in this Act.

Regulations to be laid before Parliament.

84. Regulations made under the foregoing provisions of this Act shall be laid as soon as possible before both Houses of Parliament, and if either House within the next forty days after the regulations have been laid before that House, resolve that all or any of the regulations ought to be annulled, the regulations shall, after the date of the resolution, be of no effect, without prejudice to the validity of anything done in the meantime thereunder, or to the making of any new regulations. If one or more of a set of regulations are annulled, the Secretary of State may, if he thinks fit, withdraw the whole set.

Breach of regulations.

85. (1) If any occupier, owner, or manager, who is bound to observe any regulation under this Act, acts in contravention of or fails to comply with the regulation, he shall be liable for each offence to a fine not exceeding ten pounds, and, in the case of a continuing offence, to a fine not exceeding two pounds for every day during which the offence continues after conviction therefor.

(2) If any person other than an occupier, owner, or manager, who is bound to observe any regulation under this Act, acts in contravention of, or fails to comply with, the regulation, he shall be liable for each offence to a fine not exceeding two pounds; and the occupier of the factory or workshop shall also be liable to a fine not exceeding ten pounds, unless he proves that he has<sup>1</sup> taken all reasonable means by publishing, and to the best of his power enforcing, the regulations to prevent the contravention or non-compliance.

Publication of regulations.

86. (1) Notice of any regulations having been made under the foregoing provisions of this Act, and of the place where copies of them can be purchased, shall be published in the London, Edinburgh, and Dublin Gazettes.

<sup>1</sup> Either himself or by an agent (*Baker v. Carter* (1878), 3 Ex.D. 132).

(2) Printed copies of all regulations for the time being in force under this Act in any factory or workshop shall be kept posted up in legible characters in conspicuous places in the factory or workshop where they may be conveniently read by the persons employed. In a factory or workshop in Wales or Monmouthshire the regulations shall be posted up in the Welsh language also.

(3) A printed copy of all such regulations shall be given by the occupier to any person affected thereby on his or her application.

(4) If the occupier of any factory or workshop fails to comply with any provision of this section as to posting up or giving copies, he shall be liable to a fine not exceeding ten pounds.

(5) Every person who pulls down, injures, or defaces any regulations posted up in pursuance of this Act, or any notice posted up in pursuance of the regulations, shall be liable to a fine not exceeding five pounds.

(6) Regulations for the time being in force under this Act shall be judicially noticed.

## PART V.

### SPECIAL MODIFICATIONS AND EXTENSIONS.

#### (i.) *Tenement Factories.*

87. (1) The owner (whether or not he is one of the occupiers) of a tenement factory<sup>1</sup> shall, instead of the occupier, be liable for the observance, and punishable for non-observance, of the following provisions of this Act, namely, the provisions with respect to—(i.) The cleanliness, freedom from effluvia, overcrowding and ventilation of factories, contained in section one of this Act, including, so far as they relate to any engine-house, passage, or staircase, or to any room which is let to more than one tenant, the provisions with respect to limewashing and washing of the interior of a factory; (ii.) the fencing of machinery, and penal compensation for neglect to fence machinery in a factory, except so far as relates to such parts of the machinery as are supplied by the occupier; (iii.) the notices to be affixed in a factory with respect to the period of employment, times for meals, and system of employment of children; (iv.) the prevention of the inhalation of dust, gas, vapour, or other impurity, so far as that provision requires the supply of pipes or other contrivances necessary for working the fan or other means for that purpose; and (v.) the affixing of an abstract and notices in a factory.

Duties of owner of tenement factory.

Provided that any occupier may affix in his own tenement the notice with respect to the period of employment, times for meals, and system of employment of children, and thereupon that notice shall, with respect to persons employed by that occupier, have effect in substitution for the corresponding notice affixed by the owner.

(2) The provisions of this Act with respect to the power to make orders in the case of dangerous premises shall apply in the case of a tenement factory as if the owner were substituted for the occupier.

(3) In the case of any tenement factory or class of tenement factories used wholly or partly for the weaving of cotton cloth, the owner shall, if the Secretary of State by order so directs, be substituted for the occupier for the purpose of the requirements of section seven and section ninety-four of this Act or of any order of the Secretary of State with respect to ventilation.

(4) Where, by or under this section, the owner of a tenement factory is substituted for the occupier with respect to any provisions of this Act, any summons, notice, or proceeding, which for the purpose of any of those provisions is by this Act required or authorised to be served on or taken in relation to the occupier, is hereby required or authorised (as the case may be) to be served on or taken in relation to the owner.

88. (1) Where grinding is carried on in a tenement factory, the owner

<sup>1</sup> For definition, see s. 149.

Regulations  
as to grinding  
of cutlery in  
tenement  
factory.

of the factory shall be responsible for the observance of the regulations set forth in the Third Schedule to this Act.

(2) In every such tenement factory it shall be the duty of the owner and of the occupier of the factory respectively to see that such part of the horsing chains and of the hooks to which the chains are attached as are supplied by them respectively are kept in efficient condition.

(3) In every tenement factory where grinding of cutlery is carried on, the owner of the factory shall provide that there shall at all times be instantaneous communication between each of the rooms in which the work is carried on and both the engine-room and the boiler-house.

(4) A tenement factory in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act, but for the purposes of any proceeding in respect of a provision for the observance of which the owner of the factory is responsible, that owner shall be substituted for the occupier of the factory.

(5) This section shall not apply to a textile factory.

Certificate of  
fitness in  
tenement  
factory.

89. A certificate of the fitness of any young person or child for employment in a tenement factory shall be valid for his similar employment in any part of the same tenement factory.

(ii.) *Cotton Cloth and other Humid Factories.*

Temperature  
and humidity.

90. In every room, shed, or workshop, or part thereof, in which the weaving of cotton cloth is carried on (in this Act referred to as a "cotton cloth factory"), the following provisions shall have effect:—(1) The amount of moisture in the atmosphere must not at any time be in excess of such amount as is represented by the number of grains of moisture per cubic foot of air shown in Column I. of the table in the Fourth Schedule to this Act opposite to such figure in Column II. as represents the temperature existing in the cotton cloth factory at that time: Provided that the temperature shall not at any time be raised by any artificial means whatsoever (except by gas used for lighting purposes only) above seventy degrees, except in so far as may be necessary in the process of giving humidity to the atmosphere. (2) The fact that one of the wet-bulb thermometers in the factory gives a higher reading than the figure shown in Column III. of the said table opposite to such figure in Column II. as represents the temperature existing in the factory, shall be evidence that the amount of moisture in the atmosphere exceeds the limit prescribed by this section.

Power to  
alter table  
of humidity.

91. The Secretary of State may by order repeal or vary the table in the Fourth Schedule to this Act, and substitute any new or amended table therefor: Provided as follows:—(a) The varied or substituted table shall be laid in a complete form before both Houses of Parliament if Parliament is sitting, or if not, then within three weeks after the beginning of the next ensuing session of Parliament; and if the table is disapproved by either House of Parliament within forty days after having been so laid before Parliament, the table shall be void and of no effect: (b) The table shall not come into operation until it has been laid before Parliament for forty days; but after the expiration of those forty days, if the table has not been disapproved of as aforesaid, the Secretary of State shall cause a copy thereof to be published in the London Gazette, and to be given to every occupier of a cotton cloth factory who, in pursuance of this Act, has given notice of humidity of the atmosphere being artificially produced in that factory, and after the expiration of fourteen days from the first publication thereof in the London Gazette, the varied or substituted table shall be deemed to be the table in the Fourth Schedule to this Act.

Employment  
of thermometers.

92. (1) In every cotton cloth factory, for the purpose of recording the humidity of the atmosphere and the temperature there must be provided, maintained, and kept in correct working order two sets of standardised wet and dry bulb thermometers.

(2) The following regulations shall be observed with reference to the employment of such thermometers:—(a) One set of thermometers is to be fixed in the centre and one at the side of the factory, or in such other



position as is directed or sanctioned by an inspector, so as to be plainly visible to the workers; (b) The occupier or manager or person for the time being in charge of the factory shall read the thermometers thrice in the day, namely, between seven and eight o'clock in the forenoon, between ten and eleven o'clock in the forenoon, and between three and four o'clock in the afternoon, on every day on which any workers are employed in the factory, and shall record the readings of each thermometer at each of those times on a form provided for the purpose for each set of thermometers in accordance with the Form of Record and the regulations contained in the Fourth Schedule to this Act; (c) The form in which the readings of each thermometer are to be recorded must be kept hung up near the thermometers, and after being duly filled up, must be forwarded at the end of each month to the inspector of the district, and a copy must be kept at the factory for reference; (d) There must be kept hanging up in a frame, and properly glazed, in a conspicuous position and near to each set of thermometers, a copy of the table set out in the Fourth Schedule to this Act; (e) Each form shall be *prima facie* evidence of the humidity of the atmosphere and temperature in the factory in which the form was hung up.

93. (1) The occupier of every cotton cloth factory in which humidity of the atmosphere is produced by any artificial means whatsoever (except by gas used for lighting purposes only) shall, at or before the time at which such artificial production of humidity is commenced, give notice thereof in writing to the chief inspector of factories. Notices and inspections where humidity is artificially produced.

(2) Every factory in respect of which any such notice has been given shall be visited by an inspector once at least in every three months. The inspector shall examine into the temperature, humidity of the atmosphere, ventilation, and quantity of fresh air in the factory, and shall report to the chief inspector of factories in the prescribed form.

(3) If at any time the occupier of any factory in respect of which any such notice has been given ceases to produce humidity by artificial means, he may give notice in writing of such cessation, and from the date of that notice, and so long as humidity is not artificially produced in the factory, the provisions of this section shall not apply to that factory.

94. In every cotton cloth factory the following regulations for the protection of health shall have effect, viz.:—(1) The water used for the purpose of producing humidity shall either be taken from a public supply of drinking water or other source of pure water, or shall be effectively purified to the satisfaction of the inspector before being introduced in the form of steam into the factory, and all ducts for the introduction of humidified air shall be kept clean. (2) The pipes used for the introduction of steam into a cotton cloth factory in which the temperature is seventy degrees Fahrenheit or over shall, so far as they are within the shed, be as small both in diameter and length as is reasonably practicable, and shall be effectively covered with non-conducting material to the satisfaction of the inspector, so as to minimise the amount of heat thrown off by them into the shed. (3) In the case of a cotton cloth factory in which humidity of the atmosphere is produced by any artificial means whatsoever (except by gas used for lighting purposes only), the arrangements for ventilation shall be such that during working hours in no part of the cotton cloth factory shall the proportion of carbonic acid (carbon dioxide) in the air be greater than nine volumes of carbonic acid to every ten thousand volumes of air. (4) Unless some other method certified by the inspector to be equally satisfactory is adopted, the outside of the roof of every cotton cloth factory shall be whitewashed every year before the thirty-first day of May, and such whitewash shall be effectively maintained until the thirty-first day of August. (5) In every cotton cloth factory erected after the second day of February one thousand eight hundred and ninety-eight a sufficient and suitable cloak room, or cloak rooms, shall be provided for the use of all the persons employed therein, and shall be ventilated and kept at a suitable temperature. Regulations for the protection of health.

95. If in the case of any cotton cloth factory there is a contravention of or non-compliance with any of the foregoing provisions with regard to cotton cloth factories, the inspector shall give notice in writing to the Penalties for non-compliance.

occupier of the factory of the acts or omissions constituting the contravention or non-compliance, and if those acts or omissions, or any of them, are continued or not remedied, or are repeated within twelve months after the notice has been given, the occupier of the factory shall be liable, for the first offence to a fine not less than five pounds and not exceeding ten pounds, and for every subsequent offence to a fine not less than ten pounds and not exceeding twenty pounds.<sup>1</sup>

Application of foregoing provisions to other humid factories

96. The foregoing provisions of this Act with respect to cotton cloth factories shall apply to every textile factory in which atmospheric humidity is artificially produced by steaming or other mechanical appliances, and in which regulations under Part IV. of this Act with respect to humidity are not for the time being in force, but subject to the following qualifications, namely :—(a) The Secretary of State may by special order modify the provisions of the Fourth Schedule to this Act with respect to the maximum limits of humidity; (b) the reading of the thermometer between seven and eight o'clock in the forenoon shall not be required; and (c) section ninety-four respecting regulations for the protection of health in cotton cloth factories shall not apply; and (d) the regulations in section ninety-two distinguished as (b), (c), (d), and (e) which are required to be observed with reference to the employment of thermometers shall not apply to cotton spinning mills.

(iii.) *Bakehouses.*

Sanitary regulations for bakehouses.

97. (1) It shall not be lawful to let or suffer to be occupied or to occupy any room or place as a bakehouse,<sup>2</sup> unless the following regulations are complied with :—(a) A water-closet, earth-closet, privy, or ashpit must not be within or communicate directly with the bakehouse; (b) every cistern for supplying water to the bakehouse must be separate and distinct from any cistern for supplying water to a water-closet; (c) a drain or pipe for carrying off fæcal or sewage matter must not have an opening within the bakehouse.

(2) If any person lets or suffers to be occupied or occupies any room or place as a bakehouse in contravention of this section he shall be liable to a fine not exceeding forty shillings, and to a further fine not exceeding five shillings for every day during which any room or place is so occupied after a conviction under this section.

Penalty for bakehouse being unfit on sanitary grounds.

98. (1) Where a court of summary jurisdiction is satisfied on the prosecution of an inspector or a district council that any room or place used as a bakehouse is in such a state as to be on sanitary grounds unfit for use or occupation as a bakehouse, the occupier of the bakehouse shall be liable to a fine not exceeding, for the first offence, forty shillings, and for any subsequent offence five pounds.

(2) The court of summary jurisdiction, in addition to or instead of inflicting a fine, may order means to be adopted by the occupier, within the time named in the order, for the purpose of removing the ground of complaint. The court may, on application, enlarge the time so named, but if after the expiration of the time as originally named or enlarged by subsequent order the order is not complied with, the occupier shall be liable to a fine not exceeding one pound for every day that the non-compliance continues.

Limewashing painting, and washing of bakehouses.

99. (1) All the inside walls of the rooms of a bakehouse, and all the ceilings or tops of those rooms (whether those walls, ceilings, or tops are plastered or not), and all the passages and staircases of a bakehouse, must either be painted with oil or varnished or be limewashed, or be partly painted or varnished and partly limewashed; and (a) where the bakehouse is painted with oil or varnished, there must be three coats of paint or varnish, and the paint or varnish must be renewed once at least in every seven years, and must be washed with hot water and soap once at least in every six months; and (b) where the bakehouse is lime-

<sup>1</sup> The fines cannot be reduced less than the amounts above stated (*Osborn v. Wood* (1897), 1 Q.B. 197).

<sup>2</sup> See Schedule 6, Part II. (23).

washed, the limewashing must be renewed once at least in every six months.

(2) A bakehouse in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

100. (1) A place on the same level with a bakehouse, and forming part of the same building, may not be used as a sleeping place, unless it is constructed as follows; that is to say—(a) is effectually separated from the bakehouse by a partition extending from the floor to the ceiling; and (b) has an external glazed window of at least nine superficial feet in area, of which at the least four and a half superficial feet are made to open for ventilation.

Provision as to sleeping places near bakehouses.

(2) If any person lets or occupies or continues to let or knowingly suffers to be occupied any place contrary to this section he shall be liable to a fine not exceeding, for the first offence, twenty shillings, and for any subsequent offence five pounds.

101. (1) An underground bakehouse shall not be used as a bakehouse unless it was so used at the passing of this Act.

Prohibition of underground bakehouses.

(2) Subject to the foregoing provision, after the first day of January one thousand nine hundred and four an underground bakehouse shall not be used unless certified by the district council to be suitable for that purpose.

(3) For the purpose of this section an underground bakehouse shall mean a bakehouse, any baking room of which is so situate that the surface of the floor is more than three feet below the surface of the footway of the adjoining street, or of the ground adjoining or nearest to the room. The expression "baking room" means any room used for baking, or for any process incidental thereto.

(4) An underground bakehouse shall not be certified as suitable unless the district council is satisfied that it is suitable as regards construction, light, ventilation, and in all other respects.

(5) This section shall have effect as if it were included among the provisions relating to bakehouses which are referred to in section twenty-six of the Public Health (London) Act, 1891.

(6) If any place is used in contravention of this section, it shall be deemed to be a workshop not kept in conformity with this Act.

(7) In the event of the refusal of a certificate by the district council, the occupier of the bakehouse may, within twenty-one days from the refusal, by complaint apply to a court of summary jurisdiction, and if it appears to the satisfaction of the court that the bakehouse is suitable for use as regards construction, light, ventilation, and in all other respects, the court shall thereupon grant a certificate of suitability of the bakehouse, which shall have effect as if granted by the district council.

(8) Where any place has been let<sup>1</sup> as a bakehouse, and the certificate required by this section cannot be obtained unless structural alterations are made, and the occupier alleges that the whole or part of the expenses of the alterations ought to be borne by the owner, he may by complaint apply to a court of summary jurisdiction, and that court may make such order concerning the expenses or their apportionment as appears to the court to be just and equitable, under the circumstances of the case, regard being had to the terms of any contract between the parties, or in the alternative the court may, at the request of the occupier, determine the lease.

102. As respects every retail bakehouse, the provisions of this Part of this Act shall be enforced by the district council of the district in which the retail bakehouse is situate, and not by an inspector; and for the purposes of this section the medical officer of health<sup>2</sup> of the district council shall have and may exercise all the powers of entry, inspection, taking legal proceedings and otherwise of an inspector.

Enforcement of law as to retail bakehouses by sanitary authorities.

In this section the expression "retail bakehouse" means any bake-

<sup>1</sup> *Seem*, premises are not "let as a bakehouse" unless the terms of the lease impose an obligation upon the tenant to use them as a bakehouse, and not merely confer a permission so to use them (*Morris v. Beal* (1904), 2 K.B. 585, *per* Kennedy, J.).

<sup>2</sup> Which includes medical superintendent of health (s. 160 (5)).



house or place, not being a factory, the bread, biscuits, or confectionery baked in which are sold, not wholesale, but by retail, in some shop or place occupied with the bakehouse.

(iv.) *Laundries.*

[Section 103, as to laundries, repealed by *Factory and Workshop Act*, 1907, 7 Edw. 7, c. 39.]

(v.) *Docks.*

Application  
of certain  
provisions to  
docks.

104. (1) The provisions of this Act with respect to—(i.) Power to make orders as to dangerous machines (s. 17); (ii.) accidents; (iii.) regulations for dangerous trades; (iv.) powers of inspectors (s. 119); and (v.) fines in case of death or injury (s. 136); shall have effect as if every dock,<sup>1</sup> wharf,<sup>2</sup> quay, and warehouse,<sup>3</sup> and all machinery or plant used in the process of loading or unloading<sup>4</sup> or coaling any ship in any dock, harbour, or canal were included in the word "factory," and the purpose for which the machinery or plant is used were a manufacturing process; and as if the person who by himself, his agents, or workmen, uses any such machinery or plant for the before-mentioned purpose were the occupier of the premises; and for the purpose of the enforcement of those provisions the person having the actual use or occupation,<sup>5</sup> of a dock, wharf, quay, or warehouse, or of any premises within the same or forming part thereof, and the person so using any such machinery or plant shall be deemed to be the occupier of a factory.

(2) For the purposes of this section the expression "plant" includes any gangway or ladder used by any person employed to load or unload or coal a ship, and the expressions "ship" and "harbour" have the same meaning as in the Merchant Shipping Act, 1894.

(vi.) *Buildings.*

Application  
of certain  
provisions  
to buildings.

105. (1) The provisions of this Act with respect to—(i.) Power to make orders as to dangerous machines (s. 17); (ii.) accidents; (iii.) regulations for dangerous trades; (iv.) powers of inspectors (s. 119); and (v.) fines in case of death or injury (s. 136); shall have effect as if any premises on which machinery worked by steam, water, or other mechanical power<sup>6</sup> is temporarily used for the purpose of the construction of a building or any structural work in connection with a building were included in the word "factory" and the purpose for which the machinery is used were a manufacturing process, and as if the person who, by himself, his agents, or workmen, temporarily uses any such machinery for the before-mentioned purpose were the occupier of the said premises; and for the purpose of the enforcement of those provisions the person so using any such machinery shall be deemed to be the occupier of a factory.

(2) The provisions of this Act with respect to notice of accidents, and the formal investigation of accidents, shall have effect as if—(a) any building which exceeds thirty feet in height,<sup>7</sup> and which is being constructed<sup>8</sup> or repaired by means of a scaffolding;<sup>9</sup> and (b) any build-

<sup>1</sup> See *Raine v. Jobson* (1901), A.C. 404; *Cattermole v. Atlantic Transport* (1902), 1 K.B. 204; *Bartell v. Gray* (1902), 1 K.B. 225.

<sup>2</sup> See *Haddock v. Humphrey* (1900), 1 Q.B. 609; *Ellis v. Cory* (1902), 1 K.B. 38; *Kenny v. Harrison* (1902), 2 K.B. 168.

<sup>3</sup> See *Wilmott v. Paton* (1902), 1 K.B. 237; *Green v. Britten* (1904), 1 K.B. 350.

<sup>4</sup> See *Stuart v. Nixon* (1901), A.C. 79.

<sup>5</sup> See *Merrill v. Wilson* (1901), 1 K.B. 35; *Raine v. Jobson* (1901), A.C. 404; *Bartell v. Gray* (1902), 1 K.B. 225; *Weavings v. Kirk* (1904), 1 K.B. 213; *Handford v. Clark* (1907), 2 K.B. 409.

<sup>6</sup> See *Wrigley v. Bagley* (1901), 1 K.B. 780; *Wilmott v. Paton* (1902), 1 K.B. 237.

<sup>7</sup> See *Hoddinott v. Newton* (1901), A.C. 49; *Billings v. Holloway* (1899), 1 Q.B. 70.

<sup>8</sup> See *Plant v. Wright* (1905), 1 K.B. 353.

<sup>9</sup> See *O'Brien v. Dobbie* (1905), 1 K.B. 346.

ing which exceeds thirty feet in height, and in which more than twenty persons, not being domestic servants, are employed for wages, were included in the word "factory," and, as if, in the first case, the employer of the persons engaged in the construction or repair and, in the second case, the occupier of the building, were the occupier of a factory.

(vii.) *Railways.*

106. (1) Where any line or siding not being part of a railway within the meaning of the Railway Employment (Prevention of Accidents) Act, 1900, is used in connection with a factory or workshop, or with any place to which any of the provisions of this Act are applied, the provisions of this Act with respect to—(i.) Power to make orders as to dangerous machines (s. 17); (ii.) accidents; (iii.) regulations for dangerous trades; (iv.) powers of inspectors (s. 119); and (v.) fines in case of death or injury (s. 136), shall have effect as if the line or siding were part of the factory or workshop.

Application of certain provisions to railway sidings.

(2) If any such line or siding is used in connection with more than one factory or workshop belonging to different occupiers, the foregoing provisions shall have effect as if the line or siding were a separate factory.

PART VI.

HOME WORK.

107. In the case of persons employed in such classes of work as may from time to time be specified by Special Order of the Secretary of State—

Lists of outworkers to be kept in certain trades.

- (1) The occupier of every factory and workshop and every contractor employed by any such occupier in the business of the factory or workshop shall—(a) keep in the prescribed form and manner, and with the prescribed particulars, lists showing the names and addresses of all persons directly employed by him, either as workmen or as contractors, in the business of the factory or workshop, outside the factory or workshop, and the places where they are employed; and (b) send to an inspector such copies of or extracts from those lists as the inspector may from time to time require; and (c) send on or before the first day of February and the first day of August in each year copies of those lists to the district council of the district in which the factory or workshop is situate.
- (2) Every district council shall cause the lists received in pursuance of this section to be examined, and shall furnish the name and place of employment of every outworker included in any such list whose place of employment is outside its district to the council of the district in which his place of employment is.
- (3) The lists kept by the occupier or contractor shall be open to inspection by any inspector under this Act, and by any officer duly authorised by the district council, and the copies sent to the council and the particulars furnished by one council to another shall be open to inspection by any inspector under this Act.
- (4) This section shall apply to any place from which any work is given out, and to the occupier of that place, and to every contractor employed by any such occupier in connection with the said work, as if that place were a workshop.
- (5) In the event of a contravention of this section by the occupier of a factory, workshop, or place, or by a contractor, the occupier or contractor shall be liable to a fine not exceeding forty shillings, and in the case of a second or subsequent offence, not exceeding five pounds.

108. (1) If the district council within whose district is situate a place in which work is carried on for the purpose of or in connection with the business of a factory or workshop give notice in writing to the occupier

Employment of persons in unwholesome premises.

of the factory or workshop, or to any contractor employed by any such occupier, that that place is injurious or dangerous to the health of the persons employed therein, then, if the occupier or contractor after the expiration of one month from receipt of the notice gives out work to be done in that place, and the place is found by the court having cognisance of the case to be so injurious or dangerous, he shall be liable to a fine not exceeding ten pounds.

(2) This section shall apply in the case of the occupier of any place from which any work is given out as if that place were a workshop.

(3) This section shall not apply except in the case of persons employed in such classes of work as the Secretary of State may specify by Special Order.

Making of wearing apparel where there is scarlet fever or small-pox.

109. If the occupier of a factory or workshop or of any place from which any work is given out, or any contractor employed by any such occupier, causes or allows wearing apparel to be made, cleaned, or repaired, in any dwelling-house or building occupied therewith, whilst any inmate of the dwelling-house is suffering from scarlet fever or small-pox, then, unless he proves that he was not aware of the existence of the illness in the dwelling-house, and could not reasonably have been expected to become aware of it, he shall be liable to a fine not exceeding ten pounds.

Prohibition of home work in places where there is infectious disease.

110. (1) If any inmate of a house is suffering from an infectious disease to which this section applies, the district council of the district in which the house is situate may make an order forbidding any work to which this section applies to be given out to any person living or working in that house, or such part thereof as may be specified in the order, and any order so made may be served on the occupier of any factory or workshop, or any other place from which work is given out, or on the contractor employed by any such occupier.

(2) The order may be made notwithstanding that the person suffering from an infectious disease may have been removed from the house, and the order shall be made either for a specified time or subject to the condition that the house or part thereof liable to be infected shall be disinfected to the satisfaction of the medical officer of health, or that other reasonable precautions shall be adopted.

(3) In any case of urgency the powers conferred on the district council by this section may be exercised by any two or more members of the council acting on the advice of the medical officer of health.

(4) If any occupier or contractor on whom an order under this section has been served contravenes the provisions of the order, he shall be liable to a fine not exceeding ten pounds.

(5) The infectious diseases to which this section applies are the infectious diseases required to be notified under the law for the time being in force in relation to the notification of infectious diseases, and the work to which this section applies is the making, cleaning, washing, altering, ornamenting, finishing and repairing of wearing apparel and any work incidental thereto, and such other classes of work as may be specified by Special Order of the Secretary of State.

Application of Act to domestic factories and workshops.

111. The application of this Act to domestic factories and domestic workshops shall be subject to the following provisions:—

(1) The regulations with respect to the hours of employment of women, young persons, and children, shall not apply to any such factory or workshop, and in lieu thereof the following regulations shall be observed therein:—(a) A young person or child shall not be employed in the factory or workshop except during the period of employment hereinafter mentioned; and (b) the period of employment for a young person shall, except on Saturday, begin at six o'clock in the morning and end at nine o'clock in the evening, and shall on Saturday begin at six o'clock in the morning and end at four o'clock in the afternoon; and (c) there shall be allowed to every young person for meals and absence from work during the period of employment not less, except on Saturday, than four hours and a half, and on Saturday than two hours and a half; and (d) the period of employment for a child on every day either shall begin at six



o'clock in the morning and end at one o'clock in the afternoon, or shall begin at one o'clock in the afternoon and end at eight o'clock in the evening or on Saturday at four o'clock in the afternoon; and for the purpose of the provisions of this Act respecting education such child shall be deemed, according to circumstances, to be employed in a morning or afternoon set; and (e) a child shall not be employed before the hour of one in the afternoon in two successive periods of seven days, nor after that hour in two successive periods of seven days; and a child shall not be employed on Saturday in any week before the hour of one in the afternoon if on any other day in the same week he has been employed before that hour, nor after that hour if on any other day of the same week he has been employed after that hour; and (f) a child shall not be employed continuously for more than five hours without an interval of at least half an hour for a meal.

- (2) The requirement as to making certain entries and reports when a woman, young person, or child, is employed in pursuance of an exception,<sup>1</sup> shall not apply except so far as may be prescribed from time to time by the Secretary of State.
- (3) The provisions of this Act with respect to certificates of fitness for employment<sup>2</sup> shall apply to a domestic factory as if it were a workshop and not a factory.
- (4) The following provisions shall not apply to a domestic factory or to a domestic workshop, namely:—(a) The provisions as to meal hours being simultaneous, and as to prohibition of employment during meal times;<sup>3</sup> (b) the provisions as to affixing notices and abstracts, and as to specifying certain matters in notices so affixed;<sup>4</sup> (c) the provisions as to holidays;<sup>5</sup> (d) the provisions as to notices of accidents;<sup>6</sup> (e) the provisions as to means of ventilation, the drainage of floors, and thermometers;<sup>7</sup> (f) the provisions as to the keeping of a general register.<sup>8</sup>
- (5) The provisions of section one of this Act (relating to the sanitary condition of a factory) shall not apply to a domestic factory.

112. If any manufacture, process, or description of manual labour, which in pursuance of this Act has been certified by the Secretary of State to be dangerous, is carried on in a domestic factory or workshop, all the provisions of this Act shall apply as if the place were a factory or workshop other than a domestic factory or workshop. Dangerous processes in domestic factories and workshops.

113. The Secretary of State shall give notice of the provisions of this Act relating to domestic factories and workshops by the publication of the prescribed abstract or otherwise as he thinks fit. Abstracts for domestic factories and workshops.

114. (1) The exercise in a private house or private room by the family dwelling therein, or by any of them, of manual labour by way of trade or for purposes of gain in or incidental to any of the following handicrafts, namely—(i.) straw plaiting, or (ii.) pillow-lace making, or (iii.) glove making, shall not of itself constitute the house or room a workshop within the meaning of this Act. Non-application of Act to certain domestic workshops.

When it is proved to the satisfaction of the Secretary of State that by reason of the light character of the handicraft carried on in any private house or private room by the family dwelling therein, or by any of them, it is expedient to extend the provisions of this subsection to that handicraft, he may by special order extend the same accordingly. Part Two of this Act shall apply, so far as circumstances admit, as if the order were an order extending an exception.

(2) The exercise in a private house or private room by the family dwelling therein, or by any of them, of manual labour for the purposes of gain in or incidental to any of the following purposes, namely—(i.) The making of any article or of part of any article; or (ii.) the altering,

<sup>1</sup> That is, s. 60 (4).

<sup>2</sup> That is, ss. 63–67.

<sup>3</sup> That is, s. 33.

<sup>4</sup> That is, s. 128.

<sup>5</sup> That is, s. 35.

<sup>6</sup> That is, s. 19, itself repealed by the notice of Accidents Act, 1906.

<sup>7</sup> That is, ss. 7, 8.

<sup>8</sup> That is, s. 129.

repairing, ornamenting, or finishing of any article ; or (iii.) the adapting for sale of any article, shall not of itself constitute that house or room a workshop, where the labour is exercised at irregular intervals, and does not furnish the whole or principal means of living to the family.<sup>1</sup>

Definitions of  
"domestic  
factory" and  
"domestic  
workshop."

115. The expressions "domestic factory" and "domestic workshop" mean a private house, room, or place which, though used as a dwelling, is by reason of the work carried on there a factory or a workshop, as the case may be, within the meaning of this Act, and in which neither steam, water, nor other mechanical power is used in aid of the manufacturing process carried on there, and in which the only persons employed are members of the same family dwelling there.

## PART VII.

### PARTICULARS OF WORK AND WAGES.

Particulars of  
work or wages  
to be given  
to piece  
workers.

116. (1) In every textile factory the occupier shall, for the purpose of enabling each worker who is paid by the piece to compute the total amount of wages payable to him in respect of his work, cause to be published particulars of the rate of wages applicable to the work to be done, and also particulars of the work to which that rate is to be applied, as follows :—(a) In the case of weavers in the worsted and woollen, other than the hosiery, trades, the particulars of the rate of wages applicable to the work done by each weaver, shall be furnished to him in writing at the time when the work is given out to him, and shall also be exhibited on a placard not containing any other matter, and posted in a position where it is easily legible. (b) In the case of weavers in the cotton trade, the particulars of the rate of wages applicable to the work to be done by each weaver shall be furnished to him in writing at the time when the work is given out to him, and the basis and conditions by which the prices are regulated and fixed shall also be exhibited in each room on a placard not containing any other matter, and posted in a position where it is easily legible. (c) In the case of every other worker, the particulars of the rate of wages applicable to the work to be done by each worker shall be furnished to him in writing at the time when the work is given out to him ; provided that if the same particulars are applicable to the work to be done by each of the workers in one room it shall be sufficient to exhibit them in that room on a placard not containing any other matter, and posted in a position where it is easily legible. (d) Such particulars of the work to be done by each worker as affect the amount of wages payable to him shall (except so far as they are ascertainable by an automatic indicator) be furnished to him in writing at the time when the work is given out to him. (e) The particulars either as to rate of wages or as to work shall not be expressed by means of symbols. (f) Where an automatic indicator is used for ascertaining work, the indicator shall have marked on its case the number of teeth in each wheel and the diameter of the driving roller, except that in the case of spinning machines with traversing carriages the number of spindles and the length of the stretch in such machines shall be so marked in substitution for the diameter of the driving roller. (g) Where such particulars of the work to be done by each worker as affect the amount of wages payable to him are ascertained by an automatic indicator, and a placard containing the particulars as to the rate of wages is exhibited in each room, in pursuance of an agreement between employers and workmen, and in conformity with the requirements of this section, the exhibition thereof shall be a sufficient compliance with this section.

(2) If the occupier fails to comply with the requirements of this section, or fraudulently uses a false indicator for ascertaining the particulars or amount of any work paid for by the piece, or if any workman fraudulently alters an automatic indicator, the occupier or workman, as the case may be, shall be liable for each offence to a fine not exceeding ten pounds,

<sup>1</sup> See, as to laundries, Factory and Workshop Act, 1907, 7 Edw. 7, c. 39, s. 4, *post*.

and in the case of a second or subsequent conviction within two years from the last conviction for that offence not less than one pound. Provided that an indicator shall not be deemed false if it complies with the requirements of this section.

(3) If any one engaged as a worker in a factory, having received any such particulars, whether they are furnished directly to him or to a fellow workman, discloses the particulars for the purpose of divulging a trade secret, he shall be liable to a fine not exceeding ten pounds.

(4) If any one for the purpose of obtaining knowledge of or divulging a trade secret solicits or procures a person so engaged in a factory to disclose any such particulars, or with that object pays or rewards any such person, or causes any such person to be paid or rewarded for disclosing any such particulars, he shall be liable to a fine not exceeding ten pounds.

(5) The Secretary of State, on being satisfied by the report of an inspector that the provisions of this section are applicable to any class of non-textile factories, or to any class of workshops, may, if he thinks fit, by Special Order, apply the provisions of this section to any such class, subject to such modifications as may in his opinion be necessary for adapting those provisions to the circumstances of the case. He may also by any such order apply those provisions, subject to such modifications as may, in his opinion, be necessary for adapting them to the circumstances of the case, to any class of persons of whom lists may be required to be kept under the provisions of this Act relating to outworkers, and to the employers of those persons.

117. Every Act for the time being in force relating to weights and measures shall extend to weights, measures, scales, balances, steelyards, and weighing machines used in a factory or workshop in checking or ascertaining the wages of any person employed therein, in like manner as if they were used in the sale of goods, and as if the factory or workshop were a place where goods are kept for sale, and every such Act shall apply accordingly, and every inspector of, or other person authorised to inspect or examine, weights and measures, shall inspect, stamp, mark, search for, and examine the said weights and measures, scales, balances, steelyards, and weighing machines accordingly, and for that purpose shall have the same powers and duties as he has in relation to weights, measures, scales, balances, steelyards, and weighing machines, used in the sale of goods.

Inspection of weights and measures used in ascertaining wages.

## PART VIII.

### ADMINISTRATION.

#### (i.) *Inspection.*

118. (1) The Secretary of State, with the approval of the Treasury as to numbers and salaries, may appoint such inspectors (under whatever title he may from time to time fix) and such clerks and servants as he thinks necessary for the execution of this Act, and may assign to them their duties and award them their salaries, and may appoint a chief inspector with an office in London, and may regulate the cases and manner in which the inspectors, or any of them, are to execute and perform the powers and duties of inspectors under this Act, and may remove such inspectors, clerks, and servants.

Appointment and duties of inspectors and clerks and servants.

(2) In the appointment of inspectors of factories in Wales and Monmouthshire, among candidates otherwise equally qualified, persons having a knowledge of the Welsh language shall be preferred.

(3) Notice of the appointment of every inspector shall be published in the London Gazette.

(4) The salaries of the inspectors, clerks, and servants, and the expenses incurred by them or by the Secretary of State in the execution of this Act, shall be paid out of moneys provided by Parliament.

(5) A person who is the occupier of a factory or workshop, or is directly or indirectly interested therein or in any process or business carried on



therein, or in a patent connected therewith, or is employed in or about a factory or workshop, shall not act as an inspector.

(6) An inspector shall not be liable to serve in any parochial or municipal office.

(7) Such annual report of the proceedings of the inspectors as the Secretary of State directs shall be laid before both Houses of Parliament.

(8) A reference in this Act to an inspector refers, unless it is otherwise expressed, to an inspector appointed in pursuance of this section, and a notice or other document required by this Act to be sent to an inspector shall be sent to such inspector as a Secretary of State directs, by declaration published in the London Gazette or otherwise as he thinks expedient for making the same known to all persons interested.

Powers of  
inspectors.

119. (1) An inspector shall, for the purpose of the execution of this Act, have power to do all or any of the following things; namely—(a) To enter, inspect, and examine at all reasonable times, by day and night, a factory and a workshop, and every part thereof, when he has reasonable cause to believe that any person is employed therein, and to enter by day any place which he has reasonable cause to believe to be a factory or workshop; and (b) to take with him in either case a constable into a factory or workshop in which he has reasonable cause to apprehend any serious obstruction in the execution of his duty; and (c) to require the production of the registers, certificates, notices, and documents kept in pursuance of this Act, and to inspect, examine, and copy the same; and (d) to make such examination and inquiry as may be necessary to ascertain whether the enactments for the time being in force relating to public health and the enactments of this Act are complied with, so far as respects the factory or workshop and the persons employed therein; and (e) to enter any school in which he has reasonable cause to believe that children employed in a factory or workshop are for the time being educated; and (f) to examine, either alone or in the presence of any other person,<sup>1</sup> as he thinks fit, with respect to matters under this Act, every person whom he finds in a factory or workshop, or such a school as aforesaid, or whom he has reasonable cause to believe to be or to have been within the preceding two months employed in a factory or workshop, and to require every such person to be so examined and to sign a declaration of the truth of the matters respecting which he is so examined; and (g) to exercise such other powers as may be necessary for carrying this Act into effect.

(2) The occupier of every factory and workshop, his agents and servants, shall furnish the means required by an inspector as necessary for an entry, inspection, examination, inquiry, or the exercise of his powers under this Act in relation to that factory or workshop.

(3) If any person wilfully delays an inspector in the exercise of any power under this section, or fails to comply with the requisition of an inspector in pursuance of this section, or to produce any certificate or document which he is required by or in pursuance of this Act to produce, or conceals or prevents, or attempts to conceal or prevent a woman, young person, or child, from appearing before or being examined by an inspector, that person shall be deemed to obstruct an inspector in the execution of his duties under this Act:

Provided that no one shall be required under this section to answer any question or to give any evidence tending to criminate himself.

(4) Where an inspector is obstructed in the execution of his duties under this Act, the person obstructing him shall be liable to a fine not exceeding five pounds; and where an inspector is so obstructed in a factory or workshop, other than a domestic factory or a domestic workshop, the occupier of that factory or workshop shall be liable to a fine not exceeding five, or where the offence is committed at night twenty, pounds; and where an inspector is so obstructed in a domestic factory or a domestic workshop, the occupier shall be liable to a fine not exceeding one pound, or where the offence is committed at night five pounds; and in the case of a second or subsequent conviction under this section in relation to a factory within two years from the last conviction for the

<sup>1</sup> See the Factory and Workshop Act, 1907, 7 Edw. 7, c. 39, s. 5 (2) (d), *post*.

same offence, a fine not less than one pound shall be imposed for each offence.

120. An inspector, if so authorised in writing under the hand of the Secretary of State, may, although he is not a counsel, or solicitor, or law agent, prosecute, conduct, or defend, before a court of summary jurisdiction or justice, any information, complaint, or other proceeding arising under this Act, or in the discharge of his duty as inspector. Right of inspector to conduct proceedings before magistrates.

121. Every inspector shall be furnished with the prescribed certificate of his appointment, and on applying for admission to a factory or workshop shall, if so required, produce the said certificate to the occupier. Certificate of appointment of inspector.

(ii.) *Certifying Surgeons.*

122. (1) Subject to such regulations as may be made by the Secretary of State, an inspector may appoint a sufficient number of duly registered medical practitioners to be certifying surgeons for the purposes of this Act, and may revoke any such appointment. Appointment and duties of certifying surgeons.

(2) Every appointment and revocation of appointment of a certifying surgeon may be annulled by the Secretary of State upon appeal to him for that purpose.

(3) A surgeon who is the occupier of a factory or workshop, or is directly or indirectly interested therein, or in any process or business carried on therein, or in a patent connected therewith, shall not be a certifying surgeon for that factory or workshop.<sup>1</sup>

(4) The Secretary of State may make rules for the guidance of certifying surgeons, and for the particulars to be registered respecting their visits, and for the forms of certificates and other documents to be used by them.

(5) Every certifying surgeon shall, if so directed by the Secretary of State, make any special inquiry and re-examine any young person or child.

(6) Every certifying surgeon shall in each year make at the prescribed time a report in the prescribed form to the Secretary of State as to the persons inspected during the year and the results of the inspection.

123. Where there is no certifying surgeon for a factory or workshop, the poor law medical officer for the district<sup>2</sup> in which the factory or workshop is situate shall act for the time being as the certifying surgeon for that factory or workshop. When poor law medical officer is to act as certifying surgeon.

124. (1) The fees to be paid to a certifying surgeon in respect of the examination of, and grant of certificates of fitness for employment for, young persons and children, shall be regulated as follows:—(a) The occupier of the factory may agree with the certifying surgeon as to the amount of the fees; (b) in the absence of agreement the fees shall be in accordance with the scale set forth in Part I. of the Fifth Schedule to this Act, or with such scale as may be substituted therefor by the Secretary of State; (c) the occupier shall pay the fees on the completion of the examination, or if any certificates are granted, at the time at which the surgeon signs the certificates, or at any other time directed by an inspector. Fees of certifying surgeons.

(2) The fees to be paid to a certifying surgeon in cases where, in pursuance of a direction of the Secretary of State or of regulations made under this Act, he is required to examine the persons employed in a factory or workshop, shall be in accordance with the scale set forth in Part II. of the Fifth Schedule to this Act, or with such scale as may be substituted therefor by the Secretary of State. Such fees shall, where the examination is in pursuance of a direction of the Secretary of State, be paid by the Secretary of State, and where the examination is in pursuance of regulations be paid by the occupier of the factory or workshop.

(3) The fee to be paid to a certifying surgeon for the investigation of an accident in pursuance of this Act shall be such sum, not more than ten nor less than three shillings, as the Secretary of State may prescribe, and shall be paid by the Secretary of State as expenses incurred in the execution of this Act.

<sup>1</sup> But see the Factory and Workshop Act, 1907, 7 Edw. 7. c. 39, s. 5 (2), *post*.

<sup>2</sup> Meaning, in Ireland, the medical officer of a dispensary district (s. 160 (6)).

(iii.) *Local Authorities.*

Powers of local authorities and their officers.

125. For the purpose of their duties with respect to workshops and workplaces under this Act, and under the law relating to public health, the district council and their officers shall, without prejudice to their other powers, have all such powers of entry, inspection, taking legal proceedings, or otherwise, as an inspector under this Act.

(iv.) *Special Orders.*

Provisions as to special orders of Secretary of State.

126. The following provisions shall apply to such orders made by the Secretary of State in pursuance of this Act as are in this Act referred to as Special Orders:—(1) The order shall be under the hand of the Secretary of State and shall be published in such manner as the Secretary of State thinks best adapted for the information of all persons concerned, and shall come into operation at the date of its publication, or at any later date mentioned in the order. (2) The order may be temporary or permanent, conditional or unconditional, and whether granting or extending an exception or prohibition, or directing the adoption of any special means or provision, or rescinding a previous order, or effecting any other thing, may do so either wholly or partly. (3) The order shall be laid as soon as may be before both Houses of Parliament, and if either House of Parliament, within the next forty days after the order has been so laid before that House, resolves that the order ought to be annulled, it shall after the date of that resolution be of no effect, without prejudice to the validity of anything done in the meantime under the order or to the making of a new order. (4) The order, while it is in force, shall, so far as is consistent with the tenor thereof, apply as if it formed part of the enactment which provides for the making of the order.

(v.) *Notices, Registers, and Returns.*

Notice of occupation of factory or workshop.

127. (1) Every person shall, within one month after he begins to occupy a factory or workshop, serve on the inspector for the district a written notice containing the name of the factory or workshop, the place where it is situate, the address to which he desires his letters to be addressed, the nature of the work, the nature and amount of the moving power therein, and the name of the person or firm under which the business of the factory or workshop is to be carried on.

(2) In the event of a contravention of this section by the occupier of a factory or workshop, he shall be liable to a fine not exceeding five pounds.

(3) Where an inspector receives notice in pursuance of this section with respect to a workshop, he shall forthwith forward the notice to the district council of the district in which the workshop is situate.

Affixing of abstract and notices.

128. (1) There shall be affixed at the entrance of every factory and workshop,<sup>1</sup> and in such other parts thereof as an inspector for the time being directs, and be constantly kept so affixed in the prescribed form and in such position as to be easily read by the persons employed in the factory or workshop—(a) The prescribed abstract of this Act; and (b) a notice of the name and address of the prescribed inspector; and (c) a notice of the name and address of the certifying surgeon for the district; and (d) a notice of the clock (if any) by which the period of employment and times for meals in the factory or workshop are regulated; and (e) every notice and document required by this Act to be affixed in the factory or workshop.

(2) In the event of a contravention of this section in a factory or workshop, the occupier of the factory or workshop shall be liable to a fine not exceeding forty shillings.

General registers.

129. (1) In every factory and workshop<sup>2</sup> there shall be kept a

<sup>1</sup> This section does not apply to a domestic factory or a domestic workshop (s. 111 (4)), or to men's workshops (s. 157), or to institutions excepted by the Factory and Workshop Act, 1907, 7 Edw. 7, c. 39, s. 5 (2) (c), *post*.

<sup>2</sup> This section does not apply to a domestic factory or a domestic workshop (s. 111 (4)), or to men's workshops (s. 157).



register, called the general register, showing in the prescribed form the prescribed particulars as to—(a) The children and young persons employed in the factory or workshop; and (b) the lime-washing of the factory or workshop; and (c) every accident occurring in the factory or workshop of which notice is required to be sent to an inspector; and (d) every special exception of which the occupier of the factory or workshop avails himself; and (e) such other matters as may be prescribed.

(2) Where any entry is required by this Act to be made in the general register, the entry made by the occupier of a factory or workshop or on his behalf shall, as against him, be admissible as *prima facie* evidence of the facts therein stated, and the failure to make any entry so required with respect to the observance of any provision of this Act shall be admissible as *prima facie* evidence that that provision has not been observed.

(3) The register shall at all reasonable times be open to inspection by the certifying surgeon of the district.

(4) The occupier of a factory or workshop shall send to an inspector such extracts from the general register as the inspector from time to time requires for the execution of his duties under this Act.

(5) If in any factory or workshop any requirement of this section is not complied with, the occupier shall be liable to a fine not exceeding five pounds.

130. (1) The occupier of every factory or workshop<sup>1</sup> shall, on or before such days as the Secretary of State may direct, at intervals of not less than one nor more than three years,<sup>2</sup> send to the Chief Inspector of Factories a correct return specifying, with respect to such day or days, or such period as the Secretary of State may direct, the number of persons employed in the factory or workshop, with such particulars as to the age, sex, and occupation of the persons employed as the Secretary of State may direct, and in default of complying with this section shall be liable to a fine not exceeding ten pounds.<sup>3</sup>

Periodical return of persons employed.

(2) The occupier of any place to which any of the provisions of this Act apply shall, if so required by the Secretary of State, make to the Chief Inspector of Factories a like return as is required to be made by this section, and shall be liable to a like fine for default in compliance with the requirement.

131. Every district council shall keep a register of all workshops situate within their district.

Registers of workshops.

132. The medical officer of health of every district council shall, in his annual report to them, report specifically on the administration of this Act in workshops and workplaces, and he shall send a copy of his annual report, or so much of it as deals with this subject, to the Secretary of State.

Report of medical officer of health on administration of Act.

### Miscellaneous Provisions.

133. Where any woman, young person, or child is employed in a workshop in which no abstract of this Act is affixed as by this Act required, and the medical officer of the district council becomes aware thereof, he shall forthwith give written notice thereof to the inspector for the district.

Notice by medical officer of health of employment of women, young person, or child in workshops.

134. Where the age of any young person under the age of sixteen years or child is required to be ascertained or proved for the purposes of this Act, or for any purpose connected with the employment in labour or elementary education of the young person or child, any person shall, on presenting a written requisition in such form and containing such particulars as may be from time to time prescribed by the Local Govern-

Certificate of birth in case of young persons under sixteen and children.

<sup>1</sup> Other than men's workshops (s. 157).

<sup>2</sup> If the Secretary of State so directs, the intervals at which returns are to be made under this section may be the same as the intervals at which a census of production under the Census of Production Act, 1906, 6 Edw. 7, c. 49, is to be taken (6 Edw. 7, c. 49, s. 10).

<sup>3</sup> As to the returns to be made by the managers of institutions, see the Factory and Workshop Act, 1907, 7 Edw. 7, c. 39, s. 5 (2) (e), *post*.

ment Board,<sup>1</sup> and on payment of a fee of sixpence, be entitled to obtain a certified copy under the hand of a registrar or superintendent registrar of the entry in the register, under the *Births and Deaths Registration Acts, 1836 to 1874*,<sup>2</sup> of the birth of that young person or child; and such form of requisition shall on request be supplied without charge by every superintendent registrar and registrar of births, deaths, and marriages.

## PART IX.

## LEGAL PROCEEDINGS.

Fine for not  
keeping factory  
or workshop in  
conformity  
with Act.

135. (1) If a factory or workshop is not kept in conformity with this Act, the occupier thereof shall be liable to a fine not exceeding ten pounds, and, in the case of a second or subsequent conviction in relation to a factory within two years from the last conviction for the same offence, not less than one pound for each offence.

(2) The court of summary jurisdiction, in addition to or instead of inflicting a fine, may order certain means to be adopted by the occupier, within the time named in the order, for the purpose of bringing his factory or workshop into conformity with this Act. The court may, on application, enlarge the time so named, but if, after the expiration of the time as originally named or enlarged by subsequent order, the order is not complied with, the occupier shall be liable to a fine not exceeding one pound for every day on which the non-compliance continues.

Fines in case  
of death or  
injury.

136. If any person is killed, or dies, or suffers any bodily injury or injury to health, in consequence of the occupier of a factory or workshop having neglected to observe any provision of this Act or any regulation made in pursuance of this Act, the occupier of the factory or workshop shall be liable to a fine not exceeding one hundred pounds, and, in the case of a second or subsequent conviction in relation to a factory within two years from the last conviction for the same offence, not less than one pound for each offence, and the whole or any part of the fine may be applied for the benefit of the injured person or his family, or otherwise as the Secretary of State determines.<sup>3</sup>

Provided as follows:—(a) In the case of injury to health the occupier shall not be liable under this section unless the injury was caused directly by the neglect. (b) The occupier shall not be liable to fine under this section if an information against him for not observing the provision or regulation to the breach of which the death or injury was attributable, has been heard and dismissed previous to the time when the death or injury was inflicted.

Fine for  
employing  
persons  
contrary to Act.

137. (1) Where any person is employed in a factory or workshop, other than a domestic factory or a domestic workshop, contrary to the provisions of this Act, the occupier of the factory or workshop shall be liable to a fine not exceeding three, or if the offence was committed during the night five, pounds for each person so employed, and, in the case of a second or subsequent conviction in relation to a factory within two years from the last conviction for the same offence, not less than one pound for each offence; and where any person is so employed in a domestic factory or a domestic workshop the occupier shall be liable to a fine not exceeding one, or if the offence was committed during the night two,

<sup>1</sup> That is, for Ireland (s. 160 (14)).

<sup>2</sup> That is, the *Births and Deaths Registration (Ir.) Acts, 1863 to 1880* (s. 160 (15)).

<sup>3</sup> On January 21 the fact that certain machinery at the defendants' factory was unfenced, in contravention of section 10, came to the knowledge of the inspector of the district. On July 31, in consequence of the machinery still being unfenced, a person suffered bodily injury. On October 24 an information was laid charging that, on July 31, the defendants' factory was not kept in conformity with the Act, whereby a person suffered bodily injury. The magistrate dismissed the information on the ground that it was out of time, inasmuch as it had not been laid within three months of January 21. *Heid*, that ss. 135 and 136 create separate and distinct offences; that the offence with which the defendants were charged was the offence under s. 136; and that, that offence having been committed on July 31, the information had been laid in time (*R. v. Taylor* (1908), 2 K.B. 237).

pounds for each person so employed, and, in the case of a second or subsequent conviction within two years from the last conviction in relation to a factory for the same offence, not less than one pound for each offence.

(2) If a woman, young person, or child is not allowed times for meals and absence from work as required by this Act, or during any part of the times allowed for meals or absence from work is, in contravention of the provisions of this Act, employed in the factory or workshop, or allowed to remain in any room, the woman, young person, or child shall be deemed to be employed contrary to the provisions of this Act.

138. (1) If a young person or child is employed in a factory or workshop contrary to the provisions of this Act, the parent<sup>1</sup> of the young person or child shall be liable to a fine not exceeding twenty shillings for each offence, unless it appears to the court that the offence was committed without the consent, connivance, or wilful default of the parent. Fine for offence by parent.

(2) If the parent of a child neglects to cause the child to attend school in accordance with this Act, he shall be liable to a fine not exceeding twenty shillings for each offence.

139. If any person—(a) Forges or counterfeits any certificate for the purposes of this Act (for the forging or counterfeiting of which no other punishment is provided); or (b) gives or signs any such certificate knowing the same to be false in any material particular; or (c) knowingly utters or makes use of any certificate so forged, counterfeited, or false as aforesaid; or (d) knowingly utters or makes use of as applying to any person a certificate which does not so apply; or (e) personates any person named in a certificate; or (f) falsely pretends to be an inspector; or (g) wilfully connives at the forging, counterfeiting, giving, signing, uttering, making use, or personating as aforesaid; or (h) wilfully makes a false entry in any register, notice, certificate, or document, required by this Act to be kept or served or sent; or (i) wilfully makes or signs a false declaration under this Act; or (j) knowingly makes use of any such false entry or declaration, he shall be liable to a fine not exceeding twenty pounds, or to imprisonment for a term not exceeding three months, with or without hard labour. Forgery of certificates, false entries, and false declarations.

140. Where an offence for which the occupier of a factory or workshop is liable under this Act to a fine has in fact been committed by some agent, servant, workman, or other person, that agent, servant, workman, or other person shall be liable to the like fine as if he were the occupier. Fine on person actually committing offence for which occupier is liable.

141. (1) Where the occupier of a factory or workshop is charged with an offence against this Act, he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the occupier of the factory or workshop proves to the satisfaction of the court—(a) That he has used due diligence<sup>2</sup> to enforce the execution of this Act; and (b) that the said other person had committed the offence in question without his knowledge, consent, or connivance, that other person shall be summarily convicted of the offence, and the occupier shall be exempt from any fine. The person so convicted shall, in the discretion of the court, be also liable to pay any costs incidental to the proceedings. Power of occupier to exempt himself from fine on conviction of the actual offender.

(2) When it is made to appear to the satisfaction of an inspector at the time of discovering an offence—(a) That the occupier of the factory or workshop has used all due diligence to enforce the execution of this

<sup>1</sup> Defined by s. 156.

<sup>2</sup> A child was employed in a factory where the meal-time was from 5.30 to 6 P.M. Work was stopped for the day at 5.30, and the child was employed after that time in wiping the spindles of a machine in a room where the under-manager and several overlookers were present. Notices were exhibited calling attention to the provisions of the Factory Acts against working in meal-times. The justices dismissed an information against the masters for employing a child in meal-time, on the ground that they had used every possible means to carry out the provisions of the Factory and Workshop Act, 1901. *Held*, that it could not be said that the masters had used due diligence to enforce the Act within s. 141 (*Rogers v. Barlow* (1906), 94 L.T. 519).



Act; and (b) by what person the offence has been committed; and (c) that it has been committed without the knowledge, consent, or connivance of the occupier and in contravention of his orders, the inspector shall proceed against the person whom he believes to be the actual offender without first proceeding against the occupier of the factory or workshop.

Owner of machine liable in certain cases instead of occupier.

142. Where in a factory the owner or hirer of a machine or implement moved by steam, water, or other mechanical power, is some person other than the occupier of the factory, the owner or hirer shall, so far as respects any offence against this Act committed in relation to a person who is employed in or about or in connection with that machine or implement, and is in the employment or pay of the owner or hirer, be deemed to be the occupier of the factory.

Limit to cumulative fines.

143. A person shall not be liable in respect of a repetition of the same kind of offence from day to day to any larger amount of fines than the highest fine fixed by this Act for the offence, except—(a) Where the repetition of the offence occurs after an information has been laid for the previous offence; or (b) where the offence is one of employing two or more persons, contrary to the provisions of this Act.

Prosecution of offences and recovery and application of fines.

144. (1) All offences under this Act shall be prosecuted, and all fines under this Act shall be recovered, on summary conviction, before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.<sup>1</sup>

(2) A summary order may be made for the purposes of this Act by a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.<sup>1</sup>

(3) All fines imposed in pursuance of this Act shall, save as otherwise expressly provided for by this Act, be paid into the Exchequer.

(4) Where a proceeding is taken before a court of summary jurisdiction<sup>1</sup> with respect to an offence against this Act alleged to be committed in or with reference to a factory or workshop, the occupier of the factory or workshop, and the father, son, or brother of the occupier of the factory or workshop, shall not be qualified to act as a member of the court.

(5) A person engaged in, or being an officer of any association of persons engaged in, the same trade or occupation as a person charged with any offence under this Act shall not act as a justice of the peace in hearing and determining the charge.

Appeal to quarter sessions.

145. If any person feels aggrieved by a conviction or order made by a court of summary jurisdiction on determining an information or complaint under this Act, he may appeal therefrom to quarter sessions.<sup>2</sup>

Limitation of time and general provisions as to summary proceedings.

146. The following provisions shall have effect with respect to summary proceedings for offences and fines under this Act:—

(1) The information shall be laid within three months<sup>3</sup> after the date at which the offence comes to the knowledge of the inspector for the district within which the offence is charged to have been committed, or, in case of an inquest being held in relation to the offence, then within two months after the conclusion of the inquest, so, however, that it be not laid after the expiration of six months from the commission of the offence:

<sup>1</sup> As to which, see s. 160 (8).

<sup>2</sup> As to procedure, see s. 160 (9).

<sup>3</sup> The appellant, an inspector of factories, visited the respondent's factory in May 1905, and found that the fly-wheel of an engine was not securely fenced as required by s. 10 of the Factory and Workshop Act, 1901. He again visited the factory on March 12, 1908, and July 1, 1908, and on each occasion finding that the fly-wheel was not securely fenced, he on July 22, 1908, laid an information against the respondents for not having on July 1, 1908, kept their factory in conformity with the Factory and Workshop Act, 1901. The justices dismissed the information on the ground that it had not been laid within three months after the date at which the offence came to the appellant's knowledge. *Held*, that there was a continuing offence in not securely fencing the fly-wheel, that the offence charged in the information was in not keeping the factory in conformity with the Act—namely, in not having the fly-wheel securely fenced on July 1—that that offence first came to appellant's knowledge on that date, and therefore that the justices were wrong in dismissing the information as being out of time (*Verney v. Fletcher* (1909), 1 K.B. 444).

See *R. v. Taylor* (1908), 2 K.B. 237, noted under s. 136.

- (2) It shall be sufficient to allege that a factory or workshop is a factory or workshop within the meaning of this Act, without more :
- (3) It shall be sufficient to state the name of the ostensible occupier of the factory or workshop, or the title of the firm by which the occupier employing persons in the factory or workshop is usually known :
- (4) A conviction or order made in any matter arising under this Act, either originally or on appeal, shall not be quashed for want of form, and a conviction or order made by a court of summary jurisdiction against which a person is authorised by this Act to appeal shall not be removed by certiorari or otherwise, either at the instance of the Crown or of any private person, into a superior court, except for the purpose of the hearing and determination of a special case.

147. (1) If a person is found in a factory or workshop, except at meal times, or while all the machinery of the factory or workshop is stopped, or for the sole purpose of bringing food to the persons employed in the factory or workshop between the hours of four and five o'clock in the afternoon, he shall, until the contrary is proved, be deemed for the purposes of this Act to have been then employed in the factory or workshop : Provided that yards, playgrounds, and places open to the public view, schoolrooms, waiting rooms, and other rooms belonging to the factory or workshop in which no machinery is used or manufacturing process carried on, shall not be taken to be any part of the factory or workshop within the meaning of this enactment ; and this enactment shall not apply to a domestic factory or workshop.

Evidence in summary proceedings.

(2) Where a young person or child is, in the opinion of the court, apparently of the age alleged by the informant, it shall lie on the defendant to prove that the young person or child is not of that age.

(3) A declaration in writing by a certifying surgeon for the district that he has personally examined a person employed in a factory or workshop in that district, and believes him to be under the age set forth in the declaration, shall be admissible in evidence of the age of that person.

(4) A copy of a conviction for an offence against this Act purporting to be certified under the hand of the clerk of the peace having the custody of the conviction to be a true copy shall be receivable as evidence, and every such clerk of the peace shall, on the written request of an inspector and payment of a fee of one shilling, deliver to him a copy of the conviction so certified.

148. Any notice, order, requisition, summons, and document, required or authorised to be served or sent for the purposes of this Act—  
(a) May be served and sent by post, or by delivering the same to or at the residence of the person on or to whom it is to be served or sent, or (where he is the owner of a factory or workshop) by delivering the same or a true copy thereof to his agent, or (where he is the occupier of a factory or workshop) by delivering the same or a true copy thereof to his agent or to some person in the factory or workshop ; and (b) where it is required to be served on or sent to the occupier of a factory or workshop, shall be deemed to be properly addressed if addressed to the occupier of the factory or workshop at the factory or workshop, with the addition of the proper postal address, but without naming the person who is the occupier.

Service of notices and documents, &c.

## PART X.

### SUPPLEMENTARY.

#### (i.) *Application and Definitions.*

149. (1) Subject to the provisions of this section, the following expressions have in this Act the meanings hereby assigned to them ; that is to say :—

Factories and workshops to which Act applies.

The expression " textile factory " means any premises wherein or within the close or curtilage of which steam, water, or other mechanical

power is used to move or work any machinery employed in preparing, manufacturing, or finishing, or in any process incident to the manufacture of cotton, wool, hair, silk, flax, hemp, jute, tow, china-grass, cocoa-nut fibre, or other like material, either separately or mixed together, or mixed with any other material, or any fabric made thereof: Provided that print works, bleaching and dyeing works, lace warehouses, paper mills, flax scutch mills, rope works, and hat works shall not be deemed to be textile factories:

The expression "non-textile factory" means—

(a) Any works, warehouses, furnaces, mills, foundries, or places named in Part One of the Sixth Schedule to this Act; and (b) any premises or places named in Part Two of the said schedule wherein or within the close or curtilage or precincts of which steam, water, or other mechanical power is used in aid of the manufacturing process<sup>1</sup> carried on there; and (c) any premises wherein or within the close or curtilage or precincts of which any manual labour is exercised by way of trade or for purposes of gain in or incidental to any of the following purposes, namely—(i.) the making of any article or of part of any article;<sup>2</sup> or (ii.) the altering, repairing, ornamenting, or finishing of any article; or (iii.) the adapting for sale of any article, and wherein or within the close or curtilage or precincts of which steam, water, or other mechanical power is used in aid of the manufacturing process carried on there:

The expression "factory" means textile factory and non-textile factory, or either of those descriptions of factories:

The expression "tenement factory"<sup>3</sup> means a factory where mechanical power is supplied to different parts of the same building occupied by different persons for the purpose of any manufacturing process or handicraft, in such manner that those parts constitute in law separate factories, and for the purpose of the provisions of this Act with respect to tenement factories all buildings situate within the same close or curtilage shall be treated as one building:

The expression "workshop" means—

(a) Any premises or places named in Part Two of the Sixth Schedule to this Act, which are not a factory; and (b) any premises, room, or place, not being a factory, in which premises, room, or place, or within the close or curtilage or precincts of which premises, any manual labour is exercised by way of trade<sup>4</sup> or for purposes of gain in or incidental to any of the

<sup>1</sup> A laundry, carried on for the purposes of gain and in which the machines used for washing are driven by mechanical power, is a non-textile factory in which a manufacturing process is carried on (*Owner v. Cottingham* (1910), 74 J.P. 219).

<sup>2</sup> On certain premises rags were sorted by hand, and after being sorted were sold wholesale to manufacturers of shoddy or manufacturers of paper. An exceedingly small proportion of the rags were occasionally passed through a shaker to remove dust and dirt, the "shaker" being driven by an electric motor, these rags being afterwards sorted by hand like the rest. *Held*, that the premises were not a factory within the meaning of s. 149 of the Factory and Workshop Act, 1901 (*Paterson v. Hunt* (1909), 101 L.T. 571).

<sup>3</sup> A building is not a "tenement factory" in which the mechanical power employed in the different parts of the building occupied by different persons is derived from separate sources situated upon these parts respectively, inasmuch as mechanical power is not "supplied to" different parts of such a building within the meaning of the sub-section (*Brass v. London County Council* (1904), 2 K.B. 336). *Semble*, that adjoining premises consisting of two factories, the one in part superimposed upon the other, and a builder's store, approached by separate entrances, cannot properly be described as "buildings situate within the same close or curtilage" within the definition of "tenement factory" (*ib.*).

<sup>4</sup> Premises belonging to retail florists consisted of a shop in front and a room at the back. In this room crosses, wreaths, and bouquets were made by employees, and floral decorations arranged. In doing this work wire was used, and rubber tubing, made to resemble the bark of trees, attached to frames. This work was not merely incidental to the business done in the shop. *Held*, that the production of these crosses, &c., was the exercise of "manual labour" by way of trade, and that consequently the room in which it took place was a workshop within the Act, and the notice mentioned in s. 128 (1) (a) must be affixed therein (*Hoare v. Green* (1907), 2 K.B. 315).

A fishing-boat owner occupied a warehouse with a chamber over it, in which persons in his employ repaired fishing nets belonging to his fishing-boats and used by him in his



following purposes, namely—(i.) The making of any article or of part of any article; or (ii.) the altering, repairing, ornamenting, or finishing of any article; or (iii.) the adapting for sale of any article, and to or over which premises, room, or place the employer of the persons working therein has the right of access or control:

The expression "workshop" includes a tenement workshop:

The expression "tenement workshop" means any workplace in which, with the permission of or under agreement with the owner or occupier, two or more persons carry on any work which would constitute the workplace a workshop if the persons working therein were in the employment of the owner or occupier.

(2) A part of a factory or workshop may, with the approval in writing of the chief inspector, be taken for the purposes of this Act to be a separate factory or workshop.

(3) A room solely used for the purpose of sleeping therein shall not be deemed to form part of the factory or workshop for the purposes of this Act.

(4) Where a place situate within the close, curtilage, or precincts forming a factory or workshop is solely used for some purpose other than the manufacturing process or handicraft carried on in the factory or workshop, that place shall not be deemed to form part of the factory or workshop for the purposes of this Act, but shall, if otherwise it would be a factory or workshop, be deemed to be a separate factory or workshop, and be regulated accordingly.

(5) A place or premises shall not be excluded from the definition of a factory or workshop by reason only that the place or premises is or are in the open air.

(6) The exercise by any young person or child in any recognised efficient school, during a portion of the school hours, of any manual labour for the purpose of instructing the young person or child in any art or handicraft shall not be deemed to be an exercise of manual labour for the purpose of gain within the meaning of this Act.

150. (1) This Act applies to factories and workshops belonging to the Crown; but in case of any public emergency the Secretary of State may, by order, to the extent and during the period named by him, exempt from this Act any factory or workshop belonging to the Crown, or any factory or workshop in respect of work which is being done on behalf of the Crown under a contract specified in the order.

Application to Crown factories and workshops.

(2) A factory or workshop belonging to or in the occupation of the Crown shall not be excluded from the operation of this Act by reason only that it is not carried on by way of trade or for the purpose of gain.

(3) The powers conferred by this Act on a district council or other local authority shall, in the case of a factory or workshop belonging to or in the occupation of the Crown, be exercised by an inspector under this Act.

151. The Secretary of State may by Special Order direct, with respect to any class of factories or workshops, that different branches or departments of work carried on in the same factory or workshop shall, for all or any of the purposes of this Act, be treated as if they were different factories or workshops.

Power to treat separate branches as separate factories or workshops.

152. (1) A woman, young person, or child, who works in a factory or workshop, whether for wages or not, either in a manufacturing process or handicraft, or in cleaning any part of the factory or workshop used for any manufacturing process or handicraft, or in cleaning or oiling any part

Definition of employment and working for hire.

fishing business, and no nets were repaired in this room except those which belonged to him and were used by him in his own fishing business. Upon an inspector of factories visiting the premises he found four persons engaged in manual labour in mending or repairing these nets. *Held*, on the authority of *Nash v. Hollinshead* (1901), 1 K.B. 700, that as the labour employed in the room was employed in the repairing of nets belonging to the employer and solely used by him in his own business, there was no manual labour exercised "by way of trade or for purposes of gain" within the meaning of the definition of "workshop" in s. 149 of the Factory and Workshop Act, 1901, and that therefore the room was not a "workshop" within the meaning of the Act (*Curtiss v. Skinner* (1906), 95 L.T. 31).

of the machinery, or in any other kind of work whatsoever incidental to or connected with the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein, shall, save as is otherwise provided by this Act, be deemed to be employed therein within the meaning of this Act.

(2) For the purposes of this Act an apprentice shall be deemed to work for hire.

[153. *Application to London.*]

Application of  
Act to county  
boroughs.

154. References in this Act to a district council and the district thereof shall be construed as including references to the council of a county borough and the county borough.

Saving for  
existing powers  
of district  
councils.

155. The powers conferred by this Act on district councils shall be in addition to, and not in substitution for, any other powers which they may possess.

General  
definitions.

156. (1) In this Act unless the context otherwise requires :—

The expression "bank holiday" means a holiday under the Holidays Extension Act, 1875 :

"Child."

The expression "child" means a person who is under the age of fourteen years, and who has not, being of the age of thirteen years, obtained the certificate of proficiency or attendance at school mentioned in Part III. of this Act :

"Machinery."

The expression "machinery" includes any driving strap or band :

"Mill-gearing."

The expression "mill-gearing" comprehends every shaft, whether upright, oblique, or horizontal, and every wheel, drum, or pulley, or other appliance by which the motion of the first moving power is communicated to any machine appertaining to a manufacturing process :

"Night."

The expression "night" means the period between nine o'clock in the evening and six o'clock in the succeeding morning :

"Owner."

The expression "owner" has the meaning given to it by section four of the *Public Health Act, 1875* :<sup>1</sup>

"Parent."

The expression "parent" means a parent or guardian of, or person having the legal custody of, or the control over, or having direct benefit from the wages of, a young person or child :

"Prescribed."

The expression "prescribed" means prescribed for the time being by the Secretary of State :

"Process."

The expression "process" includes the use of any locomotive :

"Special Order."

The expression "Special Order" means an order which is subject to the provisions of section one hundred and twenty-six of this Act with regard to Special Orders of the Secretary of State :

"Week."

The expression "week" means the period between midnight on Saturday night and midnight on the succeeding Saturday night :

"Woman."

The expression "woman" means a woman of the age of eighteen years and upwards :

"Young  
person."

The expression "young person" means a person who has ceased to be a child and is under the age of eighteen years.

(2) For the purposes of this Act employment shall be deemed to be continuous unless interrupted by an interval of at least half an hour.

(3) The factories and workshops named in the Sixth Schedule to this Act are in this Act referred to by the names therein assigned to them.

(4) References in this Act to regulations made under this Act shall be construed as including references to special rules established or requirements made under any previous Act.

Men's  
workshops.

157. The following provisions of this Act shall not apply to men's workshops, that is to say, workshops conducted on the system of not employing any woman, young person, or child therein :—

(1) The sections in Part I. relating to temperature, thermometers, means of ventilation, drainage of floors, sanitary conveniences, opening of doors, power to make orders as to dangerous machinery, and inquests ;

(2) Part II. and Part III. ;

(3) The sections in Part IV. relating to fans and to lavatories and meals ;

<sup>1</sup> In Ireland, Public Health (Ir.) Act, 1878, s. 160 (13).

(4) Part VII. ;

(5) The sections of Part VIII. relating to the affixing of abstracts and notices, and the keeping of a general register, and the first subsection of the section relating to periodical returns.

158. Nothing in this Act shall extend to any young person being a mechanic, artisan, or labourer, working only in repairing either the machinery in or any part of a factory or workshop.

Saving for young persons employed in repairs.

[159. *Application of Act to Scotland.*]

Application of Act to Scotland.

[ii. *Application to Ireland.*]

160. In the application of this Act to Ireland—

Application of Act to Ireland.

- (1) The expression "certified efficient school" means any national school, or any school recognised by the Lord-Lieutenant and Privy Council as affording sufficient means of literary education for the purposes of this Act :
- (2) The expression "recognised efficient school" means a certified efficient school and any school which is recognised for the time being by an inspector under this Act as giving efficient elementary education :
- (3) In the provisions of this Act relating to certificates of birth the Irish Education Act, 1892, shall be substituted for the Elementary Education Act, 1876, and a school attendance committee shall be substituted for a local authority :
- (4) In the provisions of this Act relating to payment by occupiers of sums for schooling, the Irish Education Act, 1892, shall be substituted for the Elementary Education Act, 1891, and a school grant shall be substituted for a fee grant :
- (5) The expression "medical officer of health" includes a medical superintendent of health :
- (6) The expression "poor law medical officer" means the medical officer of a dispensary district :
- (7) Any act authorised to be done or consent required to be given by, or report required to be made to, the Board of Education under this Act shall be done and given by or to the Lord-Lieutenant, acting by and with the advice of the Privy Council in Ireland :
- (8) A court of summary jurisdiction when hearing and determining an information or complaint in any matter arising under this Act shall be constituted within the police district of Dublin metropolis of one of the divisional justices of that district sitting at a police court within the district, and elsewhere of a resident magistrate appointed under the Constabulary (Ir.) Act, 1836, sitting alone, or with others, or of two or more justices of the peace sitting in petty sessions at a place appointed for holding petty sessions :
- (9) Appeals from a court of summary jurisdiction shall lie in accordance with the provisions of the Summary Jurisdiction (Ir.) Acts :
- (10) All fines imposed under this Act shall, save as is otherwise expressly provided by this Act, be applied in the manner directed by the Fines Act (Ir.), 1851, and any Act amending the same :
- (11) The provisions of section one hundred and seven of the Public Health (Ir.) Act, 1878, with respect to a factory, workshop, or workplace, not kept in a cleanly state, or not ventilated, or overcrowded, shall not apply to any factory which is subject to the provisions of this Act with respect to cleanliness, ventilation, and overcrowding, but shall apply to every other factory, workshop, or workplace :
- (12) The Sanitary Acts within the meaning of the Public Health (Ir.) Act, 1878, shall apply to buildings in which persons are employed, whatever their number may be, in like manner, as they apply to buildings where more than twenty persons are employed :



- (13) The Public Health (Ir.) Act, 1878, shall be substituted for the Public Health Act, 1875, and in particular sections two, one hundred and seven, and two hundred and nineteen to two hundred and twenty-three of the former Act shall be substituted for sections four, ninety-one, and one hundred and eighty-two to one hundred and eighty-six of the latter Act respectively :
- (14) The expression "the Local Government Board" means the Local Government Board for Ireland :
- (15) The expression "the Births and Deaths Registration Acts, 1836 to 1874," means the Births and Deaths Registration (Ir.) Acts, 1863 to 1880 :
- (16) All matters required by this Act to be published in the London Gazette shall, if they relate to Ireland, be published in the Dublin Gazette, either in addition or in substitution as the case may require.

(iii.) *Repeal, &c.*

Repeal of  
Acts.

161. The Acts specified in the Seventh Schedule to this Act are hereby repealed as from the dates and to the extent in that schedule mentioned.

Provided that—(1) All notices affixed in a factory or workshop in pursuance of any enactment hereby repealed shall, so far as they are in accordance with the provisions of this Act, be deemed to have been affixed in pursuance of this Act ; and (2) all orders and all special rules and requirements made or having effect under any enactment hereby repealed shall continue to have effect as if they had been made under this Act ; and nothing in this Act shall be construed as altering the mode of making such special rules or requirements whilst the power to make them continues in force ; and (3) all inspectors, sub-inspectors, certifying surgeons, officers, clerks, and servants, appointed in pursuance of any enactment hereby repealed shall continue in office and shall be subject to removal and have the same powers and duties as if they had been appointed in pursuance of this Act ; and (4) all certificates of fitness for employment granted in pursuance of any enactment hereby repealed shall have effect as if granted in pursuance of this Act, and all registers kept in pursuance of any enactment hereby repealed shall, until otherwise directed by the Secretary of State, be deemed to be the registers required by this Act.

Commence-  
ment of Act,  
Short title.

162. This Act shall come into operation on the first day of January one thousand nine hundred and two.

163. This Act may be cited as the Factory and Workshop Act, 1901.

## SCHEDULES.

## FIRST SCHEDULE.

Section 14.

## PROVISIONS AS TO ARBITRATIONS.

(1) The parties to the arbitration are in this schedule deemed to be the owner of the factory or workshop on the one hand and the district council on the other hand.

(2) Each of the parties to the arbitration may, within fourteen days after the date of the reference, appoint an arbitrator.

(3) No person shall act as arbitrator or umpire who is employed in, or in the management of, or is interested in, the factory or workshop to which the arbitration relates.

(4) The appointment of an arbitrator must be in writing, and notice of the appointment shall be forthwith sent to the other party to the arbitration, and the appointment shall not be revoked without the consent of that party.

(5) The death or removal of, or other change in, any of the parties to the arbitration shall not affect the proceedings under this schedule.

(6) If within the said fourteen days either of the parties fails to appoint an arbitrator, the arbitrator appointed by the other party may proceed to hear and determine the matter in difference, and in that case the award of the single arbitrator shall be final.

(7) If before an award has been made any arbitrator appointed by either party dies or becomes incapable to act, or for seven days refuses or neglects to act, the party by whom that arbitrator was appointed may appoint some other person to act in his place; and if he fails to do so within seven days after notice in writing from the other party for that purpose, the remaining arbitrator may proceed to hear and determine the matter in difference, and in that case the award of the single arbitrator shall be final.

(8) In either of the foregoing cases where an arbitrator is empowered to act singly, on one of the parties failing to appoint, the party so failing may, before the single arbitrator has actually proceeded in the arbitration, appoint an arbitrator, who shall then act as if no failure had occurred.

(9) If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as has been appointed for that purpose by both arbitrators under their hands, the matter in difference shall be determined by the umpire appointed as hereinafter mentioned.

(10) The arbitrators, before they enter on the matter referred to them, shall appoint by writing under their hands an umpire to decide on points on which they may differ.

(11) If the umpire dies or becomes incapable of acting before he has made his award, or refuses to make his award within a reasonable time after the matter has been brought within his cognisance, the persons or person who appointed such umpire shall forthwith appoint another umpire in his place.

(12) If the arbitrators refuse or fail, or for seven days after the request of either party neglect, to appoint an umpire, then on the application of either party an umpire may be appointed by the chairman of the quarter sessions within the jurisdiction of which the factory or workshop is situate.

(13) The decision of every umpire on the matters referred to him shall be final.

(14) If a single arbitrator fails to make his award within twenty-one days after the day on which he was appointed, the party who appointed him may appoint another arbitrator to act in his place.

(15) Arrangements shall, whenever practicable, be made for the matters in difference being heard at the same time before the arbitrators and the umpire.

(16) The arbitrators and the umpire, or any of them, may examine the parties and their witnesses on oath, and may also consult any counsel, engineer, or scientific person whom they think it expedient to consult.

(17) The payment, if any, to be made to any arbitrator or umpire for his services shall be fixed by the Secretary of State, and together with the costs of the arbitration and award shall be paid by the parties, or one of them, according as the award may direct. Such costs may be taxed by a master of the Supreme Court, or, in Scotland, by the auditor of the Court of Session, and the taxing officer shall, on the written application of either of the parties, ascertain and certify the proper amount thereof. The amount, if any, payable by the Secretary of State shall be paid as part of the expenses of inspectors under this Act. The amount, if any, payable by the occupier of the factory or workshop may in the event of non-payment be recovered in the same manner as fines under this Act.

## SECOND SCHEDULE.

Section 49.

## FACTORIES AND WORKSHOPS IN WHICH OVERTIME IS ALLOWED.

(1) Non-textile factories and workshops and parts thereof where the material which is the subject of the manufacturing process or handicraft is liable to be spoiled by weather; namely—(a) Flax scutch mills; and (b) any factory or workshop or part thereof in which is carried on the making or finishing of bricks or tiles not being ornamental tiles; and (c) the part of rope works in which is carried on the open-air process; and (d) the part of bleaching and dyeing works in which is carried on open-air bleaching or Turkey red dyeing; and (e) any factory or workshop or part thereof in which is carried on glue making; and

(2) Non-textile factories and workshops and parts thereof where press of work arises at certain recurring seasons of the year; namely—(f) Letter-press printing works; and (g) bookbinding works; and any factory, workshop, or part thereof, in which is carried on the manufacturing process or handicraft of—(h) lithographic printing; or (i) machine ruling; or (k) firewood cutting; or (l) bon-bon and Christmas present making; or (m) almanac making; or (n) valentine making; or (o) envelope making; or (p) aerated water making; or (q) playing card making; and

(3) Non-textile factories and workshops and parts thereof where the business is liable to sudden press of orders arising from unforeseen events; namely, any factory or workshop, or part thereof, in which is carried on the manufacturing process or handicraft of—(r) The making up of any article of wearing apparel; or (s) the making up of furniture hangings; or (t) artificial flower making; or (u) fancy box-making; or (v) biscuit making; or (w) job dyeing; and

(4) Any part of a factory (whether textile or non-textile) or workshop which is a warehouse not used for any manufacturing process or handicraft, and in which persons are solely employed in polishing, cleaning, wrapping, or packing up goods.<sup>1</sup>

## THIRD SCHEDULE.

Section 88.

## REGULATIONS AS TO GRINDING IN TENEMENT FACTORY.

(1) Boards to fence the shafting and pulleys, locally known as drum boards, must be provided and kept in proper repair. (2) Hand rails must be fixed over the drums and kept in proper repair. (3) Belt guards, locally known as scotchmen, must be provided and kept in proper repair. (4) Every floor constructed on or after the first day of January one thousand eight hundred and ninety-six must be so constructed and maintained as to facilitate the removal of slush, and all necessary shoots, pits, and other conveniences must be provided for facilitating such removal. (5) Every grinding room or hull established on or after the first day of January one thousand eight hundred and ninety-six must be so constructed that for the purpose of light grinding there shall be a clear space of three feet at least between each pair of troughs, and for the purpose of heavy grinding there shall be a clear space of four feet at least between each pair of troughs and six feet at least in front of each trough. (6) The sides of all drums in every grinding room or hull must be closely fenced. (7) Except in pursuance of a special exemption granted by the Secretary of State, a grindstone must not be run before any fireplace or in front of another grindstone. (8) A grindstone erected on or after the first day of January one thousand eight hundred and ninety-six must not be run before any door or other entrance.

<sup>1</sup> The overtime work of "polishing, cleaning, wrapping, or packing up goods" allowed in textile and non-textile factories must be performed in a warehouse or room adapted to that purpose, and cannot be performed in any part of the factory in which any manufacturing process or handicraft has been previously carried on during ordinary working hours (*Smith v. Sibray, Hall & Co.* (1903), 2 K.B. 707).



## FOURTH SCHEDULE.

## COTTON CLOTH FACTORIES.

Sections 90-92  
96.

## TABLE.

MAXIMUM LIMITS OF HUMIDITY of the ATMOSPHERE at given  
TEMPERATURES.

I. Grains of Vapour per Cubic Foot of Air.	II. Dry Bulb Thermometer Readings. Degrees Fahrenheit.	III. Wet Bulb Thermometer Readings. Degrees Fahrenheit.	IV. Percentage of Humidity. Saturation = 100.
1.9	35	33	80
2.0	36	34	82
2.1	37	35	83
2.2	38	36	83
2.3	39	37	84
2.4	40	38	84
2.5	41	39	84
2.6	42	40	85
2.7	43	41	84
2.8	44	42	84
2.9	45	43	85
3.1	46	44	86
3.2	47	45	86
3.3	48	46	86
3.4	49	47	86
3.5	50	48	86
3.6	51	49	86
3.8	52	50	86
3.9	53	51	86
4.1	54	52	86
4.2	55	53	87
4.4	56	54	87
4.5	57	55	87
4.7	58	56	87
4.9	59	57	88
5.1	60	58	88
5.2	61	59	88
5.4	62	60	88
5.6	63	61	88
5.8	64	62	88
6.0	65	63	88
6.2	66	64	88
6.4	67	65	88
6.6	68	66	88
6.9	69	67	88

I. Grains of Vapour per Cubic Foot of Air.	II. Dry Bulb Thermometer Readings, Degrees Fahrenheit.	III. Wet Bulb Thermometer Readings, Degrees Fahrenheit.	IV. Percentage of Humidity, Saturation = 100.
7.1	70	68	88
7.1	71	68.5	85.5
7.1	72	69	84
7.4	73	70	84
7.4	74	70.5	81.5
7.65	75	71.5	81.5
7.7	76	72	79
8.0	77	73	79
8.0	78	73.5	77
8.25	79	74.5	77.5
8.55	80	75.5	77.5
8.6	81	76	76
8.65	82	76.5	74
8.85	83	77.5	74
8.9	84	78	72
9.2	85	79	72
9.5	86	80	72
9.55	87	80.5	71
9.9	88	81.5	71
10.25	89	82.5	71
10.3	90	83	69
10.35	91	83.5	68
10.7	92	84.5	68
11.0	93	85.5	68
11.1	94	86	66
11.5	95	87	66
11.8	96	88	66
11.9	97	88.5	65.5
12.0	98	89	64
12.3	99	90	64
12.7	100	91	64

## FORM OF RECORD.

FORM for recording the READINGS of the THERMOMETERS.

Name of Occupier \_\_\_\_\_

Address of Factory \_\_\_\_\_

Room { Number or Designation \_\_\_\_\_  
 Process carried on \_\_\_\_\_  
 Number of Operatives \_\_\_\_\_  
 Cubic contents \_\_\_\_\_ cubic feet.

Date.		READINGS OF THERMOMETERS IN DEGREES FAHRENHEIT.						If no Artificial Humidity is produced in the 24 hours, insert in this column "None."
Year.....	Month and Day.	Between 7 and 8 A.M.		Between 10 and 11 A.M.		Between 3 and 4 P.M.		
		Dry Bulb.	Wet Bulb.	Dry Bulb.	Wet Bulb.	Dry Bulb.	Wet Bulb.	
	1							
	2							
	3							
	4							
	5							
	6							
	7							
	8							
	9							
	10							
	11							
	12							
	13							
	14							
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	16							
	17							
	18							
	19							
	20							
	21							
	22							
	23							
	24							
	25							
	26							
	27							
	28							
	29							
	30							
	31							

(Signed) \_\_\_\_\_

Occupier or Manager.



## FIFTH SCHEDULE.

## FEES OF CERTIFYING SURGEONS.

Section 124.

## PART I.

## FEES ON EXAMINATION for CERTIFICATES of FITNESS for EMPLOYMENT.

When the examination is at the factory or workshop . . . .	2s. 6d. for each visit, and 6d. for each person after the first five examined at that visit ; and also if the factory or workshop is more than one mile from the surgeon's residence, 6d. for each complete half mile over and above the mile.
When the examination is not at the factory or workshop, but at the residence of the surgeon, or at some place appointed by the surgeon for the purpose, and that place as well as the day and hour appointed for the purpose has been published in the prescribed manner . . . .	6d. for each person examined.

## PART II.

## FEES ON EXAMINATION by direction of SECRETARY OF STATE or in pursuance of REGULATIONS under this ACT.

When the number of hands is under 10 . . . .	2s. 6d. per visit.
" " " " 20 . . . .	3s. "
" " " " 30 . . . .	3s. 6d. "
" " " " 50 . . . .	4s. "
" " " " 75 . . . .	4s. 6d. "
" " " " 100 . . . .	5s. "
" " " " over 100 . . . .	7s. 6d. "

With the addition of 1s. for every mile or part of a mile in excess of one mile from the surgeon's residence.

## SIXTH SCHEDULE.

LIST OF FACTORIES AND WORKSHOPS.<sup>1</sup>Sections 54, 149,  
156.

## PART I.

## NON-TEXTILE FACTORIES.

- " Print works," (1) " Print works," that is to say, any premises in which any persons are employed to print figures, patterns, or designs upon any cotton, linen, woollen, worsted, or silken yarn, or upon any woven or felted fabric not being paper ;
- " Bleaching and dyeing works," (2) " Bleaching and dyeing works," that is to say, any premises in which the processes of bleaching, beetling, dyeing, calendering, finishing, hooking, lapping, and making up and packing any yarn or cloth of any material, or the dressing or finishing of lace, or any one or more of such processes, or any process incidental thereto, are or is carried on ;
- " Earthenware works," (3) " Earthenware works," that is to say, any place in which persons work for hire in making or assisting in making, finishing, or assisting in finishing, earthenware or china of any description, except bricks and tiles not being ornamental tiles ;
- " Lucifer-match works," (4) " Lucifer-match works," that is to say, any place in which persons work for hire in making lucifer matches, or in mixing the chemical materials

<sup>1</sup> See, as to laundries, Factory and Workshop Act, 1907, 7 Edw. 7, c. 39, s. 1, *post*.

for making them, or in any process incidental to making lucifer matches, except the cutting of the wood ;

(5) " Percussion-cap works," that is to say, any place in which persons work for hire in making percussion caps, or in mixing or storing the chemical materials for making them, or in any process incidental to making percussion caps ;

(6) " Cartridge works," that is to say, any place in which persons work for hire in making cartridges, or in any process incidental to making cartridges, except the manufacture of the paper or other material that is used in making the cases of the cartridges ;

(7) " Paper-staining works," that is to say, any place in which persons work for hire in printing a pattern in colours upon sheets of paper, either by blocks applied by hand, or by rollers worked by steam, water, or other mechanical power ;

(8) " Fustian-cutting works," that is to say, any place in which persons work for hire in fustian cutting ;

(9) " Blast furnaces," that is to say, any blast furnace or other furnace or premises in or on which the process of smelting or otherwise obtaining any metal from the ores is carried on ;

(10) " Copper mills " ;

(11) " Iron mills," that is to say, any mill, forge, or other premises, in or on which any process is carried on for converting iron into malleable iron, steel, or tin plate, or for otherwise making or converting steel ;

(12) " Foundries," that is to say, iron foundries, copper foundries, brass foundries, and other premises or places in which the process of founding or casting any metal is carried on ; except any premises or places in which such process is carried on by not more than five persons and as subsidiary to the repair or completion of some other work ;

(13) " Metal and india-rubber works," that is to say, any premises in which steam, water, or other mechanical power is used for moving machinery employed in the manufacture of machinery, or in the manufacture of any article of metal not being machinery, or in the manufacture of india-rubber or gutta-percha, or of articles made wholly or partially of india-rubber or gutta-percha ;

(14) " Paper mills," that is to say, any premises in which the manufacture of paper is carried on ;

(15) " Glass works," that is to say, any premises in which the manufacture of glass is carried on ;

(16) " Tobacco factories," that is to say, any premises in which the manufacture of tobacco is carried on ;

(17) " Letter-press printing works," that is to say, any premises in which the process of letter-press printing is carried on ;

(18) " Bookbinding works," that is to say, any premises in which the process of bookbinding is carried on ;

(19) " Flax scutch mills " ;

(20) " Electrical stations," that is to say, any premises or that part of any premises in which electrical energy is generated or transformed for the purpose of supply by way of trade, or for the lighting of any street, public place, or public building, or of any hotel, or of any railway, mine, or other industrial undertaking.

## PART II.

### NON-TEXTILE FACTORIES AND WORKSHOPS.

(21) " Hat works," that is to say, any premises in which the manufacture of hats or any process incidental to their manufacture is carried on ;

(22) " Rope works," that is to say, any premises being a ropery, ropewalk, or rope work, in which is carried on the laying or twisting or other process of preparing or finishing the lines, twines, cords, or ropes, and in which machinery moved by steam, water, or other mechanical power is not used for drawing or spinning the fibres of flax, hemp, jute, or tow, and which has no internal communication with any buildings or premises

joining or forming part of a textile factory, except such communication as is necessary for the transmission of power ;

" Bakehouses." (23) " Bakehouses," that is to say, any places in which are baked bread, biscuits, or confectionery from the baking or selling of which a profit is derived ;

" Lace ware-houses." (24) " Lace warehouses," that is to say, any premises, room, or place not included in bleaching and dyeing works as hereinbefore defined, in which persons are employed upon any manufacturing process or handicraft in relation to lace, subsequent to the making of lace upon a lace machine moved by steam, water, or other mechanical power ;

" Shipbuilding yards." (25) " Shipbuilding yards," that is to say, any premises in which any ships, boats, or vessels used in navigation, are made, finished, or repaired ;

" Quarries." (26) " Quarries," that is to say, any place not being a mine, in which persons work in getting slate, stone, coprolites or other minerals ;

" Pit-banks." (27) " Pit-banks," that is to say, any place above ground adjacent to a shaft of a mine, in which place the employment of women is not regulated by the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, whether such place does or does not form part of the mine within the meaning of those Acts.

(28) Dry cleaning, carpet beating, and bottle washing works.

Section 161.

## SEVENTH SCHEDULE.

### PART I.

#### ENACTMENTS REPEALED AS FROM THE COMMENCEMENT OF THIS ACT.

Session and Chapter.	Title of Act.	Extent of Repeal.
41 & 42 Vict. c. 16.	The Factory and Workshop Act, 1878.	The whole Act.
46 & 47 Vict. c. 53.	The Factory and Workshop Act, 1883.	The whole Act.
52 & 53 Vict. c. 62.	The Cotton Cloth Factories Act, 1889.	The whole Act.
54 & 55 Vict. c. 75.	The Factory and Workshop Act, 1891.	The whole Act except sections eight, nine, ten, and twelve, and the First Schedule.
58 & 59 Vict. c. 37.	The Factory and Workshop Act, 1895.	The whole Act except section twelve, subsection three of section twenty-four, and section twenty-eight.
60 & 61 Vict. c. 58.	The Cotton Cloth Factories Act, 1897.	The whole Act.
63 & 64 Vict. c. 27.	The Railway Employment (Prevention of Accidents) Act, 1900.	In subsection three of section thirteen the words " factory workshop or " wherever they occur, and the words " the occupier of the factory or workshop or."



## PART II.

ENACTMENTS REPEALED FROM A DATE TO BE FIXED BY ORDER OF THE  
SECRETARY OF STATE.

Session and Chapter.	Short Title.	Extent of Repeal.
54 & 55 Vict. c. 75.	The Factory and Workshop Act, 1891.	Sections eight, nine, ten, and twelve, and the First Schedule.
58 & 59 Vict. c. 37.	The Factory and Workshop Act, 1895.	Section twelve. Subsection three of section twenty-four. Section twenty-eight.

## LICENSING (IRELAND) ACT, 1902.

[2 EDW. 7, CH. 18.]

1. This Act shall extend to Ireland only, and may be cited as the Licensing (Ir.) Act, 1902. Extent and title of Act.
2. From and after the passing of this Act no licence shall be granted for the sale of intoxicating liquors, whether for consumption on or off the premises, except— Provision against the issue of new licences.
- (1) For premises which are now<sup>1</sup> licensed<sup>2</sup> or which were licensed at any time since the first day of January one thousand nine hundred and two; or
  - (2) For an hotel, which expression shall refer to a house containing at least ten apartments set apart and used exclusively for the sleeping accommodation of travellers, and having no public bar for the sale of intoxicating liquors; or
  - (3) For a railway refreshment room.
3. Where by reason of the expiration of a lease, a licence for the sale of intoxicating liquors for consumption on the premises comprised in the lease is extinguished or surrendered, the licensing authority may, notwithstanding anything in this Act, grant a licence for suitable premises in the immediate vicinity of the premises to which the licence so extinguished or surrendered was attached. Expiring leases.
4. Where, owing to increase in population, there is a growth or extension of any city or town, and the licensing authority are satisfied that the restrictions in this Act on the granting of licences may be relaxed, they may grant a licence to any applicant, notwithstanding that the same would be otherwise forbidden by this Act, provided that such licence shall be granted only for premises situate in the parish in which such increase in population has taken place, and in substitution for an existing licence or licences held in respect of premises situate within the city or town, as the case may be, comprising the whole or any part of the parish. Limit as to valuation.
5. In the case of applications under section two, subsection two, and sections three and four, the premises shall be valued under the Irish Valuation Acts at not less than— Limit as to valuation of licensed premises.
- Thirty pounds in the Dublin Metropolitan Police District and the city of Belfast;

<sup>1</sup> That is, at the date of the passing of the Act, 31st July 1902.

<sup>2</sup> Where licensed premises are reduced in area (even to such an extent as to substantially alter their identity) the reduced premises are "licensed premises" within the section, and a new licence can be granted in respect thereof (*R. (Beirne) v. Limerick J.J.*, K.B.D., March 1911, unreported; but see INDEX OF CASES). The contrary view submitted at p. 114, *ante*, is therefore erroneous.

Twenty pounds in the cities of Cork, Limerick, Waterford, and Londonderry ;

Fifteen pounds in the city of Kilkenny and the town of Galway ;

Twelve pounds in any other town of over ten thousand inhabitants at the census ascertained next preceding the application ; and

Ten pounds in all other places.

Exception  
in favour of  
adjoining  
premises.

6. Nothing in this Act shall operate to prevent the granting of new licences, where the licensing authority thinks fit, to premises attached to or adjoining premises licensed for the sale of intoxicating liquors at the date of the passing of this Act ; provided always, that such new licence as last hereinbefore mentioned shall only be granted in order to render the said licensed premises more suitable for the business carried on therein.

Transfers not to  
be affected.

7. Nothing in this Act shall be taken to affect the law as to the transfer or assignment of licences from one person to another or as to the renewal of licences.

Definitions.

8. In this Act—

The expression “ increase in population ” shall be taken to mean an increase of not less than twenty-five per cent. of the population according to the last census ;

The expression “ licence ” means any licence for the sale of intoxicating liquor granted by an officer of excise other than a wholesale beer dealer's licence, or a licence required for a military or constabulary canteen, or a licence which can be granted without the production of a certificate of a recorder or justice ; and

Other expressions shall have respectively the same meaning as in the Licensing (Ir.) Acts, 1833 to 1900, and for this purpose this Act shall be construed with the said Acts.

Limit of operation  
of Act.

9. This Act shall continue in force until the thirty-first day of December one thousand nine hundred and seven, and no longer, unless Parliament shall otherwise determine.<sup>1</sup>

## SHOP CLUBS ACT, 1902.

[2 EDW. 7, CH. 21.]

Membership of  
friendly society,  
&c., not to be  
condition of  
employment.

1. It shall be an offence under this Act if an employer shall make it a condition of employment—

(a) That any workman shall discontinue his membership of any friendly society ; or

(b) That any workman shall not become a member of any friendly society other than the shop club or thrift fund.

Employer not to  
require workman  
to join shop  
club, &c.

2. It shall be an offence under this Act if an employer shall make it a condition of employment that any workman shall join a shop club or thrift fund, unless the shop club or thrift fund is registered under the Friendly Societies Act, 1896, subject to the provisions of this Act, and certified under this Act by the Registrar of Friendly Societies.

No shop club or thrift fund shall be so certified unless the Registrar of Friendly Societies is satisfied :—

(a) That the shop club or thrift fund is one that affords to the workman benefits of a substantial kind in the form of contributions or benefits at the cost of the employer in addition to those provided by the contributions of the workman.

(b) That the shop club or thrift fund is of a permanent character, and is not a society that annually or periodically divides its funds, and that no member of such shop club or thrift fund shall, except in accordance with the provisions of section six of this Act, be required to cease his membership in such shop club or thrift fund upon leaving the firm with which such club or fund is connected.

Before so certifying any shop club or thrift fund, the Registrar shall

<sup>1</sup> Continued annually by the Expiring Laws Continuance Act.

take steps to ascertain the views of the workmen, and shall be satisfied that at least seventy-five per cent. of the workmen desire the establishment of such shop club or thrift fund, and further shall consider any objections that they may make to the certification.

3. The regulations contained in the schedule of this Act shall apply to any shop club or thrift fund certified under this Act. Regulations.

4. Every person who commits an offence within the meaning of this Act shall be liable on summary conviction to a fine not exceeding five pounds, and, in the case of a second or subsequent conviction within one year of a previous conviction, to a fine not exceeding twenty pounds : Penalty.

Provided that, where an offence is committed in respect of several persons at the same time, the offender shall not be convicted of more than one offence.

5. Nothing in this Act shall prohibit compulsory membership of any superannuation fund, insurance, or other society, already existing for the benefit of the persons employed by any railway company, to the funds of which such company contributes. Exemption of railways.

6. In any case where a workman, by the conditions of his employment, is a member of a shop club, he shall, upon his dismissal from or upon leaving his employment, unless contrary to the rules of the club, have the option of remaining a member or of having returned to him the amount of his share of the funds of the club, to be ascertained by actuarial calculation : Provided that every such member who shall exercise the option to remain a member of the club shall not, so long as he remains out of such employment, be entitled to take any part in the management of the club, or to vote in respect thereof. Compensation to workman ceasing to be member of shop club.

7. In this Act—

The term “friendly society” means a friendly society registered under the Friendly Societies Act, 1896, and includes a registered branch, and in application to Scotland and Ireland the word “registrar” means the registrar as defined in that Act : Definitions.

The expression “shop club” or “thrift fund” means every club and society for providing benefits to workmen in connection with a workshop, factory, dock, shop, or warehouse.

## SCHEDULE.

### REGULATIONS AS TO CERTIFICATION UNDER THIS ACT.

The rules of a shop club or thrift fund (hereinafter termed “the society”) shall provide for the following matters :—

- i. The name and place of office of the society.
- ii. The whole of the objects for which the society is to be established, the purposes for which the funds thereof shall be applicable, the terms of admission of members, the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member, and the consequences of non-payment of any subscription or fine.
- iii. The mode of holding meetings and right of voting, and the manner of making, altering, and rescinding rules.
- iv. The appointment and removal of a committee of management (by whatever name), of a treasurer and other officers, and of trustees.
- v. The investment of the funds, the keeping of the accounts, and the audit of the same once a year at least.
- vi. Annual returns to the registrar of the receipts, funds, effects, and expenditure, and numbers of members of the society.
- vii. The inspection of the books of the society by every person having an interest in the funds of the society.
- viii. The manner in which disputes shall be settled.
- ix. The keeping separate accounts of all moneys received or paid on account of every particular fund or benefit assured for which



a separate table of contributions payable shall have been adopted, and the keeping separate account of the expenses of management, and of all contributions on account thereof.

- x. A valuation once at least in every five years of the assets and liabilities of the society, including the estimated risks and contributions.
- xi. The voluntary dissolution of the society by consent of not less than five-sixths in value of the persons contributing to the funds of the society, and of every person for the time being entitled to any benefit from the funds of the society, unless his claim be first satisfied or adequately provided for.
- xii. The right of one-fifth of the total number of members, or of one hundred members in the case of a society of one thousand members and not exceeding ten thousand, or of five hundred members in the case of a society of more than ten thousand members, to apply to the chief registrar, or, in any case of societies registered and doing business exclusively in Scotland or Ireland, to the assistant registrar for Scotland or Ireland, for an investigation of the affairs of the society, or for winding up the same.

## REGISTRATION OF CLUBS (IRELAND) ACT, 1904.

[4 EDW. 7, CH. 9.]

Register of clubs  
to be kept.

1. (1) From and after the commencement of this Act a register shall be kept by every petty sessions clerk (hereinafter called "the registrar"), in which he shall enter the name of each club situate within his district to which a certificate of registration is granted under the provisions of this Act, which register shall be in a form prescribed by the Lord-Lieutenant, and shall show the date of such certificate, whether such certificate is granted for the first time or on renewal, the address of the premises to which the certificate is applicable, and the names and addresses of the officials and the committee of management or governing body of the club, and whether the club is tenant or the proprietor and occupier of the said premises. The register and copy of the rules lodged with the registrar shall at all reasonable hours be open to inspection without fee, in the Dublin Metropolitan Police District by a superintendent of the Dublin Metropolitan Police or any constable authorised by him in writing, and elsewhere in Ireland by a district inspector of the Royal Irish Constabulary, or any constable so authorised by him, or in any place by any officer of the Inland Revenue, and in any place by any person on payment of a fee of one shilling.

(2) The registration of a club under this Act shall not constitute the club licensed premises or authorise any sale of exciseable liquors therein which would otherwise be illegal.

Application for  
registration.

2. (1) The secretary of any club desiring a certificate of registration shall lodge with the registrar for the petty sessions district in which the club is situate an application signed by the chairman or secretary of the club, stating the name and object of the club, and the address of the premises occupied by the club, and shall publish the notice of such application once in a daily newspaper circulating in the locality. Such application shall be accompanied by two copies of the rules of the club, by a list containing the names and addresses of the officials and committee of management or governing body, and the names of the members, and by a certificate in or as nearly as may be in the form set out in the First Schedule annexed hereto, which certificate shall be signed where the premises are situate within the county borough of Dublin by two justices of the peace for the said county borough, and where the premises are situate in any part of the Dublin Metropolitan Police District which is

not comprised in the county borough of Dublin by two justices of the peace for the county of Dublin, and where the premises are situate elsewhere in Ireland by two justices of the peace sitting in petty sessions for the district within which such premises are situate, and shall also, where such premises are not owned by the club, be signed by the owner of such premises, or, where the owner is under any legal disability, by his legal representative.

(2) The secretary of any club desiring a renewal of the certificate shall, at a date not later than twenty-one days prior to its expiry, make application to the registrar for such renewal in the same manner and subject to the same incidents and publication as in the case of an original application for registration.

(3) Every club applying either for an original certificate or for a renewal shall, as a condition of registration, make payment to the registrar of a fee of five shillings.

3. (1) The registrar shall forthwith give notice of such application, where the club is situate in the Dublin Metropolitan Police District, to a superintendent of police of that District, and, where the club is situate elsewhere in Ireland, to the district inspector of the Royal Irish Constabulary, and, if no objections are taken as hereinafter provided, the court shall, if satisfied that the application has been duly made as aforesaid, and that the rules of the club are in conformity with the provisions of this Act, grant the application.

Grant and renewal of certificate of registration.

(2) It shall be competent for such superintendent of police or district inspector of the Royal Irish Constabulary, on receiving such notice, and for any person resident in the parish in which the club premises are situate, to lodge objections to the grant or renewal of the certificate on any of the grounds of objection specified in this Act. Such objections shall be lodged by the objectors with the registrar within ten days of the receipt or publication of the notice of application, and at the same time a copy of the objections shall be sent by them to the secretary of the club applying for the grant or renewal of a certificate.

(3) The court shall, as soon as may be, hear parties upon the application and objections, and may order such inquiry as it thinks fit, and thereafter shall grant or refuse the application. Upon the grant of any such application the court shall cause the entries required by this Act to be made in the register, and thereupon the registrar shall issue to the applicant, in or as nearly as may be in the form set out in the Second Schedule annexed hereto, a certificate of registration. Such certificate so issued shall, subject to the provisions of this Act, remain in force for a period of twelve months from the date of issue.

(4) The court shall have power to order costs and expenses to be paid by the unsuccessful party, where objection has been taken to the granting or renewal of a certificate, in like manner as in any case of summary jurisdiction where an order is made for payment of money not being in the nature of a penalty for an offence.

(5) Notwithstanding the provisions of this Act as to the duration of a certificate, where a renewal has been applied for the current certificate shall remain in force pending the final decision of the court, but not exceeding three months, unless the court shall in its discretion extend such time to a further period not exceeding three months.

(6) A club failing to make application for renewal of a certificate by the date at or previous to which such application must in terms of this Act be made, shall not be granted such renewal unless the court is satisfied that such failure was due to inadvertence.

(7) A club may make application for a certificate of registration at any time after the first day of November one thousand nine hundred and four and before the commencement of this Act, and no club which has made such application shall be deemed to be an unregistered club pending the final decision of the court on such application, and any application so made shall for the purposes of this section be deemed to have been made on the first day of January one thousand nine hundred and five.

4. In order that any club may be eligible to be registered, the rules of the club shall provide—

Club rules qualifying for registration.

- (a) That the business and affairs of the club shall be under the management of a committee or governing body elected for not less than a year by the general body of members, and subject in whole or in a specified proportion to annual re-election, and that no member of the committee or governing body, and no manager or servant employed in the club, shall have any personal interest in the sale of exciseable liquors therein, or in the profits arising from such sale :
- (b) That the committee or governing body shall hold periodical meetings :
- (c) That the names and addresses of persons proposed as ordinary members of the club shall be displayed on a conspicuous place in the club premises for at least a week before their election, and that an interval of not less than two weeks shall elapse between nomination and election of ordinary members :
- (d) That all members shall be elected by the whole body of members or by the committee or governing body, with or without specially added members :
- (e) That there shall be a defined subscription payable by members in advance :
- (f) That correct accounts and books shall be kept showing the financial affairs and receipts and disbursements of the club :
- (g) That a visitor shall not be supplied with exciseable liquor in the club premises unless on the invitation and in the company of a member, and that the member shall, upon the admission of such visitor to the club premises, or immediately upon his being supplied with such liquor, enter his own name and the name and address of the visitor in a book which shall be kept for the purpose, and which shall show the date of each visit :
- (h) That no exciseable liquors shall be sold or supplied for consumption outside the premises of the club, except to members of the club, between the hours of eight o'clock in the morning and ten o'clock at night :
- (i) That no persons shall be allowed to become honorary or temporary members of the club, or be relieved of the payment of the regular entrance fee or subscription, except those possessing certain qualifications defined in the rules, and subject to conditions and regulations prescribed therein :
- (j) That no person under eighteen years of age shall be admitted a member of the club unless the club is one primarily devoted to some athletic purpose, and, in the latter case, that no exciseable liquors shall be sold or supplied to any person under eighteen years of age :

Provided always that this section shall not apply to any lodge of Freemasons duly constituted under a charter or warrant from the Grand Lodge of Ireland.

5. The court shall not consider any objection to the grant or renewal of a certificate unless it is taken upon one or more of the following grounds :—

- (a) The character of the chairman or secretary, or of any official or member of the committee of management or governing body ; or
- (b) The suitability of the premises ; or
- (c) That the application made by the club, or its rules, or any of them, are in any respect specified in such objection not in conformity with the provisions of this Act ; or
- (d) That the club has ceased to exist, or that the number of members is less than twenty-five ; or
- (e) That it is not conducted in good faith as a club, or that it is kept or habitually used for any unlawful purpose, or mainly for the supply of exciseable liquor ; or
- (f) That there is frequent drunkenness on the club premises, or that persons in a state of intoxication are frequently seen to leave the club premises, or that the club is conducted in a disorderly manner ; or

Competent grounds of objection to registration.



- (g) That illegal sales of exciseable liquor have taken place on the club premises ; or
- (h) That persons who are not members are habitually admitted to the club merely for the purpose of obtaining exciseable liquor ; or
- (i) That the club occupies premises in respect of which, within twelve months next preceding the formation of the club, a licence for the sale of exciseable liquors has been forfeited or a certificate under the Licensing (Ir.) Acts, 1833 to 1900, in respect of the renewal of any such licence has been refused, or in respect of which an order has been made that they shall not be used for the purposes of a club ; or
- (j) That the supply of exciseable liquor to the club is not under the control of the members or the committee appointed by the members ; or
- (k) That any of the rules of the club are habitually broken ; or
- (l) That the rules have been so changed as not to be in conformity with the provisions of the immediately preceding section of this Act.

6. (1) If a justice of the peace of any county or borough or divisional justice of the Dublin Metropolitan Police District is satisfied by information on oath that there is reasonable ground for supposing that any registered club is so managed or carried on as to constitute a ground of objection to the renewal of its certificate in terms of the immediately preceding section, or that an offence under this Act has been or is being committed in any registered club, or that any exciseable liquor is sold or supplied, or kept for sale or supply, on the premises of an unregistered club, he may grant a search warrant to any constable or constables named therein.

Search warrant to enter club.

(2) A search warrant granted under this section shall authorise the constable or constables named therein to enter the club at any time, if need be by force, and to inspect the premises of the club, to take the names and addresses of any persons found therein, and to seize any books and papers relating to the business of the club.

(3) In the event of any person or persons found in said premises refusing to give their respective names and addresses when requested by any such constable, or giving false names or addresses, such person or persons so doing shall be liable severally on summary conviction to a fine not exceeding five pounds.

7. (1) If any exciseable liquor is sold or supplied to any member or other person on the premises of an unregistered club, every person supplying or selling such liquor, every person who shall pay for such liquor, and every person authorising the supply or sale of such liquor, shall be liable, on summary conviction, to imprisonment with or without hard labour for a term not exceeding one month, or to a fine not exceeding fifty pounds, or to both.

Penalty for supplying and keeping exciseable liquor in unregistered club.

(2) If any exciseable liquor is kept for supply or sale on the premises of an unregistered club, the same, and the vessels containing the same, may be seized by the police under a warrant from a justice of the peace or divisional justice of the Dublin Metropolitan Police District, granted after examination on oath of a credible witness to the fact that such liquor is so kept, and every officer and member of the club shall be liable, on summary conviction, to a fine not exceeding for a first offence seven pounds, for a second offence fifteen pounds, and for a third or subsequent offence thirty pounds, unless he proves to the satisfaction of the court that such liquor was so kept without his knowledge or against his consent, and on such conviction such liquor and the vessels containing the same shall be forfeited and sold, and the proceeds thereof applied in like manner as a penal sum under the Fines Act (Ir.), 1851.

8. If any exciseable liquor is sold or supplied in a registered club for consumption outside the premises of the club, except as provided in section four, paragraph (h), every person supplying or selling such liquor, every person who shall pay for such liquor, and every person authorising the sale or supply of such liquor, shall be liable severally, on summary conviction, to a fine not exceeding for a first offence seven pounds, for a

Penalties for supplying exciseable liquor for consumption outside registered club.

second offence fifteen pounds, and for a third or subsequent offence thirty pounds, unless he proves to the satisfaction of the court that such liquor was so sold or supplied without his knowledge or against his consent, and, where it is proved that such liquor has been received, delivered, or distributed within the premises of the club and taken outside the premises, it shall, failing proof to the contrary, be deemed to have been so taken for consumption outside the premises.

Power to cancel  
certificate of  
registration.

9. (1) On summary complaint by or at the instance of any person competent to lodge objections to the grant or renewal of a certificate of registration it shall be lawful for the court to make an order that on grounds to be specified therein a registered club is being so managed or carried on as to constitute a ground of objection to the renewal of its certificate as hereinbefore provided.

(2) Where such order has been made or where a conviction has taken place under the provisions of the immediately preceding section, the registrar shall forthwith make an entry of the order or conviction in the register of clubs, and lay the same before the court, and it shall be lawful for the court, if it thinks fit, and after such further inquiry as it may think necessary, having regard to the magnitude of the offence or to the grounds specified as aforesaid, to cancel the certificate of the club for the period for which it may still have to run, provided always that it shall be competent for such club to apply for the renewal of the certificate at the date at which it would have been competent to do so had the certificate not been cancelled.

(3) Where the court has refused an application by any club for the renewal of a certificate, or has cancelled the certificate of a club in manner provided as aforesaid, it may, if it think fit, further pronounce an order that the premises occupied by such club shall not be used for the purposes of any club which requires registration under this Act for a specified period, which may extend to twelve months in case of a first order, or in case of a second or subsequent order to five years: Provided that any such order may, for good cause shown, be subsequently cancelled or varied by the court.

Penalties for  
offences by  
officials of  
registered club.

10. Where an order has been made that a registered club is being so managed or carried on as to constitute a ground of objection to the renewal of its certificate, then, if the following grounds, or any of them, are specified in such order, videlicet:—

(1) That it is not conducted in good faith as a club, or that it is kept or habitually used for any unlawful purpose, or mainly for the supply of excisable liquor; or

(2) That there is frequent drunkenness on the club premises, or that persons in a state of intoxication are frequently seen to leave the club premises, or that the club is conducted in a disorderly manner; or

(3) That persons who are not members are habitually admitted to the club merely for the purpose of obtaining excisable liquor;

every person entered in the register of clubs as an official or a member of the committee of management or governing body of the club shall, unless he satisfies the court that the club was so managed or carried on without his knowledge or against his consent, be liable, on summary conviction, to a penalty not exceeding for a first offence seven pounds, for a second offence, whether in connection with the same or another club, fifteen pounds, and for a third or subsequent offence as aforesaid thirty pounds.

Decision of  
court final.

11. (1) The decision of the court in dealing with an application for an original certificate, or for the renewal of a certificate, or in cancelling a certificate, shall be subject to appeal in manner provided by the Summary Jurisdiction Acts, as if it was an order subject to appeal under those Acts.

(2) A justice shall not adjudicate on the hearing of any application or complaint affecting a club of which he is a member.

(3) If on a summary complaint being made in respect of a club the court grants a summons, the summons shall be served on the secretary and on such other person, if any, as the court may direct.

(4) The certificate under section two of this Act shall not be signed by

a divisional justice of the Dublin Metropolitan Police District, and any justice having signed any such certificate shall not adjudicate on the hearing of an application under section three of this Act.

12. If the secretary of any club or any other person knowingly lodges with the registrar an application for registration which is false in any material particular, he shall be liable, on summary conviction, to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding fifty pounds, or to both. Penalty for making false application.

13. For the purposes of this Act, unless the context otherwise requires, the following expressions shall have the meanings hereinafter assigned to them, namely— Definitions.

“Certificate” shall mean a certificate of registration :

“Registered club” shall mean a club holding a certificate of registration in force at the time :

“Secretary” shall include any officer of a club or other person performing the duties of a secretary :

“Court” shall mean court of summary jurisdiction, but in any part of Ireland other than the Dublin Metropolitan Police District the court shall, for the purposes of this Act, be constituted of two or more justices of the peace sitting in petty sessions for the district in which the premises are situate :

“Clerk of petty sessions” shall include in the case of the Dublin Metropolitan Police District the principal clerk at each police court.

14. This Act shall apply to Ireland only, and may be cited as the Registration of Clubs (Ir.) Act, 1904. Short title, application.

## SCHEDULES.

### FIRST SCHEDULE.

Section 2.

#### FORM OF CERTIFICATE TO ACCOMPANY APPLICATION BY CLUB FOR REGISTRATION OR RENEWAL.

We, Justices of the Peace for the County [or County Borough] of \_\_\_\_\_ and I, \_\_\_\_\_ owner of the premises occupied [or to be occupied] by the club hereinafter mentioned, hereby certify that to the best of our knowledge and belief the \_\_\_\_\_ club designated in the accompanying application is to be [or, in the case of an application by an existing club, has been and is to be] conducted as a *bona fide* club, and not mainly for the supply of exciseable liquor.

[Signature, date, and address of each person certifying to be here inserted.]

### SECOND SCHEDULE.

Section 3.

#### FORM OF CERTIFICATE OF REGISTRATION OF CLUBS TO BE GRANTED UNDER THIS ACT.

##### CERTIFICATE OF REGISTRATION.

I, \_\_\_\_\_ Registrar of Clubs, hereby certify that the Club, of \* \_\_\_\_\_ is registered under the Registration of Clubs (Ir.) Act, 1904. This certificate remains in force till the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_ ; application for its renewal must be made not later than the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_ .

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ .

Registrar of Clubs.

\* Fill in registered postal address of all premises used by the club.



## CHARITABLE LOAN SOCIETIES (IRELAND) ACT, 1906.

[6 EDW. 7, CH. 23.]

Extension of  
time for taking  
proceedings  
under 14 & 15  
Vict. c. 93,  
and validation of  
decrees, &c.

1. (1) In the application of subsection four of section ten of the Petty Sessions (Ir.) Act, 1851, to a promissory note current or unpaid on the first day of March eighteen hundred and ninety-nine, and purporting to have been made under the principal Act, twelve months from the passing of this Act shall be substituted for six months from the time when the cause of complaint shall have arisen.

(2) A decree, order, or warrant of a court of summary jurisdiction pronounced, made, or issued before the passing of this Act in respect of any such promissory note which has not been executed by reason only that the note became payable more than six months before the complaint relating to it was made shall not be a bar to any proceedings for the recovery of the amount due in respect of the note.

Amount due in  
respect of pro-  
missory notes  
to be recoverable  
after lapse of six  
years in certain  
cases.

2. Proceedings to recover the amount due in respect of a promissory note current or unpaid on the first day of March eighteen hundred and ninety-nine, and purporting to have been made under the principal Act, may be taken within twelve months from the passing of this Act, notwithstanding that six years or upwards may have elapsed from the time when the note became payable.

Validation of  
renewals of  
promissory notes  
in certain cases.

3. A renewal of a promissory note purporting to have been made under the principal Act and made prior to the passing of this Act shall not be invalid or incapable of being enforced in any court or liable to stamp duty by reason only of the original note having been made in contravention of section thirty-eight of that Act, which prohibits the transaction of the business of a loan society at the places therein specified.

As to amount  
recoverable in  
respect of loans.

4. (1) The total amount recoverable in respect of any loan made under the principal Act shall in no case exceed the amount lent, together with simple interest thereon at the rate of five pounds per centum per annum, and in ascertaining the amount due in respect of any such note an account shall be carried back for the entire period from the date of the original loan.

(2) The amount provided for in subsection one of section two of the Charitable Loan Societies (Ir.) Act, 1900, in lieu of being issued together with the summons, shall, not less than fourteen days before the summons is issued, be forwarded by a registered letter addressed to the borrower at his last known place of residence, and the said account shall show the allowances made for all sums paid by the borrower in respect of principal, interest, or otherwise.

As to costs.

5. In awarding costs in any proceedings taken under the principal Act the court shall have regard to any offer of settlement made by the defendant before the proceedings were instituted, and, if of opinion that any such offer was unreasonably refused by the loan society, shall order that the society shall pay costs to the defendant.

Appeal.

6. In the case of any proceedings taken under the principal Act, the complainant or defendant may, subject to rules of court, appeal to the county court from any decision of a court of summary jurisdiction, and no appeal shall, in the case of such proceedings, lie to a court of quarter sessions.

Taking account.

7. In any case where the court may decide to refer the taking of an account, it shall not be competent to refer the taking of the account to any person who is or has been an official or member of any loan society, and the fee for taking the account shall not in any case exceed two shillings and sixpence.

Short title and  
mode of citation.

8. This Act may be cited as the Charitable Loan Societies (Ir.) Act, 1906, and shall be construed as one with the Charitable Loan Societies (Ir.) Act, 1900; and the principal Act, the said Act of 1900, and this Act may be cited together as the Charitable Loan Societies (Ir.) Acts, 1843 to 1906.

## FERTILISERS AND FEEDING STUFFS ACT, 1906.

[6 EDW. 7, CH. 27.]

1. (1) Every person who sells for use as a fertiliser of the soil any article which has been subjected to any artificial process in the United Kingdom, or which has been imported from abroad, shall give to the purchaser an invoice stating the name of the article and what are the respective percentages (if any) of nitrogen, soluble phosphates, insoluble phosphates,<sup>1</sup> and potash contained in the article, and the invoice shall have effect as a warranty by the seller that the actual percentages do not differ from those stated in the invoice beyond the prescribed limits of error.

Warranties as to  
fertilisers and  
feeding stuffs.

(2) Every person who sells for use as food for cattle<sup>1</sup> or poultry any article which has been artificially prepared shall give to the purchaser an invoice stating the name of the article, and whether it has been prepared from one substance or seed or from more than one substance or seed, and in the case of any article artificially prepared otherwise than by being mixed broken ground or chopped, what are the respective percentages (if any) of oil and albuminoids contained in the article, and the invoice shall have effect as a warranty by the seller as to the facts so stated, except that as respects percentages the invoice shall have effect as a warranty only that the actual percentages do not differ from those stated in the invoice beyond the prescribed limits of error.

(3) Where any article sold for use as food for cattle or poultry is sold under a name or description implying that it is prepared from any particular substance or from any two or more particular substances, or is the product of any particular seed or of any two or more particular seeds, and without indication that it is mixed or compounded with any other substance or seed, there shall be implied a warranty by the seller that it is pure, that is to say, is prepared from that substance or those substances only, or is a product of that seed or those seeds only.

(4) On the sale of any article for use as food for cattle or poultry, there shall be implied a warranty by the seller that the article is suitable to be used as such.

(5) Any statement by the seller of the percentages of the chemical and other ingredients contained in any article sold for use as a fertiliser of the soil, or of the nutritive and other ingredients contained in any article sold for use as food for cattle or poultry, made after the commencement of this Act in an invoice of such article, or in any circular or advertisement descriptive of such article, shall have effect as a warranty by the seller.

(6) Where an article sold for use as a fertiliser of the soil or as food for cattle or poultry consists of two or more ingredients which have been mixed at the request of the purchaser, it shall be a sufficient compliance with the provisions of this section with respect to percentages if the invoice contains a statement of percentages with respect to the several ingredients before mixture, and a statement that they have been mixed at the request of the purchaser.

2. (1) The Board of Agriculture and Fisheries shall appoint a chief agricultural analyst (hereinafter referred to as the chief analyst), who shall have such remuneration out of moneys provided by Parliament as the Treasury may assign. The chief analyst shall not while holding his office engage in private practice.

Power to appoint  
analyst and  
samplers.

(2) Every county council shall, and the council of any county borough may, appoint an official agricultural analyst (hereinafter referred to as an agricultural analyst) and one or more official samplers for their county or borough.

(3) The council of any county or county borough may also appoint a deputy agricultural analyst, who shall, in case of illness, incapacity,

<sup>1</sup> For definition of these terms, see s. 10.

or absence of the agricultural analyst, have all the powers and duties of the agricultural analyst, and where the deputy acts this Act shall apply as if he were the agricultural analyst.

(4) The appointment of an agricultural analyst, deputy agricultural analyst, or official sampler shall be subject to the approval of the Board of Agriculture and Fisheries.

(5) A person whilst holding the office of agricultural analyst shall not engage or be interested in any trade, manufacture, or business connected with the sale or importation of articles used for fertilising the soil or as food for cattle or poultry.

Power to have  
fertiliser or  
feeding stuff  
analysed.

3. (1) Every purchaser of any article used for fertilising the soil or as food for cattle or poultry who has taken a sample thereof within ten days after delivery of the article to him or receipt of the invoice by him, whichever is later, shall, on payment of the required fee, be entitled to have the sample analysed by the agricultural analyst.

(2) An official sampler shall at the request of the purchaser and on payment by him of the required fee, and may without any such request, take a sample for analysis by the agricultural analyst of any such article as aforesaid which has been sold or is exposed or kept for sale, but, in the case of an article which has been sold, the sample shall be taken before the expiration of ten days after the delivery of the article to the purchaser, or the receipt of the invoice by the purchaser, whichever is later.

(3) Where a sample has been taken with a view to the institution of any civil or criminal proceeding, the person taking the sample shall divide the sample into three parts, and shall cause each part to be marked, sealed, and fastened up, and shall deliver or send by post two parts to the agricultural analyst and one part to the seller.

(4) An agricultural analyst to whom a sample is submitted for analysis under this section—

(a) If the sample has not been divided into parts and the parts marked, sealed, and fastened up as hereinbefore mentioned, shall send a copy of the certificate of his analysis to the person who submitted the sample for analysis; and

(b) If the sample has been so divided into parts, shall analyse one of the parts of the sample delivered or sent to him and retain the other, and shall send a certificate of his analysis in the prescribed form and containing the prescribed particulars to the person who submitted the sample for analysis, and where that person is not the purchaser of the article also to the purchaser, and in every case to the seller and to such other persons (if any) as may be prescribed, and shall report to the Board of Agriculture and Fisheries in the prescribed manner the result of any such analysis: Provided that if the agricultural analyst does not know the name and address of the seller he shall send the certificate intended for the seller to the purchaser, to be by him forwarded to the seller.

(5) At the hearing of any civil or criminal proceeding with respect to any article a sample whereof has been analysed in pursuance of this section, the production of a certificate of the agricultural analyst, or, if a sample has been submitted to the chief analyst, then of the chief analyst, shall be sufficient evidence of the facts therein stated unless the defendant or person charged requires that the analyst or the person who made the analysis be called as a witness: Provided that this subsection shall not apply—

(a) Where the sample has been taken otherwise than in the prescribed manner; or

(b) Where the sample has not been divided into parts and the parts marked, sealed, and fastened up as hereinbefore mentioned.<sup>1</sup>

(6) If in any such legal proceeding (other than a proceeding which cannot be instituted until an analysis has been made and a certificate

<sup>1</sup> The effect of this subsection is that in any prosecution where the facts set forth in (a) and (b), or either of those paragraphs, exist, then the analyst's certificate is of no legal effect, and he must himself attend to prove the result of the analysis.



given by the chief analyst)<sup>1</sup> either party to the proceeding objects<sup>2</sup> to the certificate of the agricultural analyst, the party objecting shall, on payment of such fee as may be fixed by the Treasury, be entitled to have submitted to the chief analyst the part of the sample retained by the agricultural analyst, and to have that part analysed by the chief analyst and to receive from him a certificate of the result of his analysis.

(7) Where a sample is, under this section, sent for analysis to the chief analyst or to an agricultural analyst, there shall be sent with the sample the invoice (if any) relating to the article from which the sample was taken, or a copy of the invoice or of any prescribed part thereof.

4. (1) The Board of Agriculture and Fisheries may make regulations<sup>3</sup>—

Power of Board of Agriculture and Fisheries to make regulations.

- (a) With respect to any matter which under this Act is to be prescribed;
- (b) as to the qualifications to be possessed by agricultural analysts, deputy agricultural analysts, and official samplers;
- (c) as to the manner in which analyses are to be made;
- (d) as to the manner in which samples are to be taken and dealt with; and
- (e) generally for the purpose of carrying this Act into execution:

Provided that nothing in this section or in any regulations made thereunder, shall affect the right of the purchaser of an article used for fertilising the soil, or as food for cattle or poultry, to have analysed by the agricultural analyst a sample of an article taken by him or at his request otherwise than in accordance with the regulations.

(2) All regulations made under this section shall be laid before both Houses of Parliament as soon as may be after they are made.<sup>4</sup>

5. (1) The council of a county or county borough may concur with one or more other such councils in making any appointment which they are authorised to make under this Act, and as to the apportionment in the case of such a joint appointment of the expenses amongst the several councils.

Provisions as to county and county borough councils.

(2) The council of any county or county borough may contribute towards any expenses incurred by any agricultural body or association in causing samples to be taken for analysis by the agricultural analyst.

(3) The council of any county or county borough may fix the fees payable in respect of the making of any analysis and the taking of any sample at the request of a purchaser.

(4) The expenses of the council incurred in the execution of this Act shall be defrayed, in the case of a county council as part of their general expenses, and in the case of a county borough council out of the borough fund or borough rate.

6. (1) If any person who sells any article for use as a fertiliser of the soil or as food for cattle or poultry commits any of the following offences, namely:—

Penalties for breach of duty by seller.

- (a) Fails without reasonable excuse to give, on or before or as soon

<sup>1</sup> That is to say, a prosecution under s. 6 (1) (a), (b), or (c), which, under s. 6 (3), cannot be instituted—(1) until an analysis has been made and a certificate of analysis given by the chief analyst, (2) after this first condition has been complied with, except with the consent of the Department.

<sup>2</sup> It is submitted that upon such objection being made it is the duty of justices to adjourn the hearing until such time as will permit of the party so objecting receiving the certificate of the chief analyst.

<sup>3</sup> The following regulations have been made by the Department of Agriculture and Technical Instruction for Ireland (see s. 12):—

The Fertilisers and Feeding Stuffs Regulations, 1907 (dated Feb. 14, 1907).

The Fertilisers and Feeding Stuffs Regulations, No. 2, 1907 (dated Feb. 29, 1908).

As to the mode in which those regulations can be proved, see EVIDENCE, p. 276.

<sup>4</sup> The section further provides that all regulations made under it shall be laid before both Houses of Parliament as soon as may be after they are made (subsection 2). A prosecution, however, lies even though the regulation has not been laid before Parliament (see *Hepburn v. Wilson* (1901), 4 F. (Just. Cas.) 18).

as possible after the delivery of the article, the invoice required by this Act ; <sup>1</sup> or

- (b) Causes or permits <sup>2</sup> any invoice or description of the article sold by him to be false in any material particular to the prejudice of the purchaser ; <sup>3</sup> or
- (c) Sells for use as food for cattle or poultry any article which contains any ingredient deleterious to cattle or poultry, or to which has been added any ingredient worthless for feeding purposes and not disclosed at the time of the sale ;

he shall, without prejudice to any civil liability, be liable, on summary conviction, for a first offence to a fine not exceeding twenty pounds, and for any subsequent offence to a fine not exceeding fifty pounds :

Provided that a person shall not be convicted of an offence under paragraph (b) of this subsection if he proves either

- (i.) That he did not know, and could not with reasonable care have ascertained, that the invoice or description was false ; <sup>4</sup> or
- (ii.) That he purchased the article sold with a written warranty or invoice from a person in the United Kingdom, and that that warranty or invoice contained the false statement in question, and that he had no reason to believe at the time when he sold the article that the statement was false, and that he sold the article in the state in which it was when he purchased it.

(2) In any proceeding for an offence under this section it shall be no defence to allege that the purchaser, having bought only for analysis, was not prejudiced by the sale.

(3) A prosecution for an offence under this section shall not be instituted except with the consent of the Board of Agriculture and Fisheries, <sup>5</sup> and the Board shall not give such consent until the part of

<sup>1</sup> If vendor delivers any invoice, even though incorrect, no offence under s. 6 (1) (a) is committed ; the delivery of such an invoice may be an offence against s. 6 (1) (b) (*Needham v. Worcestershire County Council* (1909), 25 T.L.R. 471).

<sup>2</sup> A chemical company sold a quantity of a particular kind of fertiliser and an incorrect invoice was sent. The evidence showed that the managing director knew that in this fertiliser in question the proportion of phosphates varied, that in the ordinary course of business sales of that fertiliser would come under his notice, that he was cognisant of the general form of invoice used, and that invoices with a guarantee would not be sent out in the ordinary course without his knowledge ; but there was no evidence that he saw this particular invoice in question or knew it to be false, though there was evidence that that invoice would not be sent out in the ordinary course without his knowledge. *Held*, that he was rightly convicted under the precisely similar provisions of the repealed section 3 (1) of the Fertilisers and Feeding Stuffs Act, 1893, 56 & 57 Vict. c. 56 (*Laird v. Dobell* (1906), 1 K.B. 131).

<sup>3</sup> It is doubtful if *mens rea* is a necessary element of an offence under this subsection (*Needham v. Worcestershire County Council* (1909), 25 T.L.R. 471 ; see, however, *Laird v. Dobell*, *supra*).

<sup>4</sup> There was no such proviso as that contained in these words appended to s. 3 (1) (b) of the 56 & 57 Vict. c. 56, which subsection is *verbatim* the same as s. 5 (1) (b) of this Act. Consequently in *Korten v. West Sussex County Council* (1903), 67 J.P. 167, and *Laird v. Dobell* (1906), 1 K.B. 131, it was held that want of knowledge, or of means of knowledge, of the falsity of the invoice or description was no defence. But the 56 & 57 Vict. c. 56 has been repealed by s. 13 of this Act, and therefore those cases do not as regards the question of such knowledge apply to prosecutions under s. 6 (1) (b) of this Act.

<sup>5</sup> The consent of the Department must be given before the prosecution is instituted by the issue of the summons. It is not sufficient that such consent be given after the institution of the prosecution. It would seem that such consent must be in writing, being the consent of a body corporate (*Department of Agriculture and John Marchbank v. Mary Porter* (1910), 44 I.L.T.R. 13). And it is submitted that such consent is a "licence or other instrument" which may be proved in manner provided by the Agricultural and Technical Instruction (Ir.) Act, 1899, 62 & 63 Vict. c. 50, s. 21.

The respondents in England sent to a purchaser in Ireland an article as food for cattle, and were prosecuted in England by the Department of Agriculture and Technical Instruction for Ireland, which had taken a sample of the article in Ireland and had it analysed there, for having failed without reasonable excuse to give to the purchaser an invoice as required by the Act. The consent of the Board of Agriculture and Fisheries to the institution of the prosecution had not been obtained. *Held*, that the consent of the

the sample retained by the agricultural analyst has been analysed, and a certificate of analysis given, by the chief analyst.

(4) In any prosecution under this section the summons shall state particulars of the offences alleged, and also the name of the prosecutor, and shall not be made returnable in less time than fourteen days from the day on which it is served, and there must be served therewith a copy of any analyst's certificate obtained on behalf of the prosecutor.

7. If any person fraudulently—

(a) tampers with any article so as to procure that any sample of it taken under this Act does not correctly represent the article ;  
or

Penalties for tampering.

(b) tampers with any sample taken under this Act ;

he shall be liable on summary conviction to a fine not exceeding twenty pounds, or to imprisonment for a term not exceeding six months.

8. If—

(a) the owner, or the person entrusted for the time being with the charge or custody<sup>1</sup> of any article sold or intended to be sold for use as a fertiliser of the soil or as food for cattle or poultry, refuses to allow an official sampler to take a sample of the article for the purpose of analysis ; or

Penalty for obstructing official sampler.

(b) the purchaser of any such article refuses to give to an official sampler the invoice of the article or a copy thereof or of any prescribed part thereof ;

he shall be liable on summary conviction to a fine not exceeding ten pounds.

9. (1) Subject to the provisions of this Act as to the consent of the Board of Agriculture and Fisheries, a prosecution for an offence under this Act may be instituted either by the person aggrieved, or by the council of a county or borough, or by any body<sup>2</sup> or association authorised in that behalf by the Board of Agriculture and Fisheries.

Institution of prosecutions and appeals.

(2) A prosecution for an offence of causing or permitting an invoice or description to be false in any material particular shall not be instituted under this Act—

(a) After the expiration of three months from the date when the invoice was received by the purchaser ; nor

(b) unless a sample for analysis has been taken, and an analysis by the agricultural analyst has been made, and a certificate of analysis has been given, in accordance with regulations made under this Act :

But the proceedings may be taken as well before the court having jurisdiction in the place where the purchaser of the article to which the invoice or description relates resides or carries on business, as before the court having jurisdiction in the place where the invoice or description was given.

(3) Any person aggrieved by a summary conviction under this Act may appeal to a court of quarter sessions.

10. (1) For the purposes of this Act the expression " cattle " shall mean bulls, cows, oxen, heifers, calves, sheep, goats, swine, and horses ;

Construction and application.

Irish Department to the institution of the prosecution was not sufficient, but that the consent of the Board of Agriculture and Fisheries was necessary (*Hill v. Phoenix Veterinary Supplies Limited* (1911), 2 K.B. 217).

<sup>1</sup> A steamship company had in their possession at Cork a quantity of manure consigned from Liverpool to merchants in Ireland. Their possession was solely as carriers. K, a person appointed by the Department as their sampler under this Act, applied to the company for permission to take samples of the manure, but the company refused to give him permission. *Held*, that K was an " official sampler " within the meaning of this subsection ; that the company were persons entrusted for the time being with the charge or custody of an article within the meaning of the subsection ; and that the company were guilty of an offence under the section (*Department of Agriculture and Technical Instruction for Ireland v. Cork Steam Packet Company* (1909), 2 I.R. 479).

<sup>2</sup> " Body " here seems to be intended to mean a body of persons, and cannot be taken as meaning " any individual." The Department is not a " body " that can appear as a complainant (*Department of Agriculture and John Marchbank v. Mary Porter and others* (1910), 44 I.L.T.R. 13), as s. 6 (3) of this Act contemplates some complainant other than the Department itself.



and the expressions "soluble" and "insoluble" shall respectively mean soluble and insoluble in water, or, if so specified in the invoice, in a solution of citric acid or other solvent of the prescribed strength, and the percentage of soluble phosphates and percentage of insoluble phosphates mean respectively the percentage of tribasic phosphate of lime which has been, and that which has not been, rendered soluble.

(2) This Act shall apply to wholesale as well as retail sales.

[11. *Application to Scotland.*]

Application  
to Ireland.

12. For the purposes of the execution of this Act in Ireland, inclusive of the appointment of a chief agricultural analyst, the Department of Agriculture and Technical Instruction for Ireland shall be substituted for the Board of Agriculture and Fisheries, and in section seventeen of the Agriculture and Technical Instruction (Ir.) Act, 1899, a reference to sections six, seven, and eight of this Act shall be substituted for the reference to section seven of the Fertilisers and Feeding Stuffs Act, 1893; and for the purpose of instituting prosecutions the said Department may take samples of any articles to which this Act applies which have been sold or are kept or exposed for sale.

Repeal.

13. The Fertilisers and Feeding Stuffs Act, 1893, is hereby repealed; provided that nothing in this repeal shall affect any regulation or appointment made under that Act, but every such regulation and appointment shall have effect as if made under this Act; and in Ireland an analyst holding office under the said Act both for a county and a non-county borough comprised in that county shall become the agricultural analyst for that county.

Short title and  
commencement.

14. This Act may be cited as the Fertilisers and Feeding Stuffs Act, 1906, and shall come into operation on the first day of January nineteen hundred and seven.

## PROBATION OF OFFENDERS ACT, 1907.

[7 EDW. 7, CH. 17.]

Power of courts  
to permit con-  
ditional release  
of offenders.

1. (1) Where any person is charged before a court of summary jurisdiction with an offence punishable by such court, and the court thinks that the charge is proved, but is of opinion that, having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the court may, without proceeding to conviction, make an order either—

(i.) dismissing the information or charge; or

(ii.) discharging the offender conditionally on his entering into a recognisance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, not exceeding three years, as may be specified in the order.

(2) Where any person has been convicted on indictment of any offence punishable with imprisonment, and the court is of opinion that, having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the court may, in lieu of imposing a sentence of imprisonment, make an order discharging the offender conditionally on his entering into a recognisance, with or without sureties, to be of good behaviour and to appear for sentence when called on at any time during such period, not exceeding three years, as may be specified in the order.

(3) The court may, in addition to any such order, order the offender to pay such damages for injury or compensation for loss (not exceeding

in the case of a court of summary jurisdiction ten pounds, or, if a higher limit is fixed by any enactment relating to the offence, that higher limit) and to pay such costs of the proceedings as the court thinks reasonable.

(4) Where an order under this section is made by a court of summary jurisdiction, the order shall, for the purpose of re-vesting or restoring stolen property, and of enabling the court to make orders as to the restitution or delivery of property to the owner and as to the payment of money upon or in connection with such restitution or delivery, have the like effect as a conviction.

2. (1) A recognisance ordered to be entered into under this Act shall, if the court so order, contain a condition that the offender be under the supervision of such person as may be named in the order during the period specified in the order and such other conditions for securing such supervision as may be specified in the order, and an order requiring the insertion of such conditions as aforesaid in the recognisance is in this Act referred to as a probation order.

Probation orders and conditions of recognisances.

(2) A recognisance under this Act may contain such additional conditions as the court may, having regard to the particular circumstances of the case, order to be inserted therein with respect to all or any of the following matters :—

- (a) for prohibiting the offender from associating with thieves and other undesirable persons, or from frequenting undesirable places ;
- (b) as to abstention from intoxicating liquor, where the offence was drunkenness or an offence committed under the influence of drink ;
- (c) generally for securing that the offender should lead an honest and industrious life.

(3) The court by which a probation order is made shall furnish to the offender a notice in writing stating in simple terms the conditions he is required to observe.

3. (1) There may be appointed as probation officer or officers for a petty sessional division such person or persons of either sex as the authority having power to appoint a clerk to the justices of that division may determine, and a probation officer when acting under a probation order shall be subject to the control of petty sessional courts for the division for which he is so appointed.

Probation officers.

(2) There shall be appointed, where circumstances permit, special probation officers, to be called children's probation officers, who shall, in the absence of any reasons to the contrary, be named in a probation order made in the case of an offender under the age of sixteen.

(3) The person named in any probation order shall,—

- (a) where the court making the order is a court of summary jurisdiction, be selected from amongst the probation officers for the petty sessional division in or for which the court acts ; or
- (b) where the court making the order is a court of assize or a court of quarter sessions, be selected from amongst the probation officers for the petty sessional division from which the person charged was committed for trial :

Provided that the person so named may, if the court considers it expedient on account of the place of residence of the offender, or for any other special reason, be a probation officer for some other petty sessional division, and may, if the court considers that the special circumstances of the case render it desirable, be a person who has not been appointed to be probation officer for any petty sessional division.

(4) A probation officer appointed for a petty sessional division may be paid such salary as the authority having the control of the fund out of which the salary of the clerk to the justices of that petty sessional division is paid may determine, and if not so paid by salary may receive such remuneration for acting under a probation order as the court making the order thinks fit, not exceeding such remuneration as may be allowed by the regulations of such authority as aforesaid, and may in either case be paid such out-of-pocket expenses as may be allowed under such regulations

as aforesaid, and the salary or remuneration and expenses shall be paid by that authority out of the said funds.

(5) A person named in a probation order not being a probation officer for a petty sessional division may be paid such remuneration and out-of-pocket expenses out of such fund as the court making the probation order may direct, not exceeding such as may be allowed under the regulations of the authority having control of the fund out of which the remuneration is directed to be paid.

(6) The person named in a probation order may at any time be relieved of his duties, and in any such case or in case of the death of the person so named, another person may be substituted by the court before which the offender is bound by his recognisance to appear for conviction or sentence, or, if he be a probation officer for a petty sessional division, by a court to whose control that officer is subject.

Duties of probation officers.

4. It shall be the duty of a probation officer, subject to the directions of the court—

(a) to visit or receive reports from the person under supervision at such reasonable intervals as may be specified in the probation order or, subject thereto, as the probation officer may think fit;

(b) to see that he observes the conditions of his recognisance;

(c) to report to the court as to his behaviour;

(d) to advise, assist, and befriend him, and, when necessary, to endeavour to find him suitable employment.

Power to vary conditions of release.

5. The court before which any person is bound by his recognisance under this Act to appear for conviction or sentence may, upon the application of the probation officer, and after notice to the offender, vary the conditions of the recognisance, and may, on being satisfied that the conduct of that person has been such as to make it unnecessary that he should remain longer under supervision, discharge the recognisance.

Provision in case of offender failing to observe conditions of release.

6. (1) If the court before which an offender is bound by his recognisance under this Act to appear for conviction or sentence, or any court of summary jurisdiction, is satisfied by information on oath that the offender has failed to observe any of the conditions of his recognisance, it may issue a warrant for his apprehension, or may, if it thinks fit, instead of issuing a warrant in the first instance, issue a summons to the offender and his sureties (if any) requiring him or them to attend at such court and at such time as may be specified in the summons.

(2) The offender, when apprehended, shall, if not brought forthwith before the court before which he is bound by his recognisance to appear for conviction or sentence, be brought before a court of summary jurisdiction.

(3) The court before which an offender on apprehension is brought, or before which he appears in pursuance of such summons as aforesaid, may, if it is not the court before which he is bound by his recognisance to appear for conviction or sentence, remand him to custody or on bail until he can be brought before the last-mentioned court.

(4) An offender so remanded to custody may be committed during remand to any prison to which the court having power to convict or sentence him has power to commit prisoners.

(5) A court before which a person is bound by his recognisance to appear for conviction and sentence, on being satisfied that he has failed to observe any condition of his recognisance, may forthwith, without further proof of his guilt, convict and sentence him for the original offence or, if the case was one in which the court in the first instance might, under section fifteen of the Industrial Schools Act, 1866, have ordered the offender to be sent to a certified industrial school, and the offender is still apparently under the age of twelve years, make such an order.

Power to make rules.

7. The Secretary of State may make rules for carrying this Act into effect, and in particular for prescribing such matters incidental to the appointment, resignation, and removal of probation officers, and the performance of their duties, and the reports to be made by them, as may appear necessary.



9. In the application of this Act to Ireland " Lord-Lieutenant " shall be substituted for " Secretary of State," and each division of the police district of Dublin metropolis shall be deemed to be a petty sessional division.

Application to  
Ireland.

## PETTY SESSIONS CLERK (IRELAND) AMENDMENT ACT, 1907.

[7 EDW. 7, CH. 22.]

1. (1) All the provisions of section twelve of the Petty Sessions Clerk (Ir.) Act, 1858, and of any enactment amending the same, with reference to the gratuities or pensions which may be given to petty sessions clerks retiring from office through age or infirmity, shall apply to the assistants of the clerks of petty sessions at Cork and Belfast appointed or hereafter to be appointed pursuant to the provisions of section ten of the said Act and approved of by the Lord-Lieutenant.

Extension to  
assistants of  
clerks of  
21 & 22 Vict.  
c. 100, s. 12.

(2) The power of making rules conferred on the Lord-Lieutenant by section twenty-nine of the said Act shall extend to the making of rules respecting the qualifications, salaries, and appointment of any such assistants hereafter to be appointed and respecting the removal of any such assistants, whether existing or hereafter to be appointed.

2. This Act shall be read and construed as one with the Petty Sessions Clerk (Ir.) Act, 1858, and the Acts amending the same, and may be cited as the Petty Sessions Clerk (Ir.) Amendment Act, 1907.

Short title and  
construction.

## FACTORY AND WORKSHOP ACT, 1907.

[7 EDW. 7, CH. 39.]

### LAUNDRIES.

1. The Factory and Workshop Act, 1901 (which Act, as amended by any subsequent enactment, including this Act, is hereinafter referred to as the principal Act), shall, subject to the provisions of this Act, apply to laundries as if at the end of Part II. of the Sixth Schedule to that Act, enumerating non-textile factories and workshops, the following paragraph were added :—

Application  
of 1 Edw. 7.  
c. 22, to  
laundries.

" (29) Laundries carried on by way of trade or for the purpose of gain, or carried on as ancillary to another business or incidentally to the purposes of any public institution."

2. (1) In laundries, other than laundries ancillary to a business carried on in any premises which, apart from the provisions of this Act, are a factory or workshop,—

Hours of em-  
ployment of  
women and  
young persons  
in laundries.

(a) The period of employment of women may on any three days in the week, other than Saturday, begin at six o'clock in the morning and end at seven o'clock in the evening, or begin at seven o'clock in the morning and end at eight o'clock in the evening, or begin at eight o'clock in the morning and end at nine o'clock in the evening :

Provided that a corresponding reduction is made in the periods of employment on other days of the week, so that the total number of hours of the periods of employment of women, including the intervals allowed for meals, shall not exceed sixty-eight in any one week ;

(b) Where the occupier of a laundry so elects, the following provisions shall apply to the laundry in lieu of the provisions of the last preceding paragraph :—

The period of employment of women may, on not more

than four days, other than Saturday, in any one week, and on not more than sixty days in any calendar year, begin at six o'clock in the morning and end at seven o'clock in the evening, or begin at seven o'clock in the morning and end at eight o'clock in the evening, or begin at eight o'clock in the morning and end at nine o'clock in the evening ;

(c) Different periods of employment may be fixed for different days of the week.

(2) The foregoing provisions of this section shall be deemed to be special exceptions within the meaning of section sixty of the principal Act, but it shall not be lawful for the occupier of a laundry to change from the system of employment under the above paragraph (a) to the system of employment under the above paragraph (b), or *vice versa*, oftener than once a year. The entry required to be made in the prescribed register by subsection four of the said section sixty as so applied shall, in the case of overtime employment under paragraph (b), be made before the commencement of the overtime employment on each day on which it is intended that there should be such employment, and, in reckoning the sixty days for the purposes of paragraph (b), every day on which any woman had been employed overtime shall be taken into account.

(3) Subject as aforesaid, the provisions of the principal Act as to hours of employment shall apply to laundries.

### 3. In every laundry—

Special regulations to be complied with in laundries.

- (a) If mechanical power is used, a fan or other efficient means shall be provided, maintained, and used for regulating the temperature in every ironing room, and for carrying away the steam in every washhouse ;
- (b) All stoves for heating irons must be sufficiently separated from any ironing room or ironing table, and gas irons emitting any noxious fumes must not be used ; and
- (c) The floors must be kept in good condition and drained in such manner as will allow the water to flow off freely.

A laundry in which there is a contravention of any of these provisions shall be deemed to be a factory or workshop not kept in conformity with the principal Act.

Application of provisions as to domestic workshops.

4. Subsection (2) of section one hundred and fourteen of the principal Act (which provides that certain domestic workshops are not to be deemed workshops within the meaning of that Act) shall apply to laundries as if for the words "the altering, repairing, ornamenting, or finishing of any article" there were substituted the words "the altering, repairing, ornamenting, washing, cleaning, or finishing of any article."

## INSTITUTIONS.

Application of Factory and Workshop Acts to certain institutions.

5. (1) Where in any premises forming part of an institution carried on for charitable or reformatory purposes, and not being premises subject to inspection by or under the authority of any Government Department, any manual labour is exercised in or incidentally to the making, altering, repairing, ornamenting, finishing, washing, cleaning, or adapting for sale, of articles not intended for the use of the institution, the provisions of the principal Act shall, subject to the provisions of this Act, apply to those premises notwithstanding that the work carried on therein is not carried on by way of trade or for the purposes of gain, or that the persons working therein are not working under a contract of service or apprenticeship.

(2) If in any institution to which this section applies the persons having the control of the institution (hereinafter referred to as the managers) satisfy the Secretary of State that the only persons working therein are persons who are inmates of and supported by the institution, or persons engaged in the supervision of the work or the management of machinery, and that such work as aforesaid is carried on in good faith for the purposes of the support, education, training, or reformation of persons engaged in it, the Secretary of State may by order direct that so long as the order

is in force the principal Act shall apply to the institution subject to the following modifications :—

- (a) The managers may submit for the approval of the Secretary of State a scheme for the regulation of the hours of employment, intervals for meals, and holidays of the workers, and of the education of children, and, if the Secretary of State is satisfied that the provisions of the scheme are not less favourable than the corresponding provisions of the principal Act, the Secretary of State may approve the scheme, and upon the scheme being so approved the principal Act shall, until the approval is revoked, apply as if the provisions of the scheme were substituted for the corresponding provisions of the principal Act ; any scheme when so approved shall be laid as soon as possible before both Houses of Parliament, and if either House, within the next forty days after such scheme has been laid before that House, resolve that the scheme ought to be annulled, the scheme shall, after the date of the resolution, be of no effect without prejudice to the validity of anything done in the meantime thereunder, or to the making of any new scheme ;
- (b) The medical officer of the institution (if any) may, on the application of the managers, be appointed by the chief inspector of factories to be the certifying surgeon for the institution ;
- (c) The provisions of section one hundred and twenty-eight of the principal Act as to the affixing of an abstract of the principal Act and of notices shall not apply, but amongst the particulars required to be shown in the general register there shall be included the prescribed particulars of the scheme, or where no scheme is in force the prescribed particulars as to hours of employment, intervals for meals, and holidays, and education of children, and other matters dealt with in the principal Act ;
- (d) In the case of premises forming part of an institution carried on for reformatory purposes, if the managers of the institution so give notice to the chief inspector of factories, an inspector shall not, without the consent of the managers or of the person having charge of the institution under the managers, examine an inmate of the institution save in the presence of one of the managers or of such person as aforesaid :

Provided that the Secretary of State, on being satisfied that there is reason to believe that a contravention of the principal Act is taking place in any such institution, may suspend the operation of this provision as respects that institution to such extent as he may consider necessary ;

- (e) The managers shall not later than the fifteenth day of January in each year send to the Secretary of State a correct return in the prescribed form, specifying the names of the managers and the name of the person (if any) having charge of the institution under the managers, and such particulars as to the number, age, sex, and employment of the inmates and other persons employed in the work carried on in the institution as the Secretary of State may require, and shall, if any requirement of this paragraph is not complied with, be liable to a fine not exceeding five pounds.

#### SUPPLEMENTAL.

6. Where in any premises which are subject to inspection by or under the authority of any Government Department any manual labour is exercised, otherwise than for the purposes of instruction, in or incidental to the making, altering, repairing, ornamenting, finishing, washing, cleaning, or adapting for sale, of any article, and the premises do not constitute a factory or workshop by reason that the work carried on therein is not carried on by way of trade or for the purposes of gain, or by reason that the persons employed in the work are not working under a contract of service or apprenticeship, the Secretary of State may arrange with the

Inspection of  
certain premises.



Department that the premises shall, as respects the matters dealt with by the principal Act, be inspected by an inspector appointed under that Act, and where such an arrangement is made, inspectors appointed under the principal Act shall have, as respects such matters as aforesaid, the like right of entry and inspection as is conferred on inspectors of the Department concerned.

Short title,  
construction,  
and repeal.

7. (1) This Act may be cited as the Factory and Workshop Act, 1907, and shall be construed as one with the Factory and Workshop Act, 1901, and the Factory and Workshop Act, 1901, and this Act may be cited together as the Factory and Workshop Acts, 1901 and 1907. . . .

## LIGHTS ON VEHICLES ACT, 1907.<sup>1</sup>

[7 EDW. 7, CH. 45.]

Lights to be  
carried by  
vehicles at night.

1. (1) Subject to the provisions of this Act, every person who shall cause or permit any vehicle to be in any street, highway, or road, to which the public have access, during the period between one hour after sunset and one hour before sunrise, shall provide such vehicle with a lamp or lamps in proper working order and so constructed and capable of being so attached as when lighted to display to the front a white light visible for a reasonable distance. If only one lamp is so provided it shall be placed on the off or right side of the vehicle, and, if the lamp or lamps are so constructed as to permit a light to be seen from the rear, that light shall be red.

(2) He shall also, if the vehicle is used for the purpose of carrying timber or any load projecting more than six feet to the rear, provide the same with a lamp or lamps in proper working order and so constructed and capable of being so attached as when lighted to display to the rear a red light visible for a reasonable distance.

(3) Every person driving or being in charge of any vehicle in any street, highway, or road, to which the public have access during such period as aforesaid, shall keep such lamp or lamps properly trimmed, lighted, and attached.

Penalty.

2. If any person offends against any of the provisions of this Act, he shall be liable on summary conviction for each and every such offence to a penalty not exceeding forty shillings, and in the case of a second or subsequent conviction to a penalty not exceeding five pounds :

Provided that if a person driving or being in charge of a vehicle is charged with an offence under this Act, he shall not be convicted thereof if he proves to the satisfaction of the court that such offence arose through the neglect or default of some other person whose duty it was to provide the vehicle with a lamp or lamps.

Power of council  
of a borough to  
make orders of  
exemption.

3. (1) The council of any borough may by order approved by the Secretary of State exempt from the operation of this Act, subject to any conditions mentioned in the order, any vehicle which is carrying any inflammable goods of a kind specified in the order, or any vehicle being within any place specified in the order in which, in the opinion of the council, it would be dangerous to enforce the provisions of this Act owing to the fact that inflammable goods are usually stored or dealt with in or near the place.

(2) Public notice of a proposal to make any order, and of the manner in which objections may be lodged to the proposed order, and of any order

<sup>1</sup> Under the Local Government (Ir.) Act, 1898, s. 88, the council of a county borough may make regulations for regulating the use and speed of bicycles, tricycles, velocipedes, and other similar machines, in the streets and roads within the county borough, and the carrying of lights on such machines, and the warning of approach to be given by persons using the same and for preventing any obstruction or danger being caused by the same, and the provisions of ss. 219-223 of the Public Health (Ir.) Act, 1878, with respect to bye-laws, apply to all regulations made under the section as if the same were bye-laws authorised by that Act ; the penalty for breach not to exceed 40s.

when made and approved, shall be given by the council of the borough in such manner as may be directed by the Secretary of State.

(3) The Secretary of State shall, before approving any order under this section, consider any objections to it which may be lodged in manner provided by this section, and may, if he thinks fit, order that a local inquiry be held with respect to the approval of the order, or with respect to any objections to the order.

(4) The person holding any such inquiry shall receive such remuneration as the Secretary of State may determine, and the remuneration and the expenses of the local inquiry shall be paid by the council of the borough out of the borough fund or rate.

[Subsections 5, 6, do not apply to Ireland.]

4. The council of any county may by order exempt from the operation of this Act vehicles carrying in the course of harvesting operations any farm produce to stack or barn during such months or periods in the year as may be specified in the order, and any such orders may be made either to take effect throughout the whole county or to take effect in part only of the county. A copy of any order made by a council under this section shall, as soon as may be after it is made, be sent to the Secretary of State, and any such order shall be published by the council by advertisement or otherwise in such manner as the council think best adapted for giving public notice thereof.

Power of county council to make orders of exemption for the purpose of harvesting.

5. (1) This Act shall apply to every sort of vehicle except the following:—

Application of Act and repeal of existing bye-laws.

- (a) Any bicycle, tricycle, or velocipede to which the provisions of section eighty-five of the Local Government Act, 1888, requiring lamps to be carried apply;<sup>1</sup>
  - (b) Any light locomotive or motor car which is required to carry lamps under section two of the Locomotives on Highways Act, 1896, or any regulations made thereunder;
  - (c) Any other locomotive which is required to carry lights under section three of the Locomotives Act, 1865,<sup>2</sup> as amended by section five of the Locomotives Act, 1898,<sup>3</sup> or wagon drawn by that locomotive;
  - (d) Any vehicle drawn or propelled by hand.
- (2) This Act shall apply to any machine or implement of any kind drawn by animal traction as it applies to vehicles.

(3) Any bye-laws under the Local Government Act, 1888,<sup>4</sup> the Municipal Corporations Act, 1882, or any other Act, and any provisions of any local and personal Act, or bye-laws or regulations made thereunder by a local authority, with respect to the carrying of lights on vehicles, shall so far as respects vehicles to which this Act applies cease to have effect, but this provision shall not affect any power under any such Act to make, with respect to the carrying of lights on vehicles, any fresh bye-law or regulation imposing obligations additional to those imposed by this Act.

(4) This Act shall apply to vehicles in the public service of the Crown, subject to any exceptions which His Majesty may make by Order in Council in the interests of the naval or military service of the Crown, and in the case of any such vehicle the person whom the Department in whose service the vehicle is used names as the person actually responsible shall be deemed for the purposes of this Act to be the person who causes or permits the vehicle to be in any street, highway, or road.

7. In the application of this Act to Ireland, the Lord-Lieutenant shall be substituted for the Secretary of State, and the provision as to the position of the lamp, if only one lamp is provided, shall not apply in the case of a bicycle, tricycle, velocipede, or other similar machine.

Application to Ireland.

8. This Act may be cited as the Lights on Vehicles Act, 1907.

Short title.

<sup>1</sup> This subsection does not apply to Ireland. See section 7, *post*.

<sup>2</sup> That is, heavy locomotives, *e.g.* traction engines.

<sup>3</sup> Does not apply to Ireland.

<sup>4</sup> This is the English statute.

## SUMMARY JURISDICTION (IRELAND) ACT, 1908.

[8 EDW. 7, CH. 24.]

As to married  
men when  
habitual  
drunkards.

1. (1) Where a court of summary jurisdiction is satisfied by evidence produced before it that a married man is a habitual drunkard, as defined by section three of the Habitual Drunkards Act, 1879, the court may, on the application of any person specified in this section, make an order under this Act protecting—

- (a) The earnings or separate property of the wife of the drunkard ;
- (b) Anything purchased by her with such earnings or property ;
- (c) The wearing apparel, school requirements, and earnings of her children or step-children ;
- (d) Any tools, instruments, appliances, or materials entrusted to her independently of her husband ;
- (e) Any furniture, bedding, or other articles in use as household necessities in her residence ;
- (f) Any tools, instruments, appliances, or other articles used in connection with any work, business, or calling engaged in by the wife or her children or step-children independently of her husband.

(2) The persons who may make an application to the court under this section are the wife of the habitual drunkard or his or her parent, child, brother, or sister, or any one holding the commission of the peace of the borough or county in which the alleged habitual drunkard resides, or the relieving officer of the district in which the alleged habitual drunkard resides.

As to married  
women when  
habitual  
drunkards.

2. (1) Where a court of summary jurisdiction is satisfied by evidence produced before it that a married woman is a habitual drunkard, as defined by section three of the Habitual Drunkards Act, 1879, the court may, on the application of any person specified in this section, make an order under this Act, protecting—

- (a) Any furniture, bedding, or other articles in use as household necessities in the residence of the husband of the drunkard ;
- (b) The wearing apparel, school requirements, and earnings of his children or step-children ;
- (c) Any tools, instruments, appliances, or other articles belonging to him, or entrusted to him independently of his wife.

(2) The persons who may make an application to the court under this section are the husband of the habitual drunkard or his or her parent, child, brother, or sister, or any one holding the commission of the peace of the borough or county in which the alleged habitual drunkard resides, or the relieving officer of the district in which the alleged habitual drunkard resides.

3. The court may at any time rescind or vary an order under this Act.

Power to  
rescind or  
vary orders.  
Penalty for  
illegal seizure  
or pawning.

4. While an order under this Act is in force it shall not be lawful to seize or sell any article specified therein for the satisfaction or discharge of any debt or liability of the habitual drunkard, or knowingly to buy from him, or receive from him, or on his behalf, any such article in pledge or pawn, or for him to sell or give in pledge or pawn any such article ; and any person knowingly acting in contravention of this enactment shall be liable, on summary conviction, to a fine not exceeding forty shillings, or to imprisonment, with or without hard labour, for any period not exceeding one month.

As to appeal.

5. Any order made under sections one, two, four, or ten of this Act shall be subject to appeal as if it were an order imposing a fine of more than twenty shillings, or inflicting imprisonment of more than one month's duration.

Relief.

6. An order under this Act shall not affect any liability to a board of guardians in respect of relief given to a wife or children.



7. Any person who, being drunk while in charge of any person or animal or vehicle of whatever description and by whatever kind of power it may be driven or propelled, or in the possession of any loaded firearm or of any instrument, tool, or article which unless managed with due care would become a source of danger to the person or persons in whose presence it might be used, carried, or placed, endangers the life or limb of any person, shall be liable, on summary conviction, to a fine not exceeding forty shillings, or to imprisonment, with or without hard labour, for a period not exceeding one month. Penalty.

8. The owner or manager of any premises may require any constable on duty to arrest and remove from such premises any person in his employment who is found drunk thereon. Arrest.

9. (1) Any person found drunk in any place, whether a building or not, to which the public have access, whether on payment or not, or on any licensed premises, while in charge of a child apparently under the age of seven years, may be apprehended, and shall, if the child is under that age, be guilty of an offence under this section, and be liable, on summary conviction, to a fine not exceeding forty shillings, or to imprisonment, with or without hard labour, for any period not exceeding one month. Penalty on persons found drunk in charge of children.

(2) If the child appears to the court to be under the age of seven, the child shall, for the purpose of this section, be deemed to be under that age unless the contrary is proved.

(3) An offence under this section shall be deemed to be included in the list of offences mentioned in the First Schedule to the Inebriates Act, 1898, and in section sixty of the Licensing Act, 1872.

10. Any person who, being on any premises licensed for the sale of intoxicating liquors, whether for consumption on or off such premises, shall procure, or attempt to procure, any intoxicating liquor for consumption by any drunken person, or who shall aid and abet any drunken person in obtaining or consuming any intoxicating liquor on, or in the immediate vicinity of, any premises so licensed as aforesaid, shall be liable, on summary conviction, to a fine not exceeding forty shillings, or to imprisonment, with or without hard labour, for any period not exceeding one month. Penalty for aiding and abetting a drunken person.

Provided always that no person shall be liable to be convicted under this section unless the court is satisfied that he knew or ought to have known the condition of the person in connection with whom the charge is brought.

11. Where a person is convicted of any offence included, or deemed to be included, in the list of offences mentioned in the First Schedule to the Inebriates Act, 1898, the court may, either in addition to or in substitution for any other penalty, order the offender to enter into a recognisance with or without sureties to be of good behaviour. Court to order persons to be of good behaviour.

12. In all proceedings under this Act a husband or wife shall be a competent witness. Witnesses.

13. This Act shall apply to Ireland only, and may be cited as the Summary Jurisdiction (Ir.) Act, 1908. Short title and application of Act.

## WHALE FISHERIES (IRELAND) ACT, 1908.

[8 EDW. 7, CH. 31.]

1. No person shall, in any part of Ireland, land any whale, or engage in any way in the manufacture from whales of oil or other primary products, without a licence granted and issued subject to the conditions hereinafter provided, and any person acting in contravention of this section shall be guilty of an offence under this Act, and shall be liable on summary conviction to a penalty not exceeding five hundred pounds. Prohibition of exercise of whaling industry without licence.

2. It shall be lawful for the fishery authority to issue licences under this Act, subject to the following conditions:—

(1) A person applying to the fishery authority for a licence shall, at least two months before making such application, publish Granting of licences by the fishery authority on certain conditions.

notice thereof once in each of two consecutive weeks, with an interval between each publication of not less than six days, in one or more newspaper or newspapers circulating in the district in which the factory or station existing or to be erected is situate : Such notice shall state the name and address of the applicant, and shall contain a description of the site or intended site of the factory or station where the process of manufacture as aforesaid is to be conducted :

- (2) It shall be lawful for the council of any county, county district, or county borough in which the factory or station existing or to be erected is situate, or for any person interested, within fourteen days after the publication of such notice as aforesaid, to lodge with the fishery authority objections to the granting of any such licence, and the fishery authority shall consider any such objections, and, after such inquiry, if any, as they may think necessary, shall grant or refuse such licence :
- (3) Each licence shall contain a description of the site of the factory or station erected or proposed to be erected as aforesaid, and no such factory or station shall be removed from the site in the said licence described to any other site, unless and until such other site shall have been approved by the fishery authority, and their approval shall have been endorsed on the licence :
- (4) The licence shall specify the number of whaling steamers (not exceeding three) that may be used or employed by the holder, and no whaling steamer in excess of the number specified in the licence shall be used or employed by the holder :
- (5) No licence shall be granted except to a British subject or to a company registered in Great Britain or Ireland :
- (6) The fishery authority may at any time, on the application of the holder of a licence, cancel the licence ; but it shall not be lawful to transfer or assign any licence without the consent of the fishery authority, and any transfer or assignment shall be endorsed upon the licence :
- (7) There shall be paid to the fishery authority in respect of every licence issued under the provisions of this Act a sum of two hundred pounds if the licence authorises the use or employment of three whaling steamers, the sum of one hundred and fifty pounds if the licence authorises the use or employment of two whaling steamers, and the sum of one hundred pounds if the licence authorises the use or employment of one whaling steamer, and such sum shall be paid to the fishery authority on the issue of the licence and thereafter annually during its continuance :
- (8) Every licence shall be subject to all the conditions contained in this Act, or any bye-law made in pursuance of this Act, and it shall be lawful for the fishery authority, in the event of the infringement of any such condition by the holder of a licence, or of the conviction of such holder or any person employed by him of an offence under this Act, or under any bye-law made in pursuance of this Act, without compensation to cancel any licence or to suspend any licence for a specified period.

3. (1) No holder of a licence or person employed by him shall in the prosecution of the whaling industry use any vessel, other than the whaling steamer from or by which a whale shall have been captured or killed, for the purpose of bringing or towing such whale to or towards any factory or station for manufacture.

(2) Every whaling steamer employed by the holder of a licence shall carry such distinctive mark as the fishery authority, with the consent of the Board of Trade, may from time to time prescribe, and such mark shall be specified in the licence.

(3) No holder of a licence or person employed by him shall use, in the pursuit or capture of whales, any method or contrivance which does not include a harpoon with a whaling line attached thereto, and fixed or fastened to the whaling steamer from which the whale is captured or killed.

Offences by  
holder of  
licence and  
others.

(4) No person shall pursue, kill, or shoot at any whale within three miles of low-water mark of any part of the coast of Ireland, and no holder of a licence or person employed by him shall pursue, kill, or shoot at any whale within the distance of one mile from any boat or vessel lying at anchor or engaged in fishing.

(5) No holder of a licence or person employed by him shall pursue, kill, or shoot whales between the first day of November in any year and the thirty-first day of March in the year following, both days inclusive; or during such other period of the year (not exceeding five weeks) within such distance (not exceeding twenty miles) of any particular part of the coast of Ireland as may be prescribed by the fishery authority, and no holder of a licence or person employed by him shall during the prohibited period land any whale killed in contravention of this section.

(6) In this section the expression "mile" means a nautical mile.

(7) Any person acting in contravention of this section shall be guilty of an offence under this Act.

(8) Where a whale which has been lawfully shot at and struck shall carry with it a fixed line within an area prohibited in terms of this section, nothing in this section contained shall make it unlawful to continue the pursuit of such whale and to kill it in such area.

4. Holders of licences and all persons employed by them shall give all reasonable facilities for inspection by the fishery authority, and the officers of that authority, of all factories or stations and vessels employed by the holders of licences, and shall make such returns on any matter connected with their whaling business as the fishery authority may from time to time prescribe, and, if required by the fishery authority, shall verify such returns by statutory declaration.

Inspection of whaling factories, &c.

5. Nothing in this Act contained shall make it unlawful for any person to pursue any of the whaling industries commonly followed in Arctic or Antarctic waters, or to engage in the manufacture of oil or other products from whales captured in the exercise of any such industry.

Saving for certain whales and whaling industries.

6. Any person guilty of an offence under this Act shall, save as otherwise provided, be liable on conviction to a penalty not exceeding one hundred pounds.

Penalties.

7. (1) The fishery authority may make bye-laws for all or any of the following purposes, that is to say:—

Bye-laws.

(a) Prohibiting the use of any engine or implement in the pursuit, capture, or towing of whales, or any method of whaling which is in the opinion of that authority injurious to fisheries;

(b) Regulating the methods of manufacturing oil or other products from whales and the disposal of refuse;

and, save as otherwise provided by this Act, the provisions with respect to bye-laws contained in the Fisheries (Ir.) Act, 1842 (including penal provisions), shall apply with the necessary modifications to every such bye-law.

(2) By any bye-law made under this section the fishery authority may impose a fine for the breach of any such bye-law not exceeding ten pounds for any one offence and may direct the forfeiture or destruction of any engine or implement used or attempted to be used in contravention of any such bye-law, and every rope, line, tackle, warp, iron and other thing attached to or used with such engine or implement.

(3) Any engine, implement, rope, line, tackle, warp, iron or other thing which is under any such bye-law liable to be forfeited or destroyed may be seized by any duly authorised officer of the fishery authority or any officer appointed by the fishery authority for the purposes of the Fisheries (Ir.) Act, 1842, and shall when seized be dealt with in the manner provided by section one hundred and three of the said Act, and for the purpose of such seizure any such officer may go on board any vessel engaged in whaling.

8. (1) All offences under this Act may be prosecuted, and all penalties, costs, or expenses imposed or recoverable under this Act may be recovered in a summary manner, and a summons in respect of any such offence may be served upon the person to whom it is directed in any part of the United Kingdom.

Legal proceedings and application of fees and penalties.



(2) Section eighty-nine<sup>1</sup> (which relates to the powers of officers) and section ninety-six<sup>2</sup> (which relates to the jurisdiction of magistrates of maritime counties) of the Fisheries (Ir.) Act, 1842, shall apply, with the necessary modifications, for the purposes of this Act.

(3) All licence fees, penalties, and moneys paid or recovered under this Act shall, notwithstanding any provision in any other Act, be paid to the fishery authority, and shall be applied by that authority for the purposes of sea fisheries as defined by the Agriculture and Technical Instruction (Ir.) Act, 1899, or any Act amending that Act.

Interpretation.

9. In this Act the expression "whaling steamer" includes any ship used for the purpose of capturing or killing whales, whether propelled by steam power or otherwise; and the expression "fishery authority" means the Department of Agriculture and Technical Instruction for Ireland; and the expressions "county district" and "county borough" have the same meanings respectively as in the Local Government (Ir.) Act, 1898.

Application and short title.

10. (1) This Act shall apply to Ireland only . . .

(2) This Act may be cited as the Whale Fisheries (Ir.) Act, 1908.

## BEE PEST PREVENTION (IRELAND) ACT, 1908.

[8 EDW. 7, CH. 34.]

Infected areas.

1. (1) If any person keeping or having charge of bees becomes aware that the bees, or any of them, are affected with the disease known as bee pest or foul brood, he shall forthwith give notice of that fact to the local authority of the district in which the bees are kept.

Penalties.

(2) If any person required to give notice under this section fails to give the notice forthwith, he shall be guilty of an offence under this Act, and shall be liable, on summary conviction, to a penalty not exceeding five pounds.

2. (1) Any officer of the Department of Agriculture and Technical Instruction for Ireland (in this Act referred to as "the Department")

<sup>1</sup> "It shall be lawful for . . . any officer . . . to use and exercise all and every the powers and authorities for enforcing the provisions of this Act and the apprehension of offenders by this Act conferred upon the officers of His Majesty's cruisers and of the coastguard stations and water-bailiffs respectively" (*Fisheries (Ir.) Act, 1842, s. 89*).

<sup>2</sup> "The jurisdiction of each and every justice or justices of the peace of every place within or belonging to all counties or counties of cities or towns in Ireland, any part whereof shall adjoin the sea-coast, or any of the estuaries thereof, shall be and the same is hereby extended to all and every offences or offence against the provisions of this Act or any of the bye-laws, rules, orders, or regulations (hereby authorised to be made) committed by fishermen and others engaged in fishing or by any person or persons whatsoever while at sea, as fully and effectually to all intents and purposes as if the said offences or offence had been committed upon land within his or their present jurisdiction or jurisdictions respectively; and it shall and may be lawful for the said justice or justices to issue his or their warrant for the arrest or apprehension of any of the said fishermen or others so offending as aforesaid, whether he or they shall happen to be upon land within any part of the kingdom or in any vessel at sea, and employ any person or any of the ways and means for causing such apprehension or arrest to be made as such justice or justices are now authorised and empowered to do in case the said offence had been committed upon land within his or their respective jurisdiction or jurisdictions; and the said justice or justices shall have the like powers or remedies for the apprehension, committal, or punishment of fishermen and other persons so offending at sea as aforesaid, either against this Act or any of the bye-laws, rules, and regulations to be made in pursuance thereof; and also the said justice or justices shall have the like powers and remedies for the seizure at sea of the vessels or other goods and chattels of the said fishermen or other persons so offending as aforesaid, as he or they possess by any law or statute now in force, or shall under this Act possess, in case the said offence or offences had been committed upon land, or the said goods and chattels had been upon land within his or their respective jurisdiction or jurisdictions" (*Fisheries (Ir.) Act, 1842, s. 96*).

charged with agricultural duties and authorised in writing in that behalf Inspection. by the Department, and, within the district of any local authority, any person authorised in writing in that behalf by the local authority, shall have power to enter at all reasonable times any premises where bees are kept, and to inspect any bees and articles and appliances used in connection with bee-keeping.

(2) If any person refuses to allow any such officer or authorised person to enter any premises which he is entitled to enter under this section, or obstructs or impedes him in the execution of his duty, he shall be guilty of an offence under this Act, and shall be liable, on summary conviction, to a penalty not exceeding ten pounds.

3. (1) The Department, and, within the district of any local authority, the local authority, may, if they think fit, cause to be destroyed any bees and articles and appliances used in connection with bee-keeping which are infected with bee pest or foul brood, or suspected of being so infected. Destruction of bees and articles infected or supposed to be infected.

(2) For the purposes of this section, the Department or the local authority may, if they think fit, serve a notice in writing upon the person keeping or having charge of any such bees, articles, or appliances, requiring him to destroy the same within the period specified in the notice; and, if any such person upon whom a notice is served fails to destroy the bees, articles, and appliances mentioned in the notice within the period therein specified, he shall be guilty of an offence under this Act and shall be liable, on summary conviction, to a penalty not exceeding ten pounds.

4. The Department may at any time, if they think fit, upon any evidence satisfactory to them, by order, declare any area to be an area infected with bee pest or foul brood, and may cause to be destroyed any bees and articles and appliances used in connection with bee-keeping within that area; and the provisions of the last preceding section relative to notices, including penal provisions, shall apply in the case of every person keeping or having charge of any bees or articles or appliances used in connection with bee-keeping within that area. Infected areas.

5. Any person who knowingly removes from his premises, or sells or disposes of to any other person, or imports into any district, any bees infected with bee pest or foul brood, or any article or appliance used in connection with bee-keeping and infected with that disease, shall be guilty of an offence under this Act, and shall be liable on summary conviction to a penalty not exceeding, for the first offence, five pounds, and for the second or any subsequent offence, ten pounds. Penalties.

6. (1) Subject to the provisions of this section, compensation may be paid to the owner of any bees, articles, or appliances destroyed under this Act, if the Department, with the consent of the local authority of the district within which the bees, articles, or appliances were kept, so directs, and the compensation shall be payable by such local authority accordingly. Compensation.

(2) The amount of the compensation shall be determined in accordance with a scale to be prescribed by the Department, and shall in no case exceed one half of the value of the bees, articles, and appliances immediately before their destruction.

(3) The consent of the local authority shall be signified by a resolution of the authority consenting generally to the payment of compensation, in accordance with the provisions of this section, in every case to which the section applies.

7. (1) The Department may, by order, prohibit the keeping of bees for such period as they think fit upon any premises upon which any bees, articles, or appliances have been destroyed under this Act. Prohibition of bee-keeping on infected premises.

(2) Any person keeping bees contrary to an order made by the Department under this section shall be guilty of an offence under this Act, and shall be liable, on summary conviction, to a penalty not exceeding ten pounds.

8. The Department may make regulations—

(a) With respect to the manner in which notices are to be given under this Act; Regulations.

(b) With respect to the method of cleaning, disinfection, or the destruction of bees, articles, and appliances under this Act,

and the making and determination of claims for compensation; and

(c) Generally for the purpose of carrying this Act into effect.

Section one of the Rules Publication Act, 1893,<sup>1</sup> shall not apply to any regulations made in pursuance of this section.

Appointment of officers by local authorities.

9. A local authority may, with the consent of the Department, appoint one or more officers for the purpose of the execution of this Act having such qualifications and upon such terms as to remuneration and otherwise as the Department approve.

Local authorities and expenses.

10. (1) The local authority for the purposes of this Act shall—

(a) as respects the rural districts of any administrative county, be the county council;

(b) as respects an urban district or county borough, be the council of the district or borough.

(2) The expenses incurred by or on behalf of a local authority in the execution of this Act, including compensation, shall be defrayed in the case of the council of a county other than a county borough out of the funds at the disposal of the council for the purposes of agriculture and other rural industries, and, in the case of the council of an urban district or county borough, out of any rate or fund applicable to the purposes of the Public Health (Ir.) Acts, 1878 to 1907, as if incurred for those purposes.

Exercise of powers of county councils by committees for the purposes of Part I. of 62 & 63 Vict. c. 50.

11. The powers and duties of the council of every county other than a county borough under this Act shall be exercised and discharged by and through the committee appointed by the council for the purposes of Part I. of the Agriculture and Technical Instruction (Ir.) Act, 1899.<sup>2</sup>

12. (1) Any offence under this Act may be prosecuted, and any penalty recoverable under this Act may be recovered in a summary manner.

Prosecution of offences.

(2) A prosecution for an offence under this Act may be instituted, and a penalty recoverable under this Act may be recovered, either by the Department or the local authority.

(3) All penalties recovered under this Act shall, notwithstanding any provision in any other Act, be paid to the body by whom the prosecution is instituted under this section, and shall be applied in aid of the expenses of that body in the execution of this Act.

The following Regulations have been made under the Act :—

#### THE BEE PEST PREVENTION (IRELAND) REGULATIONS, 1909.

DATED JUNE 3, 1909.

The Department of Agriculture and Technical Instruction for Ireland, in pursuance of the Bee Pest Prevention (Ir.) Act, 1908, hereby make the following Regulations :—

#### *Short Title.*

1. These Regulations may be cited as the Bee Pest Prevention (Ir.) Regulations, 1909.

#### *Commencement.*

2. These Regulations shall take effect on the date hereof, and shall remain in force until altered or revoked by the Department.

#### *Definitions.*

3. In these Regulations—

“Bee-keeper” means a person who owns, keeps, or has charge of bees, articles, or appliances used in connection with bee-keeping.

<sup>1</sup> Requiring forty days' notice to be given by publication in the Dublin Gazette of proposed rules, &c.

<sup>2</sup> Section 14 of this Act enables the council of a county or urban district to appoint a committee consisting partly of members of the council and partly of other persons.



"Premises" means the entire of the holding or place on which the bees are kept.

"Stock" means the living bee population of a hive with its brood.

"Hive" means a hive, together with all articles and fittings therein and coverings thereon.

"Articles" includes wax and honey.

"Diseased Hive or Stock" means a hive or stock, the bees, brood, or comb of which in the opinion of the Inspector is affected in any way by foul brood.

"Destruction" means destruction by burning.

"Reasonable times" means any time from the 1st of April to 31st October inclusive, when bees are flying on the premises to be inspected or in apiaries, if any, on other premises in the district, and when the weather conditions are favourable.

"Executive Officer of the Local Authority" means, in the case of a county borough or an urban district, the town clerk or clerk of such county borough or urban district; and, in all other cases, the Secretary of the County Committee of Agriculture.

"Inspector" means an officer of the Department or of the Local Authority duly authorised under section 2 (1) of the Act.

Other expressions have the same respective meanings as in the Act.

*Manner in which Notices are to be given.*

4. (a) The notice required by section 1 of the Act to be given by a bee-keeper shall be in writing, signed by the bee-keeper, and addressed by him to the Executive Officer of the Local Authority.

(b) The notice referred to in section 3 (2) of the Act shall be in writing, signed by the Executive Officer of the Local Authority or by an Inspector.

5. A notice shall be deemed to have been served on a person if it is delivered to him personally, or left for him at his last known place of abode or business, or sent through the post in a letter addressed to him there; and a notice or other document purporting to be signed, as provided above, shall be *prima facie* evidence that it was so signed and duly authorised by the Department or by the Local Authority, as the case may be.

*Measures for Preventing Spread of Disease.*

6. (1) On entering any premises in which bees are kept, the inspector may take such steps as in his opinion may be necessary to determine whether the disease exists or has recently existed on said premises, and shall, without delay, forward to the Department or to the local authority, as the case may be, a report on the facts of the case. If foul brood is found to exist on the premises inspected, the report shall contain a short and concise statement of the method of treatment, if any, which the inspector recommends should be carried out by the bee-keeper. If the inspector in his report advises destruction, he shall also state, approximately, the amount, if any, payable in accordance with the scale of compensation, if any, adopted by the local authority.

(2) (a) The local authority shall decide as to the action to be taken in each case reported by their inspector, and shall cause to be served on the bee-keeper, either by their executive officer or by the inspector, a notice in the form A set out in the schedule, or as near thereto as practicable, requiring him to carry out within three days from the date of such notice the measures for cleaning, disinfection, and destruction specified therein.

(b) The Department may cause a like notice to be served in cases reported by their inspector.

(3) The bee-keeper shall notify in writing to the local authority or to the Department, as the case may be, the date on which he complied with the requirements of said notice.

7. The inspector shall take all reasonable precautions to prevent the disease being carried by him from an infected apiary to another apiary, whether infected or not.

8. If the bee-keeper so desires, the inspector, when inspecting an apiary, shall permit the bee-keeper to manipulate the stocks to be dealt with, provided that the bee-keeper acts in all respects to the inspector's satisfaction.

9. If necessary for the proper examination of comb in a fixed comb hive, the inspector may cut out a portion of the brood comb.

*Scale of Compensation.*

10. Compensation for the destruction of bees, articles, and appliances may be allowed by a local authority at a rate not exceeding the following :—

For a stock in a movable frame hive.	One shilling in respect of each frame which in the inspector's opinion is well covered with bees, subject to a maximum of five shillings.
For a stock in a fixed comb hive.	Two shillings and sixpence.
For a movable frame hive.	Five shillings.

*Making and Determination of Claims.*

11. (a) Any bee-keeper whose bees, articles, and appliances have been destroyed under these regulations, and who has complied in every respect with the Notice served on him, may claim compensation for such destruction from the local authority, provided such local authority has adopted the resolution referred to in section 6 (3) of the Act. The claim shall be made in writing within fourteen days following the date of the said Notice, and shall contain particulars of the items in respect of which compensation is claimed and the amount of such compensation for each item.

(b) The said local authority, which has adopted the resolution above mentioned, shall take such claim into consideration at the earliest date practicable, and shall, subject to these regulations, decide as to the amount of compensation.

(c) Compensation shall not in any case be paid by a local authority until after receipt of the written direction of the Department for payment and their written sanction to the amount proposed to be paid.

*Annual Returns.*

12. Not later than the 14th day of October in each year the local authority shall forward to the Department a return, in the form B set out in the Schedule, of all cases reported to them under the Act within the twelve months ended the 30th day of September previous.

In witness whereof the Department of Agriculture and Technical Instruction for Ireland have hereunto set their official seal this third day of June, one thousand nine hundred and nine.

(L.S.)

T. P. GILL,  
Secretary.

## SCHEDULE.

## FORM A.

BEE PEST PREVENTION (IRELAND) ACT, 1908,

AND

BEE PEST PREVENTION (IRELAND) REGULATIONS, 1909.

Date .

SIR,—You are hereby required within three days from the date of this Notice to carry out the measures specified hereunder for the cleaning, disinfection, and destruction of the bees, articles, and appliances referred to below.

\* (Here insert details of measures to be adopted, and bees, articles, &c., to be destroyed.)

You are further required to notify † as to the † (Here insert date on which you have complied with the conditions of this Notice. "the local authority for

(Signed)

or "the Department," as the case may be.)

To

†

Mr. ....

† (Signatory should describe himself as "executive officer (or inspector) of the local authority for " or "inspector of the Department," as the case may be.)

## FORM B.

BEE PEST PREVENTION (IRELAND) ACT, 1908,

AND

BEE PEST PREVENTION (IRELAND) REGULATIONS, 1909.

County  
County Borough } of  
Urban District

RETURN of Cases of Foul Brood reported upon during the Twelve Months ended 30th September 19 .

Name and Address of Bee Keeper.	Date of receipt of Notification.	Date of Visit by Inspector.	Date of issue of Notice under Section 3 (2).	Date of compliance with Notice.	Amount of Compensation (if any), and date paid.

(Signed)

Executive Officer.

Date day of , 19 .



## WHITE PHOSPHORUS MATCHES PROHIBITION ACT, 1908.

[8 EDW. 7, CH. 42.]

Prohibition of  
use of white  
phosphorus in  
manufacture of  
matches.

1. (1) It shall not be lawful for any person to use white phosphorus in the manufacture of matches, and any factory in which white phosphorus is so used shall be deemed to be a factory not kept in conformity with the Factory and Workshop Act, 1901, and that Act shall apply accordingly.

(2) The occupier of any factory in which the manufacture of matches is carried on shall allow an inspector under the Factory and Workshop Act, 1901, at any time to take for analysis sufficient samples of any material in use or mixed for use, and, if he refuses to do so, shall be guilty of obstructing the inspector in the execution of his duties under that Act :

Provided that the occupier may, at the time when the sample is taken, and on providing the necessary appliances, require the inspector to divide the sample so taken into two parts, and to mark, seal, and deliver to him one part.

Prohibition  
of sale.

2. It shall not be lawful for any person to sell or to offer or expose for sale or to have in his possession for the purposes of sale any matches made with white phosphorus, and, if any person contravenes the provisions of this section, he may, on complaint to a court of summary jurisdiction, be ordered to forfeit any such matches in his possession, and any matches so forfeited shall be destroyed or otherwise dealt with as the court may think fit, but this provision shall not come into operation as respects any retail dealer until the first day of January nineteen hundred and eleven.

Prohibition of  
importation.

3. It shall not be lawful to import into the United Kingdom matches made with white phosphorus, and matches so made shall be included amongst the goods enumerated and described in the table of prohibitions and restrictions contained in section forty-two of the Customs Consolidation Act, 1876.

Compulsory  
licence to  
use patents.

4. (1) Any person who is manufacturing or proposing to manufacture matches by way of trade may present a petition to the Board of Trade, praying for the grant of a compulsory licence to use any process patented at the passing of this Act for the manufacture of matches without white phosphorus, other than matches intended to strike only on a surface specially prepared for the purpose.

(2) The Board of Trade, after considering any representations that may be made by the patentee as defined by the Patents and Designs Act, 1907, and any person claiming an interest in the patent as exclusive licensee or otherwise, and, after consultation with the Secretary of State, may order the patentee to grant a licence to the petitioner on such terms as the Board may think just. The provisions of the Board of Trade Arbitrations, &c., Act, 1874, shall apply to proceedings under this section as if this Act were a special Act within the meaning of that Act.

(3) An order of the Board directing the grant of a licence under this section shall, without prejudice to any other method of enforcement, operate as if it were embodied in a deed granting a licence and made between the petitioner and the patentee and such other persons claiming an interest in the patent as aforesaid.

Short title, com-  
mencement, and  
construction.

5. (1) This Act may be cited as the White Phosphorus Matches Prohibition Act, 1908, and shall, except as otherwise expressly provided, come into operation on the first day of January nineteen hundred and ten.

(2) For the purposes of this Act the expression "white phosphorus" means the substance usually known as white or yellow phosphorus.

## CHILDREN ACT, 1908.

[8 EDW. 7, CH. 67.]

## ARRANGEMENT OF SECTIONS.

## PART I.

## INFANT LIFE PROTECTION.

## Section

1. Notices to be given by persons receiving infants for reward.
2. Appointment and powers of inspectors, &c.
3. Persons prohibited from receiving children for reward.
4. Local authority to fix number of infants which may be retained.
5. Removal of infant improperly kept.
6. Notice to coroner.
7. Avoidance of policies of life insurance of infants kept for reward.
8. Provisions as to notices.
9. Prosecution of offences and application of fines.
10. Local authorities and expenses.
11. Exemptions.

## PART II.

## PREVENTION OF CRUELTY TO CHILDREN AND YOUNG PERSONS.

*Cruelty to Children and Young Persons.*

12. Punishment for cruelty to children and young persons.
13. Suffocation of infants.

*Other Offences in relation to Children and Young Persons.*

14. Begging.
15. Exposing children to risk of burning.
16. Allowing children or young persons to be in brothels.
17. Punishment of person causing, encouraging, or favouring seduction or prostitution of young girl.
18. Power to bind over person having custody of young girl to exercise proper care.

*Arrest of Offender and Provision for Safety of Children.*

19. Power to take offenders into custody.
20. Detention of child or young person in place of safety.
21. Disposal of child or young person by order of court.
22. Maintenance of child or young person when committed to care of any person under order of court.
23. Religious persuasion of person to whom child or young person is committed.
24. Warrant to search for or remove a child or young person.
25. Visitation of homes.

*Power as to Habitual Drunkards.*

26. Power as to habitual drunkards.

*Evidence and Procedure.*

27. Evidence of accused person.
28. Extension of power to take deposition of child or young person.
29. Admission of deposition of child or young person in evidence.
30. Evidence of child of tender years.
31. Power to proceed with case in absence of child or young person.
32. Mode of charging offences and limitation of time.
33. Appeal from summary conviction to quarter sessions.
34. Institution of proceedings by guardians, &c.

*Supplemental.*

35. Application of Vexatious Indictments Act.
36. Extension of section ten of 42 & 43 Vict. c. 54.
37. Right of parent, &c., to administer punishment.
38. Interpretation of Part II.

## PART III.

## JUVENILE SMOKING.

## Section

- 39. Penalty on selling tobacco to children and young persons.
- 40. Forfeiture of tobacco.
- 41. Provisions as to automatic machines for the sale of tobacco.
- 42. Exemption for persons employed in trade, &c.
- 43. Application of Part III.

## PART IV.

## REFORMATORY AND INDUSTRIAL SCHOOLS.

*Interpretation.*

- 44. Definitions.

*Certification and Inspection of Schools.*

- 45. Certification of school.
- 46. Inspection of certified schools.
- 47. Power of Secretary of State to withdraw certificate.
- 48. Resignation of certificate by managers.
- 49. Effect of withdrawal or resignation of certificate.
- 50. Disposal of inmates on withdrawal or resignation of certificate.
- 51. Auxiliary homes.

*Duties and Powers of Managers.*

- 52. Liabilities of managers.
- 53. Boarding out of children.
- 54. Power to make rules.
- 55. Approval of alterations, &c., of buildings.
- 56. Schemes for superannuation of officers.

*Mode of sending Offenders and Children to Reformatory and Industrial Schools and their Treatment therein.*

- 57. Commitment of offenders between twelve and sixteen years of age to reformatory schools.
- 58. Children liable to be sent to industrial schools.
- 59. Power to commit young persons to care of relative or fit person in certain cases.
- 60. Power in such cases to place young persons under supervision of probation officer.
- 61. Power to defer operation of order.
- 62. Choice of school.
- 63. Temporary detention until sent to certified school.
- 64. Conveyance to school.
- 65. Period of detention.
- 66. Provision as to religious persuasion.
- 67. Placing out on licence.
- 68. Supervision of youthful offenders and children after the expiration of period of detention.
- 69. Discharge and transfer.
- 70. Power to apprentice or dispose of child.

*Offences in relation to Certified Schools.*

- 71. Refusal to conform to rules.
- 72. Escaping from school.

*Expenses of Certified Schools.*

- 73. Contributions from Treasury.
- 74. Duties and powers of local authorities with respect to the maintenance, &c., of inmates of certified schools.
- 75. Contributions by parents.
- 76. Expenses of conveyance and clothing.

*Day Industrial Schools.*

- 77. Establishment, &c., of day industrial schools.
- 78. Power to send children to day industrial schools.
- 79. Reception of child under attendance order or without order.
- 80. Contributions by the Treasury.
- 81. Powers of local education authorities.
- 82. Contributions by parents.
- 83. Application to day industrial schools of provisions relating to industrial schools.



*Supplemental Provisions.*

## Section

- 84. Power to send offenders conditionally pardoned to reformatory schools.
- 85. Powers of school officers.
- 86. Advertisement of grant, &c., of certificate.
- 87. Orders and notices.
- 88. Rules respecting evidence of documents.
- 89. Liability to removal.
- 90. Application to schools under local Acts.
- 91. Tenure of office by certain officers and servants of the London County Council.
- 92. Application of Part IV.
- 93. Provisions as to the Isle of Man and Channel Islands.

## PART V.

## JUVENILE OFFENDERS.

- 94. Bail of children and young persons arrested.
- 95. Custody of children and young persons not discharged on bail after arrest.
- 96. Association with adults during detention in police stations.
- 97. Remand or committal to custody in place of detention.
- 98. Attendance at court of parent of child or young person charged with an offence, &c.
- 99. Power to order parent to pay fine, &c., instead of child or young person.
- 100. Removal of disqualifications attaching to felony.
- 101. Limitation of costs.
- 102. Restrictions on punishment of children and young persons.
- 103. Abolition of death sentence in case of children and young persons.
- 104. Detention in the case of certain crimes committed by children or young persons.
- 105. Provisions as to discharge of children and young persons detained in accordance with directions of Secretary of State.
- 106. Substitution of custody in place of detention for imprisonment.
- 107. Methods of dealing with children and young persons charged with offences.
- 108. Provision of places of detention.
- 109. Provisions as to custody of children and young persons in places of detention.
- 110. Expenses of maintenance of child or young person.
- 111. Juvenile courts.
- 112. Temporary saving of power to imprison children and young persons.
- 113. Saving for pending proceedings.

## PART VI.

## MISCELLANEOUS AND GENERAL.

*Miscellaneous.*

- 114. Power to clear court whilst child or young person is giving evidence in certain cases.
- 115. Prohibition on children being present in court during the trial of other persons.
- 116. Prohibition of purchase of old metals from persons under sixteen.
- 117. Prohibition against taking pawns from persons under fourteen.
- 118. Penalty on vagrants preventing children receiving education.
- 119. Penalty on giving intoxicating liquor to children.
- 120. Exclusion of children from bars of licensed premises.
- 121. Safety of children at entertainments.
- 122. Cleansing of verminous children.

*General.*

- 123. Presumption and determination of age.
- 124. Evidence of wages of defendant.
- 125. Provision as to contribution orders.
- 126. Reception and maintenance of children and young persons in workhouses.
- 127. Variation of trusts for maintenance of child or young person.
- 128. Amendment of 42 & 43 Vict. c. 49.
- 129. Application of Summary Jurisdiction Acts.
- 130. Variation of Orders in Council.
- 131. General definitions.
- 132. Application to Scotland.
- 133. Application to Ireland.
- 134. Short title, commencement, and repeal.

## SCHEDULES.

## PART I.

INFANT LIFE PROTECTION.<sup>1</sup>

Notices to be  
given by persons  
receiving infants  
for reward.

1. (1) Where a person undertakes for reward the nursing and maintenance of one or more infants under the age of seven years apart from their parents or having no parents, he shall, within forty-eight hours from the reception of any such infant, give notice in writing thereof to the local authority):<sup>2</sup>

Provided that this section shall not apply, as respects any infant, where the period for which it is received is forty-eight hours or less.

(2) Where a person undertakes for reward the nursing and maintenance of an infant already in his care without reward, the entering into the undertaking shall, for the purposes of this Part of this Act, be treated as a reception of the infant.

(3) The notice shall state the name, sex, and date and place of birth of the infant, the name of the person receiving the infant, and the dwelling within which the infant is being kept, and the name and address of the person from whom the infant has been received.

(4) If a person who has undertaken the nursing and maintenance of any such infant changes his residence, he shall within forty-eight hours thereof give to the local authority notice in writing of the change, and, where the residence to which he moves is situate in the district of another local authority, he shall give to that local authority the like notice as respects each infant in his care as he is by this section required to give on the first reception of the infant.

(5) If any such infant dies or is removed from the care of the person who has undertaken its nursing and maintenance, that person shall, within forty-eight hours thereof, give to the local authority notice in writing of the death or removal, and in the latter case also of the name and address of the person to whose care the infant has been transferred.

(6) Where at the commencement of this Act any infant is under the care of any person who has, before the commencement of this Act, undertaken its nursing and maintenance under such circumstances that if its nursing and maintenance had been undertaken after the commencement of this Act he would have been required to give notice to the local authority under this section, he shall, within one month after the commencement of this Act, give to the local authority the like notice as if the nursing and maintenance of the infant had been undertaken after the commencement of this Act:

Provided that nothing in this subsection—

(a) shall apply to any person who on the reception of an infant gave such notice as was required by the Infant Life Protection Act, 1897,<sup>3</sup> or

(b) shall exempt any person who ought to have given notice under that Act from any liability which he may have incurred thereunder.

Subject as aforesaid, this Part of this Act shall apply to an infant whose nursing and maintenance has been undertaken for reward before the passing of this Act in like manner as it applies to an infant whose nursing and maintenance has been so undertaken after the commencement of this Act, and as if any notice given under the Infant Life Protection Act, 1897, had been a notice given under this Part of this Act.

(7) If any person required to give a notice under this section fails to give the notice within the time specified for giving the notice, he shall be guilty of an offence<sup>4</sup> under this part of this Act, and, if the infant in respect of which notice ought to have been given was an infant the consideration for whose nursing and maintenance consisted in whole or in

<sup>1</sup> As to procedure under Part I., see Rule 4 of the Summary Jurisdiction Rules, 1909, printed *verbatim*, *post*.

<sup>2</sup> For definition of "local authority," see s. 10.

<sup>3</sup> Repealed. See Third Schedule.

<sup>4</sup> For penalty, see s. 9 (1).

part of a lump sum, the person failing to give the notice shall, in addition to any other penalty under this Part of this Act, be liable to forfeit that sum or such less sum as the court having cognisance of the case may deem just, and the sum forfeited shall be applied for the benefit of the infant in such manner as the court may direct, and where any such sum is ordered to be forfeited the order may be enforced as if it were an order of the court made on complaint.

2. (1) It shall be the duty of every local authority<sup>1</sup> to provide for the execution of this Part of this Act within their district, and for that purpose they shall from time to time make inquiry whether there are any persons residing therein who undertake the nursing and maintenance of infants in respect of whom notice is required to be given under the foregoing section.

Appointment  
and powers of  
inspectors, &c.

(2) If in the district of any local authority any persons are found to undertake the nursing and maintenance of such infants as aforesaid, the local authority shall appoint one or more persons of either sex to be infant protection visitors, whose duty it shall be from time to time to visit any infants referred to in any notice given under this Part of this Act, and the premises in which they are kept, in order to satisfy themselves as to the proper nursing and maintenance of the infants, or to give any necessary advice or directions as to their nursing and maintenance :

Provided that the local authority may, either in addition to or in lieu of appointing infant protection visitors, authorise in writing one or more suitable persons of either sex to exercise the powers of infant protection visitors under this Part of this Act, subject to such terms and conditions as may be stated in the authorisation, and, where any infants have been placed out to nurse in the district of the authority by any philanthropic society, may, if satisfied that the interest of the infants are properly safeguarded, so authorise the society to exercise those powers as respects those infants, subject, however, to the obligation to furnish periodical reports to the local authority.

(3) A local authority may combine with any other local authority for the purpose of executing the provisions of this Part of this Act, and for defraying the expenses thereof.

(4) A local authority may exempt from being visited, either unconditionally or subject to such conditions as they think fit, any particular premises within their district which appear to them to be so conducted that it is unnecessary that they should be visited.

(5) If any person undertaking the nursing and maintenance of any such infants refuses to allow any such visitor or other person to visit or examine the infants or the premises in which they are kept, he shall be guilty of an offence under this Part of this Act.

(6) If any such visitor or other person is refused admittance to any premises in contravention of this Part of this Act, or has reason to believe that any infants under the age of seven years are being kept in any house or premises in contravention of this Part of this Act, he may apply to a justice, who, on being satisfied, on information in writing on oath, that there is reasonable ground for believing that an offence under this Part of this Act has been committed, may grant a warrant authorising the visitor or other person to enter the premises for the purpose of ascertaining whether any offence under this Part of this Act has been committed, and, if the occupier of the premises or any other person obstructs or causes or procures to be obstructed any visitor or other person acting in pursuance of such a warrant, he shall be guilty of an offence<sup>2</sup> under this part of this Act.

3. An infant, in respect of which notice is required to be given under this Part of this Act, shall not, without the written sanction of the local authority, be kept—

Persons prohibited from  
receiving  
children for  
reward.

- (a) by any person from whose care any infant has been removed under this Part of this Act or the Infant Life Protection Act, 1897 ; or
- (b) in any premises from which any infant has been removed under

<sup>1</sup> For definition of "local authority," see s. 10.

<sup>2</sup> For penalty, see s. 9 (1).



this Part of this Act by reason of the premises being dangerous or insanitary, or has been removed under the Infant Life Protection Act, 1897, by reason of the premises being so unfit as to endanger its health; or

- (c) by any person who has been convicted of any offence<sup>1</sup> under Part II. of this Act or under the Prevention of Cruelty to Children Act, 1904;

and any person keeping or causing to be kept an infant contrary to this section shall be guilty of an offence<sup>2</sup> under this Part of the Act.

Local authority  
to fix number  
of infants which  
may be retained

4. The local authority may fix the number of infants under the age of seven which may be kept in any dwelling in respect of which a notice has been received under this Part of this Act, and any person keeping any infant in excess of the number so fixed shall be guilty of an offence<sup>2</sup> under this Part of this Act.

Removal of  
infant impro-  
perly kept.

5. (1) If any infant, in respect of which notice is required to be given under this Part of this Act, is kept—

- (a) in any premises which are overcrowded, dangerous, or insanitary; or  
(b) by any person who, by reason of negligence, ignorance, inebriety, immorality, criminal conduct, or other similar cause, is unfit to have care of it; or

(c) by any person or in any premises in contravention of any of the provisions of this Part of this Act,  
any visitor or other person appointed or authorised to execute the provisions of this Part of this Act may apply either to a justice or to the local authority for an order directing him to remove the infant to a place of safety<sup>3</sup> until it can be restored to its relatives<sup>4</sup> or be otherwise lawfully disposed of.

(2) Any person refusing to comply with such an order upon its being produced and read over to him, or obstructing or causing or procuring to be obstructed the visitor or such other person in the execution thereof, shall be guilty of an offence<sup>2</sup> under this Part of this Act, and

- (a) if the order was made by a justice, the order may be enforced by the visitor or by any constable; and  
(b) if the order was made by the local authority the visitor or other person may apply to any justice for an order directing the removal of the infant, which order may be enforced by the visitor or by any constable.<sup>5</sup>

Notice to  
coroner.

6. (1) In the case of the death of any infant respecting which notice is required to be given under this Part of this Act, the person who had the care of the infant shall, within twenty-four hours of the death, give notice in writing thereof to the coroner of the district within which the body of the infant lies, and the coroner shall hold an inquest thereon, unless a certificate under the hand of a duly qualified medical practitioner is produced to him, certifying that he has personally attended the infant during its last illness, and specifying the cause of death, and the coroner is satisfied that there is no ground for holding an inquest.

(2) If any person required to give a notice under this section fails to give the notice within the time specified for giving the notice, he shall be guilty of an offence<sup>2</sup> under this Part of this Act.

Avoidance of  
policies of life  
insurance of  
infants kept  
for reward.

7. A person by whom an infant in respect of which notice is required to be given under this Part of this Act is kept shall be deemed to have no interest in the life of the child for the purposes of the Life Assurance Act, 1774, and, if any such person directly or indirectly insures or attempts to insure the life of such an infant he shall be guilty of an offence under this Part of this Act, and, if a company, within the meaning of the Life Assurance Companies Act, 1870 to 1872,<sup>6</sup> or any other company, society,

<sup>1</sup> Part II. deals with offences relating to cruelty to children or young persons.

<sup>2</sup> For penalty, see s. 9 (1).

<sup>3</sup> For definition of "place of safety," see s. 131.

<sup>4</sup> For definition of "relatives," see s. 11 (2).

<sup>5</sup> For procedure under this section, see Rule 3 of the Summary Jurisdiction Rules, 1909, printed *verbatim*, *post*.

<sup>6</sup> These statutes are repealed by the Assurance Companies Act, 1909, s. 37, and are replaced by that Act (*Interpretation Act*, 1889, 52 & 53 Vict. c. 63, s. 38 (1)).

or person, knowingly issues, or procures or attempts to procure to be issued, to or for the benefit of such a person as aforesaid or to any person on his behalf, a policy on the life of such an infant, the company, society, or person shall be guilty of an offence<sup>1</sup> under this Part of this Act.<sup>2</sup>

8. (1) If any person required to give notice under this Part of this Act knowingly or wilfully makes, or causes or procures any other person to make, any false or misleading statement in any such notice, he shall be guilty of an offence<sup>1</sup> under this Part of this Act.

Provisions as to notices.

(2) Every notice by this Part of this Act required to be given may be sent by post in a registered letter addressed to the clerk of the local authority or to such other person as the local authority may appoint, or in the case of a notice to a coroner to the coroner, or may be delivered at the office of the local authority or, in the case of a notice to a coroner, at his office or residence.

9. (1) Every person guilty of an offence under this Part of this Act shall on summary conviction be liable to imprisonment for a term not exceeding six months or to a fine not exceeding £25, and the court may order any infant in respect of which the offence was committed to be removed to a place of safety.<sup>3</sup>

Prosecution of offences and application of fines.

(2) Any fines under this Part of this Act shall, notwithstanding any provision in any other Act, be paid to the local authority, and be applied to the purposes to which the fund or rate out of which the expenses of the local authority are to be defrayed is applicable.

10. (1) The local authority for the purposes of this Part of this Act shall—

Local authorities and expenses.

(a) as respects the county of London, exclusive of the City, be the county council ;

(b) as respects the City of London, be the Common Council ;

(c) elsewhere be the guardians of the poor law union.

(2) All expenses incurred by or on behalf of the local authority in and about the execution of this Part of this Act shall be defrayed—

(a) in the case of the county of London, out of the county fund as general county expenses ;

(b) in the case of the City of London, out of the general rate ;

(c) in the case of a board of guardians, out of the common fund.<sup>4</sup>

11. (1) The provisions of this Part of this Act shall not extend to any relative or legal guardian of an infant who undertakes the nursing and maintenance of the infant, or to any person who undertakes the nursing or maintenance of an infant under the provisions of any Act for the relief of the poor or of any order made under any such Act ; or to hospitals, convalescent homes, or institutions established for the protection and care of infants, and conducted in good faith for religious or charitable purposes, or boarding schools at which efficient elementary education is provided.

Exemptions.

(2) For the purposes of this section the expression “ relatives ” means grandparents, brothers, sisters, uncles, and aunts, by consanguinity or affinity, and in the case of illegitimate infants the persons who would be so related if the infant were legitimate.

<sup>1</sup> For penalty, see s. 9 (1).

<sup>2</sup> It has been held in the Scotch courts that it is not a contravention of the statute for a person who had undertaken the care of an infant and insured its life prior to the commencement of the Act, to continue to pay the premiums due under the policy after the Act came into force (*Glasgow Parish Council v. Martin* (1910), (J.) S.C. 102).

<sup>3</sup> For definition of “ place of safety,” see s. 131.

<sup>4</sup> Read for Ireland, “ Funds of the Union ” (s. 133 (14)).

## PART II.

PREVENTION OF CRUELTY TO CHILDREN AND  
YOUNG PERSONS.*Cruelty to Children and Young Persons.*

Punishment for  
cruelty to  
children and  
young persons.

12. (1) If any person over the age of sixteen years,<sup>1</sup> who has the custody,<sup>2</sup> charge, or care of any child or young person,<sup>3</sup> wilfully<sup>4</sup> assaults, ill-treats, neglects,<sup>5</sup> abandons,<sup>6</sup> or exposes<sup>7</sup> such child or young person, or causes or procures such child or young person to be assaulted, ill-treated, neglected, abandoned, or exposed, in a manner likely to cause such child or young person unnecessary suffering or injury to his health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person shall be guilty of a misdemeanour, and shall be liable—

- (a) on conviction on indictment, to a fine not exceeding £100, or alternatively, or in default of payment of such fine, or in addition thereto, to imprisonment, with or without hard labour, for any term not exceeding two years; and
- (b) on summary conviction, to a fine not exceeding £25, or alternatively, or in default of payment of such fine, or in addition thereto, to imprisonment, with or without hard labour, for any term not exceeding six months;

and for the purposes of this section a parent or other person legally liable to maintain a child or young person shall be deemed to have neglected him in a manner likely to cause injury to his health if he fails to provide adequate food, clothing, medical aid, or lodging for the child or young person, or if, being unable otherwise to provide such food, clothing, medical aid, or lodging he fails to take steps to procure the same to be provided under the Acts relating to the relief of the poor.

(2) A person may be convicted of an offence under this section, either on indictment or by a court of summary jurisdiction, notwithstanding that actual suffering or injury to health, or the likelihood of such suffering or injury to health, was obviated by the action of another person.

(3) A person may be convicted of an offence under this section, either

<sup>1</sup> As to presumption and determination of age, see s. 123.

<sup>2</sup> For definition of custody, see s. 38 (2).

<sup>3</sup> "Child" means a person under the age of fourteen years, and "young person" a person who is upwards of fourteen and under sixteen (s. 131). See s. 123 as to evidence of age.

<sup>4</sup> "Wilfully" means that the act is done deliberately and intentionally, not by accident or inadvertence, but so that the mind of the person who does the act goes with it (*per* Lord Russell of Killowen, L.C.J., in *R. v. Senior* (1899), 1 Q.B. 283, at p. 290).

<sup>5</sup> "Neglect" is the want of reasonable care, that is, the omission of such steps as a reasonable parent would take, such as are usually taken in the ordinary experience of mankind (*R. v. Senior, supra*, at p. 291). The mere omission of a parent to pay any part of his earnings towards the support of his child may constitute "wilful neglect" within the (repealed) 4 Edw. 7, c. 15, s. 1 (*R. v. Connor* (1908), 2 K.B. 26).

<sup>6</sup> In *R. v. Falkingham* (1870), L.R. 1 C.C.R. 222, it was held that a child under two years of age carefully packed and sent by train to its father's residence, though there was no proof that the child suffered any injury, was abandoned. A woman who was living apart from her husband, and who had the actual custody of their child, under two years of age, brought the child, and left it on the father's doorstep, telling him that she had done so. He knowingly allowed it to remain lying outside his door from 7 P.M. to 1 A.M., when it was removed by a constable, the child being then cold and stiff. *Held*, that though the father had not the actual custody and possession of the child, yet as he was by law bound to provide for it, his allowing it to remain where it was, was an abandonment and exposure of the child, whereby its life was endangered, within s. 27 of the Offences of the Person Act, 1861 (*A. v. White* (1870), L.R. 1 C.C.R. 311).

<sup>7</sup> To constitute the offence of "exposing" it is not necessary that there should be a physical placing somewhere with intent to injure. Thus, a father who, without necessity, compelled his children to tramp with him during an inclement night to a distant destination was held rightly convicted (*R. v. Williams* (1910), 26 T.L.R. 290).



on indictment or by a court of summary jurisdiction, notwithstanding the death of the child or young person in respect of whom the offence is committed.

(4) Upon the trial of any person over the age of sixteen indicted for the manslaughter of a child or young person of whom he had the custody, charge, or care, it shall be lawful for the jury, if they are satisfied that the accused is guilty of an offence under this section in respect of such child or young person to find the accused guilty of such offence.

(5) If it is proved that a person convicted under this section was directly or indirectly interested in any sum of money accruable or payable in the event of the death of the child or young person, and had knowledge that such sum of money was accruing or becoming payable, then—

(a) in the case of a conviction on indictment, the court may in its discretion either increase the amount of the fine under this section so that the fine does not exceed two hundred pounds; or, in lieu of awarding any other penalty under this section, sentence the person to penal servitude for any term not exceeding five years; and

(b) in the case of a summary conviction, the court in determining the sentence to be awarded shall take into consideration the fact that the person was so interested and had such knowledge.

(6) A person shall be deemed to be directly or indirectly interested in a sum of money under this section, if he has any share in or any benefit from the payment of that money, though he is not a person to whom it is legally payable.

(7) A copy of a policy of insurance, certified by an officer or agent of the insurance company granting the policy, to be a true copy, shall in any proceedings under this section be *prima facie* evidence that the child or young person therein stated to be insured has been in fact so insured, and that the person in whose favour the policy has been granted is the person to whom the money thereby insured is legally payable.

(8) An offence under this section is in this Part of this Act referred to as an offence of cruelty.

13. Where it is proved that the death of an infant under three years of age was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air-passages of the infant) whilst the infant was in bed with some other person over sixteen years of age, and that that other person was at the time of going to bed under the influence of drink, that other person shall be deemed to have neglected the infant in a manner likely to cause injury to its health within the meaning of this Part of this Act. Suffocation of infants.

#### *Other Offences in relation to Children and Young Persons.*

14. (1) If any person causes or procures any child or young person, or, having the custody, charge, or care of a child or young person, allows that child or young person, to be in any street, premises, or place for the purpose of begging or receiving alms, or of inducing the giving of alms, whether or not there is any pretence of singing, playing, performing, offering anything for sale, or otherwise, that person shall, on summary conviction, be liable to a fine not exceeding twenty-five pounds, or alternatively, or in default of payment of such fine, or in addition thereto, to imprisonment, with or without hard labour, for any term not exceeding three months. Begging.

(2) If a person having the custody, charge, or care of a child or young person is charged with an offence under this section, and it is proved that the child or young person was in any street, premises, or place for any such purpose as aforesaid, and that the person charged allowed the child or young person to be in the street, premises, or place, he shall be presumed to have allowed him to be in the street, premises, or place for that purpose unless the contrary is proved.

15. If any person over the age of sixteen years who has the custody, charge, or care of any child under the age of seven years allows that child to be in any room containing an open fire grate not sufficiently protected Exposing children to risk of burning.

to guard against the risk of the child being burnt or scalded, without taking reasonable precautions against that risk, and by reason thereof the child is killed or suffers serious injury, he shall on summary conviction be liable to a fine not exceeding ten pounds :

Provided that this section shall not, nor shall any proceedings taken thereunder, affect any liability of any such person to be proceeded against by indictment for any indictable offence.

Allowing children or young persons to be in brothels.

16. (1) If any person having the custody, charge, or care of a child or young person between the ages of four and sixteen allows that child or young person to reside in or to frequent a brothel, he shall be guilty of a misdemeanour and shall be liable on conviction on indictment or on summary conviction to a fine not exceeding twenty-five pounds, or alternatively or in default of payment of such fine, or in addition thereto, to imprisonment, with or without hard labour, for any term not exceeding six months.

(2) Nothing in this section shall affect the liability of a person to be indicted under section six of the Criminal Law Amendment Act, 1885,<sup>1</sup> but upon the trial of a person under that section it shall be lawful for the jury, if they are satisfied that the accused is guilty of an offence under this section, to find the accused guilty of such offence.

Punishment of person causing, encouraging, or favouring seduction or prostitution of young girl.

17. (1) If any person having the custody, charge, or care of a girl under the age of sixteen years causes or encourages the seduction or prostitution *or unlawful carnal knowledge*<sup>2</sup> of that girl, he shall be guilty of a misdemeanour and shall be liable to imprisonment, with or without hard labour, for any term not exceeding two years.

(2) For the purposes of this section a person shall be deemed to have caused or encouraged the seduction or prostitution *or unlawful carnal knowledge*<sup>2</sup> (as the case may be) of a girl who has been seduced or become a prostitute *or been unlawfully carnally known*<sup>2</sup> if he has knowingly allowed the girl to consort with, or to enter or continue in the employment of, any prostitute or person of known immoral character.

Power to bind over person having custody of young girl to exercise proper care.

18. (1) Where it is shown to the satisfaction of a court of summary jurisdiction, on the complaint of any person, that a girl under the age of sixteen years is, with the knowledge of her parent or guardian, exposed to the risk of seduction or prostitution, *or of being unlawfully carnally known*,<sup>2</sup> or living a life of prostitution, the court may adjudge her parent or guardian to enter into a recognisance to exercise due care and supervision in respect of the girl.

(2) The provisions of the Summary Jurisdiction Act, 1879,<sup>3</sup> with respect to recognisances to be of good behaviour (including the provisions as to the enforcement thereof) shall apply to recognisances under this section.<sup>4</sup>

#### *Arrest of Offender and Provision for Safety of Children.*

Power to take offenders into custody.

19. (1) Any constable may take into custody, without warrant, any person—(a) who within view of the constable commits an offence under this Part of this Act, or any of the offences mentioned in the First Schedule to this Act, where the name and residence of such person are unknown to the constable and cannot be ascertained by the constable ; or (b) who

<sup>1</sup> See INDICTABLE OFFENCES.

<sup>2</sup> The words in italics in ss. 17 and 18 are added by the Children Act (1908) Amendment Act, 1910, 10 Edw. 7 and 1 Geo. 5, c. 26, s. 1, which was passed in consequence of the decision in *R. v. Moon* (1910), 1 K.B. 818, in which it was held that the word "seduction" means inducing a girl to surrender her chastity for the first time ; and that, therefore, where a father, having the custody of his daughter, a girl under the age of sixteen years, who had already been seduced, subsequently encouraged an illicit intercourse between the girl and her seducer, he was not guilty of any offence under the section as unamended.

<sup>3</sup> The Summary Jurisdiction Act, 1879, does not apply to Ireland. This reference is to be construed as a reference to the provisions of the Petty Sessions (Ir.) Act, 1851, with respect to recognisance to keep the peace (s. 133 (7)). See s. 34 of the Petty Sessions (Ireland) Act, 1851.

<sup>4</sup> For procedure under this section, see Rule 5 of the Summary Jurisdiction Rules, 1909, printed *verbatim*, post.

has committed, or who the constable has reason to believe has committed, an offence of cruelty or any of the offences mentioned in the First Schedule to this Act, if he has reasonable ground for believing that such person will abscond, or if the name and address of such person are unknown to and cannot be ascertained by the constable.

(2) Where a constable arrests any person without warrant in pursuance of this section, the superintendent or inspector of police or an officer of police of equal or superior rank, or the officer in charge of the police station to which such person is brought, shall, unless in his belief the release of such person on bail would tend to defeat the ends of justice, or to cause injury or danger to the child or young person against whom the offence is alleged to have been committed, release the person arrested on his entering into such a recognisance, with or without sureties, as may in the judgment of the officer of police be required to secure the attendance of such person upon the hearing of the charge.

20. (1) A constable, or any person authorised by a justice, may take to a place of safety<sup>1</sup> any child or young person in respect of whom an offence under this Part of this Act, or any of the offences mentioned in the First Schedule to this Act, has been, or there is reason to believe has been, committed.<sup>2</sup>

Detention of child or young person in place of safety.

(2) A child or young person so taken to a place of safety, and also any child or young person who seeks refuge in a place of safety, may there be detained until he can be brought before a court of summary jurisdiction, and that court may make such order as is mentioned in the next following subsection, or may cause the child or young person to be dealt with as circumstances may admit and require, until the charge made against any person in respect of any offence as aforesaid with regard to the child or young person has been determined by the conviction or discharge of such person.

(3) Where it appears to a court of summary jurisdiction or any justice that an offence under this Part of this Act, or any of the offences mentioned in the First Schedule to this Act, has been committed in respect of any child or young person who is brought before the court or justice, and that it is expedient in the interests of the child or young person that an order should be made under this subsection, the court or justice may, without prejudice to any other power under this Act, make such order as circumstances require for the care and detention of the child or young person until a reasonable time has elapsed for a charge to be made against some person for having committed the offence, and, if a charge is made against any person within that time, until the charge has been determined by the conviction or discharge of that person, and in case of conviction for such further time not exceeding twenty-one days as the court which convicted may direct, and any such order may be carried out notwithstanding that any person claims the custody of the child or young person.

21. (1) Where a person having the custody, charge, or care of a child or young person has been—(a) convicted of committing in respect of such child or young person an offence under this Part of this Act or any of the offences mentioned in the First Schedule to this Act; or (b) committed for trial for any such offence; or (c) bound over to keep the peace towards such child or young person, by any court, that court, either at the time when the person is so convicted, committed for trial, or bound over, and without requiring any new proceedings to be instituted for the purpose, or at any other time, and also any petty sessional court<sup>3</sup> before which any person may bring the case, may, if satisfied on inquiry that it is expedient so to deal with the child or young person, order<sup>4</sup> that the child or young person be taken out of the custody, charge, or care of the person so convicted, committed for trial, or bound over, and be committed to the care of a relative of the child or young person, or some other

Disposal of child or young person by order of court.

<sup>1</sup> See s. 131.

<sup>2</sup> See Rule 6 of the Summary Jurisdiction Rules, 1909, printed *verbatim, post*.

<sup>3</sup> See s. 133 (5).

<sup>4</sup> For procedure, see Rule 7 of the Summary Jurisdiction Rules, 1909, printed *verbatim, post*.



fit person,<sup>1</sup> named by the court (such relative or other person being willing to undertake such care), until he attains the age of sixteen years, or for any shorter period, and that court or any court of like jurisdiction may of its own motion, or on the application of any person, from time to time by order renew, vary, and revoke any such order.

(2) If the child or young person has a parent or legal guardian no order shall be made under this section unless the parent or legal guardian has been convicted of or committed for trial for the offence, or is under committal for trial for having been, or has been proved to the satisfaction of the court making the order to have been, party or privy to the offence, or has been bound over to keep the peace towards the child or young person, or cannot be found.

(3) Every order under this section shall be in writing, and any such order may be made by the court in the absence of the child or young person; and the consent of any person to undertake the care of a child or young person in pursuance of any such order shall be proved in such manner as the court may think sufficient to bind him.

(4) Where an order is made under this section in respect of a person who has been committed for trial, then, if that person is acquitted of the charge, or if the charge is dismissed for want of prosecution, the order shall forthwith be void, except with regard to anything that may have been lawfully done under it.

(5) The Secretary of State<sup>2</sup> may at any time in his discretion discharge a child or young person from the care of any person to whose care he is committed in pursuance of this section, either absolutely or on such conditions as the Secretary of State approves, and may, if he thinks fit, make rules in relation to children or young persons so committed to the care of any person, and to the duties of such persons with respect to such children or young persons.

(6) The Secretary of State,<sup>2</sup> in any case where it appears to him to be for the benefit of a child or young person who has been committed to the care of any person in pursuance of this section, may empower such person to procure the emigration of the child or young person, but, except with such authority, no person to whose care a child or young person is so committed shall procure his emigration.

(7) Nothing in this section shall be construed as preventing the court, instead of making an order as respects a child under this section, from ordering the child to be sent to an industrial school in any case in which the court is authorised to do so under Part IV. of this Act.

Maintenance of child or young person when committed to care of any person under order of court.

22. (1) Any person to whose care a child or young person is committed under this Part of this Act shall, whilst the order is in force, have the like control over the child or young person as if he were his parent, and shall be responsible for his maintenance, and the child or young person shall continue in the care of such person, notwithstanding that he is claimed by his parent or any other person, and if any person—  
(a) knowingly assists or induces, directly or indirectly, a child or young person to escape from the person to whose care he is so committed; or  
(b) knowingly harbours, conceals, or prevents from returning to such person, a child or young person who has so escaped, or knowingly assists in so doing; he shall on summary conviction be liable to a fine not exceeding twenty pounds or to be imprisoned, with or without hard labour, for any term not exceeding two months.<sup>3</sup>

(2) Any court having power so to commit a child or young person shall have power to make the like orders on the parent or other person liable to maintain the child or young person to contribute to his maintenance during such period as aforesaid, and such orders shall be enforceable in like manner as if the child or young person were ordered to be sent to a certified school under Part IV. of this Act, but the limit on the amount of the weekly sum which the parent or such other person may

<sup>1</sup> Including any society or body corporate established for the reception or protection of poor children or the prevention of cruelty to children (s. 38 (1)).

<sup>2</sup> This in Ireland means the Chief Secretary (s. 133 (1)).

<sup>3</sup> For procedure, see Rule 8 of the Summary Jurisdiction Rules, 1909, printed *verbatim*, *post*.

be required under this section to contribute shall be one pound a week instead of the limit <sup>1</sup> fixed under Part IV.<sup>2</sup>

(3) Any such order may be made on the complaint or application of the person to whose care the child or young person is for the time being committed, and either at the time when the order for the committal of the child or young person to his care is made, or subsequently, and the sums contributed by the parent or such other person shall be paid to such person as the court may name, and be applied for the maintenance of the child or young person.<sup>2</sup>

(4) Where an order under this Part of this Act to commit a child or young person to the care of some relative or other person is made in respect of a person who has been committed for trial for an offence, the court shall not have power to make an order under this section on the parent or other person liable to maintain the child or young person prior to the trial of the person so committed.

(5) Any court making an order under this section for contribution by a parent or such other person may in any case where there is any pension or income payable to such parent or other person and capable of being attached, after giving the person by whom the pension or income is payable an opportunity of being heard, further order that such part as the court may see fit of the pension or income be attached and be paid to the person named by the court. Such further order shall be an authority to the person by whom such pension or other income is payable to make the payment so ordered, and the receipt of the person to whom the payment is ordered to be made shall be a good discharge to such first-mentioned person.<sup>3</sup>

(6) An order under this section may be made by any court before which a person is charged with an offence under this Part of this Act, and without regard to the place in which the person to whom the payment is ordered to be made may reside.<sup>3</sup>

23. (1) In determining on the person to whose care the child or young person shall be committed under this Part of this Act, the court shall endeavour to ascertain the religious persuasion to which the child or young person belongs, and shall, if possible, select a person of the same religious persuasion, or a person who gives such undertaking as seems to the court sufficient that the child or young person shall be brought up in accordance with its own religious persuasion, and such religious persuasion shall be specified in the order.

Religious persuasion of person to whom child or young person is committed.

(2) In any case where the child or young person has been placed pursuant to any such order with a person who is not of the same religious persuasion as that to which the child or young person belongs, or who has not given such undertaking as aforesaid, the court which made the order, or any court of like jurisdiction, shall, on the application of any person in that behalf, and on its appearing that a fit person, who is of the same religious persuasion, or who will give such undertaking as aforesaid, is willing to undertake the care of the child or young person, make an order to secure his being placed with a person who either is of the same religious persuasion or gives such undertaking as aforesaid.<sup>4</sup>

(3) Where a child or young person has been placed with a person who gives such undertaking as aforesaid, and the undertaking is not observed, the child or young person shall be deemed to have been placed with a person not of the same religious persuasion as that to which the child belongs, as if no such undertaking had been given.<sup>4</sup>

24. (1) If it appears to a justice on information on oath<sup>5</sup> laid by any person who, in the opinion of the justice, is acting in the interests of a child or young person, that there is reasonable cause to suspect—(a) that the child or young person has been or is being assaulted, ill-treated, or neglected in any place within the jurisdiction of the justice, in a manner likely to cause the child or young person unnecessary suffering,

Warrant to search for or remove a child or young person.

<sup>1</sup> See s. 75 (1).

<sup>2</sup> See Rule 9 of the Summary Jurisdiction Rules, 1909, printed *verbatim*, *post*.

<sup>3</sup> See Rule 10 of the Summary Jurisdiction Rules, 1909, printed *verbatim*, *post*.

<sup>4</sup> See Rule 11 of the Summary Jurisdiction Rules, 1909, printed *verbatim*, *post*.

<sup>5</sup> See Rule 12 of the Summary Jurisdiction Rules 1909, printed *verbatim*, *post*.

or to be injurious to his health; or (b) that an offence under this Part of this Act, or any offence mentioned in the First Schedule to this Act, has been or is being committed in respect of the child or young person, the justice may issue a warrant authorising any constable named therein to search for such child or young person, and, if it is found that he has been or is being assaulted, ill-treated, or neglected in manner aforesaid, or that any such offence as aforesaid has been or is being committed in respect of the child or young person, to take him to and detain him in a place of safety, until he can be brought before a court of summary jurisdiction, or authorising any constable to remove the child or young person with or without search to a place of safety<sup>1</sup> and detain him there until he can be brought before a court of summary jurisdiction; and the court before whom the child or young person is brought may commit him to the care of a relative or other fit person in like manner as if the person in whose care he was had been committed for trial for an offence under this Part of this Act.

(2) A justice issuing a warrant under this section may by the same warrant cause any person accused of any offence in respect of the child or young person to be apprehended and brought before a court of summary jurisdiction, and proceedings to be taken against such person according to law.

(3) Any constable authorised by warrant under this section to search for any child or young person, or to remove any child or young person with or without search, may enter (if need be by force) any house, building, or other place specified in the warrant, and may remove the child or young person therefrom.

(4) Every warrant issued under this section shall be addressed to and executed by a constable, who shall be accompanied by the person laying the information, if such person so desire, unless the justice by whom the warrant is issued otherwise directs, and may also, if the justice by whom the warrant is issued so directs, be accompanied by a duly qualified medical practitioner.

(5) It shall not be necessary in any information or warrant under this section to name the child or young person.

Visitation  
of homes.

25. (1) The Secretary of State<sup>2</sup> may cause any institution for the reception of poor children or young persons supported wholly or partly by voluntary contributions, and not liable to be inspected by or under the authority of any Government department, to be visited and inspected from time to time by persons appointed by him for the purpose, and the Secretary of State, with the consent of any society or body corporate established for the reception or protection of poor children or the prevention of cruelty to children may, subject to such conditions as the Secretary of State may prescribe, appoint officers of the society or body corporate for the purpose.

(2) Any person so appointed shall have power to enter the institution, and any person who obstructs him<sup>3</sup> in the execution of his duties shall be liable on summary conviction to a fine not exceeding five pounds, and a refusal to allow any person so appointed to enter the institution shall, for the purposes of the provisions of this Part of this Act relating to search warrants, be deemed to be a reasonable cause to suspect that an offence under this Part of this Act is being committed in respect of a child or young person in the institution.

(3) Where any such institution is carried on in accordance with the principles of any particular religious denomination, the Secretary of State shall, if so desired by the managers of the institution, appoint, where practicable, a person of that denomination to visit and inspect the institution.

(4) Where any such institution is for the reception of girls only, the Secretary of State shall, if so desired by the managers of the institution, appoint, where practicable, a woman to visit and inspect the institution.

<sup>1</sup> See s. 131.

<sup>2</sup> This in Ireland means the Chief Secretary (s. 133 (1)).

<sup>3</sup> See Rule 13 of the Summary Jurisdiction Rules, 1909, printed *verbatim*, *post*.



(5) Any appointment made under this section may at any time be revoked by the Secretary of State.

*Power as to Habitual Drunkards.*

26. Where it appears to the court by or before which any person is convicted of an offence of cruelty, or of any of the offences mentioned in the First Schedule to this Act, that that person is a parent of the child or young person in respect of whom the offence was committed, or is living with the parent of the child or young person, and is a habitual drunkard within the meaning of the Inebriates Acts, 1879 to 1900,<sup>1</sup> the court, in lieu of sentencing that person to imprisonment, may, if it thinks fit, make an order for his detention in a retreat under the said Acts, the licensee of which is willing to receive him, for any period named in the order, not exceeding two years, and the order shall have the like effect, and copies thereof shall be sent to the local authority and Secretary of State<sup>2</sup> in like manner, as if it were an application duly made by that person and duly attested by a justice under the said Acts; and the court may order an officer of the court or constable to remove that person to the retreat, and on his reception the said Acts shall have effect as if he had been admitted in pursuance of an application so made and attested as aforesaid: Provided that—(a) an order for the detention of a person in a retreat shall not be made under this section unless that person, having had such notice as the court deems sufficient of the intention to allege habitual drunkenness, consents to the order being made; and (b) if the wife or husband of such person, being present at the hearing of the charge, objects to the order being made, the court shall, before making the order, take into consideration any representation made to it by the wife or husband; and (c) before making the order the court shall, to such extent as it may deem reasonably sufficient, be satisfied that provision will be made for defraying the expenses of such person during detention in a retreat; and (d) nothing in this section shall affect any power of the court to order the person convicted to be detained in a certified inebriate reformatory.

Power as to  
habitual  
drunkards.

*Evidence and Procedure.*

[Section 27, applying the Criminal Evidence Act, 1908, does not apply to Ireland, but in proceedings for an offence under Part II. of the Act, the defendant or husband or wife of defendant is a competent but not compellable witness, s. 133 (28).]

28. (1) Where a justice is satisfied by the evidence of a duly qualified medical practitioner that the attendance before a court of any child or young person, in respect of whom an offence under this Part of this Act, or any of the offences mentioned in the First Schedule to this Act, is alleged to have been committed, would involve serious danger to the life or health of the child or young person, the justice may take in writing the deposition of the child or young person on oath, and shall thereupon subscribe the deposition and add thereto a statement of his reason for taking the deposition, and of the day when and place where the deposition was taken, and of the names of the persons (if any) present at the taking thereof.

Extension of  
power to take  
deposition of  
child or young  
person.

(2) The justice taking any such deposition shall transmit it with his statement—(a) if the deposition relates to an offence for which any accused person is already committed for trial, to the proper officer of the court for trial at which the accused person has been committed; and (b) in any other case, to the clerk of the peace of the county or borough in which the deposition has been taken; and the clerk of the peace to whom any such deposition is transmitted shall preserve, file, and record the deposition.

<sup>1</sup> As to penalty on persons found drunk in charge of child, see Summary Jurisdiction (Ir.) Act, 1908, s. 9, noted p. 426 under DRUNKENNESS.

<sup>2</sup> In Ireland means the Chief Secretary (s. 133 (1)).

Admission of deposition of child or young person in evidence.

29. Where, on the trial of any person on indictment for an offence of cruelty, or any of the offences mentioned in the First Schedule to this Act, the court is satisfied by the evidence of a duly qualified medical practitioner that the attendance before the court of any child or young person in respect of whom the offence is alleged to have been committed would involve serious danger to the life or health of the child or young person, any deposition of the child or young person taken under the Indictable Offences Act, 1848,<sup>1</sup> or this Part of this Act, shall be admissible in evidence either for or against the accused person without further proof thereof—(a) if it purports to be signed by the justice by or before whom it purports to be taken; and (b) if it is proved that reasonable notice of the intention to take the deposition has been served upon the person against whom it is proposed to use it as evidence, and that that person or his counsel or solicitor had, or might have had if he had chosen to be present, an opportunity of cross-examining the child or young person making the deposition.

Evidence of child of tender years.

30. Where, in any proceeding against any person for an offence under this Part of this Act, or for any of the offences mentioned in the First Schedule to this Act, the child in respect of whom the offence is charged to have been committed, or any other child of tender years who is tendered as a witness, does not in the opinion of the court understand the nature of an oath, the evidence of that child may be received, though not given upon oath, if, in the opinion of the court, the child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth; and the evidence of the child, though not given on oath, but otherwise taken and reduced into writing in accordance with the provisions of section seventeen of the Indictable Offences Act, 1848,<sup>1</sup> or of this Part of this Act, shall be deemed to be a deposition within the meaning of that section and that Part respectively: Provided that—(a) A person shall not be liable to be convicted of the offence unless the testimony admitted by virtue of this section and given on behalf of the prosecution is corroborated by some other material evidence in support thereof implicating the accused; and (b) any child, whose evidence is received as aforesaid and who wilfully gives false evidence under such circumstances that, if the evidence had been given on oath, he would have been guilty of perjury, shall, subject to the provisions of this Act, be liable on summary conviction to be adjudged such punishment as might have been awarded had he been charged with perjury and the case dealt with summarily under section ten of the Summary Jurisdiction Act, 1879.<sup>2</sup>

Power to proceed with case in absence of child or young person.

31. Where in any proceedings with relation to an offence under this Part of this Act, or any of the offences mentioned in the First Schedule to this Act, the court is satisfied that the attendance before the court of any child or young person in respect of whom the offence is alleged to have been committed is not essential to the just hearing of the case,<sup>3</sup> the case may be proceeded with and determined in the absence of the child or young person.

Mode of charging offences and limitation of time.

32. (1) Where a person is charged with committing an offence under this Part of this Act, or any of the offences mentioned in the First Schedule to this Act, in respect of two or more children or young persons, the same information or summons may charge the offence in respect of all or any of them, but the person charged shall not be liable to a separate penalty for each child or young person except upon separate informations.

(2) The same information or summons may also charge any person as having the custody, charge, or care, alternatively or together, and may charge him with the offences of assault, ill-treatment, neglect, abandonment, or exposure, together or separately, and may charge him with com-

<sup>1</sup> The Indictable Offences Act, 1848, does not apply to Ireland; references to this statute are to be construed as references to the Petty Sessions (Ir.) Act, 1851 (s. 133 (10)).

<sup>2</sup> The Summary Jurisdiction Act, 1879, does not apply to Ireland; the reference here to s. 10 of that Act is to be construed as a reference to s. 4 of the Summary Jurisdiction over Children Act (Ir.), 1884 (s. 133 (7)); noted *ante*, pp. 73, 1082.

<sup>3</sup> The presence of the child in court is not an essential condition to the hearing of any charge under the Act (see *R. v. Hale* (1905), 1 K.B. 126).

mitting all or any of these offences in a manner likely to cause unnecessary suffering or injury to health, alternatively or together, but when those offences are charged together the person charged shall not be liable to a separate penalty for each.

(3) A person shall not be summarily convicted of an offence under this Part of this Act, or of an offence mentioned in the First Schedule to this Act, unless the offence was wholly or partly committed within six months before the information was laid; but, subject as aforesaid, evidence may be taken of acts constituting, or contributing to constitute, the offence, and committed at any previous time.

(4) When an offence under this Part of this Act, or any offence mentioned in the First Schedule to this Act, charged against any person is a continuous offence, it shall not be necessary to specify in the information, summons, or indictment, the date of the acts constituting the offence.

33. When, in pursuance of this Part of this Act, any person is convicted by a court of summary jurisdiction of an offence, or when in the case of any application to a court of summary jurisdiction under this Part of this Act for an order committing a child or young person to the care of any person, or for an order for contribution to the maintenance of a child or young person, any party thereto thinks himself aggrieved by any order or decision of the court, he may appeal against such a conviction, or order, or decision to quarter sessions.

Appeal from summary conviction to quarter sessions.

34. (1) A board of guardians may institute any proceedings under this Part of this Act for any offence in relation to a child or young person and may, out of their common fund,<sup>1</sup> pay the reasonable costs and expenses of any proceedings so instituted by them.

Institution of proceedings by guardians, &c.

[*(2) relates only to London.*]

#### Supplemental.

35. Every misdemeanour under this Part of this Act shall be deemed to be an offence within, and subject to, the provisions of the Vexatious Indictments Act, 1859, and any Act amending that Act.

Application of Vexatious Indictments Act.

[*Section 36, extending section 10 of the Poor Law Act, 1879, does not apply to Ireland (s. 133 (15)).*]

37. Nothing in this Part of this Act shall be construed to take away or affect the right of any parent, teacher, or other person having the lawful control or charge of a child or young person to administer punishment to such child or young person.<sup>2</sup>

Right of parent, &c., to administer punishment.

38. (1) In this Part of this Act, unless the context otherwise requires, the expression "fit person," in relation to the care of any child or young person, includes any society or body corporate established for the reception or protection of poor children or the prevention of cruelty to children.

Interpretation of Part II.

(2) For the purposes of this Part of this Act—Any person who is the parent<sup>3</sup> or legal guardian of a child or young person or who is legally liable to maintain a child<sup>4</sup> or young person shall be presumed to have the custody of the child or young person, and as between father and mother the father shall not be deemed to have ceased to have the custody of the child or young person by reason only that he has deserted, or otherwise does not reside with, the mother and child or young person;<sup>5</sup> and any person to whose charge a child or young person is committed by any person who has the custody of the child or young person shall be presumed to have charge of the child or young person; and any other person having actual possession or control of a child or young person shall be presumed to have the care of the child or young person.

<sup>1</sup> That is, funds of the Union (s. 133 (14)).

<sup>2</sup> As to what is lawful punishment, see p. 383, *ante*.

<sup>3</sup> This does not include the father of an illegitimate child (*Butler v. Gregory* (1902), 18 T.L.R. 370).

<sup>4</sup> As to such persons, see p. 403.

<sup>5</sup> See *R. v. Connor* (1908), 2 K.B. 26, noted p. 401; and *Gunn v. M'Cullough* (1901), 1 N.I.J.R. 262.



(3) This Part of this Act shall apply in the case of a child or young person who has before the commencement of this Act been committed to the care of a relative or other fit person by an order made under the Prevention of Cruelty to Children Act, 1904, as if the order had been made under this Part of this Act.

### PART III.

#### JUVENILE SMOKING.

Penalty on  
selling tobacco  
to children and  
young persons.

39. If any person sells to a person<sup>1</sup> apparently under the age of sixteen years any cigarettes<sup>2</sup> or cigarette papers, whether for his own use or not, he shall be liable, on summary conviction, in the case of a first offence to a fine not exceeding two pounds, and in the case of a second offence to a fine not exceeding five pounds, and in the case of a third or subsequent offence to a fine not exceeding ten pounds.<sup>3</sup>

Forfeiture  
of tobacco.

40. It shall be the duty of a constable and of a park keeper, being in uniform, to seize any cigarettes or cigarette papers in the possession of any person apparently under the age of sixteen whom he finds smoking in any street or public place,<sup>4</sup> and any cigarettes or cigarette papers so seized shall be disposed of, if seized by a constable in such manner as the police authority may direct, and if seized by a park keeper in such manner as the authority or person by whom he was appointed may direct, and such constable or park keeper shall be authorised to search any boy so found smoking, but not a girl.

Provisions as  
to automatic  
machines for the  
sale of tobacco.

41. (1) If on complaint to a court of summary jurisdiction it is proved to the satisfaction of the court that any automatic machine for the sale of cigarettes kept on any premises is being extensively used by children or young persons, the court may order the owner of the machine or the person on whose premises the machine is kept to take such precautions to prevent the machine being so used as may be specified in the order, or, if necessary, to remove the machine, within such time as may be specified in the order. Provided that any person aggrieved by such an order may appeal against it to a court of quarter sessions.<sup>5</sup>

(2) If any person against whom any such order has been made fails to comply with the order, he shall be liable on summary conviction to a fine not exceeding five pounds, and to a further fine not exceeding one pound for each day during which the offence continues.<sup>5</sup>

Exemption for  
persons em-  
ployed in trade,  
&c.

42. The provisions of this Part of this Act which make it an offence to sell cigarettes or cigarette papers, and which authorise the seizure of cigarettes and cigarette papers, shall not apply where the person to whom the cigarettes or cigarette papers are sold, or in whose possession they are found, was at the time employed by a manufacturer of or dealer in tobacco, either wholesale or retail, for the purposes of his business, or was a boy messenger in uniform in the employment of a messenger company and employed as such at the time.

Application  
of Part III.

43. (1) For the purposes of this Part of this Act the expression "cigarette" includes cut tobacco rolled up in paper, tobacco leaf, or other material in such form as to be capable of immediate use for smoking.

(2) This Part of this Act shall apply to tobacco other than cigarettes in like manner as it applies to cigarettes, except that a person shall not be guilty of an offence for selling such other tobacco to a person apparently under the age of sixteen years if he did not know, and had no reason to believe, that it was for the use of that person.

(3) This Part of this Act shall apply to smoking mixtures intended as a substitute for tobacco in like manner as it applies to cigarettes.

<sup>1</sup> See s. 42 as to exemptions.

<sup>2</sup> See definition of "cigarette," s. 43.

<sup>3</sup> See Rule 14 of the Summary Jurisdiction Rules, 1909, printed *verbatim, post*.

<sup>4</sup> See definition of "street" and "public place," s. 131.

<sup>5</sup> See Rule 15 of the Summary Jurisdiction Rules, 1909, printed *verbatim, post*.

## PART IV.

## REFORMATORY AND INDUSTRIAL SCHOOLS.

*Interpretation.*

44. (1) For the purposes of this Part of this Act unless the context Definitions. otherwise requires—

The expression "reformatory school" means a school for the industrial training of youthful offenders, in which youthful offenders are lodged, clothed, and fed, as well as taught;

The expression "industrial school" means a school for the industrial training of children, in which children are lodged, clothed, and fed, as well as taught;<sup>1</sup>

The expression "certified school" means a reformatory or industrial school which is certified in accordance with the provisions of this Part of this Act;

The expression "attendance order" means an attendance order made in pursuance of the Elementary Education Act, 1876.<sup>2</sup>

The expression "child," used in reference to a child ordered to be sent to a certified industrial school or to be transferred from a certified reformatory to a certified industrial school, applies to that child during the whole period of detention, whether in the industrial school or out on licence, notwithstanding that the child attains the age of fourteen years before the expiration of that period, and, when used in reference to proceedings for the purpose of enforcing an attendance order, includes any person who, by virtue of any enactment, is deemed to be a child for the purposes of the Education Acts, 1870 to 1907.<sup>2</sup>

(2) The persons for the time being having the management or control of a school shall be deemed the managers thereof for the purposes of this Part of this Act.

*Certification and Inspection of Schools.*

45. (1) The Secretary of State<sup>3</sup> may upon the application of the managers of any reformatory or industrial school direct the chief inspector of reformatory and industrial schools<sup>4</sup> hereinafter mentioned to examine into the condition and regulations of the school and its fitness for the reception of youthful offenders or children to be sent there under this Part of this Act, and to report to him thereon. Certification of school.

(2) The Secretary of State,<sup>3</sup> if satisfied with the report of the inspector, may certify that the school is fit for the reception of youthful offenders or children to be sent there in pursuance of this Part of this Act.

46. (1) The Secretary of State<sup>3</sup> may appoint a chief inspector of reformatory and industrial schools,<sup>4</sup> and such number of inspectors and assistant inspectors as the Treasury may approve to assist the chief inspector; and every person so appointed to assist the chief inspector shall have such of the powers and duties of the chief inspector as the Secretary of State<sup>3</sup> directs but shall act under the direction of the chief inspector. Inspection of certified schools.

(2) The chief and other inspectors shall receive such remuneration and allowances out of money provided by Parliament as the Secretary of State,<sup>3</sup> with the consent of the Treasury, may direct.

(3) Every certified school shall, at least once in every year, be inspected by the chief inspector of reformatory and industrial schools,<sup>4</sup> or by an inspector or assistant inspector.

<sup>1</sup> See s. 83.

<sup>2</sup> References to the Elementary Education Act, 1876, or to the Education Acts, 1870 to 1907, shall not apply. See s. 133 (20), which contains substituted provisions.

<sup>3</sup> In Ireland, the Chief Secretary (s. 133 (1)).

<sup>4</sup> In Ireland, Inspector of Industrial and Reformatory Schools (s. 133 (13)).

Power of Secretary of State to withdraw certificate.

47. The Secretary of State<sup>1</sup> if dissatisfied with the condition, rules, management, or superintendence of a certified school, may at any time by notice served on the managers of the school declare that the certificate of the school is withdrawn as from a time specified in the notice, being not less than six months after the date of the notice; and at that time the withdrawal of the certificate shall take effect, and the school shall cease to be a certified school: Provided that the Secretary of State<sup>1</sup> may, if he thinks fit, instead of so withdrawing the certificate, by notice served on the managers of the school, prohibit the admission of youthful offenders or children to the school for such time as may be specified in the notice or until the notice is revoked.

Resignation of certificate by managers.

48. The managers of a certified school may, on giving six months', and the executors or administrators of a deceased manager (if only one) of a certified school may, on giving one month's, notice in writing to the Secretary of State<sup>1</sup> of their intention so to do, resign the certificate for the school, and, accordingly, at the expiration of six months or one month (as the case may be) from the date of the notice (unless before that time the notice is withdrawn), the resignation of the certificate shall take effect, and the school shall cease to be a certified school.

Effect of withdrawal or resignation of certificate.

49. A youthful offender or child shall not be received into a certified school in pursuance of this Part of this Act after the date of the receipt by the managers of the school of a notice of withdrawal of the certificate for the school or after the date of a notice of resignation of the certificate; but the obligation hereinafter mentioned of the managers to teach, train, lodge, clothe, and feed any youthful offenders or children detained in the school at the respective dates aforesaid shall, except so far as the Secretary of State<sup>1</sup> otherwise directs, continue until the withdrawal or resignation of the certificate takes effect, or until the discontinuance of the contribution out of money provided by Parliament towards the expenses of the offenders and children detained in the school, whichever may first happen.<sup>2</sup>

Disposal of inmates on withdrawal or resignation of certificate.

50. Where a school ceases to be a certified school the youthful offenders or children detained therein shall be by order of the Secretary of State<sup>1</sup> either discharged or transferred to some other certified school in accordance with the provisions of this Part of this Act relating to discharge and transfer.

Auxiliary homes.

51. Where the managers of a certified school, or the managers of two or more certified reformatory schools or of two or more certified industrial schools, propose to establish an auxiliary home for the reception of any inmates or any classes of inmates of the school or schools, or to utilise for any such purpose an institution already in existence or about to be established by any other persons, the Secretary of State<sup>1</sup> may, on the like application and report as is required in the case of the schools themselves, certify the home or institution, and the certificate may be withdrawn and resigned in like manner as a certificate of a school, but whilst the home or institution remains certified it shall for such purposes as are specified in the certificate be treated as part of the school or schools to which it is attached.

#### *Duties and Powers of Managers.*

Liabilities of managers.

52. The managers of a certified school may decline to receive any youthful offender or child proposed to be sent to them in pursuance of this Part of this Act, but when they have once accepted any such offender or child they shall be deemed to have undertaken to teach, train, lodge, clothe, and feed him during the whole period for which he is liable to be detained in the school, or until the withdrawal or resignation of the certificate for the school, or until the discontinuance of the contribution out of money provided by Parliament towards the expenses of the offenders or children detained in the school, whichever may first happen.<sup>3</sup>

<sup>1</sup> In Ireland, the Chief Secretary (s. 133 (1)).

<sup>2</sup> As to the application of this section to day industrial schools, see par. I. of the Order in Council, dated 15th April 1910, printed *verbatim, post*.

<sup>3</sup> As to the application of this section to day industrial schools, see par. II. of the Order in Council, dated 15th April 1910, printed *verbatim, post*.



53. The managers of a certified industrial school to which a child under the age of eight years is sent may, with the consent of the Secretary of State,<sup>1</sup> board the child out with any suitable person until the child reaches the age of ten years and thereafter for such longer period, with the consent of the Secretary of State,<sup>1</sup> as the managers consider to be advisable in the interests of the child, subject to the exercise by the managers of such powers as to supervision, recall, and otherwise as may be prescribed by regulations made by the Secretary of State;<sup>2</sup> and where a child is so boarded out he shall nevertheless be deemed for the purposes of this Part of this Act to be a child detained in the school, and the provisions of this Part of this Act shall apply accordingly, subject to such necessary adaptations as may be made by Order in Council.<sup>2</sup>

Boarding out  
of children.

54. The managers of a certified school may at any time, and shall whenever so required by the Secretary of State,<sup>1</sup> make rules for the management and discipline of the school, but the rules so made shall in all cases be subject to approval by the Secretary of State.<sup>1</sup>

Power to  
make rules.

55. No substantial addition to or alteration in the buildings of a certified school shall be made without the approval in writing of the Secretary of State.<sup>1</sup>

Approval of  
alterations, &c.,  
of buildings.

56. (1) The managers of any certified school may establish, or join with the managers of one or more other certified schools in establishing, a scheme for the payment of superannuation allowances to officers of the school or schools who become incapable of discharging the duties of their offices with efficiency by reason of permanent infirmity of mind or body, or of old age, upon their resigning or otherwise ceasing to hold their offices: Provided that the scheme shall not provide for payment of any superannuation allowance in any case in which such an allowance would not be payable under the Superannuation (Metropolis) Act, 1866,<sup>3</sup> or in excess of the amount of any superannuation allowance which would be payable under that Act, in similar circumstances.

Schemes for  
superannuation  
of officers.

(2) The scheme may also provide for the payment under any circumstances under which a gratuity may be paid under the Superannuation (Metropolis) Act, 1866, of a gratuity not exceeding such an amount as is authorised by that Act.

(3) The expenses incurred by the managers of any such school under any such scheme shall be treated as part of the expenses of the management of the school.

#### *Mode of sending Offenders and Children to Reformatory and Industrial Schools and their Treatment therein.<sup>4</sup>*

57. (1) Where a youthful offender, who in the opinion of the court before which he is charged is twelve years of age or upwards but less than sixteen years of age, is convicted, whether on indictment or by a petty sessional court,<sup>5</sup> of an offence punishable in the case of an adult with penal servitude or imprisonment, the court may, in addition to or in lieu of sentencing him according to law to any other punishment, order that he be sent to a certified reformatory school: Provided that where the offender is ordered to be sent to a certified reformatory school he shall not in addition be sentenced to imprisonment.

Commitment of  
offenders between  
twelve and sixteen  
years of age to  
reformatory  
schools.

(2) Where such an order has been made in respect of a youthful offender of the age of fourteen years or upwards, and no certified reformatory school can be found the managers of which are willing to receive him, the Secretary of State<sup>1</sup> may order the offender to be brought before the court which made the order or any court having the like jurisdiction, and that court may in lieu of the detention order make such order or pass such sentence as the court may determine, so however that the order or sentence shall be such as might have been originally made or passed in respect of the offence.

<sup>1</sup> In Ireland, the Chief Secretary (s. 133 (1)).

<sup>2</sup> In Ireland, Order in Council by the Lord-Lieutenant (s. 133 (3)).

<sup>3</sup> That is, the Union Offices (Ir.) Superannuation Acts, 1865 and 1872 (s. 133 (9)).

<sup>4</sup> See special provisions as to Ireland in the case of Roman Catholics (s. 133 (18)).

<sup>5</sup> See s. 133 (5).

Children liable  
to be sent to  
industrial  
schools.

58. (1) Any person may bring<sup>1</sup> before a petty sessional court<sup>2</sup> any person apparently under the age of fourteen years who<sup>3</sup>—

- (a) is found begging or receiving alms (whether or not there is any pretence of singing, playing, performing, offering anything for sale, or otherwise), or being in any street, premises, or place for the purpose of so begging or receiving alms; or
- (b) is found wandering and not having any home or settled place of abode, or visible means of subsistence, or is found wandering and having no parent or guardian, or a parent or guardian who does not exercise proper guardianship; or
- (c) is found destitute, not being an orphan and having both parents or his surviving parent, or in the case of an illegitimate child his mother, undergoing penal servitude or imprisonment; or
- (d) is under the care of a parent or guardian who, by reason of criminal or drunken habits, is unfit to have the care of the child; or
- (e) is the daughter, whether legitimate or illegitimate, of a father who has been convicted of an offence under section four or section five of the Criminal Law Amendment Act, 1885, in respect of any of his daughters, whether legitimate or illegitimate; or
- (f) frequents the company of any reputed thief, or of any common or reputed prostitute; or
- (g) is lodging or residing in a house or the part of a house used by any prostitute for the purposes of prostitution, or is otherwise living in circumstances calculated to cause, encourage, or favour the seduction or prostitution of the child,

and the court before which a person is brought as coming within one of those descriptions, if satisfied on inquiry of that fact, and that it is expedient so to deal with him, may order him to be sent to a certified industrial school.<sup>4</sup> Provided that a child shall not be treated as coming

<sup>1</sup> A child can be brought before justices by a summons to the child (*R. v. Moore* (1888), 52 J.P. 375); or by a warrant, as prescribed by the Petty Sessions Act, if the child does not appear. Under the Industrial Schools (E.) Act, 1866, it was held that where a child was before justices on a charge which was dismissed, they had jurisdiction, without any summons or warrant, to make an order of a similar kind to that provided by this section (*R. v. Jennings* (1896), 1 Q.B. 64).

<sup>2</sup> See s. 133 (5), and p. 694, *ante*.

<sup>3</sup> In Ireland this section also applies to a child who is found destitute, being an orphan (s. 133 (17)).

<sup>4</sup> The following is a list (liable to alteration from time to time) of Industrial and Reformatory Schools, certified under 31 Vict. c. 25, and 31 & 32 Vict. c. 59:—

#### INDUSTRIAL SCHOOLS.

##### PROTESTANT MALE SCHOOLS—

Balmoral, Belfast.  
Meath, Blackrock, Co. Dublin.

##### PROTESTANT FEMALE SCHOOLS—

Hampton House, Belfast.  
Shamrock Lodge, „  
Meath, Bray, Co. Wicklow.

##### ROMAN CATHOLIC MALE SCHOOLS—

Milltown, Belfast.  
\*Nazareth Lodge, Belfast.  
Danesport, Upton, Co. Cork.  
\*Passage West, „  
Baltimore (Fishing) „  
Greenmount, Cork.  
Killybegs (Marine), Co. Donegal.  
Artane, Co. Dublin.  
Carriglea, Monkstown, Co. Dublin.  
Letterfrack, Co. Galway.  
Salt Hill, Galway.

##### ROMAN CATHOLIC MALE SCHOOLS— *continued.*

St. Joseph's, Tralee.  
\*Male, Kilkenny.  
Male, Limerick.  
\*House of Charity, Drogheda.  
St. Joseph's, Clonmel.  
\*Cappoquin, Co. Waterford.  
\*St. Kyran's, Rathdrum.  
\*St. Joseph's Home, Killarney (Male and Female).  
\*Lurgan School for Junior Boys.

##### ROMAN CATHOLIC FEMALE SCHOOLS—

St. Patrick's Female, Belfast.  
Abbeyville, Whiteabbey, Belfast.  
Middletown, Co. Armagh.  
Lurgan, „  
St. Joseph's, Cavan.  
Ennis, Co. Clare.  
St. Aloysius, Clonakilty, Co. Cork.  
St. Coleman's, Queenstown, „

within the description contained in paragraph (f) if the only common or reputed prostitute whose company the child frequents is the mother of the child, and she exercises proper guardianship and due care to protect the child from contamination.<sup>1</sup>

(2) Where a child apparently under the age of twelve years is charged before a court of assize or quarter sessions or a petty sessional court<sup>2</sup> with an offence punishable in the case of an adult by penal servitude or a less punishment, the court, if satisfied on inquiry that it is expedient so to deal with the child, may order him to be sent to a certified industrial school.

(3) Where a child, apparently of the age of twelve or thirteen years, who has not previously been convicted, is charged before a petty sessional court<sup>2</sup> with an offence punishable in the case of an adult by penal servitude or a less punishment, and the court is satisfied that the child should be sent to a certified school but, having regard to the special circumstances of the case, should not be sent to a certified reformatory school, and is also satisfied that the character and antecedents of the child are such that he will not exercise an evil influence over the other children in a certified industrial school, the court may order the child to

ROMAN CATHOLIC FEMALE SCHOOLS—  
*continued.*

Kinsale, Co. Cork.  
Mallow, „  
St. Finbar's, Cork.  
Boosterstown, Co. Dublin.  
Golden Bridge, „  
Lakelands, Sandymount, Co. Dublin.  
Merrion, Co. Dublin.  
Loughrea, Co. Galway.  
Ballinasloe, „  
Clifden, „  
Oughterard, „  
St. Anne's „  
Pembroke Almshouse, Tralee.  
Female, Kilkenny.  
St. John's, Parsonstown.  
St. George's, Limerick.  
St. Vincent's, „  
Newtownforbes, Co. Longford.  
St. Joseph's, Dundalk.  
Westport, Co. Mayo.

ROMAN CATHOLIC FEMALE SCHOOLS—  
*continued.*

Ballaghaderreen, Co. Mayo.  
St. Martha's, Monaghan.  
St. Monica's, Roscommon.  
Summerhill, Athlone.  
Benada Abbey, Tubbercurry, Co. Sligo.  
St. Lawrence, Sligo.  
St. Augustine's, Templemore.  
St. Francis, Cashel.  
St. Bernard, Dundrum, Co. Tipperary.  
Tipperary.  
St. Catherine's, Strabane.  
St. Dominick's, Waterford.  
Mount Carmel, Moate.  
St. Aidan's, New Ross.  
St. Michael's, Wexford.  
St. Joseph's Home, Killarney (Male and Female).

REFORMATORY SCHOOLS.

PROTESTANT MALE SCHOOL—

Malone, Belfast.

ROMAN CATHOLIC MALE SCHOOLS—

Philipstown, King's County.  
St. Kevin's Glencree, Co. Wicklow.

ROMAN CATHOLIC FEMALE SCHOOLS—

High Park, Drumcondra, Co. Dublin.  
St. Joseph's, Limerick.

Those starred in the list are for boys under nine years of age. The following recommendations have been issued to Clerks of Petty Sessions:—

Clerks of Petty Sessions will please call the attention of Committing Magistrates to the following:—

- I. No case should be sent to a school without first ascertaining whether the manager of that school is willing to admit the child (31 Vict. c. 25, s. 14; 31 and 32 Vict. c. 59, s. 12).
- II. From the nature of these schools it is essential that the children sent to them should be mentally and physically fitted for industrial training.
- III. Children while inmates of workhouses cannot be legally committed to an industrial school.
- IV. In industrial school cases copies of depositions which have been made by the Constabulary should forthwith be sent to the inspector.

<sup>1</sup> See Rule 16 of the Summary Jurisdiction Rules, 1909, printed *verbatim*, *post*.

<sup>2</sup> See s. 133 (5), and p. 694, *ante*.



be sent to a certified industrial school, having previously ascertained that the managers are willing to receive the child :

Provided that the Secretary of State<sup>1</sup> may, on the application of the managers of the industrial school, by order transfer the child to a certified reformatory school.

(4) Where the parent or guardian of a child proves to a petty sessional court<sup>2</sup> that he is unable to control the child, and that he desires the child to be sent to an industrial school under this Part of this Act, the court, if satisfied on inquiry that it is expedient so to deal with the child, and that the parent or guardian understands the results which will follow, may order him to be sent to a certified industrial school :<sup>3</sup>

Provided that, if the court thinks that it is expedient that the child instead of being sent to a certified industrial school should be placed under the supervision of a probation officer, the court may deal with him in like manner as, if he had been charged with an offence, the court might have dealt with him under the Probation of Offenders Act, 1907, so however that the recognisance on entering into which he is discharged shall bind him to appear for having a detention order made against him.

(5) Where the guardians of a poor law union or the managers of a district poor law school satisfy a petty sessional court<sup>2</sup> that any child maintained in a workhouse or district poor law school is refractory or is the child of parents either of whom has been convicted of an offence punishable with penal servitude or imprisonment, and that it is desirable that the child be sent to an industrial school under this Part of this Act, the court may, if satisfied that it is expedient so to deal with the child, order him to be sent to a certified industrial school.<sup>4</sup>

(6) A petty sessional court<sup>2</sup> may, on the complaint of a local education authority, made in accordance with the provisions of section twelve of the Elementary Education Act, 1876, for the purpose of enforcing an attendance order, order a child to be sent to a certified industrial school as provided in that section :<sup>5</sup>

Provided that, if upon any such complaint it appears to the court that the child comes within one of the descriptions mentioned in subsection one of this section, the court may, on the application of the local education authority, proceed under that subsection and not under this subsection or section twelve of the Elementary Education Act, 1876.<sup>5</sup>

(7) Where under this section a court is empowered to order a child to be sent to a certified industrial school the court, in lieu of ordering him to be so sent, may in accordance with the provisions of Part II. of this Act, make an order for the committal of the child to the care of a relative or other fit person named by the court, and the provisions of that Part shall, so far as applicable, apply as if the order were an order under that Part.

(8) It shall be the duty of the police authority to take proceedings under subsection one of this section as respects any child in their district who appears to the authority to come within one of the descriptions mentioned in that subsection, unless—(a) the case is one within the cognisance of the local education authority and that authority decide themselves to take the proceedings ; or (b) proceedings are being taken by some other person ; or (c) the police authority are satisfied that the taking of proceedings is undesirable in the interests of the child.

59. Any person may bring before a petty sessional court<sup>2</sup> any person apparently of the age of fourteen or fifteen years so circumstanced that if he were a child he would come within one or other of the descriptions mentioned in subsection one of the last foregoing section, and the court, if satisfied on inquiry of that fact and that it is expedient so to deal with him, may, in accordance with the provisions of Part II. of this Act, make an order for his committal to the care of a relative or other fit person

Power to commit young persons to care of relative or fit person in certain cases.

<sup>1</sup> In Ireland, the Chief Secretary (s. 133 (1)).

<sup>2</sup> See s. 133 (5), and p. 694, *ante*.

<sup>3</sup> See Rule 17 of the Summary Jurisdiction Rules, 1909, printed *verbatim*, *post*.

<sup>4</sup> See Rule 18 of the Summary Jurisdiction Rules, 1909, printed *verbatim*, *post*.

<sup>5</sup> As to the construction of this subsection in its application to Ireland, and as to enforcements of attendance order, see s. 133 (20).

named by the court, and the provisions of that Part shall, so far as applicable, apply as if the order were an order under that Part.<sup>1</sup>

60. Where under the provisions of this Part of this Act an order is made for the committal of a child or young person to the care of a relative or other fit person named by the court, the court may in addition to such order make an order under the Probation of Offenders Act, 1907, that the child or young person be placed under the supervision of a probation officer :

Power in such cases to place young persons under supervision of probation officer.

Provided that the recognisance into which the child, if not charged with an offence, or the young person is required to enter, shall bind him to appear and submit to the further order of the court.

61. An order of a court ordering a youthful offender or child to be sent to and detained in a certified school (in this Act referred to as a detention order) may, if the court think fit, be made to take effect either immediately or at any later date specified therein, regard being had to the age or health of the youthful offender or child.

Power to defer operation of order.

62. (1) The school to which a youthful offender or child is to be sent under a detention order shall be such school as may be specified in the order, being some certified school (whether situate within the jurisdiction of the court making the order or not) the managers of which are willing to receive the youthful offender or child :

Choice of school.

Provided that, if it is found impossible to specify the school in the detention order, the school shall, subject to the provisions of this Act with respect to the determination of the place of residence of a youthful offender or child, be such as a justice having jurisdiction in the place where the court which made the order sat may by endorsement on the detention order direct.

(2) Where the court is satisfied that a youthful offender or child is, by reason of mental or physical defect, incapable of receiving proper benefit from industrial training in an ordinary certified school, but is not incapable by reason of such defect of receiving benefit from industrial training in a certified school where special provision is made for the training of youthful offenders or children suffering from such defect, the detention order (if any) shall be for detention in a school where such provision is made.<sup>2</sup>

63. If—(a) a detention order is made but is not to take effect immediately ; or (b) at the time specified for the order to take effect the youthful offender or child is unfit to be sent to a certified school ; or (c) the school to which the youthful offender or child is to be sent cannot be ascertained until inquiry has been made, the court may make an order committing him either to custody in any place to which he might be committed on remand under Part V. of this Act, or to the custody of a relative or other fit person<sup>3</sup> to whose care he might be committed under Part II. of this Act, and he shall be kept in that custody accordingly until he is sent to a certified school in pursuance of the detention order.

Temporary detention until sent to certified school.

64. (1) The person by whom any youthful offender or child ordered to be sent to a certified school is detained shall at the appointed time deliver him into the custody of the constable or other person responsible for his conveyance to school, who shall deliver him to the superintendent or other person in charge of the school in which he is to be detained, together with the order or other document in pursuance of which the offender or child was detained and is sent to the school.

Conveyance to school.

(2) The detention order in pursuance of which the youthful offender or child is sent to a certified school shall be a sufficient authority for his conveyance to and detention in the school or any other school to which he is transferred under this Part of this Act.

65. The detention order shall specify the time for which the youthful offender or child is to be detained in the school, being—(a) in the case of a youthful offender sent to a reformatory school, not less than three and not more than five years, but not in any case extending beyond the time

Period of detention.

<sup>1</sup> See Rule 19 of the Summary Jurisdiction Rules, 1909, printed *verbatim*, *post*.

<sup>2</sup> As to the application of this section to day industrial schools, see par. III. of the Order in Council, dated 15th April 1910, printed *verbatim*, *post*.

<sup>3</sup> See s. 38 (1).

when the youthful offender will, in the opinion of the court, attain the age of nineteen years,<sup>1</sup> and (b) in the case of a child sent to an industrial school, such time as to the court may seem proper for the teaching and training of the child, but not in any case extending beyond the time when the child will, in the opinion of the court, attain the age of sixteen years.<sup>2</sup>

Provision as to  
religious  
persuasion.

66. (1) The court or justice, in determining the certified school to which a youthful offender or child is to be sent, shall endeavour to ascertain the religious persuasion<sup>3</sup> to which the offender or child belongs, and the detention order shall, where practicable, specify the religious persuasion to which the offender or child appears to belong, and a school conducted in accordance with that persuasion shall, where practicable, be selected.

(2) A minister of the religious persuasion specified in the order as that to which a youthful offender or child sent to a certified school appears to belong may visit the offender or child at the school on such days, at such times, and on such conditions, as may be fixed by the Secretary of State,<sup>4</sup> for the purpose of affording him religious assistance and also for the purpose of instructing him in the principles of his religion.

(3) Where an order has been made for sending a youthful offender or child to a certified school which is not conducted in accordance with the religious persuasion to which the offender belongs, the parent, legal guardian, nearest adult relative, or person entitled to the custody of the offender or child may apply<sup>5</sup>—(a) if the detention order was made by a petty sessional court,<sup>6</sup> to a petty sessional court acting in and for the place in and for which the court which made the order acted; and (b) in any other case, to the Secretary of State,<sup>4</sup> to remove or send the offender or child to a certified school conducted in accordance with the offender's or child's religious persuasion, and the court or Secretary of State<sup>4</sup> shall, on proof of the offender's or child's religious persuasion, comply with the request of the applicant: Provided that—(i.) the application must be made before the offender or child has been sent to a certified school, or within thirty days after his arrival at the school; and (ii.) the applicant must show to the satisfaction of the court or Secretary of State<sup>4</sup> that the managers of the school named by him are willing to receive the offender or child: (iii.) nothing in this section shall be construed as preventing any such person as aforesaid from making an application to the Secretary of State<sup>4</sup> after the expiration of the said period of thirty days to exercise the powers of transfer conferred on him by the other provisions of this Act.<sup>7</sup>

Placing out  
on licence.

67. (1) Where a youthful offender or child is detained in a certified school, the managers of the school may at any time, with the consent—(a) in the case of a child sent to an industrial school at the instance of the local education authority, of that authority; and (b) in any other case of the Secretary of State;<sup>4</sup> or after the expiration of eighteen months of the period of detention without any such consent, by licence permit the offender or child to live with any trustworthy and respectable person named in the licence willing to receive and take charge of him:<sup>8</sup>

Provided that where the licence is granted in respect of a child under the age of fourteen years it shall be conditional on the child attending as a day scholar, in accordance with the bye-laws in force in the place where he resides, some school named in the licence, being a certified

<sup>1</sup> A conviction ordering a detention for a period which will not expire till after the offender has attained the age of nineteen years will be quashed (*R. v. Boundy* (1904), 68 J.P.N. 340).

<sup>2</sup> As to the application of this section to day industrial schools, see par. IV. of the Order in Council, dated 15th April 1910, printed *verbatim*, *post*.

<sup>3</sup> See further as to Roman Catholics, s. 133 (18).

<sup>4</sup> In Ireland, the Chief Secretary (s. 133 (1)).

<sup>5</sup> See Rule 20 of the Summary Jurisdiction Rules, 1909, printed *verbatim*, *post*.

<sup>6</sup> See s. 135 (5).

<sup>7</sup> As to the application of this section to day industrial schools, see par. V. of the Order in Council, dated 15th April 1910, printed *verbatim*, *post*.

<sup>8</sup> See restriction on this clause in s. 133 (25).



efficient school within the meaning of the Elementary Education Act, 1876.<sup>1</sup>

(2) Any licence so granted shall be in force until revoked or forfeited by the breach of any of the conditions on which it was granted.

(3) The managers of the school may at any time by order in writing revoke any such licence, and order the offender or child to return to the school.

(4) Any youthful offender or child escaping from the person with whom he is placed in pursuance of this section, or refusing to return to the school when required to do so on the revocation or forfeiture of his licence, shall be liable to the same penalty<sup>2</sup> as if he had escaped from the school itself.

(5) The time during which a youthful offender or child is absent from a certified school in pursuance of a licence under this section shall be deemed to be part of the time of his detention in the school: Provided that, where a youthful offender or child has failed to return to the school on the licence being forfeited or revoked, the time which elapses after his failure so to return shall be excluded in computing the time during which he is to be detained in the school.

(6) Where a licence has been revoked or forfeited and the youthful offender or child refuses or fails to return to the school, a court of summary jurisdiction, if satisfied by information on oath that there is reasonable ground for believing that his parent or guardian could produce the youthful offender or child, may issue a summons requiring the parent or guardian to attend at the court on such day as may be specified in the summons, and to produce the child,<sup>3</sup> and, if he fails to do so without reasonable excuse, he shall, in addition to any other liability to which he may be subject under the provisions of this Part of this Act, be liable on summary conviction to a fine not exceeding one pound.<sup>4</sup>

68. (1) Every youthful offender sent to a certified reformatory school shall, on the expiration of the period of his detention, if that period expires before he attains the age of nineteen years, remain up to the age of nineteen under the supervision of the managers of the school.

Supervision of youthful offenders and children after the expiration of period of detention.

(2) Every child sent to an industrial school shall, from the expiration of the period of his detention, remain up to the age of eighteen under the supervision of the managers of the school: Provided that this subsection shall not apply in any case where the child was ordered to be sent to an industrial school for the purpose only of enforcing an attendance order made in consequence of his parent, guardian, or other person legally liable to maintain him neglecting to provide efficient elementary instruction for him.

(3) The managers may grant to any person under their supervision a licence in the manner provided by this Part of this Act, and may revoke any such licence, and recall any such person to the school; and any person so recalled may be detained in the school for a period not exceeding three months, and may at any time be again placed out on licence: Provided that—(a) a person shall not be so recalled unless the managers are of opinion that the recall is necessary for his protection; and (b) the managers shall send to the chief inspector of reformatory and industrial schools an immediate notification of the recall of any person, and shall state the reasons for his recall; and (c) they shall again place the person out as soon as possible, and at latest within three months after the recall, and shall forthwith notify the chief inspector that the person has been placed out.

(4) A licence granted to a youthful offender or child before the expiration of his period of detention shall, if he is liable to be under supervision in accordance with this section, continue in force after the expiration of that period, and may be revoked in manner provided by this Part of this Act.

<sup>1</sup> As to the construction of this section in its application to Ireland, see s. 133 (20).

<sup>2</sup> See s. 72.

<sup>3</sup> See Rule 21 of the Summary Jurisdiction Rules, 1909, printed *verbatim*, *post*.

<sup>4</sup> As to the application of this section to day industrial schools, see par. VI. of the Order in Council, dated 15th April 1910, printed *verbatim*, *post*.

(5) The Secretary of State<sup>1</sup> may at any time order that a person under supervision under this section shall cease to be under such supervision.

(6) When a youthful offender or child is under the supervision of the managers of a certified school it shall not be lawful for his parent to exercise, as respects the youthful offender or child, his rights and powers as parent in such a manner as to interfere with the control of the managers over the youthful offender or child.<sup>2</sup>

Discharge and transfer.

69. (1) The Secretary of State<sup>1</sup> may at any time order a youthful offender or a child to be discharged from a certified school, either absolutely or on such conditions as the Secretary of State<sup>1</sup> approves, and may, where the order of discharge is conditional, revoke the order on the breach of any of the conditions on which it was granted, and thereupon the youthful offender or child shall return to school, and if he fails to do so he and any person who knowingly harbours or conceals him or prevents him from returning to school shall be liable to the same penalty as if the youthful offender or child had escaped from the school.

(2) The Secretary of State<sup>1</sup> may order—(a) a youthful offender or child to be transferred from one certified reformatory school to another, or from one certified industrial school to another; (b) a youthful offender under the age of fourteen years detained in a certified reformatory school to be transferred to a certified industrial school; (c) a child over the age of twelve years detained in a certified industrial school, who is found to be exercising an evil influence over the other children in the school, to be transferred to a certified reformatory school; so however that the whole period of the detention of the offender or child shall not be increased by the transfer.

(3) Where a youthful offender or child is detained in a certified school in one part of the United Kingdom, the central authority for that part of the United Kingdom may, subject to the provisions of this section, direct the youthful offender or child to be transferred to a certified school in another part of the United Kingdom if the central authority for that other part consents. For the purpose of this provision "central authority" means the Secretary of State, the Secretary for Scotland, or the Chief Secretary, as the case may be.<sup>3</sup>

Power to apprentice or dispose of child.

70. If any youthful offender or child detained in or placed out on licence from a certified school, or a person when under the supervision of the managers of such a school, conducts himself well, the managers of the school may, with his own consent, apprentice him to, or dispose of him in, any trade, calling, or service, including service in the Navy or Army, or by emigration, notwithstanding that his period of detention or supervision has not expired; and such apprenticing or disposition shall be as valid as if the managers were his parents:

Provided that where he is to be disposed of by emigration, and in any case unless he has been detained for twelve months, the consent of the Secretary of State shall also be required for the exercise of any power under this section.

#### *Offences in relation to Certified Schools.*

Refusal to conform to rules.

71. (1) If a youthful offender detained in a certified reformatory school is guilty of a serious and wilful breach of the rules of the school, or of inciting other inmates of the school to such a breach, he shall be liable upon summary conviction to have the period of his detention in the reformatory school increased by such period not exceeding six months as the court directs, or, if of the age of sixteen years or upwards, to be imprisoned, with or without hard labour, for any term not exceeding three months; and if sentenced to imprisonment he shall, at the expiration of the term thereof, by and at the expense of the managers of the school

<sup>1</sup> In Ireland, the Chief Secretary (s. 133 (1)).

<sup>2</sup> If the breach of this subsection is punishable, it can only be by indictment, as the Act provides no penalty (see p. 41, *ante*).

<sup>3</sup> As to the application of this section to day industrial schools, see par. VII. of the Order in Council, dated 15th April 1910, printed *verbatim, post*.

<sup>4</sup> See Rule 22 of the Summary Jurisdiction Rules, 1909, printed *verbatim, post*.

in which the offence was committed, be brought back to a certified reformatory school, there to be detained during a period equal to so much of his period of detention as remained unexpired at the time of his being sent to prison.

(2) If a child of the age of twelve years or upwards detained in a certified industrial school is guilty of a serious and wilful breach of the rules of the school, or of inciting other inmates of the school to such a breach, he shall be liable on summary conviction to be sent to a certified reformatory school, and to be there detained, subject and according to the provisions of this Part of this Act.

(3) A period of detention may be increased in pursuance of this section notwithstanding that the period as so increased will extend beyond the limits imposed by this Part of this Act.<sup>1</sup>

72. (1) If a youthful offender detained in a certified reformatory school escapes from the school, he may, at any time before the expiration of his period of detention, be apprehended without warrant, and may (any other Act to the contrary notwithstanding) be then brought before a court of summary jurisdiction having jurisdiction in the county or place where he is found, or in the county or place where the school from which he escaped is situate; and he shall be liable on summary conviction to be brought back to the reformatory school and to have the period of his detention therein increased by such period not exceeding six months as the court directs, or, if of the age of sixteen years or upwards, to be imprisoned, with or without hard labour, for any term not exceeding three months; and if sentenced to imprisonment he shall, at the expiration of the term thereof, be brought back to a certified reformatory school. Escaping from school.

(2) If a child detained in a certified industrial school escapes from the school, he may at any time before the expiration of his period of detention be apprehended without warrant, and may (any other Act to the contrary notwithstanding) be then brought before a court of summary jurisdiction having jurisdiction in the county or place where he is found, or in the county or place where the school from which he escaped is situate; and he shall be liable, on summary conviction, to be brought back to the school from which he escaped, or, if of the age of twelve years or upwards, to be sent to a certified reformatory school and to be there detained subject and according to the provisions of this Part of this Act.

(3) In computing the time during which a youthful offender or child who, having escaped, is brought back to a certified school is thereafter liable to be detained in that school, the time during which he was absent from school, including the time (if any) during which he was imprisoned under this section, shall not be reckoned as part of the period of detention.

(4) The expenses of bringing a youthful offender or child back to the school shall be borne by the managers of the school from which he escaped.

(5) Where the period for which a youthful offender or child, on being brought back to the school from which he escaped, is liable to be detained therein would, by virtue of this section, whether on account of any increase in the period of detention or otherwise, extend beyond the limits imposed by this Part of this Act, the youthful offender or child may notwithstanding anything in this Part of this Act be detained in the school in accordance with this section.

(6) If any person—(a) knowingly assists or induces directly or indirectly an offender or child detained in or placed out on licence from a certified school to escape from the school or from any person with whom he is placed out on licence; (b) knowingly harbours, conceals, or prevents from returning to school, or to any person with whom he is placed out on licence, an offender or child who has so escaped, or knowingly assists in so doing; he shall, on summary conviction,<sup>2</sup> be liable to be imprisoned for any term not exceeding two months, with or without hard labour, or to a fine not exceeding twenty pounds.<sup>3</sup>

<sup>1</sup> As to the application of this section to day industrial schools, see par. VIII. of the Order in Council, dated 15th April 1910, printed *verbatim, post*.

<sup>2</sup> See Rule 23 of the Summary Jurisdiction Rules, 1909, printed *verbatim, post*.

<sup>3</sup> As to the application of this section to day industrial schools, see par. IX. of the Order in Council, dated 15th April 1910, printed *verbatim, post*.



*Expenses of Certified Schools.*

Contributions  
from Treasury.

73. There shall be paid out of money provided by Parliament such sums on such conditions as the Secretary of State<sup>1</sup> may, with the approval of the Treasury, recommend towards the expenses of any youthful offender or child detained in a certified school, including the expenses of removal in the case of any offender or child ordered to be transferred from one school to another and towards the expenses of disposing of any such offender or child by emigration: Provided that the contribution shall not exceed two shillings per head per week for children detained in an industrial school on the application of their parents or guardians.

Duties and  
powers of local  
authorities with  
respect to the  
maintenance,  
&c., of inmates  
of certified  
schools.

74. (1) Where a youthful offender is ordered to be sent to a certified reformatory school, it shall be the duty of the council of the county or county borough<sup>2</sup> in which he resides (to be specified in the order) to provide for his reception and maintenance in a certified reformatory school suitable to the case, having regard to the requirements of this Part of this Act.

(2) Where a child is ordered to be sent to a certified industrial school, it shall be the duty of the local education authority<sup>3</sup> of the district in which he resides (to be specified in the order) to provide for his reception and maintenance in a certified industrial school suitable to the case, having regard to the requirements of this Part of this Act.

(3) For the purposes of the foregoing provisions of this section a youthful offender or child shall be presumed to reside in the place where the offence was committed, or the circumstances which rendered him liable to be sent to a certified school occurred, unless it is proved that he resided in some other place.

(4) Where the court by which the detention order is made is a court of assize or a court of quarter sessions, the court shall remit to a court of summary jurisdiction for the place where the youthful offender or child was committed for trial the determination of his place of residence.

(5) The obligation imposed under this section on a local education authority<sup>3</sup> shall not apply in the case of a child sent to a certified industrial school—

- (a) at the desire of his parent or guardian as being a child whom the parent or guardian is unable to control; or
- (b) at the instance of the guardians of a poor law union or the managers of a district poor law school<sup>4</sup> as being a refractory child, or as being the child of parents either of whom has been convicted of an offence punishable with penal servitude or imprisonment; or
- (c) being a child who had no settled place of abode and who habitually wandered from place to place through the districts of various local education authorities; or
- (d) in respect of whose maintenance in a certified school no contribution is paid out of moneys provided by Parliament.

But the local education authority<sup>3</sup> who would but for this provision have been responsible for the maintenance of the child may, if they think fit, contribute towards his maintenance or provide for his maintenance in a certified school in any such case.

(6) An order for the detention of a child in a certified industrial school shall not be made by a petty sessional court unless the local education authority,<sup>3</sup> which by virtue of the order are responsible for providing for the reception and maintenance of the child in a certified school, have been given an opportunity of being heard.

(7) Where a local authority,<sup>5</sup> that is to say, as respects reformatory schools the council of a county or county borough, and as respects industrial schools a local education authority,<sup>3</sup> are aggrieved<sup>6</sup> by the

<sup>1</sup> In Ireland, the Chief Secretary (s. 133 (1)).

<sup>2</sup> As to local authorities in Ireland, see s. 133 (19).

<sup>3</sup> As to local education authority, see s. 133 (20).

<sup>4</sup> As to district poor law school, see s. 133 (27).

<sup>5</sup> As to local authority, see s. 133 (19).

<sup>6</sup> See Rule 24 of the Summary Jurisdiction Rules, 1909, printed *verbatim, post*.

decision of a court as to the place of residence of a youthful offender or child, they may within three months after the making of the detention order apply to a petty sessional court<sup>1</sup> acting in and for the place for which the court which made the order or determined the place of residence acted, and that court, on proof to its satisfaction that the youthful offender or child was resident in the area of another local authority, and after giving such other local authority an opportunity of being heard, may transfer the liability to maintain the youthful offender or child in a certified school to that other local authority, and may order that other authority to repay to the first-mentioned local authority any expenses incurred by them in respect of the youthful offender or child under the detention order, and an appeal shall lie from the decision of the court to a court of quarter sessions; but nothing in this provision shall affect the liability of the first-mentioned local authority under the detention order until an order has been made transferring the liability to another local authority.

(8) For the purpose of the performance of their duties under this Part of this Act, a local authority—

(a) may contract with the managers of any certified school for the reception and maintenance therein of youthful offenders or children for whose reception and maintenance the authority are required under this section to make provision;

(b) may, with the approval of the Secretary of State,<sup>2</sup> undertake or combine with any other such authority in undertaking, or contribute such sums of money upon such conditions as they may think fit towards, the establishment, building, alteration, enlargement, rebuilding, or management of a certified school, or the purchase of any land required for the use of an existing certified school, or for the site of any school intended to be a certified school.

(9) A local authority may contribute towards the ultimate disposal of any inmate of a certified school for whose maintenance in such a school the authority are under this section responsible, or towards whose maintenance the authority have voluntarily contributed.

(10) The local authority responsible for the maintenance of a youthful offender or child in a certified school under this section shall continue responsible for his maintenance in the event of his transfer to another certified school, notwithstanding that having been originally ordered to be sent to a reformatory school he is subsequently transferred to an industrial school, or having been originally ordered to be sent to an industrial school he is subsequently transferred to or ordered by a court to be sent to a reformatory school:

Provided that, before any such youthful offender or child is ordered to be transferred from one school to another, notice shall be given to the local authority responsible for his maintenance, and that authority shall be given an opportunity of making representations to the Secretary of State<sup>2</sup> with respect thereto.

(11) Where a child has been ordered to be sent to a certified industrial school at the instance of the guardians of a poor law union or the managers of a district poor law school<sup>3</sup> as refractory, or as the child of parents either of whom has been convicted of an offence punishable with penal servitude or imprisonment, the guardians or managers shall contribute towards the maintenance of the child in a certified industrial school such sums as may be agreed upon between them and the managers of the certified school to which the child is ordered to be sent, or in default of agreement as may be fixed by the Secretary of State.<sup>2</sup>

(12)<sup>4</sup> Land may be acquired by a local authority for the purposes of this Part of this Act—(a) as respects reformatory schools, under and in accordance with the Local Government Act, 1888, in the case of the council of a county, and as for the purposes of the Public Health Acts

<sup>1</sup> See s. 133 (5), and p. 694, *ante*.

<sup>2</sup> In Ireland, the Chief Secretary (s. 133 (1)).

<sup>3</sup> As to district poor law school, see s. 133 (27).

<sup>4</sup> As to the operation of this section in Ireland, see s. 133 (19) (20).

in the case of the council of a county borough; (b) as respects industrial schools, as for the purposes of the Education Acts, 1870 to 1907.

(13) The expenses incurred by a local authority<sup>1</sup> under this Part of this Act shall be defrayed—(a) as respects reformatory schools, as expenses for general county purposes in the case of the council of a county, and out of the borough fund or borough rate in the case of the council of a county borough; <sup>2</sup> (b) as respects industrial schools, as expenses incurred for the purposes of elementary education.

(14)<sup>2</sup> Money may be borrowed by a local authority for the purposes of defraying or contributing towards the expenses of establishing, building, altering, enlarging, rebuilding, or purchasing land for the use or site of—(a) a reformatory school, under and in accordance with the Local Government Act, 1888, in the case of the council of a county, and under and in accordance with the Municipal Corporations Act, 1882, in the case of a council of a county borough; (b) an industrial school, under and in accordance with the Education Acts, 1870 to 1907: Provided that the maximum period within which money so borrowed is to be repaid shall be sixty years.

(15) Where two or more local education authorities, with the approval of the Secretary of State,<sup>3</sup> agree to combine for any of the purposes of this section, the agreement may provide for the appointment of a joint body of managers, and for the apportionment of the contributions to be paid by each authority and any other matters which, in the opinion of the Secretary of State,<sup>3</sup> are necessary for carrying out the agreement, and the expenses of any such joint body of managers shall be paid in the proportions specified in the agreement by each of the authorities, and their receipts and payments shall be audited in manner provided by section six of the Education (Administrative Provisions) Act, 1907.<sup>4</sup>

(16) For the purpose of obtaining the approval of the Secretary of State<sup>3</sup> where required by this section, there shall be forwarded to the Secretary of State<sup>3</sup> particulars of the proposed establishment or purchase, and a plan of the proposed alteration, enlargement, rebuilding, or building drawn on such scale and accompanied by such particulars and estimate of cost as the Secretary of State<sup>3</sup> thinks fit to require, and the Secretary of State<sup>3</sup> may approve the plan and particulars submitted to him, with or without modification, or may disapprove them.

(17) [*Does not apply to Ireland.*]

(18) [*Deals solely with the city of London.*]

Contributions  
by parents.

75. (1) The parent, or other person liable to maintain<sup>5</sup> a youthful offender or child ordered to be sent to and detained in a certified school shall, if able to do so, contribute to his maintenance therein a sum not exceeding such sum as may be declared by Order<sup>6</sup> in Council to represent approximately the average cost of maintenance of youthful offenders or children in the class of school to which such school belongs in the locality in which such school is situate.<sup>7</sup>

(2) (a) The court by which a detention order is made shall at the time of making that order,<sup>8</sup> unless it considers that it is not in possession of the necessary information; and

(b) any petty sessional court<sup>9</sup> having jurisdiction at the place where such parent or other person resides may, on complaint

<sup>1</sup> As to local authority, see s. 133 (19).

<sup>2</sup> As to the operation of this section in Ireland, see s. 133 (19) (20).

<sup>3</sup> In Ireland, the Chief Secretary (s. 133 (1)).

<sup>4</sup> See s. 133 (20).

<sup>5</sup> As to the persons liable, see p. 403.

<sup>6</sup> See s. 133 (3).

<sup>7</sup> By Order in Council, dated 23rd April 1910 (*Stat. R. & O.*, 1909, No. 186), the average weekly cost of maintenance has been declared to be six shillings in the case of reformatory schools, and five shillings in the case of industrial schools.

<sup>8</sup> Contributions under the statute may be recovered as provided by s. 25 of the Industrial Schools and Reformatory Act, 1868, 31 & 32 Vict. c. 59 (s. 133 (22))—that is, payment may be enforced by distress if it shall appear to the justices on confession of the defendant or otherwise, or if it shall be returned to the warrant of distress that no sufficient goods of the party can be found, the defendant may be committed for any term not exceeding ten days.

<sup>9</sup> See s. 133 (5). See also s. 133 (13).



being made by or at the instance of the chief inspector of reformatory and industrial schools,<sup>1</sup> at any time whilst the offender or child is detained in the school ;

make an order on such parent or other person for the payment to the chief inspector of such weekly sum, not exceeding such sum as aforesaid, as having regard to the ability of the parent or other person seems reasonable during the whole or any part of the time for which the offender or child is liable to be detained in the school :

Provided that the court making the detention order, if a court of assize or court of quarter sessions, may, if it thinks fit, remit the case to a court of summary jurisdiction for the place where the offender or child was committed for trial, for the purpose of making an order under this section, and upon the case being so remitted any such court of summary jurisdiction shall have power to make any such order under this section as the court which made the detention order might have made.

(3) Every such order may specify the time during which the payment is to be made, or may direct the payment to be made until further order, and shall be enforceable as an order of affiliation.

(4) Any order made under this section may, on application being made either by the person on whom the order is made or by or at the instance of the chief inspector<sup>2</sup> and on fourteen days' notice of such application being given to the chief inspector or person on whom the order was made, be varied by any court which would have had power to make the order.<sup>3</sup>

(5) An order made under this section shall be binding on the person on whom it is made :

Provided that if that person was not summoned to attend the sitting of the court at which the order was made, the order shall be served on him in manner prescribed by rules of court,<sup>4</sup> and shall be binding on him unless he makes an application against it within the time prescribed by rules of court to the court by which the order was made or any court of like jurisdiction on the ground either that he is not liable to maintain the offender or child, or that he is unable to contribute the sum specified in the order, and on any such application being made the court may confirm the order with or without modifications or may rescind it.<sup>5</sup>

(6) Where a parent or other person has been ordered under this section to contribute to the maintenance of a youthful offender or child, he shall give notice of any change of address to the chief inspector of reformatory and industrial schools, and, if he fails to do so without reasonable excuse, he shall be liable on summary conviction to a fine not exceeding two pounds.

(7) All sums received under this section shall be paid into the Exchequer, but, if the amount received in respect of any child in an industrial school exceeds the contribution from the Treasury in respect of that child, the excess shall be paid to the managers of the school and shall not be paid into the Exchequer.

(8) The Secretary of State may in his discretion remit wholly or partially any payment ordered to be made under this section.

(9) It shall be the duty of a constable, if so required by the chief inspector of reformatory and industrial schools, to take proceedings under this section on behalf of the chief inspector.

(10) Where there is some person, other than the parent, liable to maintain a youthful offender or child, an order under this section may be made on that person notwithstanding that there may be also a parent.

(11) Any court making an order under this section for contribution by a parent or other such person may, in any case where there is any pension or income payable to such parent or other person and capable of being attached, after giving the person by whom the pension or income

<sup>1</sup> See Rule 25 of the Summary Jurisdiction Rules, 1909, printed *verbatim*, *post*.

<sup>2</sup> See s. 133 (13).

<sup>3</sup> See Rule 26 of the Summary Jurisdiction Rules, 1909, printed *verbatim*, *post*.

<sup>4</sup> See Rule 27 of the Summary Jurisdiction Rules, 1909, printed *verbatim*, *post*.

<sup>5</sup> See Rule 28 of the Summary Jurisdiction Rules, 1909, printed *verbatim*, *post*.

is payable an opportunity of being heard, further order<sup>1</sup> that such part as the court may see fit of the pension or income be attached and be paid to the person named by the court. Such further order shall be an authority to the person by whom such pension or other income is payable to make the payment so ordered, and the receipt of the person to whom the payment is ordered to be made shall be a good discharge to such first-named person.<sup>2</sup>

Expenses of conveyance and clothing.

76. (1) The expense of conveying to any certified reformatory school any youthful offender who has been directed to be detained in such a school, and the expense of proper clothing for him requisite for his admission to the school, shall be defrayed out of moneys provided by Parliament.

(2) The expense of conveying to a certified industrial school a child ordered to be sent there shall be defrayed by the police authority<sup>3</sup> by whom he is conveyed, and shall be deemed part of the current expenses of that authority :

Provided that, where a child is committed to a certified industrial school at the instance of a local education authority, the authority may pay the expenses of and incidental to the conveyance of the child to and from the school, and the sending of the child out on licence or bringing back the child on the revocation or forfeiture of a licence.

#### *Day Industrial Schools.*

Establishment, &c., of day industrial schools.

77. (1) If the Secretary of State<sup>4</sup> is satisfied that, owing to the circumstances of any class of population in the area of any local education authority, a school in which industrial training, elementary education, and one or more meals a day, but not lodging, are provided is necessary or expedient for the proper training and control of the children of that class, he may, on the like application and report as is required by this Part of this Act in the case of industrial schools, certify any such school (in this Act referred to as a day industrial school) as fit for the reception of children to be sent there in pursuance of the provisions of this Part of this Act relating to day industrial schools.

(2) A certified day industrial school shall be deemed to be a certified efficient school within the meaning of the Elementary Education Act, 1876.<sup>5</sup>

(3) A school shall not at the same time be a day industrial school and a reformatory or industrial school.

(4) If the Secretary of State<sup>4</sup> is of opinion that, by reason of a change of circumstances or otherwise, a certified day industrial school ceases to be necessary or expedient for the proper training and control of the children of any class of population in the neighbourhood of that school, he may, after due notice, withdraw the certificate of the school, and thereupon the school shall cease to be a certified day industrial school.

Power to send children to day industrial schools.

78. (1) Any child authorised by this Part of this Act to be sent to a certified industrial school may, if the court before which the child is brought thinks it expedient, be sent to a certified day industrial school.

(2) Any child sent to a certified day industrial school by an order of a court (other than an attendance order) may during the period specified in the order be there detained during such hours as may be authorised by the rules of the school approved by the Secretary of State.<sup>4</sup>

(3) The school must be within such distance of the residence of the child as may be prescribed by Order in Council<sup>6</sup> under this Part of this Act, but need not be situate within the jurisdiction of the court making the order.

79. The managers of a certified day industrial school may, upon the request of a local education authority and of the parent or guardian of,

<sup>1</sup> See Rule 29 of the Summary Jurisdiction Rules, 1909, printed *verbatim*, *post*.

<sup>2</sup> As to the application of s. 75 to day industrial schools, see par. XII. of the Order in Council, dated 15th April 1910, printed *verbatim*, *post*.

<sup>3</sup> See s. 133 (23).

<sup>4</sup> In Ireland, the Chief Secretary (s. 133 (1)).

<sup>5</sup> References to this Act do not apply (s. 133 (20)).

<sup>6</sup> See s. 133 (3).

or other person legally liable to maintain, a child, and upon the undertaking of the parent, guardian, or other person to pay towards the industrial training and meals of the child such sum<sup>1</sup> as a Secretary of State<sup>2</sup> may authorise, receive the child into the school under an attendance order or without an order of a court.<sup>3</sup>

Reception of child under attendance order or without order.

80. There shall be paid out of money provided by Parliament towards the custody, industrial training, elementary education, and meals of children sent to a day industrial school such sums, on such conditions, as the Secretary of State,<sup>2</sup> with the approval of the Treasury, may recommend:<sup>4</sup>

Contributions by the Treasury.

Provided that—

(a) the conditions of a parliamentary contribution to a day industrial school shall provide that the education given in the school shall be on such level of efficiency as would enable the school, if a public elementary school, to obtain a parliamentary grant;

(b) any conditions recommended by the Secretary of State for the purposes of contributions to a day industrial school shall be laid before Parliament in the same manner as minutes of the Board of Education relating to the annual parliamentary grant.

81. A local education authority<sup>5</sup> shall have the same powers in relation to a certified day industrial school as they have in relation to a certified industrial school, but nothing in this Act shall be construed as imposing on any such authority an obligation to provide for the reception and maintenance of a child in a certified day industrial school.

Powers of local education authorities.

82. (1) Where a court orders a child to be sent to a certified day industrial school, the court shall also order the parent of the child, or other person liable to maintain him, to contribute to his industrial training and meals in the school such sum as is named in the order, not exceeding such sum as may be declared by Order in Council<sup>6</sup> to represent approximately the average cost of industrial training and meals in day industrial schools in the locality in which the school to which the child is sent is situate.

Contributions by parents.

(2) It shall be the duty of the local education authority<sup>5</sup> to obtain and enforce the order, and every sum paid under the order shall be paid over to the local education authority in aid of their expenses for elementary education under the Education Acts, 1870 to 1907.<sup>7</sup>

(3) If a parent or other person is unable to pay the sum required by the order to be paid, he shall apply to the guardians of the poor law union comprising the parish in which the parent or other person is resident, who, if satisfied of such inability, shall give the parent or other person sufficient relief to pay the sum, or so much thereof as they consider him unable to pay.<sup>8</sup>

83. The provisions of this Part of this Act with respect to industrial schools shall, so far as applicable, apply to certified day industrial schools, subject to such modifications as are made therein by this Part of this Act: Provided that His Majesty<sup>9</sup> may by Order in Council<sup>10</sup> make such further modifications of those provisions as may appear to His Majesty<sup>9</sup> to be necessary or proper for adapting those provisions to day industrial schools,

Application to day industrial schools of provisions relating to industrial schools.

<sup>1</sup> Fixed by regulations made 17th March 1910 (*Stat. R. & O.*, 1910, No. 393), at such sum, not exceeding 1s. 9d. a week, as may be agreed upon between the parent, &c., and the manager of the school.

<sup>2</sup> In Ireland, the Chief Secretary (s. 133 (1)).

<sup>3</sup> As to the application of this section to day industrial schools, see par. X. of the Order in Council, dated 15th April 1910, printed *verbatim, post*.

<sup>4</sup> Recommendations, dated 17th March 1910 (*Stat. R. & O.*, 1910, No. 394), have been made by the Chief Secretary pursuant to this section.

<sup>5</sup> As to local education authority, see s. 133 (20).

<sup>6</sup> See s. 133 (3), and as to day industrial schools see par. XI. of the Order in Council, dated 15th April 1910, printed *verbatim, post*.

<sup>7</sup> See section 133 (20).

<sup>8</sup> As to application of this subsection to Ireland, see s. 133 (21).

<sup>9</sup> In Ireland, the Lord-Lieutenant (s. 133 (4)).

<sup>10</sup> See s. 133 (3) and the Order in Council, dated 15th April 1910, printed *verbatim, post*.



and any such Order may provide that a child may be punished for an offence by being sent to a certified industrial school in lieu of a certified reformatory school, or may otherwise mitigate any punishment imposed by the provisions of this Part of this Act in relation to industrial schools.

*Supplemental Provisions.*

Power to send offenders conditionally pardoned to reformatory schools.

84. Where a youthful offender has been sentenced to imprisonment or penal servitude, and has been pardoned by His Majesty<sup>1</sup> on condition of his placing himself under the care of some charitable institution for the reception and reformation of youthful offenders, the Secretary of State<sup>2</sup> may direct him, if under the age of sixteen years, to be sent to a certified reformatory school, the managers of which consent to receive him, for a period of not less than three and not more than five years, but not in any case extending beyond the time when he will in the opinion of the Secretary of State<sup>2</sup> attain the age of nineteen years; and thereupon the offender shall be subject to all the provisions of this Part of this Act as if he had been originally sentenced to detention in a certified reformatory school.

Powers of school officers.

85. Every officer authorised by the managers of a certified school or by a local education authority<sup>3</sup> to take charge of any youthful offender or child ordered to be detained under this Part of this Act for the purpose of conveying him to or from the school, or of apprehending and bringing him back to the school in case of his escape or refusal to return, shall, for that purpose and while engaged in that duty, have all the powers, protection, and privileges of a constable.

Advertisement of grant, &c., of certificate.

86. A notice of the grant of a certificate to a reformatory or industrial school, or of withdrawal or resignation of such a certificate, shall within one month be advertised by order of the Secretary of State<sup>2</sup> in the London Gazette.<sup>4</sup>

Orders and notices.

87. (1) An order or other act of the Secretary of State under this Part of this Act may be signified under the hand of the Secretary of State<sup>2</sup> or of an under-secretary.

(2) An order or other act of the managers of a certified school under this Part of this Act may be signified under the hands of the managers or their secretary or clerk.

(3) Any notice may be served on the managers of a certified school by being delivered personally to any one of them, or by being sent by post or otherwise, in a letter addressed to them or any of them at the school, or at the usual or last known place of abode of any of the managers or of their secretary or clerk, except where the managers are a local authority, in which case any notice may be so served on the clerk of the authority.

(4) No summons issued, notice given, or order made for the purpose of carrying into effect the provisions of this Part of this Act shall be invalidated for want of form only.

(5) The Secretary of State<sup>2</sup> may prescribe forms to be used for the purposes of this Part of this Act otherwise than for the purpose of legal proceedings thereunder.

Rules respecting evidence of documents.

88. (1) The production of the London Gazette<sup>4</sup> containing a notice of the grant, or of the withdrawal or resignation, of a certificate to a certified school shall be sufficient evidence of the fact of a certificate having been duly granted to the school named in the notice, or of the withdrawal or resignation of such a certificate.

(2) The grant of a certificate to a certified school may also be proved by the production of the certificate itself, or of a document purporting to be a copy of the certificate and to be attested as such by the chief inspector of reformatory and industrial schools.

(3) A certificate purporting to be signed by one of the managers of a certified school, or by their secretary or clerk, or by the superintendent

<sup>1</sup> In Ireland, the Lord-Lieutenant (s. 133 (4)).

<sup>2</sup> In Ireland, the Chief Secretary (s. 133 (1)).

<sup>3</sup> See s. 133 (20).

<sup>4</sup> Dublin Gazette (s. 133 (2)).

or other person in charge of the school, to the effect that the youthful offender or child therein named was duly received into, and is at the date of the signing thereof detained in, the school, or has been otherwise dealt with according to law, shall be evidence of the matters therein stated.

(4) An instrument purporting to be an order of a court under this Part of this Act and to be signed by the members of the court which made the order, or purporting to be a copy of such an order, and to be certified as such a copy by the clerk to that court, shall be evidence of the order.

(5) A copy of the rules purporting to be the rules of a certified school, and to be signed by the chief inspector of reformatory and industrial schools, shall be evidence of the rules of that school.

(6) A certificate purporting to be under the hand of the chief inspector or an inspector or assistant inspector of reformatory and industrial schools, stating that any sum due from a parent or other person for the maintenance of a child or young person is overdue and unpaid, shall be evidence of the facts stated therein.<sup>1</sup>

(7) A school to which any youthful offender or child is directed to be sent in pursuance of this Part of this Act shall, until the contrary is proved, be deemed to be a certified school.

[Section 89 refers to s. 1 of the Poor Removal Act, 1846, and is not applicable to Ireland; see section 135 (15).]

90. This Part of this Act shall apply to any reformatory or industrial school established under any local Act passed before the commencement of this Act, subject to the following modifications:—

Application to schools under local Acts.

(1) The superintendent of the school shall be substituted for the chief inspector of reformatory and industrial schools as the person to whom notice of any change of address of a parent or other person against whom a contribution order has been made is to be given:

(2) A certificate purporting to be under the hand of the superintendent or other officer of the school specially authorised by the managers for that purpose, stating that any sum due from a parent or other person for the maintenance of a youthful offender or child is overdue and unpaid, shall be evidence of the facts stated therein.

[Section 91 refers only to the London County Council.]

92. The provisions of this Part of this Act with respect to youthful offenders and children detained in certified schools, except such as impose obligations on local authorities with respect to their maintenance, shall apply to youthful offenders and children detained in certified schools at the commencement of this Act in pursuance of any enactment repealed by this Act in like manner as if they were so detained in pursuance of this Act, but nothing in this Act shall affect any obligation undertaken by, or liability imposed on, any local authority before the commencement of this Act with respect to any such youthful offender or child, or prevent any local authority from continuing to make any contribution which they were making before the commencement of this Act.

Application of Part IV.

[Section 93 refers only to the Isle of Man and the Channel Islands.]

## PART V.

### JUVENILE OFFENDERS.

94. Where a person apparently under the age of sixteen years is apprehended with or without warrant, and cannot be brought forthwith before a court of summary jurisdiction, a superintendent or inspector of police, or other officer of police of equal or superior rank, or the officer in charge of the police station to which such person is brought, shall inquire into the case and may in any case, and shall—

Bail of children and young persons arrested.

(a) unless the charge is one of homicide or other grave crime; or

<sup>1</sup> As to the application of this subsection to day industrial schools, see par. XIII. of the Order in Council, dated 15th April 1910, printed *verbatim, post*.

(b) unless it is necessary in the interest of such person to remove him from association with any reputed criminal or prostitute ;  
or

(c) unless the officer has reason to believe that the release of such person would defeat the ends of justice,  
release such person on a recognisance, with or without sureties, for such an amount as will, in the opinion of the officer, secure the attendance of such person upon the hearing of the charge, being entered into by him or by his parent or guardian.

Custody of children and young persons not discharged on bail after arrest.

95. Where a person apparently under the age of sixteen years having been apprehended is not so released as aforesaid, the officer of police shall cause him to be detained in a place of detention<sup>1</sup> provided under this Part of this Act until he can be brought before a court of summary jurisdiction, unless the officer certifies—

(a) that it is impracticable to do so ; or

(b) that he is of so unruly a character that he cannot be safely so detained : or

(c) that by reason of his state of health or of his mental or bodily condition it is inadvisable so to detain him ;

and the certificate shall be produced to the court before which the person is brought.

Association with adults during detention in police stations.

96. It shall be the duty of the police authority<sup>2</sup> to make arrangements for preventing, so far as practicable, a child or young person while being detained in a police station from associating with an adult, other than a relative, charged with an offence.

Remand or committal to custody in place of detention.

97. (1) A court of summary jurisdiction, on remanding or committing for trial a child or young person who is not released on bail, shall, instead of committing him to prison, commit him to custody in a place of detention provided under this Part of this Act and named in the commitment, to be there detained for the period for which he is remanded or until he is thence delivered in due course of law :

Provided that in the case of a young person it shall not be obligatory on the court so to commit him if the court certifies that he is of so unruly a character that he cannot be safely so committed, or that he is of so depraved a character that he is not a fit person to be so detained.

(2) A commitment under this section may be varied or, in the case of a young person who proves to be of so unruly a character that he cannot be safely detained in such custody, or to be of so depraved a character that he is not a fit person to be so detained, revoked by any court of summary jurisdiction acting in or for the place in or for which the court which made the order acted, and if it is revoked the young person may be committed to prison.

Attendance at court of parent of child or young person charged with an offence, &c.

98. (1) Where a child or young person is charged with any offence, or where a child is brought before a petty sessional court<sup>3</sup> on an application for an order to send him to a certified industrial school, his parent or guardian may in any case, and shall if he can be found and resides within a reasonable distance and the person so charged or brought before the court is a child, be required to attend at the court before which the case is heard or determined during all the stages of the proceedings, unless the court is satisfied that it would be unreasonable to require his attendance.

(2) Where the child or young person is arrested, the constable by whom he is arrested or the officer of police in charge of the police station to which he is brought shall cause the parent or guardian of the child or young person, if he can be found, to be warned to attend at the court before which the child or young person will appear.<sup>4</sup>

(3) For the purpose of enforcing the attendance of a parent or guardian and enabling him to take part in the proceedings and enabling orders to be made against him, rules may be made under section twenty-nine of the Summary Jurisdiction Act, 1879,<sup>5</sup> for applying, with the necessary adaptations and modifications, such of the provisions of the Summary

<sup>1</sup> See s. 108.

<sup>2</sup> See s. 133 (23).

<sup>3</sup> See s. 133 (5), and p. 694, *ante*.

<sup>4</sup> See Rule 31 of the Summary Jurisdiction Rules, 1909, printed *verbatim*, *post*.

<sup>5</sup> In Ireland, under the substituted provisions contained in s. 133 (7). The rules made in pursuance of this enactment are printed *verbatim*, *post*.



Jurisdiction Acts and the Indictable Offences Act, 1848,<sup>1</sup> as appear appropriate for the purpose, and such rules may provide for a summons to a child or young person including a summons to his parent or guardian.

(4) The parent or guardian whose attendance shall be required under this section shall be the parent or guardian having the actual possession and control of the child or young person :

Provided that if that person is not the father, the attendance of the father may also be required.

(5) The attendance of the parent of a child or young person shall not be required under this section in any case where the child or young person was before the institution of the proceedings removed from the custody or charge of his parent by an order of a court of justice.

99. (1) Where a child or young person is charged before any court with any offence for the commission of which a fine, damages, or costs may be imposed, and the court is of opinion that the case would be best met by the imposition of a fine, damages, or costs, whether with or without any other punishment, the court may in any case, and shall if the offender is a child, order that the fine, damages, or costs awarded be paid by the parent or guardian of the child or young person instead of by the child or young person, unless the court is satisfied that the parent or guardian cannot be found or that he has not conducted to the commission of the offence by neglecting to exercise due care of the child or young person.

Power to order parent to pay fine, &c., instead of child or young person.

(2) Where a child or young person is charged with any offence, the court may order his parent or guardian to give security for his good behaviour.<sup>2</sup>

(3) Where a court of summary jurisdiction thinks that a charge against a child or young person is proved, the court may make an order on the parent or guardian under this section for the payment of damages or costs or requiring him to give security for good behaviour, without proceeding to the conviction of the child or young person.

(4) An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so, but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity of being heard.

(5) Any sums imposed and ordered to be paid by a parent or guardian under this section, or on forfeiture of any such security as aforesaid, may be recovered from him by distress or imprisonment in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child or young person was charged.

(6) A parent or guardian may appeal against an order under this section—

(a) if made by a court of summary jurisdiction to a court of quarter sessions ; and

[*(b) Provides appeal to the Court of Criminal Appeal in England.*]

100. The conviction of a child or young person shall not be regarded as a conviction of felony for the purposes of any disqualification attaching to felony.

Removal of disqualifications attaching to felony.

101. Where a child or young person is himself ordered by a court of summary jurisdiction to pay costs in addition to a fine, the amount of the costs so ordered to be paid shall in no case exceed the amount of the fine, and (except so far as the court may think fit expressly to order otherwise) all fees payable or paid by the informant in excess of the amount of costs so ordered to be paid shall be remitted or repaid to him, and the court may also order the fine or any part thereof to be paid to the informant in or towards the payment of his costs.

Limitation of costs.

102. (1) A child shall not be sentenced to imprisonment or penal servitude<sup>3</sup> for any offence, or committed to prison in default of payment of a fine, damages, or costs.<sup>4</sup>

Restrictions on punishment of children and young persons.

<sup>1</sup> In Ireland, the Petty Sessions (Ir.) Act, 1851, see s. 133 (10).

<sup>2</sup> See Rule 35 of the Summary Jurisdiction Rules, 1909, printed *verbatim*, *post*.

<sup>3</sup> For table of punishment to which youthful offenders are liable, see INDICTABLE OFFENCES, p. 867.

<sup>4</sup> Standing Order No. 44 of the Orders of the General Prisons Board is as follows :—  
On the reception of a prisoner who states that his age is under sixteen years, governors

(2) A young person shall not be sentenced to penal servitude for any offence.

(3) A young person shall not be sentenced to imprisonment for an offence or committed to prison in default of payment of a fine, damages, or costs, unless the court certifies that the young person is of so unruly a character that he cannot be detained in a place of detention provided under this Part of this Act, or that he is of so depraved a character that he is not a fit person to be so detained.

Abolition of death sentence in case of children and young persons.

**103.** Sentence of death shall not be pronounced on or recorded against a child or young person, but in lieu thereof the court shall sentence the child or young person to be detained during His Majesty's pleasure, and, if so sentenced, he shall, notwithstanding anything in the other provisions of this Act, be liable to be detained in such place and under such conditions as the Secretary of State<sup>1</sup> may direct, and whilst so detained shall be deemed to be in legal custody.

Detention in the case of certain crimes committed by children or young persons.

**104.** Where a child or young person is convicted on indictment of an attempt to murder, or of manslaughter, or of wounding with intent to do grievous bodily harm, and the court is of opinion that no punishment which under the provisions of this Act it is authorised to inflict is sufficient, the court may sentence the offender to be detained for such period as may be specified in the sentence; and where such a sentence is passed the child or young person shall, during that period, notwithstanding anything in the other provisions of this Act, be liable to be detained in such place and on such conditions as the Secretary of State<sup>1</sup> may direct, and whilst so detained shall be deemed to be in legal custody.

Provisions as to discharge of children and young persons detained in accordance with directions of Secretary of State.

**105.** (1) A person in detention pursuant to the directions of the Secretary of State<sup>1</sup> under the last two foregoing sections of this Act may, at any time, be discharged by the Secretary of State<sup>1</sup> on licence.

(2) A licence may be in such form and may contain such conditions as the Secretary of State<sup>1</sup> may direct.

(3) A licence may at any time be revoked or varied by the Secretary of State,<sup>1</sup> and where a licence has been revoked the person to whom the licence related shall return to such place as the Secretary of State<sup>1</sup> may direct, and if he fails to do so may be apprehended without warrant and taken to that place.

Substitution of custody in place of detention for imprisonment.

**106.** Where a child or young person is convicted of an offence punishable, in the case of an adult, with penal servitude or imprisonment, or would, if he were an adult, be liable to be imprisoned in default of payment of any fine, damages, or costs, and the court considers that none of the other methods in which the case may legally be dealt with is suitable, the court may, in lieu of sentencing him to imprisonment or committing him to prison, order that he be committed to custody in a place of detention provided under this Part of this Act and named in the order for such term as may be specified in the order, not exceeding the term for which he might, but for this Part of this Act, be sentenced to imprisonment or committed to prison, nor in any case exceeding one month.

Methods of dealing with children and young persons charged with offences.

**107.** Where a child or young person charged with any offence is tried by any court, and the court is satisfied of his guilt, the court shall take into consideration the manner in which, under the provisions of this or any other Act enabling the court to deal with the case, the case should be dealt with, namely, whether—

(a) by dismissing the charge; or

(b) by discharging the offender on his entering into a recognisance; or

(c) by so discharging the offender and placing him under the supervision of a probation officer; or

will at once communicate with the clerk of the committing court with a view to ascertaining the age which the court found the prisoner to be, and that age will be entered in the prison records. If it appears from the clerk's reply that the question of age was not considered, or that the court found the prisoner to be under sixteen years, the case should at once be reported direct to the Under-Secretary, Dublin Castle. Where, however, a certificate has been given under section 102 (3) of the Children Act, 1908, that the prisoner is of unruly or depraved character, no inquiry will be made unless the prisoner gives his age as under fourteen years (2543).

<sup>1</sup> In Ireland, the Chief Secretary (s. 133 (1)).

- (d) by committing the offender to the care of a relative or other fit person ; <sup>1</sup> or
- (e) by sending the offender to an industrial school ; <sup>2</sup> or
- (f) by sending the offender to a reformatory school ; <sup>3</sup> or
- (g) by ordering the offender to be whipped ; or
- (h) by ordering the offender to pay a fine, damages, or costs ; or
- (i) by ordering the parent or guardian <sup>4</sup> of the offender to pay a fine, damages, or costs ; or
- (j) by ordering the parent or guardian of the offender to give security for his good behaviour ; or
- (k) by committing the offender to custody in a place of detention <sup>5</sup> provided under this Part of this Act ; or
- (l) where the offender is a young person, by sentencing him to imprisonment ; <sup>6</sup> or
- (m) by dealing with the case in any other manner in which it may be legally dealt with :

Provided that nothing in this section shall be construed as authorising the court to deal with any case in any manner in which it could not deal with the case apart from this section.

108. (1) It shall be the duty of every police authority <sup>7</sup> to provide such places of detention for every petty sessional division <sup>8</sup> within their district as may be required for the purposes of this Act, either by arranging with the occupiers of any premises whether within or without their district for the use of those premises for the purpose, or by themselves establishing or joining with another police authority <sup>7</sup> in establishing such places ; but nothing shall prevent the same place of detention being provided for two or more petty sessional divisions.<sup>8</sup>

Provision of places of detention.

(2) If more than one place of detention is provided for any petty sessional division, <sup>8</sup> the police authority <sup>7</sup> may determine that any such place shall be used for some only of the purposes for which places of detention are required to be provided and another place for the other purposes.

(3) Before arranging for the use of any premises as aforesaid the police authority <sup>7</sup> shall satisfy themselves of the fitness of the occupier thereof to have the custody and care of children or young persons committed to, or detained in, custody under this Part of this Act, and of the suitability of the accommodation provided by him.

(4) It shall be lawful for the authority or persons responsible for the management of any institution other than a prison, whether supported out of public funds or by voluntary contributions, but subject in the case of an institution supported out of public funds to the consent of the Government department concerned, to agree with the police authority <sup>7</sup> for the use of the institution or any part thereof as a place of detention on such terms as may be agreed upon between them and the police authority.<sup>7</sup>

(5) The police authority <sup>7</sup> shall keep a register of the places of detention <sup>9</sup> provided by them for each petty sessional division,<sup>8</sup> and the register shall contain a description of the premises, the names of the occupiers thereof, and the number of children or young persons who may be detained in custody in the several premises, and no child or young person shall be detained in custody in any place which is not so registered.

(6) A copy of the register shall be kept at every court house and police station within the area to which it relates.

(7) The registered occupier of any registered place of detention shall be responsible for the custody of the children and young persons detained in that place, and, if at any time he appears to be unfit or refuses to receive any child or young person committed to custody in that place, or brought to that place for custody until he can be brought before a court of summary jurisdiction, the police authority <sup>7</sup> may remove from the register the premises of which he is the registered occupier.

<sup>1</sup> See ss. 58 (7), 59.

<sup>2</sup> See s. 58.

<sup>3</sup> See s. 57.

<sup>4</sup> See s. 99 (1).

<sup>5</sup> See s. 106.

<sup>6</sup> See s. 102.

<sup>7</sup> See s. 133 (23).

<sup>8</sup> See s. 133 (24).

<sup>9</sup> The table on next page is a list of places of detention in Ireland, which is to be kept at every court house and police station.



(8) In selecting the place of detention to which a child or young person is to be committed the court or officer of police shall have regard, where practicable, to the religious persuasion of the child or young person.

(9) Where it is intended to bring a person before a petty sessional court<sup>1</sup> as coming, or as being a person who, if a child, would come, within one

Description of Premises.	Occupier.	Number of Children or young persons who may be detained in custody.
<b>YOUNG PERSONS.</b>		
<i>For Protestant Males.</i>		
Malone Reformatory, Belfast . . . . .	The Manager	10
<i>For Roman Catholic Males.</i>		
Philipstown Reformatory, King's Co. . . . .	do.	10
Glencree Reformatory, Co. Wicklow . . . . .	do.	10
<i>For Roman Catholic Females.</i>		
High Park Reformatory, Dublin . . . . .	do.	10
Limerick Reformatory . . . . .	do.	10
<b>CHILDREN.</b>		
<i>For Roman Catholic Males.</i>		
Artane Industrial School, Co. Dublin . . . . .	do.	8
Carriglea " " " " . . . . .	do.	10
Greenmount " " Co. Cork . . . . .	do.	10
Passage West " " " " . . . . .	do.	10
Drogheda " " Co. Lough . . . . .	do.	10
Milltown " " Belfast . . . . .	do.	6
<i>For Protestant Males.</i>		
Balmoral Industrial School, Belfast . . . . .	do.	10
Meath " " Blackrock, Co. Dublin . . . . .	do.	10
<i>For Roman Catholic Females.</i>		
Golden Bridge Industrial School, Co. Dublin . . . . .	do.	10
Merrion " " " " . . . . .	do.	8
Ennis " " Co. Clare . . . . .	do.	10
Clonakilty " " Co. Cork . . . . .	do.	10
Kinsale " " " " . . . . .	do.	10
Mallow " " " " . . . . .	do.	10
St. Finbar's " " Cork . . . . .	do.	10
St. George's " " Limerick . . . . .	do.	10
Roscommon " " Co. Roscommon . . . . .	do.	5
Sligo " " Co. Sligo . . . . .	do.	10
Summerhill " " Athlone . . . . .	do.	10
New Ross " " Co. Wexford . . . . .	do.	10
Waterford " " Waterford . . . . .	do.	10
<i>For Protestant Females.</i>		
Hampton House Industrial School, Belfast . . . . .	do.	4
Shamrock Lodge " " " " . . . . .	do.	4
Meath " " Bray, Co. Wicklow . . . . .	do.	2

<sup>1</sup> See s. 133 (5), and p. 694, *ante*.

of the descriptions mentioned in subsection one of section fifty-eight of this Act, and it is necessary that accommodation should be temporarily provided for him, a place of detention may be used for his accommodation until he can be brought before such a court in like manner as if he had been apprehended.

(10) A police authority<sup>1</sup> shall proceed to exercise the powers conferred on them by this section as soon as may be after the commencement of this Act, but the obligation to provide such places of detention as may be required for the purposes of this Act shall not become operative until the first day of January nineteen hundred and ten.

(11) [*Does not apply to Ireland.*]

(12) [*Does not apply to Ireland.*]

109. (1) The order or judgment in pursuance of which a child or young person is committed to custody in a place of detention provided under this Part of this Act shall be delivered with the child or young person to the person in charge of the place of detention and shall be a sufficient authority for his detention in that place in accordance with the tenour thereof.

Provisions as to custody of children and young persons in places of detention.

(2) A child or young person whilst so detained and whilst being conveyed to and from the place of detention shall be deemed to be in legal custody, and if he escapes may be apprehended without warrant and brought back to the place of detention in which he was detained.

(3) The Secretary of State<sup>2</sup> shall cause places of detention provided under this Part of this Act to be inspected, and may make rules as to the places to be used as places of detention, and as to their inspection, and as to the classification, treatment, employment and control of children and young persons detained in custody in a place of detention provided under this Part of this Act, and for the children and young persons whilst so detained being visited from time to time by persons appointed in accordance with those rules.<sup>3</sup>

110. (1) The expenses incurred by the police authority<sup>1</sup> in respect of any place of detention provided by the authority, including the expenses of the maintenance of any child or young person detained therein, whether detained on apprehension or committed to custody on remand or commitment for trial or in lieu of imprisonment or in default of payment of a fine, damages, or costs, shall be defrayed out of the police fund<sup>1</sup> of the police authority<sup>1</sup> by which the place is provided.

Expenses of maintenance of child or young person.

(2) There shall be paid, out of money provided by Parliament, towards the cost of maintaining any child or young person so committed to custody on remand or commitment for trial or in lieu of imprisonment or in default of payment of a fine, damages, or costs, such contributions as may be fixed by regulations made by the Secretary of State<sup>2</sup> with the approval of the Treasury,<sup>4</sup> and the sums so paid shall be applied in repayment of the sums paid out of the police fund in respect of that child or young person.

(3) [*Does not apply to Ireland.*]

111. (1) A court of summary jurisdiction when hearing charges against children or young persons, or when hearing applications for orders or licences relating to a child or young person at which the attendance of the child or young person is required, shall, unless the child or young person is charged jointly with any other person not being a child or young person, sit either in a different building or room from that in which the ordinary sittings of the court are held, or on different days or at different times from those at which the ordinary sittings are held, and a court of summary jurisdiction so sitting is in this Act referred to as a juvenile court.

Juvenile courts.

(2) Where in the course of any proceedings in a juvenile court it appears to the court that the person charged or to whom the proceedings

<sup>1</sup> See s. 133 (23).

<sup>2</sup> In Ireland, the Chief Secretary (s. 133 (1)).

<sup>3</sup> Rules dated 1st January 1910 (*Stat. R. & O.*, 1910, No. 187) have been made by the Chief Secretary pursuant to this subsection.

<sup>4</sup> The sum has been fixed at ninepence a day by regulations dated 31st December 1909 (*Stat. R. & O.*, 1910, No. 188) made by the Chief Secretary.

relate is of the age of sixteen years or upwards, or where in the course of any proceedings in any court of summary jurisdiction other than a juvenile court it appears that the person charged or to whom the proceedings relate is under the age of sixteen years, nothing in this section shall be construed as preventing the court if it thinks it undesirable to adjourn the case from proceeding with the hearing and determination of the case.

(3) Provision shall be made for preventing persons apparently under the age of sixteen years whilst being conveyed to or from court, or whilst waiting before or after their attendance in court, from associating with adults charged with any offence other than an offence with which the person apparently under the age of sixteen years is jointly charged.

(4) In a juvenile court no person other than the members and officers of the court and the parties to the case, their solicitors and counsel, and other persons directly concerned in the case, shall, except by leave of the court, be allowed to attend :

Provided that *bona fide* representatives of a newspaper or news agency shall not be excluded.

(5) His Majesty<sup>1</sup> may by Order in Council under the Metropolitan Police Courts Acts, 1839 and 1840,<sup>2</sup> provide for the establishment of one or more separate juvenile courts for the metropolitan police court district and for assigning as a division to each such court such portion of that district as may be specified in the order, and where such an order is made the London County Council shall, if so required by the Secretary of State, provide the necessary accommodation for the purpose at any place of detention provided by the Council upon such terms as to payment and otherwise as may be agreed between the Secretary of State and the Council, or, in default of agreement, as may be settled by the Treasury.

(6) [*Relates only to the period ending 31st March 1909.*]

112. [*Relates only to the period ending 31st December 1909.*]

113. This Part of this Act shall not apply in the case of any proceedings instituted before the 1st day of April 1909.

Saving for  
pending  
proceedings.

## PART VI.

### MISCELLANEOUS AND GENERAL.

#### *Miscellaneous.*

Power to clear  
court whilst  
child or young  
person is giving  
evidence in  
certain cases.

114. In addition and without prejudice to any powers which a court may possess to hear proceedings *in camera* the court may, where a person who, in the opinion of the court, is a child or young person is called as a witness in any proceedings in relation to an offence against, or any conduct contrary to, decency or morality, direct that all or any persons, not being members or officers of the court or parties to the case, their counsel or solicitors, or persons otherwise directly concerned in the case, be excluded from the court during the taking of the evidence of the child or young person : Provided that nothing in this section shall authorise the exclusion of *bona fide* representatives of a newspaper or news agency.

Prohibition on  
children being  
present in court  
during the trial  
of other persons.

115. No child (other than an infant in arms) shall be permitted to be present in court during the trial of any person charged with an offence, or during any proceedings preliminary thereto, and if so present he shall be ordered to be removed, unless he is the person charged with the alleged offence, or during such time as his presence is required as a witness or otherwise for the purposes of justice :

Provided that this section shall not apply to messengers, clerks, and other persons required to attend at any court for purposes connected with their employment.

116. [*Prohibits the purchase of old metals from persons under fourteen. Does not apply to Ireland (s. 133 (11)). See also p. 511, ante.*]

<sup>1</sup> In Ireland, the Lord-Lieutenant (s. 133 (3)).

<sup>2</sup> The Dublin Police Act, 1859 (s. 133 (8)).



117. [Does not apply to Ireland. See s. 133 (12), which contains substituted provisions.]

118. (1) If a person habitually wanders from place to place and takes with him any child above the age of five, he shall, unless he proves that the child is totally exempted from school attendance or that the child is not by being so taken with him prevented from receiving efficient elementary education, be liable on summary conviction to a fine not exceeding with costs twenty shillings, and shall, for the purposes of the provisions of this Act relating to the descriptions of children who may be sent to a certified industrial school, be deemed not to be exercising proper guardianship over the child<sup>1</sup> (*remainder of section, dealing with the Canal Boats Act, 1877, does not apply to Ireland*) (s. 133 (15)).

Penalty on vagrants preventing children receiving education.

(2) Any constable who finds a person wandering from place to place and taking a child with him may, if he has reasonable ground for believing that the person is guilty of an offence under this section, apprehend him without a warrant, and may take the child to a place of safety in accordance with the provisions of Part II. of this Act, and that Part shall apply accordingly as if an offence under this section were an offence under that Part.

(3) Without prejudice to the requirements of the Education Acts, 1870 to 1907,<sup>2</sup> as to school attendance or to proceedings thereunder, this section shall not apply during the months of April to September, inclusive, to any child whose parent or guardian is engaged in a trade or business of such a nature as to require him to travel from place to place, and who has obtained a certificate of having made not less than two hundred attendances at a public elementary school during the months of October to March immediately preceding, and the power of the Board of Education to make regulations with respect to the issue of certificates of due attendance for the purposes of the Education Acts, 1870 to 1907, shall include a power to make regulations as to the issue of certificates of attendance for the purposes of this section.<sup>3</sup>

119. If any person gives, or causes to be given, to any child under the age of five any intoxicating liquor, except upon the order of a duly qualified medical practitioner, or in case of sickness, or apprehended sickness, or other urgent cause, he shall, on summary conviction, be liable to a fine not exceeding three pounds.

Penalty on giving intoxicating liquor to children.

120. (1) The holder of the licence of any licensed premises shall not allow a child to be at any time in the bar of the licensed premises, except during the hours of closing.<sup>4</sup>

Exclusion of children from bars of licensed premises.

(2) If the holder of a licence acts in contravention of this section, or if any person causes or procures, or attempts to cause or procure, any child to go to or to be in the bar of any licensed premises except during the hours of closing, he shall be liable, on summary conviction, to a fine not exceeding, in respect of the first offence, forty shillings, and in respect of any subsequent offence, five pounds.

(3) If a child is found in the bar of any licensed premises, except during the hours of closing, the holder of the licence shall be deemed to have committed an offence under this section unless he shows that he has used due diligence to prevent the child being admitted to the bar or that the child was apparently a person over the age of fourteen.

(4) Nothing in this section shall apply in the case of any child of the licence-holder or in the case of a child who is resident but not employed in the licensed premises or who is in the bar of licensed premises solely for the purpose of passing through in order to obtain access to, or egress from, some other part of the premises, not being a bar, where there is no other convenient means of access to, or egress from, that part of the

<sup>1</sup> This section applies to Ireland (*Rowan v. Culhane* (1910), 44 I.L.T.R. 70).

<sup>2</sup> See s. 133 (20).

<sup>3</sup> This section is applicable to Ireland, notwithstanding the exception contained therein in favour of a child who has made 200 attendances between October and March, which number of attendances is impossible in Ireland, owing to the fact that only one attendance per day is recordable (*Rowan v. Culhane* (1910), 44 I.L.T.R. 70).

<sup>4</sup> See modification as to Ireland in s. 133 (29), which with s. 120 is noted under INTOXICATING LIQUORS, pp. 541-2.

premises, or in the case of railway refreshment rooms or other premises constructed, fitted, and intended to be used in good faith for any purpose to which the holding of a licence is merely auxiliary.

(5) In this section the bar of licensed premises means any open drinking bar or any part of the premises exclusively or mainly used for the sale and consumption of intoxicating liquor, and the expressions "licence" and "licensed premises" have the same meaning as in the Licensing Acts, 1828 to 1906.<sup>1</sup>

Safety of  
children at  
entertainment.

121. (1) Where an entertainment for children or any entertainment at which the majority of the persons attending are children is provided, and the number of children who attend the entertainment exceeds one hundred, and access to any part of the building in which children are accommodated is by stairs, it shall be the duty of the person who provides the entertainment to station and keep stationed wherever necessary a sufficient number of adult attendants, properly instructed as to their duties, to prevent more children or other persons being admitted to any such part of the building than that part can properly accommodate, and to control the movement of the children and other persons admitted to any such part whilst entering and leaving, and to take all other reasonable precautions for the safety of the children.

(2) Where the occupier of a building permits, for hire or reward, the building to be used for the purpose of an entertainment, he shall take all reasonable steps to secure the observance of the provisions of this section.

(3) If any person, on whom any obligation is imposed by this section, fails to fulfil that obligation, he shall be liable, on summary conviction, to a fine not exceeding, in the case of a first offence, fifty pounds, and in the case of a second or subsequent offence, one hundred pounds, and also, if the building in which the entertainment is given is licensed under any of the enactments relating to the licensing of theatres and of houses and other places for music or dancing, the licence shall be liable to be revoked by the authority by which the licence was granted.

(4) A constable may enter any building in which he has reason to believe that such an entertainment as aforesaid is being, or is about to be, provided with a view to seeing whether the provisions of this section are carried into effect.

(5) It shall be the duty of the council of the county or county borough in which a building in which any contravention of the provisions of this section is alleged to have taken place to institute proceedings under this section if the building is a building licensed by the Lord Chamberlain, or is licensed by the council of the county or county borough under the enactments relating to the licensing of theatres or of houses and other places for music or dancing, and in any other case it shall be the duty of the police authority to institute such proceedings.

(6) This section shall not apply to any entertainment given in a private dwelling-house.

Cleansing of  
verminous  
children.

122. (1) A local education authority<sup>2</sup> may direct their medical officer, or any person provided with and, if required, exhibiting the authority in writing of their medical officer, to examine in any public elementary school provided or maintained by the authority the person and clothing of any child attending the school, and, if on examination the medical officer, or any such authorised person as aforesaid, is of opinion that the person or clothing of any such child is infected with vermin or is in a foul or filthy condition, the local education authority may give notice in writing to the parent or guardian of, or other person

<sup>1</sup> In Ireland, the Licensing (Ir.) Acts, 1833 to 1905 (s. 133 (29)). A licensed person permitted three young children to be in a room or box, in the licensed premises, situated at the end of the bar, but separated therefrom by a partition seven feet high and closed by a door. There was evidence to the effect that the room or box in question was used as a luncheon room where intoxicating liquor was served along with food, but no evidence that it was mainly or exclusively used for the sale or consumption of liquor. The licensed person having been convicted, it was held that the room or box was not a part of the bar of the premises, and the conviction was quashed (*Donaghue v. McIntyre* (1911), H.C. Just. 4<sup>8</sup> S.L.R. 310).

<sup>2</sup> See s. 133 (20).

liable to maintain, the child, requiring him to cleanse properly the person and clothing of the child within twenty-four hours after the receipt of the notice.

(2) If the person to whom any such notice as aforesaid is given fails to comply therewith within such twenty-four hours, the medical officer, or some person provided with and, if required, exhibiting the authority in writing of the medical officer, may remove the child referred to in the notice from any such school, and may cause the person and clothing of the child to be properly cleansed in suitable premises and with suitable appliances, and may, if necessary for that purpose, without any warrant other than this section, convey to such premises and there detain the child until the cleansing is effected.

(3) Where any sanitary authority<sup>1</sup> within the district of a local education authority<sup>1</sup> have provided, or are entitled to the use of, any premises or appliances for cleansing the person or clothing of persons infested with vermin, the sanitary authority shall, if so required by the local education authority, allow the local education authority to use such premises and appliances for the purpose of this section upon such payment (if any) as may be agreed between them or, in default of agreement, settled by the Local Government Board.

(4) Where, after the person or clothing of a child has been cleansed by a local education authority<sup>1</sup> under this section, the parent or guardian of, or other person liable to maintain, the child allows him to get into such a condition that it is again necessary to proceed under this section, the parent, guardian, or other person shall, on summary conviction, be liable to a fine not exceeding ten shillings.

(5) Where a local education authority<sup>1</sup> give notice under this section to the parent or guardian of, or other person liable to maintain, a child, requiring him to cleanse the person and clothing of the child, the authority shall also furnish him with written instructions describing the manner in which the cleansing may best be effected.

(6) The examination and cleansing of girls under this section shall only be effected by a duly qualified medical practitioner or by a woman duly authorised as hereinbefore provided.

(7) For the purposes of this section "medical officer" means any officer appointed for the purpose of section thirteen of the Education (Administrative Provisions) Act, 1907.<sup>1</sup>

#### *General.*

123. (1) Where a person, whether charged with an offence or not, is brought before any court otherwise than for the purpose of giving evidence, and it appears to the court that he is a child or young person, the court shall make due inquiry as to the age of that person, and for that purpose shall take such evidence as may be forthcoming at the hearing of the case, but an order or judgment of the court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to the court, and the age presumed or declared by the court to be the age of the person so brought before it shall, for the purposes of this Act, be deemed to be the true age of that person, and, where it appears to the court that the person so brought before it is of the age of sixteen years or upwards, that person shall for the purposes of this Act be deemed not to be a child or young person.

Presumption, and determination of age.

(2) Where in a charge or indictment for an offence under this Act, or any of the offences mentioned in the First Schedule to this Act, except an offence under the Criminal Law Amendment Act, 1885, it is alleged that the person by or in respect of whom the offence was committed was a child or young person or was under or above any specified age, and he appears to the court to have been at the date of the commission of the alleged offence a child or young person, or to have been under or above the specified age, as the case may be, he shall for the purposes of this Act be presumed at that date to have been a child or young person or to

<sup>1</sup> See s. 133 (20).



have been under or above that age, as the case may be, unless the contrary is proved.

(3) Where in any charge or indictment for an offence under this Act or any of the offences mentioned in the First Schedule to this Act it is alleged that the person in respect of whom the offence was committed was a child or was a young person, it shall not be a defence to prove that the person alleged to have been a child was a young person or the person alleged to have been a young person was a child in any case where the acts constituting the alleged offence would equally have been an offence if committed in respect of a young person or child respectively.

(4) Where a person is charged with an offence under this Act in respect of a person apparently under a specified age it shall be a defence to prove that the person was actually of or over that age.

Evidence of  
wages of  
defendant.

124. In any proceedings under this Act a copy of an entry in the wages book of any employer of labour, or, if no wages book be kept, a written statement signed by the employer, or by any responsible person in his employ, shall be *prima facie* evidence that the wages therein entered, or stated as having been paid to any person, have in fact been so paid.

Provision as to  
contribution  
orders.

125. The persons liable to maintain a youthful offender, young person, or child, against whom an order to contribute to the maintenance of the youthful offender, young person, or child may be made under this Act shall include his step-parent, and, if the court having cognisance of the case thinks fit, a person cohabiting with his mother, whether or not the person so cohabiting is his putative father, and in the case of illegitimacy his putative father :

Provided that where the youthful offender, young person, or child is illegitimate and an affiliation order for his maintenance has previously been made on the application of his mother under the enactments relating to bastardy, the court shall not (unless in view of the special circumstances of the case the court thinks it desirable) make an order for contribution against the putative father, but may order the whole or any part of the payments accruing due under the affiliation order to be made to the chief inspector of reformatory and industrial schools or such other person as may be named in the order, to be applied by him towards the maintenance of the youthful offender, young person, or child.

Reception and  
maintenance of  
children and  
young persons in  
workhouses.

126. Boards of Guardians shall provide for the reception of children and young persons brought to a workhouse in pursuance of this Act, and, where the place to which under this Act a child or young person is authorised to be taken is a workhouse, the master shall receive the child or young person into the workhouse if there is suitable accommodation therein, and any expenses incurred in respect of the child or young person shall be paid out of the common fund.<sup>1</sup>

Variation of  
trusts for main-  
tenance of child  
or young person.

127. (1) Where a child or young person is by an order of any court made under this Act removed from the care of any person, and that person is entitled under any trust to receive any sum of money in respect of the maintenance of the child or young person, the court may order the whole or any part of the sum so payable under the trust to be paid to the person to whose care the child or young person is committed, to be applied by that person for the benefit of the child or young person in such manner as, having regard to the terms of the trust, the court may direct.

(2) An appeal shall lie from an order of a court of summary jurisdiction under this section to quarter sessions.

128. (1) In the definitions of "child" and "young person" in the Summary Jurisdiction Act, 1879,<sup>2</sup> "fourteen years" shall be substituted for "twelve years." (*The remainder of the section does not apply to Ireland. See s. 133 (7).*)

Application of  
Summary  
Jurisdiction  
Acts.

129. All orders of a court of summary jurisdiction, whether a petty sessional court<sup>3</sup> or not, under this Act shall be made, and all proceedings in relation to any such orders shall be taken, in manner provided by the Summary Jurisdiction Acts (*and the power of making rules under section*

<sup>1</sup> In Ireland, funds of the Union (s. 133 (14)).

<sup>2</sup> That is, the Summary Jurisdiction over Children (Ir.) Act, 1884 (s. 133 (7)).

<sup>3</sup> See s. 133 (5), and p. 694, *ante*.

*twenty-nine of the Summary Jurisdiction Act, 1879, shall extend to making rules for regulating the procedure of courts of summary jurisdiction under this Act and matters incidental thereto*<sup>1</sup>).

130. An order in council under this Act may be revoked or varied by any subsequent Order in Council.

131. For the purposes of this Act unless the context otherwise requires—

Variation of  
Orders in  
Council,  
General  
definitions.

The expression "child" means a person under the age of fourteen years;

The expression "young person" means a person who is fourteen years of age or upwards and under the age of sixteen years;

The expression "guardian," in relation to a child, young person, or youthful offender, includes any person who, in the opinion of the court having cognisance of any case in relation to the child, young person, or youthful offender, or in which the child, young person, or youthful offender is concerned, has for the time being the charge of or control over the child, young person, or youthful offender;

The expression "legal guardian," in relation to an infant, child, young person, or youthful offender, means a person appointed, according to law, to be his guardian by deed or will, or by order of a court of competent jurisdiction;

The expression "place of safety" means any workhouse or police station, or any hospital, surgery, or any other suitable place, the occupier of which is willing temporarily to receive an infant, child, or young person;

The expression "local education authority" means a local education authority for the purpose of Part III. of the Education Act, 1902;<sup>2</sup>

The expressions "police authority" and "police fund" as respect the City of London mean the Common Council and the fund out of which the expenses of the city police are defrayed, and elsewhere have the same meanings as in the Police Act, 1890;<sup>3</sup>

The expression "common fund" means, as respects a poor law union consisting of a single parish,<sup>4</sup> the poor rate of that parish;

The expression "street" includes any highway and any public bridge, road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not;

The expression "public place" includes any public park, garden, sea beach, or railway station, and any ground to which the public for the time being have or are permitted to have access, whether on payment or otherwise;

The expression "intoxicating liquor" means any fermented, distilled, or spirituous liquor which cannot according to any law for the time being in force be legally sold without a licence from the Commissioners of Inland Revenue.

132. [*Application of Act to Scotland.*]

133. This Act in its application to Ireland shall be subject to the following modifications:—

Application to  
Ireland.

- (1) The Chief Secretary shall be substituted for the Secretary of State;
- (2) The Dublin Gazette shall be substituted for the London Gazette;
- (3) For references to Orders in Council by His Majesty there shall be substituted references to Orders in Council by the Lord-Lieutenant;
- (4) The powers which may be exercised by His Majesty may be exercised as to Ireland by the Lord-Lieutenant;
- (5) A court of summary jurisdiction constituted in accordance with the provisions of section two hundred and forty-nine of the

<sup>1</sup> The italicised words of this section do not apply to Ireland (s. 133 (7)). For substituted provisions, see s. 133 (7). See Rules 30, 32, 33, 34, 36 of the Summary Jurisdiction Rules, 1909 (made pursuant to s. 133 (7) and printed *verbatim, post*), for general provisions as to procedure under the Act.

<sup>2</sup> But see as to Ireland, s. 133 (20).

<sup>3</sup> See s. 133 (23).

<sup>4</sup> See s. 133 (7).

Public Health (Ir.) Act, 1878,<sup>1</sup> shall be substituted for a petty sessional court :

- (6) Section five of the Summary Jurisdiction over Children (Ir.) Act, 1884, which gives power to deal summarily with young persons by consent, shall extend to all indictable offences other than homicide, and accordingly in that section for the words "specified in the schedule to this Act" there shall be substituted the words "other than homicide" :

- (7) References to the Summary Jurisdiction Act, 1879, shall, save as otherwise provided in this subsection, be construed as references to the Summary Jurisdiction over Children (Ir.) Act, 1884,<sup>2</sup> and the reference to section ten of the first-mentioned Act shall be construed as a reference to section four of the last-mentioned Act.

The reference to the provisions of the first-mentioned Act with respect to recognisances to be of good behaviour shall be construed as a reference to the provisions of the Petty Sessions (Ir.) Act, 1851, with respect to recognisances to keep the peace.

The reference to the First Schedule of the first-mentioned Act shall not apply.

For the provisions of this Act giving power to make rules under the first mentioned Act the following provision shall be substituted :—

"The Lord Chancellor of Ireland may make rules regulating the procedure of courts of summary jurisdiction under this Act,<sup>3</sup> and other matters incidental thereto, and all rules so made shall be laid as soon as may be before both Houses of Parliament" :

- (8) The Dublin Police Act, 1859, shall be substituted for the Metropolitan Police Courts Acts, 1839 and 1840 :
- (9) The Union Officers (Ir.) Superannuation Acts, 1865 and 1872, shall be substituted for the Superannuation (Metropolis) Act, 1866 :
- (10) For references to the Indictable Offences Act, 1848, there shall be substituted references to the Petty Sessions (Ir.) Act, 1851, and for references to particular provisions of the first-mentioned Act there shall be substituted references to the corresponding provisions of the last-mentioned Act :
- (11) The prohibition of the purchase of old metal from children and young persons shall not apply :
- (12) For the prohibition against taking any pawns from children the following provision shall be substituted :—

"If a pawnbroker takes an article in pawn from any person apparently under the age of fourteen years, he shall be liable on summary conviction to a fine not exceeding ten pounds with the right of appeal in the manner provided by the Summary Jurisdiction Acts irrespective of the amount of the fine" :

- (13) Inspector of Reformatory and Industrial Schools in Ireland shall be substituted for Chief Inspector and Chief Inspector of Reformatory and Industrial Schools respectively, and Assistant Inspector of Reformatory and Industrial Schools in Ireland shall be substituted for Assistant Inspector :
- (14) In relation to a board of guardians "funds of the union" shall be substituted for "common fund" :
- (15) Any reference to the Poor Removal Act, 1846, to the Poor Law Act, 1879, to the Canal Boats Act, 1877, or to an order of affiliation shall not apply :
- (16) Any reference to the Criminal Appeal Act, 1907, or to an appeal to the Court of Criminal Appeal shall not apply :
- (17) The provisions of this Act relating to children liable to be sent to

<sup>1</sup> See p. 694, *ante*.

<sup>2</sup> Noted p. 73, *ante*.

<sup>3</sup> See the Summary Jurisdiction Rules, 1909, printed *verbatim*, *post*.



industrial schools shall extend and apply to any child who is found destitute, being an orphan :

- (18) In the application of the provisions of Part IV. of this Act relating to the sending, removal, and transfer, respectively, of a youthful offender or child to and from a certified school, the following provision shall apply :

" Provided that a youthful offender or child who appears to belong to the Roman Catholic Church shall not be ordered to be sent, removed, or transferred to any school save to a certified school conducted in accordance with the doctrines of that church, and a youthful offender or child who does not appear to belong to the Roman Catholic Church shall not be ordered to be sent, removed, or transferred to any school conducted in accordance with the doctrines of that church :

For the purposes of this section the youthful offender or child shall be deemed to belong to the religious persuasion to which his parents belong, and, in all cases where his parents do not belong to the same religious persuasion, or where the religious persuasion of his parents is unknown, the youthful offender or child shall be deemed to belong to the religious persuasion in which he appears to have been baptized or, that not appearing, to which he professes to belong " :

- (19) The local authority for the purposes of Part IV. of this Act shall be the council of any county and the council of any county borough, both as respects a reformatory and as respects an industrial school, and the expenses incurred by a local authority under Part IV. of this Act shall be defrayed in the case of a county council out of the county fund, as a county at large charge, and in the case of a county borough council out of any rate or fund applicable to the purposes of the Public Health (Ir.) Acts, 1878 to 1907, as if incurred for sanitary purposes, or out of any other rate or fund which the Local Government Board for Ireland may on the application of the council approve, and land may be acquired by a local authority for the purposes of Part IV. of this Act as for the purposes of the Local Government (Ir.) Act, 1898, and the borrowing powers conferred on local authorities by Part IV. of this Act may be exercised, both as respects a reformatory and as respects an industrial school, in the case of a county council under the Local Government (Ir.) Act, 1898, and in the case of a county borough council under the Public Health (Ir.) Acts, 1878 to 1907 :
- (20) For the provisions of this Act relating to the enforcement of an attendance order the following provision shall be substituted :  
 " A court of summary jurisdiction constituted in accordance with the provisions of the Irish Education Act, 1892,<sup>1</sup> may, if it thinks fit, on complaint of a school attendance committee made under section four<sup>2</sup> of that Act for the purpose of enforcing an attendance order, order a child to be sent to a certified day industrial school, or, if it appears to the court that there is no such school suitable for the child, to a certified industrial school, either in addition to or without inflicting any fine under that section," and references in this Act to a " local education authority," where they occur in relation to day industrial schools or in relation to children sent to industrial schools at the instance of a local education authority, shall be construed as references to the school attendance committee<sup>3</sup> appointed under the Irish Education Act, 1892, and the expression " area of any local education authority " shall mean any place to which that Act applies,<sup>3</sup> and the expenses incurred and moneys received by a school attendance committee under this Act shall be defrayed and applied in like manner as expenses incurred and moneys received by that committee under that Act. Other references

<sup>1</sup> See p. 431.

<sup>2</sup> See p. 428.

<sup>3</sup> See p. 427.

to a local education authority shall be construed as references to the council of the county or county borough, and references to a public elementary school shall be construed as references to a national school, and any reference to the Elementary Education Act, 1876, or to the Education Acts, 1870 to 1907, or any of those Acts, shall not apply :

- (21) Any relief which can under this Act be given to the parent or other person ordered to contribute to the industrial training and meals of a child sent to a day industrial school shall be given by the board of guardians of the poor law union in which the parent or other person is resident, and shall be charged to the union :
- (22) An order made upon a parent or other person to contribute to the maintenance or expenses of a youthful offender or child under Part IV. of this Act and any other order enforceable in like manner may be enforced in the manner provided by section twenty-five of the Irish Reformatory Schools Act, 1868 :
- (23) Payments required by this Act to be made from the police fund of a district shall be made by the police authorities of the district, and those authorities shall be repaid in like manner as the said police fund, and the definitions of police authority and police fund in this Act shall not apply :
- (24) The expression " petty sessional division " in the police district of Dublin metropolis shall mean that district, and elsewhere in Ireland shall mean the petty sessions district :
- (25) No licence shall be granted in respect of a child under the age of fourteen years detained in a certified school except upon the condition of the child attending regularly some national or other efficient school named in the licence, and being a school under the management of a manager belonging to the religious persuasion to which the child belongs :
- (26) A board of guardians may, with the consent of the Local Government Board for Ireland, contribute to the funds of any society or body corporate for the prevention of cruelty to children :
- (27) The expression " managers of a district poor law school " in Part IV. of this Act means the board of management of a school for any two or more unions established under the Poor Relief (Ireland) Acts, 1838 to 1900, and the expression " district poor law school " means a school so established :
- (28) The reference to the Criminal Evidence Act, 1898, shall not apply, but, in any proceeding against any person for an offence under Part II. of this Act, or for any of the offences mentioned in the First Schedule to this Act, such person shall be competent but not compellable to give evidence, and the wife or husband of such person may be required to attend to give evidence as an ordinary witness in the case, and shall be competent but not compellable to give evidence :
- (29) The provisions of section one hundred and twenty of this Act (relative to the exclusion of children from bars of licensed premises) shall not apply in the case of any child going to or being upon licensed premises if a substantial part of the business carried on upon the premises is a drapery, grocery, hardware, or other business wholly unconnected with the sale of intoxicating liquor, and the child, or the person (if any) in whose custody the child is, goes to or is upon the premises for the purpose of purchasing goods other than intoxicating liquor for consumption on the premises ; and the reference in the said section to the Licensing Acts, 1828 to 1906, shall be construed as a reference to the Licensing (Ir.) Acts, 1833 to 1905.<sup>1</sup>

**134.** (1) This Act may be cited as the Children Act, 1908.

(2) Save as otherwise expressly provided, this Act shall come into operation on the first day of April, nineteen hundred and nine.

Short title,  
commencement  
and repeal.

<sup>1</sup> The above amends s. 120, which with s. 133 (29) is noted under INTOXICATING LIQUORS, pp. 541-2.

(3) The enactments mentioned in the Third Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule: Provided that nothing in this repeal shall affect any notice or certificate given or any appointment or rules made under any enactment hereby repealed, and every such notice, certificate, appointment, and rules shall have effect as if given or made under this Act.

## SCHEDULES.

## FIRST SCHEDULE.

Any offence under sections twenty-seven, fifty-five, or fifty-six of the Offences against the Person Act, 1861, and any offence against a child or young person under sections five, forty-two, forty-three, fifty-two, or sixty-two of that Act, or under the Criminal Law Amendment Act, 1885.

Any offence under the Dangerous Performances Acts, 1879 and 1897.

Any other offence involving bodily injury to a child or young person.

## SECOND SCHEDULE.

Section 128.

First column. Adults pleading guilty.	Second Column. Adults consenting.
	Committing an indecent assault upon a person, whether male or female, who in the opinion of the court is under the age of sixteen years.

THIRD SCHEDULE.<sup>1</sup>

Section 134.

Session and Chapter.	Short Title.	Extent of Repeal.
31 & 32 Vict. c. 25.	The Industrial Schools (Ireland) Act, 1868.	The whole Act.
31 & 32 Vict. c. 59.	The Irish Reformatory Schools Act, 1868.	The whole Act, except section twenty-five.
34 & 35 Vict. c. 112.	The Prevention of Crimes Act, 1871.	Section fourteen.
43 & 44 Vict. c. 15.	The Industrial Schools Acts Amendment Act, 1880.	The whole Act.
44 & 45 Vict. c. 29.	The Reformatory Institutions (Ireland) Act, 1881.	The whole Act.
47 & 48 Vict. c. 19.	The Summary Jurisdiction over Children (Ireland) Act, 1884.	Subsection (1) of section five from the words "and if the young person is a male," to end of subsection. In section six the words "imprisoned for a longer period than one month nor."

<sup>1</sup> Many Acts and portions of Acts not relating to Ireland, which are included in this schedule and thereby repealed, are here omitted.



Session and Chapter.	Short Title.	Extent of Repeal.
48 & 49 Vict. c. 19.	The Industrial Schools (Ireland) Act, 1885.	The whole Act.
48 & 49 Vict. c. 69.	The Criminal Law Amendment Act, 1885.	Section four, from "and if, having regard" to "as if he or she had been sworn."
56 & 57 Vict. c. 48.	The Reformatory Schools Act, 1893.	The whole Act.
60 & 61 Vict. c. 57.	The Infant Life Protection Act, 1897.	The whole Act.
62 & 63 Vict. c. 12.	The Reformatory Schools Act, 1899.	The whole Act.
1 Edw. 7, c. 20.	The Youthful Offenders Act, 1901.	The whole Act.
4 Edw. 7, c. 15.	The Prevention of Cruelty to Children Act, 1904.	Section one. In section two, paragraph (a). In section four, the words "or any of the offences mentioned in the First Schedule to this Act," and paragraph (b). Sections five to eleven. In section twelve, the words "or for any of the offences mentioned in the First Schedule to this Act." Section thirteen. Section fourteen. In section fifteen, the words "or for any of the offences mentioned in the First Schedule to this Act." Section sixteen. In section seventeen, the words "or any of the offences mentioned in the First Schedule to this Act." In section eighteen, the words "or any of the offences mentioned in the First Schedule to this Act," and the words "or of an offence mentioned in the First Schedule to this Act," and "or any offence mentioned in the First Schedule to this Act," and subsection (2) from "and may charge him with the offences" to the end of that subsection. Section nineteen, from "or when in the case" to "decision of the court," and the words "or order or decision." Section twenty. Section twenty-one. In section twenty-three, subsection (2). Section twenty-five. Section twenty-six.

Session and Chapter.	Short Title.	Extent of Repeal.
7 Edw. 7. c. 17.	The Probation of Offenders Act, 1907.	<p>Section twenty-eight.</p> <p>In section twenty-nine, the definitions of "street," "place of safety," and "Industrial Schools Acts."</p> <p>In section thirty-one, the words "The Chief Secretary shall be substituted for a Secretary of State."</p> <p>The Schedules.</p> <p>In section one, subsection (3), from "and if the offender" to the end of the subsection.</p> <p>Subsection (4) of section six, from "In the case" to the end of the subsection.</p>

SUMMARY JURISDICTION RULES, 1909. DATED JULY 31, 1909, MADE BY THE LORD CHANCELLOR OF IRELAND UNDER S. 133 (7) OF THE CHILDREN ACT, 1908.

(Statutory Rules and Orders, 1909, No. 952.)

1. In these rules "the Act" means the Children Act, 1908.

2. In all proceedings under the Act the forms in Schedule A hereto, when applicable, and in other cases the several forms provided under the Petty Sessions (Ir.) Act, 1851, and any Act amending the same, with the necessary modifications, shall be deemed good, valid and sufficient in law, and shall be the proper forms to be used, provided that no omission or variation from the said forms shall vitiate or make void, or in any way affect the proceedings, provided the forms used in substance follow the forms set out in the said schedules.

**Rules.**

*Forms, generally.*

3. Where a visitor or other person appointed or authorised to execute the provisions of Part I. of the Act is desirous of obtaining from a justice an order under section 5 of the Act, he shall take out a summons specifying the order he seeks, and said summons shall be served on the person by whom the infant referred to in said section is kept two clear days before the return day named in said summons.

*Summons under s. 5.*

4. A complainant desirous of taking proceedings against any person, society, or company for an offence under Part I. of the Act shall take out a summons, specifying the offence alleged to have been committed by the defendant, and said summons shall be served on the defendant two clear days before the return day thereof.

*Summons under Part I.*

5. Where a complainant is desirous of proceeding under section 18 of the Act, he shall take out a summons, specifying the complaint made against the defendant, and said summons shall be served on the defendant two clear days before the return day thereof.

*Summons under s. 18.*

6. Where a constable or a person authorised by a justice, who has taken a child or young person to a place of safety in pursuance of section 20, subsection 1 of the Act, is desirous of bringing said child or young person before a court of summary jurisdiction, he shall, as soon as possible, take out a summons, specifying the order sought, wherein he shall name as defendant the person who had the custody, charge or care of the child or young person, and the summons shall be served on the defendant two clear days before the return day thereof.

*Summons under s. 20 (1).*

7. Where a complainant is desirous of obtaining from a court of

**Rules.**

*Summons under  
s. 21.*

summary jurisdiction an order under section 21 of the Act, committing a child or young person to the care of a relative or other fit person, he shall, if the order is sought at a time other than that at which the person having the custody, charge or care of the infant, is convicted, committed for trial, or bound over as in said section mentioned, take out a summons specifying the complaint alleged and the order sought, and shall name as defendant the person having the custody, charge or care of the child or young person, and said summons shall be served on the defendant two clear days before the return day thereof.

*Summons under  
s. 22 (1).*

8. Where a complainant is desirous of proceeding under section 22, subsection 1 of the Act, he shall take out a summons, and said summons shall be served on the defendant two clear days before the return day thereof.

*Summons under  
s. 22 (2), (3).*

9. No order shall be made under section 22, subsections 2 and 3 of the Act, against the parent or person liable to maintain a child or young person, unless a summons specifying the order sought, shall have been served on the parent or person liable to maintain the child or young person two clear days before the return day thereof.

*Summons under  
s. 22 (5), (6).*

10. No order shall be made under section 22, subsections 5 and 6 of the Act, for the attachment of the pension or income of the parent or person liable to maintain the child or young person, unless a summons, specifying the order sought, shall have been served seven clear days before the return day thereof on the parent or person liable as aforesaid and also upon the person by whom the pension or income is payable.

*Summons under  
s. 23 (2), (3).*

11. Where any person is desirous of obtaining an order under section 23, subsection 2 or 3 of the Act, he shall take out a summons, specifying the order sought, and he shall name as defendant in said summons the person to whose care the child or young person was committed, and the summons shall be served on the defendant two clear days before the return day thereof.

*Summons under  
s. 24.*

12. The person laying the information to lead to the issue of a warrant under section 24 of the Act shall, as soon as possible after the warrant has been executed, and the child or young person taken to a place of safety, take out a summons asking that the child or young person be committed to the care of a relative or other fit person as provided in subsection 1 of said section, and shall name as defendant in said summons the person who had the custody, charge or care of said child or young person, and said summons shall be served on the defendant two clear days before the return day thereof.

*Summons under  
s. 25 (2).*

13. Where a person appointed to visit and inspect any institution, specified in section 25, is obstructed by any person in the execution of his duties, and is desirous of proceeding against the person who obstructed him to recover the fine specified in subsection 2 of said section, he shall take out a summons specifying the complaint, and shall name as defendant in said summons the person alleged to have obstructed him, and said summons shall be served on the defendant two clear days before the return day thereof.

*Summons under  
s. 39.*

14. Where a complainant is desirous of proceeding under section 39 of the Act, he shall take out a summons specifying the complaint, and said summons shall be served on the defendant two clear days before the return day thereof.

*Summons under  
s. 41 (1), (2).*

15. Where a complainant is desirous of proceeding under section 41, subsection 1 or 2 of the Act, he shall take out a summons specifying the complaint, and said summons shall be served on the defendant two clear days before the return day thereof.

*Summons under  
s. 58 (1).*

16. Where a complainant is desirous of proceeding under section 58, subsection 1 of the Act, he shall take out a summons specifying the complaint and the order sought, and he shall name as defendants in said summons the child, and the parent or guardian (if any) of the child, if he can be found, and resides within a reasonable distance, and said summons shall be served on the defendants two clear days before the return day thereof. Provided that where it is inexpedient or impracticable to take out a summons the justices may proceed in the matter although no summons has been taken out.



17. Where a parent or guardian is desirous of proceeding under section 58, subsection 4 of the Act, he shall take out a summons in which he shall name the child as a defendant, and said summons shall be served on the child two clear days before the return day thereof. *Rules. Summons under s. 58 (4).*

18. Where the guardians of a poor law union or the board of management of a school for any two or more unions established under the Poor Relief (Ir.) Acts, 1838 to 1900, are desirous of proceeding under section 58, subsection 5 of the Act, they shall take out a summons specifying the complaint and the order sought, and shall name as defendants in said summons the child, and the parent or guardian (if any) of the child, if he can be found, and resides within a reasonable distance, and said summons shall be served on the defendants two clear days before the return day thereof. *Summons under s. 58 (5).*

19. Where a complainant is desirous of proceeding under section 59 of the Act, he shall take out a summons specifying the complaint and the order sought, and he shall name as defendants in said summons the young person, and the parent or guardian (if any) of the young person, and said summons shall be served on the defendants two clear days before the return day thereof. Provided that where it is inexpedient or impracticable to take out a summons the justices may proceed in the matter, although no summons has been taken out. *Summons under s. 59.*

20. Where a complainant is desirous of proceeding under section 66, subsection 3 of the Act, he shall take out a summons specifying the complaint and order sought, and he shall name as defendant in the summons the manager, or one of the managers, of the school to which the youthful offender or child has been ordered to be sent, and said summons shall be served on the defendant seven clear days before the return day thereof. *Summons under s. 66 (3).*

21. The summons issued in pursuance of section 67, subsection 6, shall be served on the parent or guardian of the youthful offender or child two clear days before the return day thereof. *Summons under s. 67 (6).*

22. Where a complainant is desirous of proceeding under section 71 of the Act, he shall take out a summons specifying the complaint, and he shall name as defendants the youthful offender or child, and the parent or guardian (if any) of the youthful offender or child, if he can be found and resides within a reasonable distance, and the summons shall be served on the defendants two clear days before the return day thereof. *Summons under s. 71.*

23. The manager or managers of the certified school to which the youthful offender or child had been sent may be the complainant in proceedings taken under section 72, subsection 6 of the Act, and he or they shall take out a summons specifying the complaint, and said summons shall be served on the defendant two clear days before the return day thereof. *Summons under s. 72 (6).*

24. Where a local authority is desirous of proceeding against another local authority under section 74, subsection 7 of the Act, the first named authority shall take out a summons specifying the complaint and order sought, and shall name as defendant in said summons the local authority within whose area the youthful offender or child is alleged to have been resident, and said summons shall be served on the defendant seven clear days before the return day thereof. *Summons under s. 74 (7).*

25. Where the Inspector of Reformatory and Industrial Schools in Ireland is desirous of proceeding under section 75, subsection 2 (b) of the Act, he, or an agent on his behalf, or a constable thereto required by him shall take out a summons specifying the order sought, and shall name as defendant in said summons the parent or other person liable to maintain the youthful offender or child, and said summons shall be served on the defendant two clear days before the return day thereof. *Summons under s. 75 (2).*

26. Where the person on whom the order referred to in section 75, subsection 4 of the Act is made, or the Inspector of Reformatory and Industrial Schools in Ireland, is desirous of applying to have said order varied, the said person or the inspector, or an agent on his behalf, or a constable thereto required by the inspector, shall take out a summons specifying the respect in which he seeks to have said order varied, and said summons shall be served on the inspector or person on whom the

**Rules.**

order was made fourteen days before the return day thereof. The transmission of a copy of said summons in a prepaid registered envelope, addressed to said Inspector at his office, The Castle, Dublin, shall be deemed sufficient service of said summons on said Inspector.

*Service of maintenance order.*

27. Where the parent or other person liable to maintain a youthful offender or child was not summoned to attend the sitting of the court of summary jurisdiction at which an order was made under section 75 of the Act against him to contribute to the maintenance of the child or youthful offender in a certified school, said order shall be served on him by delivering to him a copy of said order, or if he cannot conveniently be met with, by leaving such copy for him at his last and most usual place of abode, or at his office, warehouse, counting-house, shop, factory, or place of business, with some inmate of the house not being under sixteen years of age, and said order shall be binding on him, unless he shall make an application against it within fourteen days after it has been so served on him.

*Summons to vary maintenance order.*

28. Where a parent, or other person liable to maintain a youthful offender or child, is desirous of proceeding to vary an order, made against him and without notice to him to contribute to the maintenance of the youthful offender or child, he shall take out a summons specifying the respect in which he seeks to have said order varied, and shall name as defendant therein the Inspector of Reformatory and Industrial Schools in Ireland, and said summons shall be served seven clear days before the return day thereof, and the said summons may be served on the Inspector in the manner provided in Rule 26.

*Summons under s. 75 (11).*

29. Where an order is sought under section 75, subsection 11 of the Act, attaching any pension or income payable to the parent or other person liable to maintain the youthful offender or child, or part thereof, the person by whom the pension or income is payable shall be named as a defendant in the summons by which the order is sought, and the summons shall be served on him seven clear days before the return day thereof.

*Naming parent or guardian defendant.*

30. Where a child or young person is charged on a summons with any offence, his parent or guardian may in any case be named as a defendant, and shall, if he can be found, and resides within a reasonable distance, and the person so charged or brought before the court is a child, be named as a defendant along with the child or young person, and the summons shall be served on the defendants two clear days before the return day thereof.

*Warrant to compel attendance of parent or guardian.*

31. Where the constable by whom a child or young person is arrested, or the officer in charge of the police station to which he is brought, has caused the parent or guardian of the child or young person to be warned to attend the court at which the child or young person appears, and the parent or guardian fails or neglects without reasonable excuse to attend, the justices comprising said court may grant a warrant to compel the attendance of the parent or guardian, and may adjourn the hearing of the case to such day as to them may seem fit.

*Appeal.*

32. Where by the Act an appeal is allowed from an order of a court of summary jurisdiction to a Court of Quarter Sessions or Recorder's Court said appeal shall be prosecuted in the manner prescribed in section 24 of the Petty Sessions (Ir.) Act, 1851, or any Act amending the same, and the forms prescribed in the said section, or in any Act amending the same, for appeals under that Act shall be used in appeals under the Act with the necessary modifications, and the same proceedings shall be taken for the purpose of carrying out the orders made by the Court of Quarter Sessions or Recorder's Court on the hearing of said appeal, as are prescribed by said section 24, or by any Act amending the same, to be taken for the purpose of carrying out the orders made by the Court of Quarter Sessions or Recorder's Court on the hearing of appeals under the Petty Sessions (Ir.) Act, 1851, with the necessary modifications.

*Method of serving summons.*

33. Every summons in the foregoing rules specified, save as hereinbefore mentioned, shall be served upon the person to whom it is directed by delivering to him a copy of such summons, or if he cannot conveniently be met with, by leaving such copy for him at his last or most usual place of abode, or at his office, warehouse, counting-house, shop, factory, or

place of business with some inmate of the house not being under sixteen years of age ; and in every case the person who shall serve such summons shall indorse on the same the time and place where it was served, and shall attend with the same at the hearing of the complaint to depose, if necessary, to such service. In the absence of any statutory provision regulating service of process, every summons issued against a corporation aggregate may be served on the mayor or other head officer, or on the town clerk, treasurer or secretary of such corporation.

34. Where it shall appear to the justice by whom a summons is heard, that the facts proved do not justify the making of the order sought in said summons, but would justify the making of some other order under the Act, it shall be lawful for the justices, upon such terms as to them may seem right, to amend the summons in any way they think proper, and to make such order as the facts proved justify them in making under the Act. *Amendment of summons.*

35. The security which a court of summary jurisdiction may, under section 99, subsection 2 of the Children Act, 1908, require a parent or guardian to give for the good behaviour of a child or young person shall be given by way of recognisance. *Security under s. 99 (2).*

36. Cases and charges under the Act shall, so far as consistent with the provisions of section one hundred and eleven, subsection one, be heard and disposed of on the same day as the ordinary Petty Sessions Courts or any adjournment thereof are held in each city, or town, or county, or petty sessions district of a county, for the hearing and disposal of charges and cases under the Summary Jurisdiction Acts. *Hearing of cases.*

## SCHEDULE A.

### CHILDREN ACT, 1908.

#### I. *Summons to Child or Young Person, or to Parent or Guardian, or to both.* *Forms.*

Petty Sessions District of ——— County of ———

*E.F.* of ——— Complainant.

[*A. B.* of ——— and] *C.D.* of ——— Defendant(s).

Information has been laid this day by [*or*, complaint has been this day made by ———] for that [*you*] *A. B.*, being a child [*or* young person under 16], on the ——— day of ———, 19—, at ——— in the ——— aforesaid, did

And information has further been laid by [*or*, And complaint has further been made by ———] for that you *C. D.*, are the parent [*or* guardian] of the said child or young person.

You are therefore [*each of you*] hereby summoned to appear before the Court of Summary Jurisdiction sitting at ——— on ——— day the ——— day of ———, 19—, at the hour of ——— in the ——— noon, to answer to the said informations [*or*, complaints].

Given under my hand the ——— day of ——— one thousand nine hundred and

*J.P.*

Justice of the Peace for the  
[county] aforesaid.

#### 2. *Summons for Attendance of Parent, &c., of Young Person or Child.*

Petty Sessions District of ——— County of ———

*E. F.* of ——— Complainant. *C. D.* of ——— Defendant.

Whereas *A. B.*, a child [*or* young person] within the meaning of the Children Act, 1908, of whom you are stated to be the father [*or* parent or guardian having the possession and control of such child or young person] is charged for that (*here set forth the offence charged*) ——— [*or* whereas application is made for an order for the committal to a Certified Industrial School of one *A. B.*, a child under the age of 14 years, of whom



**Rules.**

you are stated to be the father [or parent or guardian having the possession and control of such child].

**Forms.**

You are therefore hereby summoned to attend before the Court of Summary Jurisdiction sitting at — on the — day of — 19—, at the hour of — in the — noon and during all the proceedings of the case.

Given under my hand this — day of — one thousand nine hundred and

*J.P.*

Justice of the Peace for the  
[county] aforesaid.

### 3. *Commitment to Place of Detention on Remand.*

Petty Sessions District of — County of —

*C. D.*, Complainant. *A. B.*, Defendant.

To the Head or other Constable of — and all other Peace Officers of the said County of — and to the Occupier of the Place of Detention at

*A. B.*, hereinafter called the defendant, being a child [or young person under 16], being brought before the Court of Summary Jurisdiction sitting at —, charged with having

The hearing of the case being adjourned until the — day of —, 19—, at — o'clock in the — noon.

You — are therefore hereby commanded to convey the defendant to the said place of detention, and there to deliver him to the occupier thereof, together with this warrant, and you, the occupier of the said place of detention, to receive him into your custody and keep him until the — day of —, 19—, and on that day you the said Constables are required to convey him before the Court of Summary Jurisdiction sitting at — at the hour of — in the — noon, to be further dealt with according to law.

Given under my hand the — day of — one thousand nine hundred and

*J.P.*

Justice of the Peace for the  
[county] aforesaid.

### 4. *Commitment to Place of Detention pending Trial.*

Petty Sessions District of — County of —

*C. D.*, Complainant. *A. B.*, Defendant.

To the Head or other Constable of — and all other Peace Officers of the said County of — and to the Occupier of the Place of Detention at

*A. B.*, hereinafter called the defendant, being a child [or young person under 16], being brought before the Court of Summary Jurisdiction sitting at —, charged with having

The defendant being committed for trial:

You, said —, are therefore hereby commanded to convey the defendant to the said place of detention, and there to deliver him to the occupier thereof, together with this warrant, and you, the occupier of the said place of detention, to receive him into your custody, and keep him until the next Court of Assize [or Quarter Sessions], when you the said Constables are required to convey him before such court to be further dealt with according to law.

Given under my hand the — day of — one thousand nine hundred and

*J.P.*

Justice of the Peace for the  
[county] aforesaid.

5. *Conviction (Commitment to Place of Detention).*Rules.  
Forms.

Petty Sessions District of ——— County of ———

E. F., Complainant. A. B. and C. D., Defendants.

A.B., hereinafter called the defendant, being above the age of seven years, and a child [or being a young person] within the meaning of the Children Act, 1908, is this day convicted for that he, on the ——— day of ———, 19—, at ——— within the ——— aforesaid, did

[If detention is ordered :—

And the Court being satisfied that none of the other methods in which the case may legally be dealt with is suitable, it is ordered that the defendant, for his said offence, be committed to custody in the place of detention at ——— and there kept for the space of ———.]

[If costs are ordered to be paid by a young person, add :—

And it is ordered that the defendant pay to ——— the sum of ——— for costs [by instalments of ——— for every ——— days, the first instalment to be paid] forthwith [or on the day of ———] :

And in default of payment it is ordered that the sum due be levied by distress and sale of the defendant's goods, and in default of sufficient distress that the defendant be committed to custody in the said place of detention for the space of ——— commencing at the termination of the period of detention before adjudged, unless the said sum [and all costs and charges of the said distress] be sooner paid.]

[In other cases where costs are ordered, add :—

And it is ordered that C. D., the parent [or guardian] of the defendant, pay to ——— the sum of ——— for costs [by instalments of ——— for every ——— days, the first instalment to be paid] forthwith [or on the ——— day of ———] :

And in default of payment it is ordered that the sums due be levied by distress and sale of the said C. D.'s goods, and in default of sufficient distress that the said C. D. be imprisoned in His Majesty's prison at ——— and there kept for the space of ——— unless the said sums [and all costs and charges of the [said distress]] be sooner paid.]

[Where security for good behaviour is required, add :—

And it is further ordered that C. D., the parent [or guardian] of the said defendant, do forthwith to the satisfaction of [this Court] ——— give security in the sum of ——— for the good behaviour of the said defendant for the term of ——— now next ensuing.]

Given under my hand the ——— day of ——— one thousand nine hundred and

J.P.

Justice of the Peace for the  
[county] aforesaid.

6. *Conviction of Child for Indictable Offence.*

Petty Sessions District of ——— County of ———

C. D., Complainant. A. B., Defendant.

A. B., hereinafter called the defendant, being a child within the meaning of the Children Act, 1908, and above the age of seven years, is this day convicted [without objection of the parent or guardian, who, though he was informed by the Court of his right to have the child tried by a jury, did not object to the child being dealt with summarily] for that he on the ——— day of ——— at ———, in the ——— aforesaid, did

And it is adjudged that [proceed as in other forms of conviction; if whipping is ordered, insert either in addition to or in substitution for any other punishment,—

And that the defendant, being a male child, be, as soon as practicable, privately whipped with ——— strokes of a birch rod by a constable in

**Rules.**  
**Forms.**

presence of another officer of higher rank than said constable, and the parent or guardian of the child, if he desires to be present].

Given under my hand the — day of — one thousand nine hundred and

*J.P.*

Justice of the Peace for the  
[county] aforesaid.

*7. Conviction of Young Person (by consent) for Indictable Offence.*

Petty Sessions District of — County of —

*C. D.*, Complainant. *A. B.*, Defendant.

*A. B.*, hereinafter called the defendant, being a young person within the meaning of the Children Act, 1908, is this day charged for that he on the — day of —, 19—, at — in the — aforesaid, — did

The defendant, having been informed of his right to be tried by a jury, and having consented to be dealt with summarily, is convicted of the said offence.

And it is adjudged that [*proceed as in other forms of conviction*].

Given under my hand the — day of — one thousand nine hundred and

*J.P.*

Justice of the Peace for the  
[county] aforesaid.

*8. Order on Parent or Guardian to Pay Damages or Costs where a Child or Young Person is not convicted.*

Petty Sessions District of — County of —

*E. F.*, Complainant. *A. B.* and *C. D.*, Defendants.

Whereas *A. B.*, hereinafter called the defendant, being a child [*or young person*] within the meaning of the Children Act, 1908, has been this day charged for that he, on the — day of —, 19—, at — within the — aforesaid, did

And whereas the court is of opinion that the charge is proved, but does not proceed to a conviction of the child [*or young person*],

It is ordered that *C. D.*, the parent [*or guardian*] of the defendant, do pay the sum of — for damages and — for costs [*by instalments of — for every — days, the first instalment to be paid*] forthwith [*or on the — day of — 19—*].

And in default of payment it is ordered that [the sums due under this Order be levied by distress and sale of the said parent's [*guardian's*] goods, and in default of sufficient distress that] the said parent [*guardian*] be imprisoned in His Majesty's prison at — and there kept for the space of — unless the said sums [and all costs and charges of the [*said distress*]] be sooner paid.

[*Where security for good behaviour is required, add:—*

And it is further ordered that the said *C. D.* do forthwith to the satisfaction of [this Court] — give security in the sum of — for the good behaviour of the said defendant for the term of — now next ensuing.]

Given under our hands the — day of — one thousand nine hundred and

*J.P.*

Justice of the Peace for the  
[county] aforesaid.

*9. Order for Detention in Reformatory School.*

Petty Sessions District of — County of —

*E. F.*, Complainant. *A. B.* and *C. D.*, Defendants.

Before the Court of Summary Jurisdiction sitting at — within the said Petty Sessions district and county.

*A. B.*, of —, hereinafter called the defendant, who appears to the



said court to be twelve years of age or upwards, but less than sixteen **Rules.** years of age, to wit, of the age of — years, having been born, so far **Forms.** as has been ascertained, on the — day of —, 1—, and who resides at — in the county [or county borough] of —, is this day convicted [he being above the age of 14, but under the age of 16, and though informed by the court of his right to be tried by a jury having consented to be dealt with summarily (or being of the age of 12 years but under the age of 14 years, without objection of his parent or guardian who, though he was informed by the court of his right to have the child tried by a jury, did not object to the child being dealt with summarily)] for that he, on the — day of —, 19—, at — within the — aforesaid did [*here state the offence*]

And it is ordered in pursuance of the Children Act, 1908, that the defendant (whose religious persuasion appears to the court to be —) be sent to the Certified Reformatory School at — in the county [or borough] of —, being a school [or not] conducted in accordance with the doctrines of the Roman Catholic Church, the managers whereof are willing to receive him [or to some certified reformatory school to be hereafter named in this behalf], and to be there detained until he shall have attained the age of — years [or for the period of — commencing from and after the — day of —, 19—] [or this day] [or the date of his reception therein],<sup>1</sup> and it is further ordered that the said defendant be taken to the place of detention at — [or to the custody of — a fit person who is willing to receive him], and to be [there] [by him] detained until he is sent to a Certified Reformatory School in pursuance of this order, or is otherwise discharged in due course of law.

And it is further ordered that *C. D.*, residing at —, the [parent of] [person legally liable to maintain] the said *A. B.*, shall pay to the Inspector of Reformatory and Industrial Schools in Ireland a weekly sum of — shillings [during the whole of the time for which the said *A. B.* is liable to be detained in the school] [until further order].

Given under our hands the — day of — nine thousand nine hundred and

*J.P.*

Justice of the Peace for the  
[county] aforesaid.

*J.P.*

Justice of the Peace for the  
[county] aforesaid.

#### 10. *Order of Detention in a Certified Industrial School.*

Petty Sessions District of — County of —

*C. D.*, Complainant. *A. B.*, Defendant.

Whereas [*here insert that one of the recitals in Schedule B appropriate to the case*];

And whereas the court is satisfied that it is expedient to deal with the said child by sending him to a Certified Industrial School.

And whereas the religious persuasion of the said child appears to the court to be

It is hereby ordered that the said child shall be sent to a Certified Industrial School at —, being a school [or not] conducted in accordance with the doctrines of the Roman Catholic Church, the managers whereof are willing to receive him [or, to some Certified Industrial School to be hereafter named in this behalf], to be there detained until — [or further period of —] commencing from and after the — day of —, 19— [or this day] [or that date of his reception therein].<sup>2</sup>

<sup>1</sup> The youthful offender will, under s. 62 (1) of the Children Act, 1908, remain under the supervision of the managers of the school until he is 19.

<sup>2</sup> The child will, under s. 62 (2) of the Children Act, 1908, remain under the supervision of the managers of the school until he is 18, unless he is committed for the purpose only of enforcing an attendance order made in consequence of his parent, guardian, or other person legally liable to maintain him, neglecting to provide efficient elementary instruction for him.

**Rules.**  
**Forms.**

And it is further ordered that the said child be taken to [the place of detention at —] [*or* to the custody of —, a fit person who is willing to receive him], and to be [there] [by him] detained until he is sent to a Certified Industrial School, or is otherwise discharged in due course of law.

And it is further ordered that *E. F.*, residing at —, the [parent of] [person legally liable to maintain] the said child, shall pay to the Inspector of Reformatory and Industrial Schools in Ireland a weekly sum of — shillings [during the whole of the time for which the said child is liable to be detained in the school] [until further order].

Given under our hands the — day of — one thousand nine hundred and

*J.P.*

Justice of the Peace for the  
[county] aforesaid.

*J.P.*

Justice of the Peace for the  
[county] aforesaid.

**11. Summons to Parent, &c., upon Complaint for Contribution Order.**

Petty Sessions District of — County of —

*E. F.* of — Complainant. *C. D.* of — Defendant.

Complaint has been made this day by *E. F.*, a person duly authorised by the Inspector of Reformatory and Industrial Schools in Ireland to take proceedings in this behalf, for that you are the parent of [*or* person liable to maintain] one *A. B.*, who is now detained in the Certified Reformatory [Industrial] School at — in the county of — under the provisions of the Children Act, 1908, and who has been duly ordered to be detained therein until he attains the age of — years [*or* for the period of — commencing from the — day of — 19—], and that you are of sufficient ability to contribute to his maintenance.

You are therefore hereby summoned to appear before the Court of Summary Jurisdiction sitting at — on the — day of — at the hour of — in the — noon to answer said complaint.

Given under my hand this — day of — one thousand nine hundred and

*J.P.*

Justice of the Peace for the  
[county] aforesaid.

**12. Contribution Order on Parent, &c., of Child in Reformatory or Industrial School.**

Petty Sessions District of — County of —

*E. F.* of — Complainant. *C. D.* of — Defendant.

*E. F.*, a person duly authorised by the Inspector of Reformatory and Industrial Schools in Ireland to take proceedings in this behalf, having made a complaint that one *C. D.*, residing at —, is the parent of [*or* person liable to maintain] a certain child [*or* young person], named *A. B.*, of the age of — years, or thereabouts, who is now detained in the Certified Reformatory [Industrial] School at — in the county of — in pursuance of an order duly made under the provisions of the Children Act, 1908, directing his detention therein until he attains the age of — years [*or* for the period of — commencing from the — day of —, 19—], and that the said *C. D.* is of sufficient ability to contribute to the maintenance of the said child [*or* young person].

On hearing the said complaint it is adjudged that the matter thereof is true, and it is ordered that the said *C. D.* do pay to the said Inspector of Reformatory and Industrial Schools in Ireland a weekly sum of — shillings and — pence during the whole of the period for which the

said child [*or* young person] is liable to be detained in the School [*or* **Rules.** until —], and the sum of — for costs. Forms.

Given under our hands the — day of — one thousand nine hundred and

*J.P.*

Justice of the Peace for the  
[county] aforesaid.

*J.P.*

Justice of the Peace for the  
[county] aforesaid.

**TAKE NOTICE** that you are required by section 75 (6) of the Children Act, 1908, to give notice to the Inspector of Reformatory and Industrial Schools in Ireland of any change of address, under a penalty of £2.

*13. Order for Detention in a Certified Day Industrial School.*

Petty Sessions District of — County of —

*E. F.*, Complainant. *A. B.* and *C. D.*, Defendants.

Whereas [*here insert that one of the recitals in Schedule B appropriate to the case*];

And whereas the court is satisfied that it is expedient to deal with the said child by sending the child to a Certified Day Industrial School.

And whereas the religious persuasion of the said child appears to the court to be

It is hereby ordered that the said child shall be sent to the Certified Day Industrial School at —, being a school [*or not*] conducted in accordance with the doctrines of the Roman Catholic Church, to be there detained until — [*or for the period of —*] [*or the date of his reception therein*], during the hours of —, being the hours authorised by the rules of the school approved by the Chief Secretary.

And it is further ordered that *C. D.*, residing at —, the [parent of] [person legally liable to maintain] the said child, shall pay to — a weekly sum of — [during the whole of the time for which the said child is liable to be detained in the school] [until further order].

Given under our hands the — day of — one thousand nine hundred and

*J.P.*

Justice of the Peace for the  
[county] aforesaid.

*J.P.*

Justice of the Peace for the  
[county] aforesaid.

*14. Attendance Order (Industrial School).*

Petty Sessions District of — County of —

— Complainants. *C. D.*, Defendant.

In pursuance of section 133 (20) of the Children Act, 1908, and section 4 of the Irish Education Act, 1892, it is hereby ordered that *A. B.* — of —, who appears to us to be a child under 14 years of age (whose religious persuasion appears to us to be —), do attend the Certified [Day] Industrial School at —, being a school [*or not*] conducted in accordance with the doctrines of the Roman Catholic Church, until —, [during the hours of —, being the hours authorised by the rules of the school approved by the Chief Secretary].

Given under our hands the — day of — one thousand nine hundred and

*J.P.*

Justice of the Peace for the  
[county] aforesaid.

*J.P.*

Justice of the Peace for the  
[county] aforesaid.



Rules.  
Forms.

15. *Information on Disobedience of Order on Parent, &c., for Contribution*

Petty Sessions District of — County of —

*A. B.*, Complainant. *C. D.*, Defendant.

The information and complaint — of — (hereinafter called the complainant), of —, on behalf of the Inspector of Reformatory and Industrial Schools in Ireland, taken upon oath before me, the undersigned, one of His Majesty's Justices of the Peace for the said [county], the — day of —, 19—, who saith, that by an Order made under the authority of the statutes in that behalf by the [Court of Summary Jurisdiction] sitting at — on the — day of —, 19—, *C. D.* (hereinafter called the defendant) of — was adjudged and ordered to pay to the said Inspector the sum of — per week for the support and maintenance of *A. B.*, a child [or young person] whom the said defendant was legally liable to maintain, and who was duly committed under the authority of the statutes in that behalf to the Certified Industrial [or Reformatory] School at

And this deponent further saith that the said defendant hath had due notice of the said Order, and that the payments directed to be made by the said Order have not been made according thereto by the said defendant, and that there is now in arrear for the same the sum of — *being the amount of arrears for — weeks' payments*, and this complainant therefore prays justice in the premises.

Exhibited and sworn before me, the day and year first above written, at — in the [county] aforesaid.

*J.P.*

Justice of the Peace for the  
[county] aforesaid.

16. *Summons for Arrears.*

Petty Sessions District of — County of —

*A. B.*, Complainant. *C. D.*, Defendant.

Complaint has been made this day by — (hereinafter called the complainant), on behalf of the Inspector of Reformatory and Industrial Schools in Ireland, who saith that on the — day of —, 19—, an Order was duly made under the authority of the statutes in that behalf, by the [Court of Summary Jurisdiction] sitting at — in the said [county], by which said Order you were duly ordered and adjudged to pay to the said Inspector the sum of — shillings — per week.

And the complainant further saith that you have had due notice of the said Order, and that the payments directed to be made by the said Order have not been made according thereto by you, and that there is now in arrear for the same the sum of —, being the amount of arrears for — weeks' payments.

You are therefore hereby summoned to appear before the Court of Summary Jurisdiction sitting at — on — day the — day of —, 19—, at the hour of — in the — noon, to answer to the said complaint.

Given under my hand the — day of — one thousand nine hundred and

*J.P.*

Justice of the Peace for the  
[county] aforesaid.

17. *Warrant of Distress for Arrears.*

Petty Sessions District of — County of —

*E. F.*, Complainant. *C. D.*, Defendant.

To the Head or other Constable of — and all other Peace Officers of the said County of —

Whereas on the — day of — one thousand nine hundred and —, on the complaint of the Inspector of Reformatory and Industrial

Schools in Ireland, it was adjudged by the Court of Summary Jurisdiction **Rules.** sitting at — in the said county that the sum of — was then due from **Forms.** *C. D.* of — to the said Inspector under an Order made in pursuance of the Children Act, 1908, together with the sum of — for costs.

And default having been made in payment :

You are hereby commanded forthwith to make distress of the goods of the said *C. D.* (except the wearing apparel and bedding of him and his family, and to the value of five pounds, the tools and implements of his trade); and if within the space of *five* clear days next after the making of such distress, unless he consents in writing to an earlier sale, the sum stated at the foot of this Warrant, together with the reasonable costs and charges of the making and keeping of the said distress, be not paid, then to sell the said goods, and pay the money arising therefrom to the clerk of that court, and if no such distress can be found, to certify the same to that court.

Given under our hands the — day of — one thousand nine hundred and

*J.P.*

Justice of the Peace for the  
said [county].

*J.P.*

Justice of the Peace for the  
said [county].

	£	s.	d.
Amount adjudged . . . . .			
Paid . . . . .			
Remaining due . . . . .			
Cost of issuing this Warrant . . . . .			
Total amount to be levied . . . . .			

#### 18. Commitment in lieu of Distress.

Petty Sessions District of — County of —

*A. B.*, Complainant. *C. D.*, Defendant.

To the Head or other Constable of — and all other Peace Officers of the said County of — and to the Governor of His Majesty's Prison at

Whereas *C. D.* of — (hereinafter called the defendant) was *this day* adjudged before the Court of Summary Jurisdiction sitting at — in the said county, to owe to the Inspector of Reformatory and Industrial Schools in Ireland the sum of — due to the said Inspector from him the said defendant, under an Order made in pursuance of the Children Act, 1908, and the sum of — for costs.

And default having been made in payment, it was directed that such sums should be levied by distress and sale of the defendant's goods ;

And it appearing to this court that the defendant has no *sufficient* goods whereon to levy distress, *or that the levy of the distress will be more injurious to the defendant and his family than imprisonment ;*

It is ordered that the defendant be imprisoned in His Majesty's prison at —, and there kept for the space of — unless the said sums, together with the costs of the commitment and conveying of the defendant to prison, amounting to the sum of —, be sooner paid.

And you — are hereby commanded to take the defendant and convey him to the said prison, and there deliver him to the Governor thereof, together with this warrant ; and you, the Governor of the said prison, to receive the defendant into your custody, and keep him for the space of — unless the said sums — be sooner paid.

Rules.  
Forms.

Given under our hands the — day of — one thousand nine hundred and

J.P.

Justice of the Peace for the  
said [county].

J.P.

Justice of the Peace for the  
said [county].

### 19. Commitment in Default of Distress.

Petty Sessions District of — County of —

A. B., Complainant. C. D., Defendant.

To the Head or other Constable of — and all other Peace Officers of the said County of — and to the Governor of His Majesty's Prison at

Whereas C. D. of — (hereinafter called the defendant) was on the — day of —, one thousand nine hundred and —, before the Court of Summary Jurisdiction sitting at — in the said county, adjudged to owe to the Inspector of Reformatory and Industrial Schools in Ireland the sum of — due to the said Inspector from him the said defendant, under an Order made in pursuance of the Children Act, 1908, and the sum of — for costs.

And default having been made in payment, it was directed by warrant dated the — day of —, one thousand nine hundred and —, to levy the said sums by distress; and it now appearing that no sufficient distress whereon to levy the said sum could be found:

You — are hereby commanded to convey the defendant to His Majesty's prison at — and there deliver him to the Governor thereof, together with this warrant; and you, the Governor of the said prison, to receive the defendant into your custody and keep him for the space of — unless the said sums and all costs and charges of the said distress amounting to the further sum of —, and the costs of the commitment and conveying of the defendant to prison amounting to the further sum of —, be sooner paid.

Given under our hands the — day of — one thousand nine hundred and

J.P.

Justice of the Peace for the  
said [county].

J.P.

Justice of the Peace for the  
said [county].

### SCHEDULE B.

*Recitals to be used to Orders of Detention in Certified Industrial School.*

#### A.

Whereas A. B., who appears to the court to be a child under the age of 14 years (having been born, so far as has been ascertained, on the — day of —), and who resides at — in the county [or county borough] of —, has been found begging [(or receiving alms)] [or begging (or receiving alms) under the pretence of singing, playing, performing, or offering for sale (*here state article, e.g., matches*)] [or being in a street, premises, or place for the purpose of begging or receiving alms] [or of begging or receiving alms under the pretence of singing, playing, performing, or offering for sale (*here state article*)], and whereas the Council of the said county [or county borough] has been given an opportunity of being heard.

#### B.

Whereas A. B., who appears to the court to be a child under the age of 14 years (having been born, so far as has been ascertained, on the —



day of —), and who resides at — in the county [or county borough] of —, has been found wandering, and not having any home [or not having any settled place of abode, or visible means of subsistence [or having no parent or guardian] [or having a parent or guardian who does not exercise proper guardianship], and whereas the Council of the said county [or county borough] has been given an opportunity of being heard.

**Rules.**  
**Forms.**

#### C.

Whereas *A. B.*, who appears to the court to be a child under the age of 14 years (having been born, so far as has been ascertained, on the — day of —), and who resides at — in the county [or county borough] of —, has been found destitute, not being an orphan and having both parents or his surviving parent [or, in the case of an illegitimate child, his mother], undergoing penal servitude [or imprisonment], and whereas the Council of the said county [or county borough] has been given an opportunity of being heard.

#### D.

Whereas *A. B.*, who appears to the court to be a child under the age of 14 years (having been born, so far as has been ascertained, on the — day of —), and who resides at — in the county [or county borough] of —, has been under the care of a parent or guardian, who, by reason of criminal [or drunken] habits, is unfit to have the care of the child, and whereas the Council of the said county [or county borough] has been given an opportunity of being heard.

#### E.

Whereas *A. B.*, who appears to the court to be a child under the age of 14 years (having been born, so far as has been ascertained, on the — day of —), and who resides at — in the county [or county borough] of —, is the legitimate [or illegitimate] daughter of —, who has been convicted of an offence under section four [or section five] of the Criminal Law Amendment Act, 1885, in respect of one of his daughters, and whereas the Council of the said county [or county borough] has been given an opportunity of being heard.

#### F.

Whereas *A. B.*, who appears to the court to be a child under the age of 14 years (having been born, so far as has been ascertained, on the — day of —), and who resides at — in the county [or county borough] of —, has been frequenting the company of a reputed thief [or a common or reputed prostitute], and whereas the Council of the said county [or county borough] has been given an opportunity of being heard.

#### G.

Whereas *A. B.*, who appears to the court to be a child under the age of 14 years (having been born, so far as has been ascertained, on the — day of —), and who resides at — in the county [or county borough] of —, has been lodging [or residing] in a house or the part of a house used by any prostitute for the purposes of prostitution [or has been living in circumstances calculated to cause, encourage, or favour the seduction or prostitution of the child], and whereas the Council of the said county [or county borough] has been given an opportunity of being heard.

#### H.

Whereas *A. B.*, who appears to the court to be a child under the age of 12 years (having been born, so far as has been ascertained, on the — day of —), and who resides at — in the county [or county borough] of —, has been charged before the court with the offence of —, which is punishable in the case of an adult by penal servitude [here state lesser punishment], and whereas the Council of the said county [or county borough] has been given an opportunity of being heard.

## Rules.

## Forms.

## I.

Whereas *A. B.*, who appears to the court to be a child over the age of 12 years, but under the age of 14 years (having been born, so far as has been ascertained, on the — day of —), and who resides at — in the county [or county borough] of —, has been charged before the court with the offence of —, which is punishable in the case of an adult by penal servitude [*here state lesser punishment*], but has not been previously convicted, and whereas the court is satisfied that the said child should be sent to a certified school, but, having regard to the special circumstances of the case, should not be sent to a certified reformatory school, and is also satisfied that the character and antecedents of the child are such that he will not exercise an evil influence over the other children in a certified industrial school, and whereas the managers of the certified industrial school at — are willing to receive the said child; and whereas the Council of the said county [or county borough] has been given an opportunity of being heard.

## J.

Whereas the parent [or guardian] of *A. B.*, who appears to the court to be a child under the age of 14 years (having been born, so far as has been ascertained, on the — day of —), and who resides at — in the county [or county borough] of —, has proved to the court that he is unable to control the said child, and represents that he desires the said child to be sent to a certified industrial school, and whereas the court is satisfied that the parent [or guardian] understands the results which will follow; and whereas the Council of the said county [or county borough] has been given an opportunity of being heard.

## K.

Whereas the Guardians of the Poor of — Union [or Board of Management of the School for the Unions of — established under the Poor Relief (Ireland) Acts, 1838 to 1900] have represented to the court that *A. B.*, who appears to the court to be a child under the age of 14 years (having been born, so far as has been ascertained, on the — day of —), and who resides at — in the county [or county borough] of —, maintained in the workhouse of the said union [or in the school established for said Unions], is refractory [or is the child of parents, one of whom has been convicted of an offence punishable with penal servitude or imprisonment], and that it is desirable that the said child should be sent to a certified industrial school; and whereas the Council of the said county [or county borough] has been given an opportunity of being heard.

## L.

Whereas an attendance order under the 4th section of the Irish Education Act, 1892, was made against the child *A. B.*, who appears to the court to be a child under the age of 14 years (born, so far as has been ascertained, on the — day of —), and who resides at — in the county [or county borough] of —, and who is under the said Act prohibited from being taken into full-time employment, on the ground that his parent without reasonable excuse neglected to cause him to attend school, and the said attendance order has not been complied with, without any reasonable excuse within the meaning of the said Act, and whereas [the parent has satisfied the court that he has used all reasonable efforts to enforce compliance with the said order] [or the said non-compliance was not the first non-compliance with the said order]; and whereas the Council of the said county [or county borough] has been given an opportunity of being heard.

## M.

Whereas an order of detention in the day industrial school at — under section 78 of the Children Act, 1908, was made on — against *A. B.*, who appears to the court to be a child under the age of 14 (having been born,

so far as has been ascertained, on the — day of —), and who resides **Rules.**  
 at — in the county [or county borough] of —, on the ground that **Forms.**  
*(here state the ground on which the former order was made, following the*  
*terms of such recital as the case may require)*, and whereas the said *A. B.*  
 wilfully neglects to attend the said day industrial school [or wilfully  
 neglects or wilfully refuses to conform to the rules of the said day industrial  
 school] ; and whereas the Council of the said county [or county borough]  
 has been given an opportunity of being heard.

RULE DATED NOVEMBER 31, 1909, MADE BY THE LORD CHANCELLOR  
 OF IRELAND UNDER S. 133 (7) OF THE CHILDREN ACT, 1908.

The following recital shall be added to the forms of recitals set out in  
 Schedule B to the Summary Jurisdiction Rules, 1909, made in pursuance of  
 the provisions of the Children Act, 1908, and shall be the recital to be used  
 in an Order of Detention in a certified industrial school in the case of  
 a child, being an orphan, who has been found destitute.

*Schedule B.*

*Ba.*

Whereas *A. B.*, who appears to the court to be a child under the age  
 of 14 years (having been born, so far as has been ascertained, on the —  
 day of —), and who resides at — in the county [or county borough]  
 of —, has been found destitute, being an orphan, and whereas the  
 Council of the said county [or county borough] has been given an oppor-  
 tunity of being heard.

ORDER IN COUNCIL, DATED APRIL 15, 1910, APPLYING CERTAIN PROVISIONS **Rules.**  
 OF THE CHILDREN ACT, 1908 (8 EDW. 7, C. 67), TO CERTIFIED DAY  
 INDUSTRIAL SCHOOLS.

*(Statutory Rules and Orders, 1910, No. 392.)*

*Effect of Withdrawal or Resignation of Certificate.*

I. Section 49 of the Children Act shall, in its application to day indus-  
 trial schools, take effect with modifications as follows :—

A child shall not be received into a certified day industrial school  
 in pursuance of the Children Act after the date of the receipt by the  
 managers of the school of a notice of withdrawal of the certificate  
 for the school or after the date of a notice of resignation of the  
 certificate ; but the obligation hereinafter mentioned of the managers  
 to provide with industrial training, elementary education, and one or  
 more meals a day, any children detained in or attending the school at  
 the respective dates aforesaid shall, except so far as the Chief Secretary  
 otherwise directs, continue until the withdrawal or resignation of the  
 certificate takes effect, or until the discontinuance of the contribution  
 out of money provided by Parliament towards the expenses of the  
 children detained in the school, whichever may first happen : Provided  
 that when a child is received in pursuance of section 79 under an  
 attendance order, or without an order, the obligation of the managers  
 shall be suspended if and so long as the parent fails to carry out the  
 undertaking entered into by him.

*Liabilities of Managers.*

II. Section 52 of the Children Act shall, in its application to day indus-  
 trial schools, take effect with modifications as follows :—

The managers of a certified day industrial school may decline to  
 receive any child proposed to be sent to them in pursuance of the



**Rules.**

Children Act, but when they have once accepted any such child they shall be deemed to have undertaken to provide him with industrial training, elementary education, and one or more meals a day during the whole period for which he is liable to be detained in or to attend the school, or until the withdrawal or resignation of the certificate for the school, or until the discontinuance of the contribution out of money provided by Parliament towards the expenses of the children detained in the school, whichever may first happen: Provided that when a child is received in pursuance of section 79 under an attendance order, or without an order, the undertaking of the managers shall be suspended if and so long as the parent fails to carry out the undertaking entered into by him.

*Choice of School.*

III. Section 62 of the Children Act shall, in its application to day industrial schools, take effect with modifications as follows:—

The day industrial school to which a child is to be sent under a detention order shall be such school as may be specified in the order, being some certified day industrial school (whether situate within the jurisdiction of the court making the order or not) the managers of which are willing to receive the child, and which is within three miles of the residence of the child.

Provided that, if it is found impossible to specify the school in the detention order, the school shall be such as a justice having jurisdiction in the place where the court which made the order sat may by endorsement on the detention order direct.

*Period of Detention.*

IV. Section 65 of the Children Act shall, in its application to day industrial schools, take effect with modifications as follows:—

The detention order shall specify the time for which the child is to be detained in the school, being such time as to the court may seem proper for the teaching and training of the child, but not in any case extending beyond the time when the child will, in the opinion of the court, attain the age of fourteen years.

V. Section 66 of the Children Act shall, in its application to day industrial schools, take effect with modifications as follows:—

(1) The court of justice, in determining the school to which a child is to be sent, whether under a detention order or an attendance order, shall endeavour to ascertain the religious persuasion to which the child belongs, and the order shall, where practicable, specify the religious persuasion to which the child appears to belong, and if the child belongs, or appears to belong, to the Roman Catholic Church, a school conducted in accordance with the doctrines of that Church; and, if the child does not belong, or does not appear to belong to that Church, some school not conducted in accordance with the doctrines of that Church, shall be selected.

(2) A minister of the religious persuasion specified in the order of the court as that to which a child sent to a school appears to belong, or specified in the undertaking of the parent, may visit the child at the school on such days, at such times, and on such conditions, as may be fixed by the Chief Secretary, for the purpose of affording him religious assistance, and also for the purpose of instructing him in the principles of his religion.

(3) Where an order has been made for sending a child to a school which is not conducted in accordance with the religious persuasion to which the child belongs, the parent, legal guardian, nearest adult relative, or person entitled to the custody of the child, may apply to a court of summary jurisdiction constituted in accordance with the provisions of section 249 of the Public Health (Ireland) Act, 1878

(41 & 42 Vict., c. 52), acting in and for the place in and for which the court which made the order acted, to remove or send the child to a certified day industrial school, within three miles of the residence of the child, conducted in accordance with the child's religious persuasion, and the court shall, on proof of the child's religious persuasion, comply with the request of the applicant :

Rules.

Provided that—

(i.) the application must be made before the child has been sent to a certified day industrial school, or within thirty days after his arrival at the school ; and

(ii.) the applicant must show to the satisfaction of the court that the managers of the school named by him are willing to receive the child ;

(iii.) nothing in this section shall be construed as preventing any such person as aforesaid from making an application to the Chief Secretary after the expiration of the said period of thirty days to exercise the powers of transfer conferred on him by the other provisions of the Children Act.

#### *Placing out on Licence.*

VI. Section 67 of the Children Act shall, in its application to day industrial schools, take effect with modifications as follows :—

(1) Where a child is sent to a certified day industrial school under a detention order, the managers of the school may at any time give him a licence exempting him from attendance at such school, but conditionally on his attending regularly as a day scholar, some national or other efficient school named in the licence, and being a school under the management of a manager belonging to the religious persuasion to which the child belongs.

(2) Any licence so granted shall be in force until revoked or forfeited by the breach of any of the conditions on which it was granted.

(3) The managers of the school may at any time by order in writing revoke any such licence, and order the child to return to the school.

(4) Any child refusing to return to the school when required to do so on the revocation or forfeiture of his licence, shall be liable to the same penalty as if he had wilfully neglected to attend the day industrial school.

(5) The time during which a child is absent from a day industrial school in pursuance of a licence under this section shall be deemed to be part of the time of his detention in the school : Provided that, where a child has failed to return to the school on the licence being forfeited or revoked, the time which elapses after his failure so to return shall be excluded in computing the time during which he is to be detained in the school.

(6) Where a licence has been revoked or forfeited and the child refuses or fails to return to the school, a court of summary jurisdiction, if satisfied by information on oath that there is reasonable ground for believing that his parent or guardian could produce the child, may issue a summons requiring the parent or guardian to attend at the court on such day as may be specified in the summons, and to produce the child, and, if he fails to do so without reasonable excuse, he shall, in addition to any other liability to which he may be subject under the provisions of Part IV. of the Children Act, be liable on summary conviction to a fine not exceeding one pound.

#### *Discharge and Transfer.*

VII. Section 69 of the Children Act shall, in its application to day industrial schools, take effect with modifications as follows :—

(1) The Chief Secretary may at any time order a child to be discharged from a certified day industrial school whether committed by a detention order or an attendance order.

**Rules.**

(2) The Chief Secretary may order a child to be transferred from one day industrial school to another within three miles of the residence of the child, or where there are different sections of the same school for different religious denominations, from one section to another.

(3) Where a child is so transferred the undertaking, if any, given by the parent shall continue in force as if the school or section of the school named in the order of transfer had been specified in the undertaking.

*Refusal to conform to Rules.*

VIII. Section 71 of the Children Act shall, in its application to day industrial schools, take effect with modifications as follows :—

If a child of the age of twelve years or upwards sent to a certified day industrial school under a detention order, is guilty of a serious and wilful breach of the rules of the school, or of inciting other inmates of the school to such a breach, he shall be liable to be brought before a court of summary jurisdiction constituted in accordance with the provisions of section two hundred and forty-nine of the Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52), and the court, if satisfied on inquiry that it is expedient so to deal with the child, may order him to be sent to a certified industrial school, and to be there detained, subject and according to the provisions of Part IV. of the Children Act.

*Wilfully neglecting to attend School.*

IX. Section 72 of the Children Act shall, in its application to day industrial schools, take effect with modifications as follows :—

(1) If a child, of the age of twelve years or upwards, sent to a certified day industrial school under a detention order wilfully neglects to attend thereat, he may, at any time before the expiration of his period of detention, be brought before a court of summary jurisdiction constituted in accordance with the provisions of section two hundred and forty-nine of the Public Health (Ireland) Act, 1878 (41 & 42 Vict. c. 52), and the court, if satisfied on inquiry that it is expedient so to deal with the child, may order him to be sent to a certified industrial school, to be there detained subject and according to the provisions of Part IV. of the Children Act.

(2) If any person—

(a) knowingly assists or induces directly or indirectly a child sent to a certified day industrial school not to attend thereat ;

(b) knowingly harbours, conceals, or prevents from returning to school, a child who has neglected to attend the school, or knowingly assists in so doing ;

he shall on summary conviction be liable to be imprisoned for any term not exceeding fourteen days, with or without hard labour, or to a fine not exceeding five pounds.

*Reception of Child under Attendance Order or without Order.*

X. Whereas it is enacted by section 79 of the Children Act as modified by section 133 (20) as follows :—

“ The managers of a certified day industrial school may upon the request of a School Attendance Committee, and of the parent or guardian of, or other person legally liable to maintain a child, and upon the undertaking of the parent, guardian, or other person, to pay towards the industrial training and meals of the child such sum as the Chief Secretary may authorise, receive the child into the school under an attendance order or without an order of a court : ”

And whereas by the 4th section of the Irish Education Act, 1892, it is enacted in effect that any child under an attendance order requiring him to attend some national or other efficient school, shall attend that school in such regular manner as is specified in the order :



It is hereby ordered, with respect to an attendance order requiring attendance in a certified day industrial school, that the following provisions shall apply :— **Rules.**

(a) The school shall be some certified day industrial school, the managers of which are willing to receive the child, which is within three miles of the residence of the child ;

(b) The attendance order shall specify the period for which the child is to attend the school, being such period as to the court seems proper, but not in any case extending beyond the time when the child will attain the age of fourteen years ;

(c) The undertaking of the parent may be made in the form set forth in Schedule A hereto ; and

It is further ordered, with respect to a child received without an order of a court, that the undertaking of the parent shall specify the religious persuasion to which the child belongs, and may be made in the form set forth in Schedule B thereto.

#### *Contribution by Parents.*

XI. Whereas by section 82 of the Children Act, 1908, as modified by section 133 (20), it is enacted as follows :—

“(1) Where a court orders a child to be sent to a certified day industrial school, the court shall also order the parent of the child, or other person liable to maintain him, to contribute towards his industrial training and meals in the school such sum as is named in the order, not exceeding such sum as may be declared by Order in Council to represent approximately the average cost of industrial training and meals in day industrial schools in Ireland.

“(2) It shall be the duty of the School Attendance Committee to obtain and enforce the order, and every sum received by the School Attendance Committee under the order shall be applied in like manner as moneys received by the Committee under the Irish Education Act, 1892.”

It is hereby declared that the sum of 1s. 9d. a week represents approximately the average cost of industrial training and meals in day industrial schools in Ireland.

XII. Section 75 of the Children Act shall, in its application to day industrial schools, take effect with modifications as follows :—

(1) Every order requiring a parent or other person to contribute to the industrial training and meals of a child ordered to be sent to a day industrial school may specify the time during which the payment is to be made, or may direct the payment to be made until further order, and shall be enforceable in the manner provided by section 25 of the Irish Reformatory Schools Act, 1868.

(2) Any such order may, on application being made either by the person on whom the order is made, or at the instance of the School Attendance Committee, and on fourteen days' notice of such application being given to such authority or person on whom the order was made, be varied by any court which would have had power to make the order.

(3) Any such order shall be binding on the person on whom it is made :

Provided that if that person was not summoned to attend the sitting of the court at which the order was made, the order shall be served on him in manner prescribed by rules of court, and shall be binding on him unless he makes an application against it within the time prescribed by rules of court to the court by which the order was made, on the ground that he is not liable to maintain the child, and on any such application being made the court may confirm the order with or without modifications, or may rescind it.

(4) Where a parent or other person has been so ordered to contribute to the industrial training and meals of a child he shall give notice of any change of address to the School Attendance Committee, and

**Rules.**

if he fails to do so, without reasonable excuse, he shall be liable, on summary conviction, to a fine not exceeding two pounds.

(5) The School Attendance Committee may in their discretion remit wholly or partially any payment ordered to be made under this section.

(6) Where there is some person, other than the parent, for the time being liable to maintain a child, such an order as aforesaid may be made on that person notwithstanding that there may be also a parent.

(7) Any court making an order for contribution by a parent or other such person may, in any case where there is any pension or income payable to such parent or other person and capable of being attached, after giving the person by whom the pension or income is payable an opportunity of being heard, further order that such part as the court may see fit of the pension or income be attached and be paid to the person named by the court. Such further order shall be an authority to the person by whom such pension or other income is payable to make the payment so ordered, and the receipt of the person to whom the payment is ordered to be made shall be a good discharge to such first-named person.

XIII. Section 88 (6) of the Children Act shall, in its application to day industrial schools, take effect with modifications as follows :—

A certificate purporting to be under the hand of the superintendent of the day industrial school, or an officer of the managers, stating that any sum due from a parent or other person for the maintenance of a child is overdue and unpaid, shall be evidence of the facts stated therein.

*Miscellaneous.*

XIV. All expressions used in this Order shall have the same meaning as in the Children Act, 1908.

**SCHEDULE A.***Undertaking of Parent in the case of an Attendance Order.*

Whereas a complaint has been made under the 4th section of the Irish Elementary Education Act, 1892, against *A. B.* — of a child under the age of fourteen years, with a view to an order being made requiring him to attend some national or other efficient school ; and whereas *I, C. D.*, — am the parent of the said *A. B.*

I hereby undertake that if an attendance order be made requiring him to attend the certified day industrial school at —, being (or not being) a school conducted in accordance with the doctrines of the Roman Catholic Church, I will pay to the managers of the said school toward the industrial training and meals of the said *A. B.* — in the said school the sum of — per week so long as such attendance order is in force.

Dated — day of — 19—  
(Signed)

**SCHEDULE B.***Undertaking of Parent in the case of a Child about to attend a School without any order of Court.*

*I, C. D.*, —, of —, being the parent of *A. B.*, —, a child under fourteen years of age, and of the religious persuasion of —, hereby undertake to pay to the managers of the certified day industrial school at — towards the industrial training and meals of the said *A. B.* —, in the said school, the sum of — per week for the term of — and for such further terms as may be agreed upon between myself and the said managers and the School Attendance Committee.

Dated — day of —, 19—  
(Signed)

# MARINE INSURANCE (GAMBLING POLICIES) ACT, 1909.

[9 EDW. 7, CH. 12.]

## 1. (1) If—

Prohibition  
of gambling  
on loss by  
maritime perils.

- (a) any person effects a contract of marine insurance without having any *bona fide* interest, direct or indirect, either in the safe arrival of the ship in relation to which the contract is made or in the safety or preservation of the subject-matter insured, or a *bona fide* expectation of acquiring such an interest ; or
- (b) any person in the employment of the owner of a ship, not being a part owner of the ship, effects a contract of marine insurance in relation to the ship, and the contract is made " interest or no interest," or " without further proof of interest than the policy itself," or " without benefit of salvage to the insurer," or subject to any other like term,

the contract shall be deemed to be a contract by way of gambling on loss by maritime perils, and the person effecting it shall be guilty of an offence, and shall be liable, on summary conviction, to imprisonment, with or without hard labour, for a term not exceeding six months or to a fine not exceeding one hundred pounds, and in either case to forfeit to the Crown any money he may receive under the contract.

(2) Any broker or other person through whom, and any insurer with whom, any such contract is effected shall be guilty of an offence and liable on summary conviction to the like penalties if he acted knowing that the contract was by way of gambling on loss by maritime perils within the meaning of this Act.

(3) Proceedings under this Act shall not be instituted without the consent . . . in Ireland of the Attorney-General for Ireland.

(4) Proceedings shall not be instituted under this Act against a person (other than a person in the employment of the owner of the ship in relation to which the contract was made) alleged to have effected a contract by way of gambling on loss by maritime perils until an opportunity has been afforded him of showing that the contract was not such a contract as aforesaid, and any information given by that person for that purpose shall not be admissible in evidence against him in any prosecution under this Act.

(5) If proceedings under this Act are taken against any person (other than a person in the employment of the owner of the ship in relation to which the contract was made) for effecting such a contract, and the contract was made " interest or no interest," or " without further proof of interest than the policy itself," or " without benefit of salvage to the insurer," or subject to any other like term, the contract shall be deemed to be a contract by way of gambling on loss by maritime perils unless the contrary is proved.

(6) For the purpose of giving jurisdiction under this Act, every offence shall be deemed to have been committed either in the place in which the same actually was committed or in any place in which the offender may be.

(7) Any person aggrieved by an order or decision of a court of summary jurisdiction under this Act, may appeal to quarter sessions.

(8) For the purposes of this Act the expression " owner " includes charterer.

2. This Act may be cited as the Marine Insurance (Gambling Policies) Act, 1909, and the Marine Insurance Act, 1906, and this Act may be cited together as the Marine Insurance Acts, 1906 and 1909.



## TRADE BOARDS ACT, 1909.

[9 EDW. 7, CH. 22.]

*Establishment of Trade Boards for Trades to which the Act applies.*Application  
of Act to  
certain trades.

1. (1) This Act shall apply to the trades specified in the schedule to this Act and to any other trades to which it has been applied by Provisional Order of the Board of Trade made under this section.

(2) The Board of Trade may make a Provisional Order applying this Act to any specified trade to which it does not at the time apply if they are satisfied that the rate of wages prevailing in any branch of the trade is exceptionally low, as compared with that in other employments, and that the other circumstances of the trade are such as to render the application of this Act to the trade expedient.

(3) If at any time the Board of Trade consider that the conditions of employment in any trade to which this Act applies have been so altered as to render the application of this Act to the trade unnecessary, they may make a Provisional Order that this Act shall cease to apply to that trade.

(4) The Board of Trade may submit to Parliament for confirmation any Provisional Order made by them in pursuance of this section, but no such Order shall have effect unless and until it is confirmed by Parliament.

(5) If, while a Bill confirming any such Order is pending in either House of Parliament, a petition is presented against any Order comprised therein, the Bill, so far as it relates to that Order, may be referred to a select committee, or, if the two Houses of Parliament think fit so to order, to a joint committee of those Houses, and the petitioner shall be allowed to appear and oppose as in the case of Private Bills.

(6) Any Act confirming a Provisional Order made in pursuance of this section may be repealed, altered, or amended by any subsequent Provisional Order made by the Board of Trade and confirmed by Parliament.

Establishment  
of Trade Boards  
for trades  
to which  
Act applies.

2. (1) The Board of Trade shall, if practicable, establish one or more Trade Boards constituted in accordance with regulations made under this Act for any trade to which this Act applies or for any branch of work in the trade.

Where a Trade Board is established under this Act for any trade or branch of work in a trade which is carried on to any substantial extent in Ireland, a separate Trade Board shall be established for that trade or branch of work in a trade in Ireland.

(2) Where a Trade Board has been established for any branch of work in a trade, any reference in this Act to the trade for which the Board is established shall be construed as a reference to the branch of work in the trade for which the Board has been established.

General duties  
of Trade Boards.

3. A Trade Board for any trade shall consider, as occasion requires, any matter referred to them by a Secretary of State, the Board of Trade, or any other Government Department, with reference to the industrial conditions of the trade, and shall make a report upon the matter to the department by whom the question has been referred.

*Minimum Rates of Wages.*Duties and  
powers of Trade  
Boards with  
respect to  
minimum rates  
of wages.

4. (1) Trade Boards shall, subject to the provisions of this section, fix minimum rates of wages for timework for their trades (in this Act referred to as minimum time-rates), and may also fix general minimum rates of wages for piecework for their trades (in this Act referred to as general minimum piece-rates), and those rates of wages (whether time- or piece-rates) may be fixed so as to apply universally to the trade, or so as to apply to any special process in the work of the trade or to any special class of workers in the trade, or to any special area.

If a Trade Board report to the Board of Trade that it is impracticable

cable in any case to fix a minimum time-rate in accordance with this section, the Board of Trade may so far as respects that case relieve the Trade Board of their duty.

(2) Before fixing any minimum time-rate or general minimum piece-rate, the Trade Board shall give notice of the rate which they propose to fix and consider any objections to the rate which may be lodged with them within three months.

(3) The Trade Board shall give notice of any minimum time-rate or general minimum piece-rate fixed by them.

(4) A Trade Board may, if they think it expedient, cancel or vary any minimum time-rate or general minimum piece-rate fixed under this Act, and shall reconsider any such minimum rate if the Board of Trade direct them to do so, whether an application is made for the purpose or not :

Provided that the provisions of this section as to notice shall apply where it is proposed to cancel or vary the minimum rate fixed under the foregoing provisions in the same manner as they apply where it is proposed to fix a minimum rate.

(5) A Trade Board shall on the application of any employer fix a special minimum piece-rate to apply as respects the persons employed by him in cases to which a minimum time-rate but no general minimum piece-rate is applicable, and may as they think fit cancel or vary any such rate either on the application of the employer or after notice to the employer, such notice to be given not less than one month before cancellation or variation of any such rate.

5. (1) Until a minimum time-rate or general minimum piece-rate fixed by a Trade Board has been made obligatory by order of the Board of Trade under this section, the operation of the rate shall be limited as in this Act provided. Order giving obligatory effect to minimum rates of wages.

(2) Upon the expiration of six months from the date on which a Trade Board have given notice of any minimum time-rate or general minimum piece-rate fixed by them, the Board of Trade shall make an order (in this Act referred to as an obligatory order) making that minimum rate obligatory in cases in which it is applicable on all persons employing labour and on all persons employed, unless they are of opinion that the circumstances are such as to make it premature or otherwise undesirable to make an obligatory order, and in that case they shall make an order suspending the obligatory operation of the rate (in this Act referred to as an order of suspension).

(3) Where an order of suspension has been made as respects any rate, the Trade Board may, at any time after the expiration of six months from the date of the order, apply to the Board of Trade for an obligatory order as respects that rate ; and on any such application the Board of Trade shall make an obligatory order as respects that rate, unless they are of opinion that a further order of suspension is desirable, and, in that case, they shall make such a further order, and the provisions of this section which are applicable to the first order of suspension shall apply to any such further order.

An order of suspension as respects any rate shall have effect until an obligatory order is made by the Board of Trade under this section.

(4) The Board of Trade may, if they think fit, make an order to apply generally as respects any rates which may be fixed by any Trade Board constituted, or about to be constituted, for any trade to which this Act applies, and while the order is in force any minimum time-rate or general minimum piece-rate shall, after the lapse of six months from the date on which the Trade Board have given notice of the fixing of the rate, be obligatory in the same manner as if the Board of Trade had made an order making the rate obligatory under this section, unless in any particular case the Board of Trade, on the application of any person interested, direct to the contrary.

The Board of Trade may revoke any such general order at any time after giving three months' notice to the Trade Board of their intention to revoke it.

6. (1) Where any minimum rate of wages fixed by a Trade Board

Penalty for not paying wages in accordance with minimum rate which has been made obligatory.

has been made obligatory by order of the Board of Trade under this Act, an employer shall, in cases to which the minimum rate is applicable, pay wages to the person employed at not less than the minimum rate clear of all deductions, and if he fails to do so shall be liable on summary conviction in respect of each offence to a fine not exceeding twenty pounds and to a fine not exceeding five pounds for each day on which the offence is continued after conviction therefor.

(2) On the conviction of an employer under this section for failing to pay wages at not less than the minimum rate to a person employed, the court may by the conviction adjudge the employer convicted to pay, in addition to any fine, such sum as appears to the court to be due to the person employed on account of wages, the wages being calculated on the basis of the minimum rate, but the power to order the payment of wages under this provision shall not be in derogation of any right of the person employed to recover wages by any other proceedings.

(3) If a Trade Board are satisfied that any worker employed, or desiring to be employed, on time work in any branch of a trade to which a minimum time-rate fixed by the Trade Board is applicable is affected by any infirmity or physical injury which renders him incapable of earning that minimum time-rate, and are of opinion that the case cannot suitably be met by employing the worker on piece-rate, the Trade Board may, if they think fit, grant to the worker, subject to such conditions, if any, as they prescribe, a permit exempting the employment of the worker from the provisions of this Act rendering the minimum time-rate obligatory, and, while the permit is in force, an employer shall not be liable to any penalty for paying wages to the worker at a rate less than the minimum time-rate so long as any conditions prescribed by the Trade Board on the grant of the permit are complied with.

(4) On any prosecution of an employer under this section, it shall lie on the employer to prove by the production of proper wages sheets or other records of wages or otherwise that he has not paid, or agreed to pay, wages at less than the minimum rate.

(5) Any agreement for the payment of wages in contravention of this provision shall be void.

Limited operation of minimum rate which has not been made obligatory.

7. (1) Where any minimum rate of wages has been fixed by a Trade Board, but is not for the time being obligatory under an order of the Board of Trade made in pursuance of this Act, the minimum rate shall, unless the Board of Trade direct to the contrary in any case in which they have directed the Trade Board to reconsider the rate, have a limited operation as follows :—

- (a) In all cases to which the minimum rate is applicable an employer shall, in the absence of a written agreement to the contrary, pay to the person employed wages at not less than the minimum rate, and, in the absence of any such agreement, the person employed may recover wages at such a rate from the employer ;
- (b) Any employer may give written notice to the Trade Board by whom the minimum rate has been fixed that he is willing that that rate should be obligatory on him, and in that case he shall be under the same obligation to pay wages to the person employed at not less than the minimum rate, and be liable to the same fine for not doing so, as he would be if an order of the Board of Trade were in force making the rate obligatory ; and
- (c) No contract involving employment to which the minimum rate is applicable shall be given by a Government Department or local authority to any employer unless he has given notice to the Trade Board in accordance with the foregoing provision :

Provided that in case of any public emergency the Board of Trade may by order, to the extent and during the period named in the order, suspend the operation of this provision as respects contracts for any such work being done or to be done on behalf of the Crown as is specified in the order.

(2) A Trade Board shall keep a register of any notices given under this section :



The register shall be open to public inspection without payment of any fee, and shall be evidence of the matters stated therein :

Any copy purporting to be certified by the secretary of the Trade Board or any officer of the Trade Board authorised for the purpose to be a true copy of any entry in the register shall be admissible in evidence without further proof.

8. An employer shall, in cases where persons are employed on piece-work and a minimum time-rate but no general minimum piece-rate has been fixed, be deemed to pay wages at less than the minimum rate—

Provision for case of persons employed by piece-work where a minimum time-rate but no general minimum piece-rate has been fixed.

- (a) in cases where a special minimum piece-rate has been fixed under the provisions of this Act for persons employed by the employer, if the rate of wages paid is less than that special minimum piece-rate ; and
- (b) in cases where a special minimum piece-rate has not been so fixed, unless he shows that the piece-rate of wages paid would yield, in the circumstances of the case, to an ordinary worker at least the same amount of money as the minimum time-rate.

9. Any shopkeeper, dealer, or trader, who by way of trade makes any arrangement express or implied with any worker in pursuance of which the worker performs any work for which a minimum rate of wages has been fixed under this Act, shall be deemed for the purposes of this Act to be the employer of the worker, and the net remuneration obtainable by the worker in respect of the work after allowing for his necessary expenditure in connection with the work shall be deemed to be wages.

Prevention of evasion.

10. (1) Any worker or any person authorised by a worker may complain to the Trade Board that the wages paid to the worker by any employer in any case to which any minimum rate fixed by the Trade Board is applicable are at a rate less than the minimum rate, and the Trade Board shall consider the matter and may, if they think fit, take any proceedings under this Act on behalf of the worker.

Consideration by Trade Board of complaints as to infraction of minimum rates.

(2) Before taking any proceedings under this Act on behalf of the worker, a Trade Board may, and on the first occasion on which proceedings are contemplated by the Trade Board against an employer they shall, take reasonable steps to bring the case to the notice of the employer, with a view to the settlement of the case without recourse to proceedings.

[Sections 11-13 deal with the constitution, proceedings, &c., of Trade Boards, and s. 14 deals with the appointment of officers of Trade Boards.]

15. (1) Any officer appointed by the Board of Trade under this Act, and any officer of any Government Department for the time being assisting in carrying this Act into effect, shall have power for the performance of his duties—

Powers of officers.

- (a) to require the production of wages sheets or other record of wages by an employer, and records of payments made to outworkers by persons giving out work, and to inspect and examine the same and copy any material part thereof ;
- (b) to require any person giving out work and any outworker to give any information which it is in his power to give with respect to the names and addresses of the persons to whom the work is given out or from whom the work is received, as the case may be, and with respect to the payments to be made for the work ;
- (c) at all reasonable times to enter any factory or workshop and any place used for giving out work to outworkers ; and
- (d) to inspect and copy any material part of any list of outworkers kept by an employer or person giving out work to outworkers.

(2) If any person fails to furnish the means required by an officer as necessary for any entry or inspection or the exercise of his powers under this section, or if any person hinders or molests any officer in the exercise of the powers given by this section, or refuses to produce any document or give any information which any officer requires him to produce or give under the powers given by this section, that person shall be liable on summary conviction in respect of each offence to a fine not exceeding five pounds ; and, if any person produces any wages sheet, or record of wages, or record of payments, or any list of outworkers to

any officer acting in the exercise of the powers given by this section, knowing the same to be false, or furnishes any information to any such officer knowing the same to be false, he shall be liable, on summary conviction, to a fine not exceeding twenty pounds, or to imprisonment for a term not exceeding three months, with or without hard labour.

Officers to produce certificates when required.

16. Every officer appointed by the Board of Trade under this Act, and every officer of any Government Department for the time being assisting in carrying this Act into effect, shall be furnished by the Board or Department with a certificate of his appointment, and when acting under any or exercising any power conferred upon him by this Act shall, if so required, produce the said certificate to any person or persons affected.

Power to take and conduct proceedings,

17. (1) Any officer appointed by the Board of Trade under this Act, and any officer of any Government Department for the time being assisting in carrying this Act into effect, shall have power in pursuance of any special or general directions of the Board of Trade to take proceedings under this Act, and a Trade Board may also take any such proceedings in the name of any officer appointed by the Board of Trade for the time being acting under the directions of the Trade Board in pursuance of this Act, or in the name of their secretary or any of their officers authorised by them.

(2) Any officer appointed by the Board of Trade under this Act, or any officer of any Government Department for the time being assisting in carrying this Act into effect, and the secretary of a Trade Board, or any officer of a Trade Board authorised for the purpose, may, although not a counsel or solicitor or law agent, prosecute or conduct before a court of summary jurisdiction any proceedings arising under this Act.

#### *Supplemental.*

Regulations as to mode of giving notice,

18. (1) The Board of Trade shall make regulations as to the notice to be given of any matter under this Act, with a view to bringing the matter of which notice is to be given so far as practicable to the knowledge of persons affected.

(2) Every occupier of a factory or workshop, or of any place used for giving out work to outworkers, shall, in manner directed by regulations under this section, fix any notices in his factory or workshop or the place used for giving out work to outworkers which he may be required to fix by the regulations, and shall give notice in any other manner, if required by the regulations, to the persons employed by him of any matter of which he is required to give notice under the regulations :

If the occupier of a factory or workshop, or of any place used for giving out work to outworkers, fails to comply with this provision, he shall be liable on summary conviction in respect of each offence to a fine not exceeding forty shillings.

[Section 19 deals with the laying of Regulations before Parliament, s. 20 with the interchange of powers between Government Departments, and s. 21 with the expenses of carrying the Act into effect.]

Short title,

22. This Act may be cited as the Trade Boards Act, 1909.

#### SCHEDULE.

##### TRADES TO WHICH THE ACT APPLIES WITHOUT PROVISIONAL ORDER.

1. Ready-made and wholesale bespoke tailoring and any other branch of tailoring in which the Board of Trade consider that the system of manufacture is generally similar to that prevailing in the wholesale trade.

2. The making of boxes or parts thereof made wholly or partially of paper, cardboard, chip, or similar material.

3. Machine-made lace and net finishing and mending or darning operations of lace curtain finishing.

4. Hammered and dollied or tommied chain-making.

## CINEMATOGRAPH ACT, 1909.

[9 EDW. 7, CH. 30.]

1. An exhibition of pictures or other optical effects by means of a cinematograph, or other similar apparatus, for the purposes of which inflammable films are used, shall not be given unless the regulations made by the Secretary of State<sup>1</sup> for securing safety are complied with, or, save as otherwise expressly provided by this Act, elsewhere than in premises licensed for the purpose in accordance with the provisions of this Act.

Provision  
against  
cinematograph  
exhibition  
except in  
licensed  
premises.

2. (1) A county council may grant licences to such persons as they think fit to use the premises specified in the licence for the purposes aforesaid on such terms and conditions<sup>2</sup> and under such restrictions as, subject to regulations of the Secretary of State,<sup>1</sup> the council may by the respective licences determine.

Provisions as  
to licences.

(2) A licence shall be in force for one year or for such shorter period as the council on the grant of the licence may determine, unless the licence has been previously revoked as hereinafter provided.

(3) A county council may transfer any licence granted by them to such other person as they think fit.

(4) An applicant for a licence or transfer of a licence shall give not less than seven days' notice in writing to the county council and to the chief officer of police of the police area in which the premises are situated of his intention to apply for a licence or transfer :

Provided that it shall not be necessary to give any notice where the application is for the renewal of an existing licence held by the applicant for the same premises.

(5) There shall be paid in respect of the grant, renewal, or transfer of a licence such fees as the county council may fix, not exceeding in the case of a grant or renewal for one year one pound, or in the case of a grant or renewal for any less period five shillings for every month for which it is granted or renewed, so however that the aggregate of the fees payable in any year shall not exceed one pound, or, in the case of transfer, five shillings.

(6) [*Does not apply to Ireland.*]

3. If the owner of a cinematograph or other apparatus uses the apparatus, or allows it to be used, or if the occupier of any premises allows those premises to be used, in contravention of the provisions of this Act or the regulations made thereunder, or of the conditions or restrictions upon or subject to which any licence relating to the premises has been granted under this Act, he shall be liable, on summary conviction, to a fine not exceeding twenty pounds, and in the case of a continuing offence to a further penalty of five pounds for each day during which the offence continues, and the licence (if any) shall be liable to be revoked by the county council.

Penalties.

4. A constable or any officer appointed for the purpose by a county council may at all reasonable times enter any premises, whether licensed or not, in which he has reason to believe that such an exhibition as aforesaid is being or is about to be given, with a view to seeing whether the provisions of this Act, or any regulations made thereunder, and the conditions of any licence granted under this Act, have been complied with, and, if any person prevents or obstructs the entry of a constable or any officer appointed as aforesaid, he shall be liable, on summary conviction, to a penalty not exceeding twenty pounds.

Power of entry.

5. [*Refers to delegation of powers. Does not apply to Ireland. See s. 9 (2).*]

<sup>1</sup> In Ireland, Lord-Lieutenant, see s. 9.

<sup>2</sup> These conditions are not limited to questions of safety, and the county council may insert, for instance, a condition requiring the premises to be closed on Sundays, Good Friday and Christmas Day (*London C.C. v. Bermondsey Bioscope Co., Ltd.* (1910), 27 T.L.R. 141).



Application to  
county  
boroughs.

6. The provisions of this Act shall apply in the case of a county borough as if the borough council were a county council, and the expenses of the borough council shall be defrayed out of the borough fund or borough rate.

Application of  
Act to special  
premises.

7. (1) Where the premises are premises licensed by the Lord Chamberlain the powers of the county council under this Act shall, as respects those premises, be exercisable by the Lord Chamberlain instead of by the county council.

(2) Where the premises in which it is proposed to give such an exhibition as aforesaid are premises used occasionally and exceptionally only, and not on more than six days in any one calendar year, for the purposes of such an exhibition, it shall not be necessary to obtain a licence for those premises under this Act if the occupier thereof has given to the county council and to the chief officer of police of the police area, not less than seven days before the exhibition, notice in writing of his intention so to use the premises, and complies with the regulations made by the Secretary of State<sup>1</sup> under this Act, and, subject to such regulations, with any conditions imposed by the county council, and notified to the occupier in writing.

(3) Where it is proposed to give any such exhibition as aforesaid in any building or structure of a moveable character, it shall not be necessary to obtain a licence under this Act from the council of the county in which the exhibition is to be given if the owner of the building or structure—

- (a) has been granted a licence in respect of that building or structure by the council of the county in which he ordinarily resides, or by any authority to whom that council may have delegated the powers conferred on them by this Act; and
- (b) has given to the council of the county and to the chief officer of police of the police area in which it is proposed to give the exhibition, not less than two days before the exhibition, notice in writing of his intention to give the exhibition; and
- (c) complies with the regulations made by the Secretary of State under this Act, and, subject to such regulations, with any conditions imposed by the county council, and notified in writing to the owner.

(4) This Act shall not apply to an exhibition given in a private dwelling-house to which the public are not admitted, whether on payment or otherwise.

8. [*Application to Scotland.*]

Application to  
Ireland.

9. This Act shall extend to Ireland subject to the following modifications:—

- (1) For references to the Secretary of State there shall be substituted references to the Lord-Lieutenant:
- (2) The provision of this Act relating to the delegation of powers shall not apply:
- (3) Any of the powers conferred on the county council by this Act may be exercised by any officer of the council authorised in writing by the council in that behalf for such period and subject to such restrictions as the council think fit:
- (4) If any urban district other than a county borough, and in any town, the provisions of this Act shall apply as if the council of the district and the commissioners of the town, as the case may be, were a county council:
- (5) The expenses incurred in the execution of this Act shall—
  - (a) in the case of the council of any county other than a county borough, be defrayed out of the poor rate and raised over so much of the county as is not included in any urban district or town;
  - (b) in the case of the council of any county borough or other urban district, be defrayed out of any rate or fund applicable to

<sup>1</sup> In Ireland, the Lord-Lieutenant, see s. 9.

the purposes of the Public Health (Ir.) Acts, 1878 to 1907, as if incurred for those purposes ;

- (c) in the case of the commissioners of any town, be defrayed out of the rate leviable under section sixty of the Towns Improvement (Ir.) Act, 1854 : Provided that the limits imposed upon that rate by that section may be exceeded for the purpose of raising the expenses incurred under this Act by not more than one penny in the pound :
- (6) The expression " town " means any town as defined by the Local Government (Ir.) Act, 1898, not being an urban district :
- (7) The expressions " police area " and " chief officer of police " mean, as respects the police district of Dublin Metropolis, that district and the chief commissioner of the police for that district, and elsewhere a police district and the county inspector of the Royal Irish Constabulary.
10. This Act may be cited as the Cinematograph Act, 1909.

Short title.

## WEEDS AND AGRICULTURAL SEEDS (IRELAND) ACT, 1909.

[9 EDW. 7, CH. 31.]

### PART I.

1. (1) The Department of Agriculture and Technical Instruction for Ireland (in this Act referred to as " the Department ") may, with the consent of the council of any county, make an order declaring that throughout the county all plants of any species to which this section applies are noxious weeds for the purposes of this Part of this Act.

Definition of noxious weeds by the Department of Agriculture.

(2) The species of plants to which this section applies are ragwort, charlock, coltsfoot, thistle, and dock, and the order may include all or any of those species.

(3) The consent of the county council shall be signified by a resolution passed at a meeting of the council, and a copy of the resolution under the seal of the council shall be accepted as sufficient evidence of such consent.

(4) The Department may, and at the request of the county council, shall revoke any order made under this section.

2. (1) Where the Department are satisfied that there are noxious weeds growing upon any land, they may serve upon the occupier of the land a notice in writing requiring him to cut down or destroy those weeds in the manner and within the time specified in the notice.

Destruction of noxious weeds.

(2) If any occupier upon whom a notice is served under this section fails to carry out the requirements of the notice within the time therein specified, he shall be guilty of an offence under this Act, and shall be liable on summary conviction to a penalty not exceeding, for the first offence, five pounds, and, for the second or any subsequent offence, ten pounds.

3. Any officer of the Department shall have power at all reasonable hours to enter upon any land for the purpose of ascertaining whether any noxious weeds are growing thereon.

Entry on premises.

4. (1) Any notice which the Department are authorised to serve under this Act shall be sufficiently authenticated if signed by the secretary or other officer of the Department.

Notices.

(2) Any such notice may be served by delivering the same or a true copy thereof either to or at the usual or last-known residence of the person to whom it is addressed, or where addressed to the occupier of premises then to some person on the premises, or, if there is no person on the premises who can be so served, then by fixing the same or a true copy thereof on some conspicuous part of the premises ; it may also be served by sending

the same or a true copy thereof by post addressed to a person at such residence or premises as above mentioned.

(3) Any such notice may be addressed by the description of the "occupier" of the premises (naming them) in respect of which the notice is served without further name or description.

## PART II.

### AGRICULTURAL SEEDS.

Power to examine and take samples of agricultural seeds.

5. (1) Any officer of the Department shall have power at all reasonable hours to enter the shop, store, or other premises of any person who sells or exposes or keeps for sale agricultural seeds for sowing, and to examine and take samples of any agricultural seeds that are upon the premises.

(2) The person on whose premises a sample of agricultural seeds is taken under this section shall, if the officer requires, give the name and address of the person from whom he procured the seeds; and, if he refuses to give such name and address, or wilfully gives a false name or address, he shall be guilty of an offence under this Act and shall be liable on summary conviction to a penalty not exceeding ten pounds.

Testing of agricultural seeds and publication of results.

6. The Department may cause any sample of agricultural seeds taken under this Act to be tested for purity and germination, and may publish in such manner as they think fit the results of the tests and the names and addresses of the persons upon whose premises the samples were taken, and of the persons from whom the seeds were stated to have been procured.

## PART III.

### GENERAL.

Obstruction of officers.

7. If any person refuses to allow any officer of the Department to enter any land or premises which he is entitled to enter under this Act, or obstructs or impedes him in the execution of his duty, he shall be guilty of an offence under this Act and shall be liable on summary conviction to a penalty not exceeding five pounds.

Prosecution of offences.

8. (1) Offences under this Act may be prosecuted, and penalties recoverable under this Act may be recovered, in a summary manner.

(2) All penalties recovered under this Act shall, notwithstanding any provision in any other Act, be paid to the Department, and shall be applied in aid of the expenses of the Department in the execution of this Act.

Interpretation.

9. In this Act, unless the context otherwise requires,—

The expression "noxious weed" means any plant declared by an order of the Department under this Act to be a noxious weed in any county to which the order applies:

The expression "agricultural seeds" means the seeds of grass, clover, flax, cereals, turnips, rape, mangel, carrots, cabbage, or parsnips:

The expression "occupier" shall be deemed to include—

(a) in the case of any public road, the county or district council by whom the road is maintained;

(b) in the case of any land the occupier of which (being an individual) is absent from Ireland, any agent or other person entrusted with the management of the land on his behalf.

Extent, commencement, short title.

10. This Act shall apply to Ireland only, and shall come into operation on the first day of January nineteen hundred and ten, and may be cited as the Weeds and Agricultural Seeds (Ir.) Act, 1909.



# FINANCE (1909-10) ACT, 1910.

[10 EDW. 7, CH. 8, FIRST SCHEDULE, Scale 7.]

[The following quotation from the above statute should be noted at pp. 118, 576, ante, as same modifies the hours for the sale of intoxicating liquors in theatres, &c.]

4. The maximum amount of duty payable in respect of a retailer's on-licence granted to the proprietor or occupier of premises adapted to be and *bona fide* used only for any of the following purposes, namely, for judicial or public administrative purposes or as a theatre or place of public or private entertainment, or as public gardens, picture galleries, or exhibitions, or for any similar purpose to which the holding of the licence is merely auxiliary, shall, in the case of a theatre the annual value of which does not exceed £2000, be £20, and in any other case be £50, but it shall be a condition of any such licence that intoxicating liquor is not sold under the licence except while the premises are open and being used, and to persons *bona fide* using the premises, for the said purposes.

# PUBLIC HEALTH (IRELAND) ACT, 1911.

[1 & 2 GEO. 5, CH. 12.]

1. (1) Any urban district council in Ireland may, in addition to any existing powers, make bye-laws providing for the inspection of all meat intended to be sold within the urban district for human consumption, and prohibiting the sale of meat within the urban district for human consumption except after inspection in accordance with the bye-laws. Power to urban councils to make bye-laws as to sale of meat in urban districts.

(2) The provisions of sections two hundred and nineteen to two hundred and twenty-three of the Public Health (Ireland) Act, 1878, relative to bye-laws shall apply to every bye-law made under this Act as they apply to bye-laws made under that Act. 41 & 42 Vict. c. 52.

2. This Act shall be read and construed with the Public Health (Ireland) Acts, 1878 to 1907, and may be cited as the Public Health (Ireland) Act, 1911. Short title and construction.

# PROTECTION OF ANIMALS ACT, 1911.

[1 & 2 GEO. 5, CH. 27.]

1. (1) If any person—

- (a) shall cruelly beat, kick, ill-treat, over-ride, over-drive, over-load, torture, infuriate, or terrify any animal, or shall cause or procure, or, being the owner, permit any animal to be so used, or shall, by wantonly or unreasonably doing or omitting to do any act, or causing or procuring the commission or omission of any act, cause any unnecessary suffering, or, being the owner, permit any unnecessary suffering to be so caused to any animal; or
- (b) shall convey or carry, or cause or procure, or, being the owner, permit to be conveyed or carried, any animal in such manner or position as to cause that animal any unnecessary suffering; or
- (c) shall cause, procure, or assist at the fighting or baiting of any animal; or shall keep, use, manage, or act or assist in the management of, any premises or place for the purpose, or partly for the purpose, of fighting or baiting any animal, or shall permit any premises or place to be so kept, managed, or

Offences of cruelty.

used, or shall receive, or cause or procure any person to receive, money for the admission of any person to such premises or place ; or

- (d) shall wilfully, without any reasonable cause or excuse, administer, or cause or procure, or being the owner permit, such administration of, any poisonous or injurious drug or substance to any animal, or shall wilfully, without any reasonable cause or excuse, cause any such substance to be taken by any animal ; or
- (e) shall subject, or cause or procure, or being the owner permit, to be subjected, any animal to any operation which is performed without due care and humanity ;

such person shall be guilty of an offence of cruelty within the meaning of this Act, and shall be liable upon summary conviction to a fine not exceeding twenty-five pounds, or alternatively, or in addition thereto, to be imprisoned, with or without hard labour, for any term not exceeding six months.

(2) For the purposes of this section, an owner shall be deemed to have permitted cruelty within the meaning of this Act if he shall have failed to exercise reasonable care and supervision in respect of the protection of the animal therefrom :

Provided that, where an owner is convicted of permitting cruelty within the meaning of this Act by reason only of his having failed to exercise such care and supervision, he shall not be liable to imprisonment without the option of a fine.

(3) Nothing in this section shall render illegal any act lawfully done under the Cruelty to Animals Act, 1876, or shall apply—

- (a) to the commission or omission of any act in the course of the destruction, or the preparation for destruction, of any animal as food for mankind, unless such destruction or such preparation was accompanied by the infliction of unnecessary suffering ; or
- (b) to the coursing or hunting of any captive animal, unless such animal is liberated in an injured, mutilated, or exhausted condition ; but a captive animal shall not, for the purposes of this section, be deemed to be coursed or hunted before it is liberated for the purpose of being coursed or hunted, or after it has been recaptured, or if it is under control.

39 & 40 Vict.  
c. 77.

Power for court  
to order destruction  
of animal.

2. Where the owner of an animal is convicted of an offence of cruelty within the meaning of this Act, it shall be lawful for the court, if the court is satisfied that it would be cruel to keep the animal alive, to direct that the animal be destroyed, and to assign the animal to any suitable person for that purpose ; and the person to whom such animal is so assigned shall, as soon as possible, destroy such animal, or cause or procure such animal to be destroyed, in his presence without unnecessary suffering. Any reasonable expenses incurred in destroying the animal may be ordered by the court to be paid by the owner, and thereupon shall be recoverable summarily as a civil debt :

Provided that, unless the owner assent, no order shall be made under this section except upon the evidence of a duly registered veterinary surgeon.

Power for court  
to deprive person  
convicted of  
cruelty of owner-  
ship of animal.

3. If the owner of any animal shall be guilty of cruelty within the meaning of this Act to the animal, the court, upon his conviction thereof, may, if they think fit, in addition to any other punishment, deprive such person of the ownership of the animal, and may make such order as to the disposal of the animal as they think fit under the circumstances :

Provided that no order shall be made under this section, unless it is shown by evidence as to a previous conviction, or as to the character of the owner, or otherwise, that the animal, if left with the owner, is likely to be exposed to further cruelty.

Compensation  
for damage done  
by cruelty to an  
animal.

4. If any person shall, by cruelty within the meaning of this Act to any animal, do or cause to be done, any damage or injury to the animal or any person or property, he shall upon conviction for the cruelty under this Act, be liable upon the application of the person aggrieved to be

ordered to pay as compensation to the person who shall sustain damage or injury as aforesaid, such sum not exceeding ten pounds, as the court before whom he is convicted may consider reasonable :

Provided that this section shall not—

- (a) prevent the taking of any other legal proceedings in respect of any such damage or injury, so that a person be not twice proceeded against in respect of the same claim ; nor
- (b) affect the liability of any person to be proceeded against and punished under this Act for an offence of cruelty within the meaning of this Act.

5. (1) Every person who shall carry on, or assist in carrying on, the trade or business of a knacker shall observe and conform to the regulations set out in the First Schedule to this Act, and, if any person, carrying on or assisting in the carrying on of the said trade or business, contravenes or fails to comply with, or causes or procures or permits any contravention or non-compliance with, any such regulation, he shall be liable upon summary conviction to a fine not exceeding ten pounds.

Compliance by knackers with certain regulations.

(2) Any constable shall have a right to enter any knacker's yard at any hour by day, or at any hour when business is or apparently is in progress or is usually carried on therein, for the purpose of examining whether there is or has been any contravention of or non-compliance with the provisions of this Act, and, if any person refuses to permit any constable to enter any premises which he is entitled to enter under this section, or obstructs or impedes him in the execution of his duty under this section, he shall, upon summary conviction, be liable to a fine not exceeding five pounds.

(3) For the purposes of section one, which relates to offences of cruelty, of this Act, a knacker shall be deemed to be the owner of any animal delivered to him.

(4) For the purposes of this Act, an animal shall be deemed to have been delivered to a knacker if it has been delivered either to the knacker himself, or to any person on his behalf, or at the knacker's yard.

6. (1) It shall not be lawful for any person who shall be licensed to slaughter horses, during the time while such licence shall be in force, to carry on the trade or business of a dealer in horses.

Persons licensed to slaughter horses not to be horse-dealers at same time.

(2) If any person shall act in contravention of this section, he shall be liable upon summary conviction to a fine not exceeding ten pounds.

7. (1) Any person who impounds or confines, or causes to be impounded or confined, any animal in any pound shall, while the animal is so impounded or confined, supply it with a sufficient quantity of wholesome and suitable food and water, and, if he fails to do so, he shall be liable upon summary conviction to a fine not exceeding five pounds.

Animals in pounds.

(2) If any animal is impounded or confined in any pound and is without sufficient suitable food or water for six successive hours, or longer, any person may enter the pound for the purpose of supplying the animal therewith.

(3) The reasonable cost of the food and water supplied to any animal impounded or confined in any pound shall be recoverable summarily from the owner of the animal as a civil debt.

8. If any person—

- (a) shall sell, or offer or expose for sale, or give away, or cause or procure any person to sell or offer or expose for sale or give away, or knowingly be a party to the sale or offering or exposing for sale or giving away of any grain or seed which has been rendered poisonous except for *bona fide* use in agriculture ; or
- (b) shall knowingly put or place, or cause or procure any person to put or place, or knowingly be a party to the putting or placing, in or upon any land or building any poison, or any fluid or edible matter (not being sown seed or grain) which has been rendered poisonous,

Poisoned grain and flesh, &c.

such person shall, upon summary conviction, be liable to a fine not exceeding ten pounds :



Provided that, in any proceedings under paragraph (b) of this section, it shall be a defence that the poison was placed by the accused for the purpose of destroying rats, mice, or other small vermin, and that he took all reasonable precautions to prevent access thereto of dogs, cats, fowls, or other domestic animals.

Use of dogs for  
purposes of  
draught.

9. If any person shall use, or cause or procure, or being the owner permit, to be used, any dog for the purpose of drawing or helping to draw any cart, carriage, truck, or barrow, on any public highway, he shall be liable upon summary conviction in respect of the first offence to a fine not exceeding two pounds, and in respect of the second or any subsequent offence to a fine not exceeding five pounds.

Inspection of  
traps.

10. Any person who sets, or causes or procures to be set, any spring trap for the purpose of catching any hare or rabbit, or which is so placed as to be likely to catch any hare or rabbit, shall inspect, or cause some competent person to inspect, the trap at reasonable intervals of time and at least once every day between sunrise and sunset, and, if any person shall fail to comply with the provisions of this section, he shall be liable, upon summary conviction, to a fine not exceeding five pounds.

Injured animals.

11. (1) If a police constable finds any animal so diseased, or so severely injured or in such a physical condition that, in his opinion, having regard to the means available for removing the animal, there is no possibility of removing it without cruelty, he shall, if the owner is absent or refuses to consent to the destruction of the animal, at once summon a duly registered veterinary surgeon, if any such veterinary surgeon resides within a reasonable distance, and, if it appears by the certificate of such veterinary surgeon that the animal is mortally injured, or so severely injured, or so diseased, or in such physical condition, that it is cruel to keep it alive, it shall be lawful for the police constable, without the consent of the owner, to slaughter the animal, or cause or procure it to be slaughtered, with such instruments or appliances, and with such precautions, and in such manner, as to inflict as little suffering as practicable, and, if the slaughter takes place on any public highway, to remove the carcase or cause or procure it to be removed therefrom.

(2) If any veterinary surgeon summoned under this section certifies that the injured animal can without cruelty be removed, it shall be the duty of the person in charge of the animal to cause it forthwith to be removed with as little suffering as possible, and, if that person fail so to do, the police constable may, without the consent of that person, cause the animal forthwith to be so removed.

(3) Any expense which may be reasonably incurred by any constable in carrying out the provisions of this section (including the expenses of any veterinary surgeon summoned by the constable, and whether the animal is slaughtered under this section or not) may be recovered from the owner summarily as a civil debt, and, subject thereto, any such expense shall be defrayed out of the fund from which the expenses of the police are payable in the area in which the animal is found.

(4) For the purposes of this section, the expression "animal" means any horse, mule, ass, bull, sheep, goat, or pig.

Powers of  
constables.

12. (1) A police constable may apprehend without warrant any person who he has reason to believe is guilty of an offence under this Act which is punishable by imprisonment without the option of a fine, whether upon his own view thereof or upon the complaint and information of any other person who shall declare his name and place of abode to such constable.

(2) Where a person having charge of a vehicle<sup>\*</sup> or animal is apprehended by a police constable for an offence under this Act, it shall be lawful for that or any other constable to take charge of such vehicle or animal, and to deposit the same in some place of safe custody until the termination of the proceedings or until the court shall direct such vehicle or animal to be delivered to the person charged or the owner, and the reasonable costs of such detention, including the reasonable costs of veterinary treatment where such treatment is required, shall, in the event of a conviction in respect of the said animal, be recoverable from the

owner summarily as a civil debt, or, where the owner himself is convicted, shall be part of the costs of the case.

13. (1) Where proceedings are instituted under this Act against the driver or conductor of any vehicle, it shall be lawful for the court to issue a summons directed to the employer of the driver or conductor, as the case may be, requiring him, if it is in his power so to do, to produce the driver or conductor at the hearing of the case. Employers and owners to produce drivers or animals if so required.

(2) Where proceedings are instituted under this Act, it shall be lawful for the court to issue a summons directed to the owner of the animal requiring him to produce either at, or at any time before, the hearing of the case, as may be stated in the summons, the animal for the inspection of the court, if such production is possible without cruelty.

(3) Where a summons is issued under either of the foregoing subsections of this section, and the owner or employer, as the case may be, fails to comply therewith without satisfactory excuse, he shall be liable upon summary conviction to a fine not exceeding five pounds for the first occasion, and not exceeding ten pounds for the second or any subsequent occasion, on which he so fails, and may be required to pay the costs of any adjournment rendered necessary by his failure.

14. (1) An appeal shall lie from any conviction or order (other than an order for the destruction of an animal) by a court of summary jurisdiction under this Act to quarter sessions. Appeals.

(2) Where there is an appeal by the owner of an animal from any conviction or order by a court of summary jurisdiction under this Act, the court may direct that the recognisance required to be entered into under subsection (3) of section thirty-one, which relates to procedure on appeal to general or quarter sessions, of the Summary Jurisdiction Act, 1879, shall include an undertaking not to sell or part with the animal until the appeal is determined or abandoned, and to produce it on the hearing of the appeal if such production is possible without cruelty. 42 & 43 Vict. c. 49.

15. In this Act, except the context otherwise requires, or it is otherwise expressly provided— Definitions.

- (a) the expression " animal " means any domestic or captive animal ;
- (b) the expression " domestic animal " means any horse, ass, mule, bull, sheep, pig, goat, dog, cat, or fowl, or any other animal of whatsoever kind or species, and whether a quadruped or not which is tame or which has been or is being sufficiently tamed to serve some purpose for the use of man ;
- (c) the expression " captive animal " means any animal (not being a domestic animal) of whatsoever kind or species, and whether a quadruped or not, including any bird, fish, or reptile, which is in captivity, or confinement, or which is maimed, pinioned, or subjected to any appliance or contrivance for the purpose of hindering or preventing its escape from captivity or confinement ;
- (d) the expression " horse " includes any mare, gelding, pony, foal, colt, filly, or stallion ; and the expression " bull " includes any cow, bullock, heifer, calf, steer, or ox, and the expression " sheep " includes any lamb, ewe, or ram ; and the expression " pig " includes any boar, hog, or sow ; and the expression " goat " includes a kid ; and the expression " dog " includes any bitch, sapling, or puppy ; and the expression " cat " includes a kitten ; and the expression " fowl " includes any cock, hen, chicken, capon, turkey, goose, gander, duck, drake, guinea-fowl, peacock, peahen, swan, or pigeon ;
- (e) the expression " knacker " means a person whose trade or business it is to kill any cattle not killed for the purpose of the flesh being used as butcher's meat, and the expression " knacker's yard " means any building or place used for the purpose, or partly for the purpose, of such trade or business, and the expression " cattle " includes any horse, ass, mule, bull, sheep, goat, or pig ;

- (f) The expression "pound," used in relation to the impounding or confining of animals, includes any receptacle of a like nature.
- Extent of Act, Application to Ireland. 16. This Act shall not apply to Scotland.
- 14 & 15 Vict. c. 92. 17. This Act in its application to Ireland shall be subject to the following modifications, namely :—
- (1) (a) Section twenty-three of the Summary Jurisdiction (Ireland) Act, 1851 (which gives a right of appeal), shall apply as respects any conviction or order under this Act (other than an order for the destruction of an animal), notwithstanding that the fine imposed does not exceed twenty shillings or that the term of imprisonment imposed does not exceed one month ;
- (b) A reference to section twenty-four of the Petty Sessions (Ireland) Act, 1851, shall be substituted for the reference to subsection (3) of section thirty-one of the Summary Jurisdiction Act, 1879.
- (2) Nothing in section eight of this Act shall prevent owners or occupiers of land in Ireland from laying or causing to be laid any poison or poisonous matter as therein described, after a notice has been posted in a conspicuous place, and notice in writing has been given to the nearest constabulary station.
- Repeals. 18. Except so far as applying to Scotland, the enactments mentioned in the Second Schedule to this Act are repealed to the extent mentioned in the third column of that schedule.
- Commencement, saving for pending proceedings, and short title. 19. (1) This Act shall come into operation on the first day of January nineteen hundred and twelve.
- (2) This Act shall not apply where proceedings have been instituted before the commencement of this Act.
- (3) This Act may be cited as the Protection of Animals Act, 1911.

## SCHEDULES

## FIRST SCHEDULE

Section 5.

1. The name of the knacker, together with the word "knacker," shall be painted or affixed in a conspicuous manner over the door or gate of the knacker's yard.
2. The hair shall be cut from the neck of any horse, ass, or mule, directly the animal has been delivered to the knacker.
3. All animals shall be slaughtered, with as little suffering as possible, within two days from the time they have been delivered to the knacker. Any animal which is in pain shall be so slaughtered without delay.
4. All animals shall be properly fed and watered after they have been delivered to the knacker.
5. No animal shall be used or employed for any work after it has been delivered to the knacker.
6. The knacker shall enter in a book kept for the purpose such a full and correct description of the colour, marks, and gender of every animal delivered to him as may clearly distinguish and identify the same, and the name and address of the owner thereof, and the book shall be produced by him before any justice of the peace upon the requirement of such justice, and the knacker shall allow such book to be inspected and extracts to be made therefrom at all reasonable times by any police constable or by any other person authorised by a justice of the peace.
7. No person who is under the age of sixteen years shall be admitted to, or permitted to remain in, the knacker's yard during the process of slaughtering or of cutting up the carcase of any animal.
8. No animal shall be killed in the sight of any other animal awaiting slaughter.
9. The knacker shall not sell or part with alive, or cause or procure or permit any person to sell or part with alive, any animal which has been delivered to him.



## SECOND SCHEDULE

Section 18.

## ENACTMENTS REPEALED

Session and Chapter.	Short Title.	Extent of Repeal.
26 Geo. 3, c. 71.	The Knackers Act, 1786.	Section four.
7 & 8 Vict. c. 87.	The Knackers Act, 1844.	Section three.
12 & 13 Vict. c. 92.	The Cruelty to Animals Act, 1849.	The whole Act, so far as not already repealed.
17 & 18 Vict. c. 60.	The Cruelty to Animals Act, 1854.	The whole Act.
26 & 27 Vict. c. 113.	The Poisoned Grain Prohibition Act, 1863.	The whole Act.
27 & 28 Vict. c. 115.	The Poisoned Flesh Prohibition Act, 1864.	The whole Act.
39 & 40 Vict. c. 13.	The Drugging of Animals Act, 1876.	The whole Act.
63 & 64 Vict. c. 33.	The Wild Animals in Captivity Protection Act, 1900.	The whole Act.
7 Edw. 7, c. 5.	The Injured Animals Act, 1907.	The whole Act.



# INDEX.

**ABANDONMENT OF APPEAL,**  
certiorari probably applicable on,  
229.  
to quarter sessions, 137, 1013.

**ABANDONMENT OF CHARGE,**  
effect of, 50, 59.

**ABANDONMENT OF CHILD.**  
See "CHILDREN."

**ABDUCTION,**  
children under 14, 870.  
evidence: wife competent witness  
against accused, 260.  
females over 18, 870.  
girls under 16, 870.  
18, 870.  
over 18, 870.

**ABETTING.**  
See "AIDING AND ABETTING."

**ABODE,**  
place of, 48, 1001 n. 2.

**ABORTION,**  
evidence of prior acts, 267.  
offence of, 871.

**ABUSIVE LANGUAGE,**  
remedy for, 351.  
special provisions as to, in D.M.P.  
district, 314, 948.

**ACCESSORY,** 300, 885.  
See "AIDING AND ABETTING."

**ACCIDENT,**  
notice of, 351.  
in factory and workshop,  
1104.

**ACCOMPLICE,**  
corroboration of evidence of, 286.

**ACCOUNTS,**  
falsification of, 871.

**ACCUSED,**  
confession by, 272-275.  
evidence as to character of, 269.  
incompetent witness, generally, 260.  
statement by, 272-275.  
statement of, during preliminary  
investigation, 275.

**ACQUIESCENCE,**  
defendant, when estopped by, from  
getting bad order set aside, 93, 96.

**ACQUISITION OF LANDS,**  
award of compensation for com-  
pulsory taking, 175, 176.

**ACQUITTAL,**  
bringing up on certiorari acquittal by  
quarter sessions, 227, 231.  
certiorari not applicable generally,  
231.  
See "AUTREFOIS ACQUIT."

**ACT OF PARLIAMENT,**  
evidence of public, 278.  
local and personal, 275,  
278.

**ACT WITHIN JURISDICTION OF  
JUSTICES.**  
See "LIABILITY OF JUSTICES."

**ACT WITHOUT JURISDICTION,**  
certiorari applicable to, 223.  
issuing warrant on information not  
disclosing indictable offence, 17.  
justice not responsible, if informa-  
tion false, 17.  
See "LIABILITY OF JUSTICES."

**ACTION AGAINST JUSTICES.**  
See "LIABILITY OF JUSTICES."

**ADHESIVE STAMPS,**  
fraud in relation to, 681, 789.

**ADJOINING COUNTY,**  
defendant residing in, 43.  
See "JURISDICTION OF JUSTICES."

**ADJOURNMENT,**  
after case heard, 61.  
application by defendant for, 23, 50,  
62, 214.  
bringing up order for, on certiorari  
or mandamus, 61, 247.  
cases remaining unheard, 61, 1009.  
civil proceedings pending, not a  
ground for, 61.  
discretion of court, where both  
parties apply for, 59.  
equal division of justices, 62, 109.  
good grounds for, what are, 61.  
what are not, 61.  
hearing of adjourned case, 61,  
61 n. 2.



- ADJOURNMENT**—*continued*.  
 indictable offence, preliminary investigation, 23.  
 inherent power of, 61.  
 length of, no statutory limit to, 61.  
 non-attendance of justices, 61, 62, 1042.  
 non-attendance of complainant, 57, 61, 1008.  
 of court, 1009.  
 particular cases, 61, 1009.  
 postponing charge pending decision of second charge, 107.  
 quarter sessions may adjourn, 9, 116.
- ADJUDICATION**,  
 general rules as to, 62, 90, 1009.  
 mandamus does not lie for erroneous, 246.  
     See "CONVICTIONS," "SUMMARY CASES WITHIN PETTY SESSIONS ACT."
- ADMINISTRATIVE ACTS**,  
 certiorari not applicable to, 228.
- ADMIRALTY JURISDICTION**, 14.
- ADMIRALTY ORDERS**,  
 evidence of, 277.
- ADMITTING TO BAIL**.  
     See "BAIL."
- ADULTERATION**,  
 bread, 386, 387.  
 corn, 352.  
 flour, 352.  
 food and drugs, 456.  
 intoxicating liquor, 539.  
 meal, 352.  
 seeds, 352.  
 wine, 352.  
     See also "FOOD AND DRUGS."
- ADULTERY**,  
 defence to charge of desertion, 404.  
 of wife, how far a bar to maintenance proceedings against husband, 531.  
     See "HUSBAND AND WIFE."
- ADVERTISEMENT**,  
 advertising reward, "no questions asked," 883.  
 betting house, 501.  
 bye-laws as to, 353.  
 indecent, 352.  
 lottery, 503.  
 placards, &c., prohibited on post-office property, 680.
- AFFIDAVIT**,  
 includes declaration, 335.
- AFFILIATION ORDER**,  
 none in Ireland, 532.
- AFFIRMATION**,  
 in lieu of oath, 259.  
 included in term "oath," 335.
- AFFRAY**,  
 definition of, 150.  
 powers of justices and peace officers, 150.  
 punishment, 871.
- AGE**,  
 evidence of. See "CHILDREN," "EDUCATION."
- AGENT**,  
 accessory to offence by master, 300.  
 meaning of, in Petty Sessions Act, 46.  
 employer liable for act of innocent agent, 300, 882.
- AGGRAVATED ASSAULT**.  
     See "ASSAULT."
- AGGRIEVED PERSON**.  
     See "COMPLAINANT."
- AGRICULTURAL FERTILISERS**.  
     See "FERTILISERS AND FEEDING STUFFS."
- AGRICULTURAL SEEDS**.  
     See "WEEDS AND AGRICULTURAL SEEDS."
- AIDING**.  
     See "AIDING AND ABETTING."
- AIDING AND ABETTING**,  
 cock-fighting, 360.  
 indictable offence, 885.  
 larceny, 589.  
 summary offence, 353, 1011.
- ALIEN**,  
 deportation of, 354, 869.  
 immigration, 354.
- ALKALI WORKS**, 355.
- ALLIANCE AND DUBLIN CONSUMERS GAS CO.**,  
 provisions of private Acts, 507.
- ALTERING FENCE**, 524, 526.
- ALTERING WARRANT**, 18.
- AMENDMENT**,  
 after entry in order book, 99.  
 after separation of justices, 63, 99, 234.  
 appeal court, powers of, 93.  
 case stated, amendment of, 242.  
 Children Act, 1908, 1249.  
 convictions not within Petty Sessions Act, 234.  
 Customs Act, in cases under, 81, 81 n. 7.  
 defect or omission, 93, 94.  
 determination of justices, 93.  
 Dublin Metropolitan Police district, 99.  
 entry in order book in cases within Petty Sessions Act, 63, 99, 234.  
 excessive penalty cannot be reduced by High Court, 99.

AMENDMENT—*continued.*

High Court, powers of, 93, 97, 98, 99.  
 new defendant cannot be substituted, 99.  
 order book, no power to amend entry after separation of justices, 63, 99, 234.  
 preliminary hearing of indictable offence, 24.  
 quarter sessions, powers of, on rating appeal, 201.  
 statutory provisions as to, 93.  
 substitution by High Court of charge different from that set out in case stated, 242.  
 substituting new charge in indictment for charge at preliminary hearing, 28.  
 substituting new offence for that charged, 95.  
 suggested rules for justices, 99.  
 summons, 93.  
 variance as to time, place, date, 93, 94.  
 where defendant does not appear, not allowed, 99.

## AMENDS.

See "COMPENSATION."

## AMOUNT OF BAIL, 30.

## ANCHORS, MARKING, 606.

## ANCIENT MONUMENTS, 355.

## ANGLING.

See "FISHERY LAWS."

## ANIMALS,

allowing to wander on public road, 983.  
 cruelty to. See "CRUELTY TO ANIMALS."  
 diseases of. See "DISEASES OF ANIMALS."  
 D.M.P. district, 314, 947.  
 hiring of, civil jurisdiction, 160, 988.  
 impounding, 682, 990-994.  
 larceny of, 587.  
 malicious damage to, 604.  
 meaning of, 356-362.  
 slaughter of injured, 363.  
 trespassing, 992-994.  
     appeal, 139.  
 turning loose on road, 314, 947, 983.

## APOTHECARY,

definition, 395.  
 falsely pretending to be, 615.  
 unqualified person acting as, 395.

## APPEAL.

See "APPEAL TO COURT OF APPEAL," "APPEAL TO HOUSE OF LORDS," "APPEAL TO QUARTER SESSIONS," "CASE STATED," "CERTIORARI," "DUBLIN METROPOLITAN POLICE DISTRICT."

## APPEAL TO COURT OF APPEAL, 234, 244, 249, 253.

## APPEAL TO HOUSE OF LORDS.

from King's Bench order as to mandamus, 249.  
 none from decision on certiorari, 234.

## APPEAL TO QUARTER SESSIONS, 130-143.

abandonment of, 137.  
 adjournment of, 9, 137.  
 amendment on hearing, 93, 137.  
 beer dealers' or retailers' licensing application, 124, 142.  
 "cannot be found," meaning of, 187.  
 case stated from quarter sessions, 139, 141.  
 case stated, effect of determination of High Court, 242, 243.  
 case stated, right to, does not take away appeal, 237.  
 cases within P.S. Act, 77, 133-138, 1012, 1013.  
 cases not within Petty Sessions Act, 77, 972.  
 certificate of non-prosecution of appeal, 137, 1013.  
 certificate of result, 137, 1013.  
 certiorari does not lie pending, 143, 229.  
 certiorari for removal of quarter sessions "speaking order," 139.  
 certiorari not affected by right of appeal, 227.  
 certiorari probably lies on abandonment of, 229.  
 civil cases, 132, 132 *n.* 1, 1012.  
 corporation, by, 134, 135.  
 costs of appeal, 136, 1013.  
 costs of abandoned appeal, 137, 1053.  
 Cottier Tenant Act, 188, 1038.  
 Customs Acts, 81.  
 death of respondent, 137.  
 decision of quarter sessions on, 136, 1013.  
 discharge of accused pending, 137, 1012.  
 dismiss, from, 130 *n.* 3, 133.  
 disqualification of justices in original hearing, 137, 222.  
 Dublin Metropolitan Police district, 139, 311.  
 ejectment, no appeal in, except under Cottier Tenant (Ireland) Act, 1856, 193, *Add. et Corr.* cvi.  
 Employers and Workmen Act, 1875, 160.  
 enforcing order after appeal decided, 138, 1013.  
 even division of justices, 137.  
 Excise Acts, 80, 139-141, 944.  
 fees payable on, 1047.  
 Fines (Ireland) Act, 1851, 130, 138, 139, 311, 973.  
 fishery cases, 130, 438, *Add. et Corr.* cvii.

# APPEAL TO QUARTER SESSIONS— *continued.*

form of appeal (Form H), 1012, 1030.  
 form of order on appeal, 91.  
 Friendly Societies Acts, 163.  
 hearing of appeal, 133-136.  
 lies, when, 130, 131, 132, 133, 1012.  
 mandamus to compel sessions to hear, 138.  
 merger of petty sessions order in quarter sessions order on appeal, 229, 230, 231.  
 notice of appeal by appellant, 133, 1012, 1038.  
 notice of appeal to complainant by P.S. clerk, 135, 1043.  
 notice of intention to prosecute, 135, 1013.  
 order binding to peace or good behaviour, does not lie from, 133.  
 order of court below, assumed correctness of, 138.  
 order on appeal, 136, 1013.  
 Petty Sessions (Ireland) Act, 1851, 133-138, 1012, 1013.  
 procedure on, under statute giving appeal, but silent as to procedure, 131 *n.* 4.  
 quarter sessions' powers on, 136, 137, 138, 201, 1013.  
 Railway Clauses Consolidation Act, 1845, 183.  
 rating appeals, 194, 201, 202.  
 recognisance on, 131, 134, 135, 137, 141, 142, 143, 1012, 1038, 1052.  
 refusal to register club, 128.  
 rehearing, is an appeal, 136.  
 renewal of publican's licence, 117, 141, 142.  
 return of proceedings to Petty Sessions, 137, 1013.  
 road material, no appeal from order to obtain, 170.  
 Small Debts Act, 143, 156, 1047.  
 "speaking order" may be made on, 139.  
 spirit grocer's licensing application, 123, 143.  
 statutes before, and statutes after, 1851, 130, 131, 132.  
 statutes governing, 130.  
 stamp cases, 80.  
 stay of execution on, 137, 1012.  
 Summary Jurisdiction Act, 1851, 139, 994.  
 Summary Jurisdiction over Children Act, 1884, 1083.  
 Sunday, when counted, 794.  
 sureties of the peace or good behaviour may be required on, 37, 136.  
 to what quarter sessions, 133, 1012.  
 Towns Improvement Act, 1854, provisions of, 802.  
 valuation appeal, 194, 196.

## APPEARANCE,

by "agent," 46, 1008.  
 counsel or solicitor, 47.  
 "under protest," 50.

# APPLICATION OF FINES AND PENALTIES, 68, 91, 439, 974, 1011.

## APPOINTMENT OF JUSTICES,

application for commission, 7.  
 boroughs having separate commission of peace, 6.  
 by Lord Chancellor, 3.  
 chairman of Town Commissioners, 2.  
 commission, form of, 3.  
 commission not issued to *ex officio* justices, 3.  
 county lieutenant, 2, 7.  
 creation of office, 1.  
 deputy lieutenants, 8.  
 determination of office, 2, 7.  
 disqualification of certain persons, 6.  
 Dublin Metropolitan Police district, 3.  
*ex-officio* justices, 2, 3.  
 fees payable on appointment, 6.  
 Local Government Act, 2.  
 mayors, 2, 3, 6.  
 methods of appointment, 1.  
 oaths on appointment, 5.  
     how taken, 5.  
 property qualification not necessary, 7.  
 Resident Magistrate, 3.

## APPRENTICES,

disputes between masters and apprentices under Employers and Workmen's Act, 1875, 158, 159, 1061-1065.  
 enlistment of, 374.  
 ill-treatment of, 612, 614, 919.  
 misbehaviour of, 614.  
 obligation of master to support, 612.  
 power of justices in respect of, 615.  
 to sea fishing and sea service, 615.  
     See also "MASTER AND SERVANT."

# APPROPRIATION OF PENALTY, 68, 91, 439, 974, 1011.

## AQUEDUCT,

order to cleanse, &c., 181.

## ARBITRATION,

perjury in, 921.

## AREA OF JURISDICTION, 13.

See also "LIMITS OF JURISDICTION."

## ARMS,

going armed, 872.

## ARMY,

application of Army Act, 1881, 373.  
 billeting, compensation for, 375.  
     general provisions, 374.  
     illegal, 926.  
     offences as to, by troops, 375.  
     offences as to, by victualing house keeper, 374.  
     offences by police, 374.  
 canteen, 379.  
 civil courts, jurisdiction of, 373.



ARMY—*continued.*

- court-martial sentence, effect of, 377.
- delivery of soldier or officer to civil power, 378.
- deserter, apprehension of, 376.
  - concealing, 376.
- detaining pensioner's certificate, 377.
- enlistment, procedure and offences as to, 373, 377.
- evidence of documents, 377.
  - defendant, or husband or wife of defendant, 261.
- false pretence of being deserter, 376.
- forgery of certificate of discharge, 376.
- fraudulently claiming billets, &c., 375.
- furlough, power of justices as to, 378.
- ill-treatment by troops, compensation for, 375.
- impressment of carriages and horses, 375.
- inducing soldiers to desert, 376.
- military manœuvres, closing roads, 378.
  - offences, 378.
- obtaining army pay or pension by false pretences, 896.
- pawning of military property prohibited, 376, 660.
- personation to obtain employment, 376.
  - military pay, 376.
- procedure as to offences, 377.
- purchasing army stores, 376.
- recruiting, offences as to, 374.
- search warrant for army equipment or stores, 145, 377.
- taking soldier out of service for offences, 378.
- "victualling houses," 374.

## ARMY STORES,

- purchasing or taking in pawn, 376, 660.

## ARRANGING DEBTOR,

- disqualified from acting as justice, 6.

## ARREST,

- breaking into house of third person, 18.
- felony, in case of, 12.
- force lawful, wherever right to arrest exists, 19.
- handcuffing prisoner, 18.
- medical examination of prisoner illegal, 20.
- misdemeanour, in case of, 12.
- of offender released upon promise of finding surety, 26.
- persons found in betting-house, 502.
  - common gaming-house, 497.
- searching prisoner, 20, 149.
- seizure of property or documents, 20.
- suspected poachers, 486.
- trespassers in pursuit of game, 485.
- under search warrant, 145.

ARREST—*continued.*

- under warrant, 18. See also "WARRANT OF ARREST."
- void warrant, 20.
- warrant for, in indictable cases, 17, 1000.
  - where indictment found, 32, 1006.
- without warrant—
  - affray, 147, 924.
  - breach of peace. See "BREACH OF PEACE."
  - by peace officer at common law, 146, 147.
  - by peace officer under statute, 147–149, *Add. et Corr.* cvi.
  - by private person at common law, 147 n. 1, n. 2.
  - by private person under statute, 147–149.
  - Dublin Metropolitan Police district, 149, 318.
  - felony. See "FELONY."
  - justice before whom prisoner is to be brought, 149.
  - larceny offences, 589.
  - misdemeanour. See "MISDEMEANOUR."
  - of person "found committing" an offence, 149.
  - of person "found committing" an indictable offence by night, 147.
  - on Sunday, 793.
  - rioters, 150.
  - unlawful assembly, persons forming, 150.
  - witness failing to obey *sub-pœna*, 53, 1002.

## ARSENIC,

- restrictions on sale of, 671.

## ARSON, 872.

## ASSAULT,

- affray, 871.
- aggravated assault, 380, 381.
- aggrieved party declining to prosecute, 380, 1052.
- binding over in respect of, 36, 379, 380.
- certificate of dismissal or conviction, effect of, 58, 64, 102, 104, 874, 882.
- chastisement by persons in authority, right of, 383.
- common, accompanied by wounding, when disposable summarily, 41.
- conviction against will of complainant, when bad, 64.
- against will of complainant, when good, 64.
- form of, 380.
- for aggravated assault, 380.
- when complainant applies only for sureties of the peace, 36.

**ASSAULT—continued.**

dangerous performance causing accident to child, 397, 1200, 1202, 1203, 1205, 1206, 1243.  
 definition of assault, 873.  
 dismiss, effect of, 102, 104, 382.  
 Dublin Metropolitan Police district, special provisions in, 313, 318, 951.  
 husband or wife of accused competent witness against accused, 260.  
 indictable, when, 873.  
 in pursuance of conspiracy to raise wages, bail discretionary, 29.  
 negligence in driving is not, 873 *n. l.*  
 number of justices required, 379.  
 "occasioning bodily harm," 380, 873.  
 on child. See "CHILDREN."  
   engineer, surveyor, or contractor of public road, 981.  
   female, 380.  
   lunatic, 601, 911.  
   male under 14, 380.  
   peace officer, 313, 381, 873, 1052.  
     bail discretionary with justice, 29.  
   person of sovereign, 917.  
   persons engaged in drainage works, 425.  
   seamen, &c., 382.  
 ouster of jurisdiction by question of title, 206, 207, 211, 212, 381.  
 prize fight, 872.  
 procedure, 382.  
 punishment for, when a bar to further proceedings, 64, 382.  
 setting on dog, 382.  
 summary jurisdiction when applicable, 379, 873.  
 title ousting jurisdiction, 206, 207, 211, 212, 381.  
 to obstruct sale of grain, &c., 381.  
 various kinds of, 379–383, 873.  
 who may prosecute, 379, 380.  
 wife of accused competent witness against accused, 260.  
 withdrawal of complaint, 383.  
 with intent to rob, 908.  
 with intent to commit felony, bail discretionary with justice, 29.  
 wounding, 873.

**ASSAY, 513.**

See "PLATE."

**ASSEMBLY,**

unlawful, 150, 874.

See "UNLAWFUL ASSEMBLY."

**ASSIZES,**

cases which should be sent forward to, 10, 26.  
 cases which should not be sent forward to, 10.  
 compelling witness to attend, and answer, 291.

**ASSURANCE COMPANIES,**

duties of, as to annual statement of accounts, &c., 410.  
 offences in relation to, 874.

**ASYLUM,**

licence for private asylum, 117.

**ATTEMPT,**

to commit felony, bailable, 29.  
 murder, 919.  
 obtain property by false pretences, 895.  
 Vexatious Indictment Act does not apply to attempt to obtain by false pretences, 28.

**ATTEMPT TO COMMIT A CRIME, 874, 875.****ATTEMPTED SUICIDE.**

See "SUICIDE, ATTEMPTED."

**ATTENDANCE ORDER, 428.**

See "EDUCATION."

**ATTORNEY-GENERAL,**

absolutely entitled to case stated, 241.  
 absolutely entitled to certiorari, 227.  
 costs to or against, 78.

**AUCTION.**

See "AUCTIONEER."

**AUCTIONEER,**

licence necessary for, 383.  
 to be produced, 384.  
 when not required, 383, 1016.  
 placard to be exhibited at auction, 384.  
 sale of cattle at auction mart, 849.  
 exciseable articles by, 384.

**AUDITOR'S SURCHARGE,**

recovery of, 175.

**AUTOMATIC MACHINE,**

for sale of cigarettes, 1208.  
 unlawful games with, 496.  
 when a lottery, 504.

**AUTREFOIS ACQUIT,**

assault, effect of dismiss, 102, 104, 382.  
 can defendant be again charged, if conviction quashed, 105.  
 certificate of order, when a bar, 64, 382, 874.  
 examples, 102, 104.  
 generally, 62, 63, 102, 336.  
 "in jeopardy," 104.

meaning of, 105.

larceny, special provisions as to, 586, 1034.

when to be pleaded, 106.

withdrawal of charge, effect of, 63, 104.

**AUTREFOIS CONVICT,**

assault, effect of conviction, 102, 104, 382, 874.  
 can defendant be again charged, if conviction quashed, 105.  
 examples, 102, 104.

**AUTREFOIS CONVICT**—*continued.*

generally, 102, 336.  
 "in jeopardy," meaning of, 105.  
 larceny, special provisions as to, 586, 1034.  
 when to be pleaded, 106.

**AWARD OF COMPENSATION,**

D.M.P. district, damage caused by negligent driving, &c., 312, 316.  
 for loss of time in recovering wages, 160, 988.  
 frivolous prosecution, 312, 955.  
 generally, 312, 955.  
 wilful damage by tenant, 312, 956.  
 prosecutor, to, under Criminal Justice Act, 586, 1035.  
 summary cases within Petty Sessions Act, 68, 1011.  
 witness, to, under Criminal Justice Act, 586, 1035.

**BABY FARMING,** 1194.

**BACKING WARRANT,**

for execution, 19, 21 n. 2, 70, 1014, 1015.  
 search warrants cannot be backed, 145.

**BAIL,**

admitting accused to bail on preliminary hearing of indictable offence, 24, 1004, 1005.  
 amount of, 30.  
 application to High Court for, 29, 31, 1006.  
     by accused to any justice, 30, 1006.  
 arrest or new bail where party about to abscond, 31, 1006.  
 cases in which justice can, in his discretion, admit to, 29, 30, 1005.  
     in which justice cannot admit to, 29, 1005, 1006.  
     in which justice must admit to, 29, 30, 1006.  
 certificate where accused unable at once to give, 30, 1006.  
 consent to, form, 1032.  
 contract to indemnify is void and an offence, 31.  
 customs cases, 81.  
 discharge of accused, where required bail ultimately forthcoming, 1006.  
 excise cases, 79.  
 felony, generally, 29, 1005.  
 fugitive offenders, 303.  
 hearing case out of sessions when offender unable to give bail, 45, 998.  
 inability to give, when to appear on face of conviction, 45.  
 inability of sureties to attend at jail, or in county where prisoner is, 31, 1006.

**BAIL**—*continued.*

infant cannot be surety, 30.  
 justice cannot bail person committed under coroner's warrant, 29.  
 married woman can be surety, 30.  
 misdemeanour, 29, 30, 1005, 1006.  
 murder, 31.  
 peer may be surety, 30.  
 recognisance with one or more sureties required, 30, 1006.  
 remand, on, 25, 24, 1004. See also "REMANDING."  
 solicitor for accused may, but ought not to be surety, 30, 30 n. 2.  
 surety to be a householder, 30.  
 treason felony, in, 29, 1005, 1006.  
 where offender unable to give bail, case may be heard out of sessions, 45, 998.

**BAIL MOTION.**

See "BAIL."

**BAILEE,**

definition of, 907 n. 4.  
 larceny by, 907.

**BAILIFF,**

auctioneer's licence not required by, 383.  
 demanding more than legal fees, 417, 780.  
 disqualified for liquor licence, 111.  
 extorting excessive fees, 318, 417, 780.  
 offences by, in D.M.P. district, 318, 319, 418.  
 required to give copy of charges, 318, 418.

**BAITING ANIMALS,** 312, 360, 946.

**BAKEHOUSE,**

hours of employment, 1111.  
 provisions of Factory Act as to, 384, 1128-1130.

**BAKER.** 386-388.

See also "BREAD."

**BALLAST.**

unloading in harbour, 451, 522, 523.

**BANKER'S BOOKS,**

inspection and production of, 21, 53, 276.

**BANKRUPT.**

disqualified from acting as justice, 6.  
 infant, offences by, 256.  
 offences by and relating to, 875, 876, 1050 n. 1.

**BARBED WIRE,** 384, 1093.

**BARBER,**

Sunday trading by, 791.

**BASTARD,**

liability for support of, 403, 531.



- BATHING**,  
bye-laws as to, 385, 763.  
indecent in, 887.  
Kingstown harbour, in, 385.  
legality of, 384.
- BEACH**,  
forms part of county, 14 n. 1.  
taking materials from, 522, 526, 981.
- BEATING FLAX**,  
within 30 feet of centre of road, 983.
- BEE PEST**,  
committees, officers, &c., 1186.  
destruction of bees and articles infected, 1185.  
expenses in execution of Act, 1186.  
infected areas, 1185.  
inspection of premises, &c., 1185.  
keeping bees in infected premises, 1185.  
local authorities, 1186.  
notice of disease, 1184.  
offences and penalties, 1185.  
regulations, 337, 385, 1187.  
who may prosecute, 1186.
- BEER**,  
includes porter, 553 n. 2, 566 n. 1.  
See "INTOXICATING LIQUORS."
- BEER DEALER**.  
See "INTOXICATING LIQUORS."
- BEER DEALER'S LICENCE**, 110.  
appeal from grant or refusal, 124, 142.  
application to petty sessions for certificate, 121.  
case stated does not lie from refusal of, 121.  
certificate required for, 110, 123.  
objection to, grounds of, 124.  
who may make, 124.  
petty sessions at which application can be made, 124.  
sale authorised by, 123, 124.  
temporary transfer of, cannot be granted, 123.  
See "INTOXICATING LIQUORS."
- BEER RETAILER'S LICENCE**,  
appeal from grant or refusal of, 124, 142.  
application to petty sessions for certificate, 110, 112, 112 n. 2, 121.  
case stated does not lie from refusal of, 121.  
certificate required for, 123.  
effect of Licensing Act, 1902. See also "LICENSING ACT, 1902," 112.  
objection, who may make, 124.  
to, grounds of, 124.  
petty sessions at which application can be made, 124.  
sale authorised by, 124.  
temporary transfer of, cannot be granted, 123.  
See also "INTOXICATING LIQUORS."
- BEGGING**,  
allowing, &c., child to beg, 385, 527, 830, 1199.  
committal of child to industrial school, 1212.  
exposing deformities of child to obtain alms, 830.  
false pretences in reference to, 831.  
forfeiture of pedlar's certificate by, 1057.  
punishment of, 385, 527, 830, 1057.
- BELFAST**,  
county borough, 369.  
pawnbrokers, special provisions as to, 663.  
separate court of quarter sessions in, 6.  
theatre licence in, 117 n. 2, 798.
- BENCH**,  
disqualified justice should not remain on, 221.
- BENCH WARRANT**,  
issue of, 1007.
- BESETTING**,  
evidence of previous acts, 267.
- BETTING**,  
club may be betting-house, 500.  
gaming-house, 496, 498.  
offences in relation to, 877.  
suffering, on licensed premises, 546.  
See also "GAMING."
- BETTING AND LOANS (INFANTS) ACT**, 1892,  
husband or wife of accused competent witness for accused, 261, 405.
- BETTING-HOUSE**, 498.  
See "GAMING."
- BIAS**,  
cross-examination as to, 283.  
order of court affected with, voidable, not void, 231.  
See "DISQUALIFICATION OF JUSTICES."
- BICYCLE**,  
special powers of county borough council as to, 1178 n. 1.  
See "FOOTPATH," "HIGHWAY," "LIGHTS ON VEHICLES," "MOTOR CAR."
- BIGAMY**,  
committed out of U.K., triable in Ireland, 14 n. 2.  
offence of, 877, 913  
second wife or husband a competent witness in, 260.
- BILLETING**, 374.  
See "ARMY."

**BINDING OVER,**  
accused to come up for judgment,  
10, 59.  
See "SURETIES OF THE PEACE  
AND GOOD BEHAVIOUR."

**BIRTH,**  
concealment of, 877.  
registration of. See "REGISTRATION  
OF BIRTHS."

**BLACK GAME,** 482, 484, 489.

**BLACKMAIL,** 891.

**BLANK,**  
summons cannot be signed in, 46,  
1001.  
warrant cannot be signed in, 18,  
1001.

**BLASPHEMY,** 878, 910.

**BOARD OF TRADE,**  
orders, evidence of, 277.  
prosecutions by, under Merchandise  
Marks Acts, 622.

**BOAT,**  
hire of, summary jurisdiction, 160,  
988.  
offences as to, 450, 451, 930 n. 4.  
pleasure-boats, licence for, 763.  
to be marked with ship's name, 786.  
See "FISHERY LAWS."

**BOILER EXPLOSION,**  
notice of, to be sent to Board of  
Trade, 386.

**BONA-FIDE TRAVELLER,** 560.  
See "INTOXICATING LIQUORS."

**BONFIRE,**  
on or near highway, 314, 527, 948,  
983.

**BOOKS,**  
copyright of, 411.

**BOROUGH,**  
jurisdiction of county justices in, 6.  
limits of justices' jurisdiction, 14, 15.  
mayor of, 2, 3, 6.  
Municipal Corporation (Ir.) Act, 6.

**BOROUGH JUSTICES.**  
See "BOROUGH."

**BORROWING,**  
inciting infant to borrow, 405.

**BORSTAL INSTITUTION,**  
offences with regard to, 689.  
what is, 689, 868.

**BOUNDARY OF COUNTY,** 15.  
jurisdiction on, 15, 43, 998.  
See also "LIMITS OF JURISDIC-  
TION."

**BOUNDARY SURVEY,**  
altering, defacing, &c., 386.

**BOXING MATCH,** 872.

**BRANCHES,**  
order to cut, 173, 981.

**BRASS,**  
sale or purchase of, by dealers, 508,  
606.

**BREACH OF PEACE,**  
arrest for, without warrant, 147.  
what amounts to, 147, 341, 342.

**BREACH OF PUBLIC TRUST,** 926.  
See "OFFICIAL SECRETS ACT, 1889."

**BREACH OF STATUTES,**  
when punishable on indictment or  
summarily, 13.

**BREAD,**  
adulteration of, 386.  
assault to obstruct sale of, 381.  
made otherwise than from wheat to  
be marked as prescribed, 387.  
sale of, to be by weight, 387, 388.  
on Sunday, 388.  
search warrant as to, 145, 387.  
weighing implements to be provided,  
388.

**BREAKING DOORS,**  
to effect arrest under warrant, 18.  
See "DOOR."

**BREAKING INTO HOUSE OF THIRD  
PERSON,**  
to effect arrest, 18.

**BREWER.**  
See "INTOXICATING LIQUORS."

**BRIBERY,** 389, 878.  
attempt to bribe agent, 389.  
generally, 878.  
licensed person bribing police, 539.  
of agent, 389.  
of judicial officer, 926.  
Vexatious Indictments Act applies  
to, 28, 1050 n. 1.  
See "ELECTIONS," "EM-  
BRACERY."

**BRICKS,**  
burning, on or near highway, 527,  
983.  
within two miles of Dublin,  
389.

**BRIDGE,**  
injury to, by taking materials, 522,  
526.  
malicious damage to, 912.  
use of locomotives on, 599, 600.  
motor-cars on, 645.

**BRITISH CURRENCY,** 91, 341.

**BRITISH SHIP,**

Admiralty jurisdiction as to, 14 n. 1.  
offences committed on, 16.

**BRITISH TERRITORIAL WATERS,**

Admiralty jurisdiction within, 14 n. 1.

**BROTHEL,**

allowing child to be in, 880, 1200.  
appeal from charge of "keeping," 390.  
encouraging prostitution or seduction of girl under 16, 899, 1200.  
evidence of "keeping," 390.  
harbouring thieves in, 390, 687.  
"keeping," offence of, 390, 887.  
married woman's liability for keeping, 299.  
permitting licensed premises to be, 111, 540.  
unlawful detention for immoral purposes, 899.  
Vexatious Indictments Act, application of, 1050.  
what is, 390.

See "CHILDREN," "INDECENCY,"  
"INTOXICATING LIQUORS."

**BUILDING,**

at corner of street, 745.  
bye-laws of sanitary authority, 702.  
cellar dwellings, prohibition of occupation of, 716.  
closing of, when unfit for habitation, 709.  
constructing in contravention of bye-law not a trivial offence, 100.  
exemption of railway buildings from Public Health Act, 1907, 748.  
Factory and Workshop Act, how far applicable to, 1130.  
height of chimneys, 745.  
hoards to be erected during building, 738, 804.  
house let in lodgings, 718.  
house within 30 feet of centre of road, 526, 980.  
Housing of Working Classes Acts, 720-722.  
malicious injury to, 891, 911.  
new, what is, 745.  
not described in plans as dwelling-house not to be so used, 738.  
notification of infectious diseases, 728, 729.  
nuisances, bye-laws as to, 707.  
offences as to, under Public Health Acts, 701-702.  
overcrowding houses, 713, 714.  
payment for works of common benefit, 750.  
precautions during repairs, 738, 804.  
prohibition of erection on ground filled with offensive matter, 737.  
projection of, in towns, forbidden, 803.  
purification of, 706, 726.  
repair of cellar under street, 738.  
room over privy not to be used for living purposes, 736.

**BUILDING—continued.**

ruinous or dangerous, 803.  
sanitary accommodation in, 704, 735.  
temporary, 746.

See also "PUBLIC HEALTH,"  
"TOWNS IMPROVEMENT."

**BUILDING SOCIETY,**

husband or wife of accused competent witness for accused, 261.  
offences by and in relation to, 389.

**BURGLARY, 878, 879.**

illegal possession of burglarious implements, 831.

**BURIAL,**

burying in private grave, 730.  
Cemeteries Clauses Act, 731.  
coroner's order and registrar's certificate, 731, 775.  
dead infectious bodies, provisions as to, 729.  
disturbance in burial ground, 418, 731, 926.  
establishment by sanitary authority of mortuaries, 729.  
fencing of private graves, 730.  
graves, property in, 731, *Add. et Corr.* cix.  
grazing animal in burial ground, 730.  
obstructing burial service, 926.  
of deceased child as still-born, 775.  
more than one body in one coffin, 775.  
still-born child, 775.  
power of L.G.B. as to burial grounds, 729, 730.  
regulations of L.G.B. as to burial ground, 730.  
without coroner's order on medical certificate, 775.

**BURIAL GROUND,**

disturbance in, 418, 731, 926.  
See "BURIAL."

**BURIAL OF CARCASE, 367.****BURNING BRICKS,**

on or near highway, 527, 983.  
within two miles of Dublin, 389.

**BURNING LIME.**

on or near highway, 527, 983.

**BURNING MOUNTAINS, 494.****BURTHEN OF PROOF.**

of exemption, 57.

**BUSTARDS.**

are game, 482, 491.

**BUTTER.**

casks, provisions as to, 391.  
counterfeiting market brands, 392, 848.  
fraudulently increasing weight of, 392.



**BUTTER**—*continued*.

- provisions as to sale of, 391-392,  
  *Add. et Corr.* cvii.
- weighing, &c., 391.
- See "FOOD AND DRUGS."

**BYE-LAWS,**

- advertisements, 353.
- bathing, 385.
- county council, evidence of, 279.
- drainage bye-laws, 424.
- employment of children, 398, 401.
- evidence of, 278-280, *Add. et Corr.* cvii.
- examples, 338.
- fishery, 442, 455.
- good in part, bad in part, 340.
- gymnasiums, 647.
- hackney carriages, 529.
- miscellaneous statutory provisions, 279.
- museums, 647.
- power to make, 337.
- publication, evidence of, 278.
- Public Health Acts, evidence, 279, 702.
- railway company, 279, 338, 771.
- reasonableness of, 337-340.
- sale of coal, 846.
- seashore, 385, 522.
- street trading, 398.
- Towns Improvement Act, evidence, 279.
- trawling, 452, 453.

**CAB.**

- See "HACKNEY CAR."

**CABLE,**

- cutting up, 606.

**CABMEN'S SHELTERS, 740.****CALENDAR MONTH, 52, 335.****CANAL,**

- obstructing, &c., 424.
- tunnel under, order to cleanse, 181.

**CANTEEN, 379, 563.****CAPACITY, CRIMINAL, 255-257.****CAPERCAILZIE,**

- are game, 482.
- See "GAME LAWS."

**CAR,**

- hire of, civil jurisdiction as to, 160, 988.
- offences as to, 524-527.
- See "HIGHWAY."

**CARBIDE OF CALCIUM,**

- storage and conveyance of, 668.

**CARCASE,**

- burying, to which dogs can get access, 423.
- digging up, 369.

**CARCASE**—*continued*.

- throwing into sea, river, &c., 368.
- washed ashore, burial of, 367.

**CARNAL KNOWLEDGE.**

- See "FEMALES, OFFENCES AGAINST AND RELATING TO."

**CARDS,**

- cheating at, 895.
- games of, what unlawful, 496 *n.*,  
  *Add. et Corr.* cviii.
- See "GAMING."

**CARETAKER,**

- ejectment of, 189, 190.

**CARRIAGE,**

- tram-car is a, 527 *n.*
- See "HIGHWAY."

**CARRIAGE, HACKNEY, 528.**

- injury to, 529.
- public stage, 527.
- See "HACKNEY CAR."

**CARRICKFERGUS,**

- separate commission of peace for, abolished, 6.
- court of quarter sessions in, 6.

**CASE STATED, 235-245.**

- abandonment of, 69, 244.
- amendment of, 242.
- summons on hearing of, 242.
- appeal to Court of Appeal, 193, 244.
- quarter sessions precluded by, 1041.
- application for, 1039.
- Attorney-General absolutely entitled to, 241, 1039.
- certiorari—
  - effect of case stated on, 231, 243.
  - not required for, 1040.
  - not taken away by pending, 231.
- compelling justices to state case, 241, 249, 1039.
- costs, 78, 243, 1040.
- death of respondent, 243.
- decision of K.B.D., how far final, 193, 244, 1040.
- dismiss, case stated from, 227, 236, 237.
- disqualification of justices not open on, 236.
- does not lie from order to enter land for road material, 170, 235.
- enforcing order after determination of case stated, 244, 1040.
- evidence, admissibility of, may be considered, 236.
- facts found by justices are conclusive, 239, 242.
- fees payable on, 241, 1039, 1041.
- "final," effect of statute making justices' decision final, 227, 235, 237.
- form of, 244-245.
- hearing of, by K.B.D., 242, 244.

CASE STATED—*continued*.

hearing of, by justices, if remitted to them, 50, 244.  
 High Court, powers of, as to, 241, 1040.  
 jurisdiction to state case, 11, 139, 141, 170, 227, 235, 236, 237, 964, 1039.  
 licensing certificate decisions not subject to, 121, 235.  
 "no rule," case stated from, 236.  
 notice of, 239, 1039.  
 order binding to peace or good behaviour, may be subject of, 36, 235.  
     of High Court, effect of, 242, 243, 1040.  
 prisoner to be released pending hearing, 241, 1039.  
 procedure—  
     application to justices for, 238, 1039.  
     by whom case to be prepared, 239.  
     hearing, 242, 244.  
     notice to respondent, 239, 240, 241, 1039.  
     payment of fees, 241.  
     recognisance by appellant, 238.  
     signature of justices, 239, 1039, 1041.  
     transmission to K.B.D., 240, 1039.  
 proceedings by landlord against tenant, 191, 193.  
 quarter sessions can state case for Court for Crown Cases Reserved, 11, 964.  
 quarter sessions can state case for K.B.D., 139, 141, 227, 237.  
 question not raised by case, when considered, 242.  
 question of law only lies on, 235, 236, 237.  
 rating appeal, 197, 199, 200.  
 recognisance on, 238, 1039.  
     forfeiture of, 238, 243, 1040.  
 refusal of justices to state case, 241, 249, 1039.  
 rehearing of case transmitted to justices, 50, 244.  
 remitting case stated to justices, 241, 242, 1040.  
     for amendment, 242, 1040.  
 return of case to justices, 244.  
 right to, unaffected by right of appeal, 237.  
 rule to compel case to be stated, 241, 1039.  
 rules as to, 1040.  
 "Stipendiary Magistrate," 1040.  
 transmission of, 240, 1039.  
 under Customs Acts, 81.  
 valuation appeal, 197, 199, 200.

## CASES NOT WITHIN PETTY SESSIONS (IR.) ACT, 1851,

appeal in, 77, 78.  
 costs in, 77, 78.  
 differences between, and cases under Petty Sessions Act, 77, 78.

CASES NOT WITHIN PETTY SESSIONS (IR.) ACT, 1851—*continued*.

dismiss under, 77.  
 orders under, 77.  
 summons, 77.  
 time limit for, 77.  
 venue, 76.  
 warrant on non-appearance of defendant, 77.

## CASES TRIABLE OUT OF SESSIONS, 45.

## CASTING VOTE,

chairman at quarter sessions has no, 116, 137.

## CATTLE,

"cattle-driving," 906 *n.* 5.  
 causing mischief in driving, 526, 982.  
 driving of, in D.M.P. district, 314, 947.  
 larceny of, 907.  
 straying or trespassing on highway, 392, 393, 527, 983.  
 trespass of, 392, 992-994.  
 "turning loose" on road, 526, 982.  
     in D.M.P. district, 314, 947.  
 weighing of, 848.

## CATTLE PLAGUE,

powers of Department of Agriculture, 364.

## CAUTION,

accused to be cautioned on hearing of indictable offence, 23, 275.  
 answer of accused to question of justice put without caution given, 23, 275.  
 "convicted and discharged with a caution," effect of, 92.  
 statement of accused, effect of caution, 275.

## "CAUTIONED,"

not a proper order, 346.

## CELLAR DOORS.

provisions as to, 803.

## CELLAR DWELLINGS, 716.

## CEMETERY.

See "CHURCHYARD."

## CENSUS,

evidence of population, 393.  
 offences as to, 393.

## CENSUS OF PRODUCTION,

offences relating to, 394, 880.

## CERTAINTY,

necessity for, in orders in conviction, 87.

## CERTIFICATE,

assault cases, 58, 102, 104, 382.  
 evidence by, 279, 280.

**CERTIFICATE**—*continued*.

licensing matters, 110, 112 *n.* 2, 114, 115.  
of consent to bail, 31, 1006.  
indictment found, 32, 1007.  
order, 63, 1010.  
to kill game, 489.

**CERTIORARI,**

acquittal, certiorari not generally applicable to, 227, 231.  
appeal does not take away right to, 227.  
to Court of Appeal, 234.  
to House of Lords, 234.  
to quarter sessions pending, 143, 229.  
Attorney-General absolutely entitled to, 227.  
biassed tribunal, to quash order of, 220-221.  
case stated pending, 231.  
effect of, on, 243.  
costs of, 234.  
Customs Acts, 81.  
death of applicant, effect of, 233.  
definition of, 223.  
discretion of court as to, 227, 228.  
dismiss, when certiorari lies from, 227, 231.  
evidence, want of, cannot generally be considered on, 224, 225, 226.  
Excise Acts, 78.  
grounds for, 223, 223 *n.* 2, 224.  
indictable offence, does not lie in respect of, 26, 227.  
lies, when, 223, 224.  
mandamus, not certiorari, when proper remedy, 227.  
merger of petty sessions order in quarter sessions order, 229.  
ministerial acts, does not lie in respect of, 228, 229.  
order binding to peace or good behaviour may be brought up on, 36, 226.  
payment of fine does not take away right to, 229.  
procedure to obtain—  
affidavit, 232.  
conditional order, 232.  
counsel necessary, 231, 232.  
making conditional order absolute, 233.  
showing cause, 233, 234.  
quarter sessions order may be reviewed on, how, 139, 226.  
quashing conviction on, 233.  
return to writ, 233.  
statute taking away, effect of, 226, 227.  
*subpoena* may be quashed on, 228.  
time limit for application, 231.  
warrant may be quashed on, 229.

**CHAFF CUTTING MACHINES,** 261, 394, 1095.

**CHAIRMAN,**

has no casting vote, 62, 116, 137.

**CHAIRMAN OF COUNCIL,**

justice under Local Government Act, 2.  
local limits of jurisdiction, 42.  
necessity for oaths, 2.  
no fees payable by, 6.

**CHAIRMAN OF QUARTER SESSIONS,**  
has no casting vote on appeal, 137.

**CHAIRMAN OF TOWN COMMIS-  
SIONERS,** 801.

justice of the peace, 2.  
powers of, 3.

**CHALLENGE, RIGHT OF,**

in felony, 12.  
in misdemeanour, 12.

**CHANNEL ISLES,**

backing warrant for execution from or in, 19, 1053.

**CHARACTER,**

accused's character, when evidence admissible, 269.  
complainant's character, when evidence admissible, 269.  
cross-examination as to, 269.  
false statement as to character on enlistment, 376.  
meaning of, 120, 269.

**CHARGE.**

See "CONVICTION."

**CHARITABLE LOAN SOCIETIES,**

accounts of loan societies, how to be kept, 962.  
amount recoverable in respect of loans, 1166.  
appeal, 1166.  
appointment of bailiff by justice, 161.  
authority of Loan Fund Board to advance funds, 961.  
business not to be transacted in a public-house, 962.  
compromise of claims, 1096.  
costs, 1096, 1166.  
"fines," meaning of, 1097.  
forms, 1096.  
interest on loans, maximum rate of, 961.  
members may act as justices, 963, 1097.  
notes, to whom payable, 961.  
offences by society, officer, &c., 394, 962.  
official not to receive present from borrower, 962.  
recovery of loan, 161, 961, 962, 1095.  
penalties, 963.  
summons for recovery, 962.  
taking accounts, 1096, 1166.  
time limit, 1166.  
treasurer may sue on securities given to his predecessor, 962.  
validation of certain renewals, 1166.  
warrant for recovery, 962.



**CHASE,**  
offences as to deer in, 486, 486 n. 2.

**CHEAT,** 880.

**CHEATING,** 498.  
cheating at cards, 895.  
See "GAMING."

**CHEESE,** 471.  
See "FOOD AND DRUGS."

**CHEMIST,**  
assuming title of, 396, 673.  
continuation of business on death,  
396.  
definition, 395.  
indictable offences in relation to, 880.  
limited company, right of, 395.  
offences, 395, 396.  
register to be evidence, 380, 396.  
sale of methylated spirits by, 557.  
shop to be managed personally or by  
qualified assistant, 674.  
unqualified person acting as, 396.

**CHEMIST AND DRUGGIST,** 395.  
See "CHEMIST."

**CHILDREN,**  
abandoning or exposing, 880, 1198.  
abduction of, 870.  
age, presumption and determination  
of, 431, 1237.  
appeal from conviction, 406, 1083,  
1207.  
application of Children Act, 1908, to  
Ireland, 1239, 1240.  
arrangement of Children Act, 1908,  
1191-1193.  
assault on, 397.  
attachment of income or pension,  
1203, 1246.  
attendance order at school, 428,  
1209, 1241, 1255, 1265.  
attendance order, form of under-  
taking, 1266.  
award of compensation, form of,  
1252.  
begging by, causing or allowing,  
385, 527, 830, 1199.  
boarding out, under Employment of  
Children Act, 1903, 399.  
brothel, allowing child or young  
person to be in, 880, 1200.  
cart not to be driven by, 527, 985.  
chastisement of, 383.  
"child," meaning of, 398 n. 3, 1209,  
1239.  
cigarettes (see "juvenile smoking,"  
*infra*), 688 n. 2, 1084, 1209, 1239.  
circus, employment in, 401.  
cleaning machinery in motion, 1102.  
clearing court during evidence of,  
56, 349, 1234.  
of, 56, 1234.  
commitment, form of, 1250.  
"common fund," 1239.  
competency to give evidence, 262.  
compulsory education of (see "EDU-  
CATION"), 427.

**CHILDREN—continued**  
conviction—  
form of, 1206, 1251-1252.  
separate information when  
necessary in respect of several  
children, 406, 1206.  
criminal capacity of, 255.  
cruelty to—  
abandoning, 880, 1198.  
arrest without warrant of  
offender, 1200.  
Board of Guardians may prose-  
cute, 1207.  
causing death by suffocation,  
1199.  
deposition admissible if de-  
ponent unable to attend,  
287, 1206.  
detention of, in place of safety,  
1201, 1245.  
disposal of child or young per-  
son by order of court, 1201,  
1245.  
evidence of insurance, 1199.  
when not on oath, 259, 1206.  
exposing child or young person,  
1198, 1198 n. 7.  
to risk of burn-  
ing, 1199.  
"fit person" includes body  
corporate, 1207.  
habitual drunkard guilty of,  
519, 1205.  
"having the custody of," 1207.  
indictable offences as to, 880.  
inspection of homes for children,  
1204.  
insurance of child, 1198, 1199.  
"neglect," meaning of, 1198  
n. 5.  
overlying child, 880, 1199.  
penalty for, to child or young  
person, 1198.  
increase of, if accused  
interested in death,  
1199.  
person charged with man-  
slaughter may be found  
guilty of cruelty, 1199.  
persons convicted of, incapable  
of receiving infants for re-  
ward, 1196.  
procedure, 1206.  
in absence of child, 1206.  
punishment—  
right of parent to ad-  
minister, 383, 1207.  
right of person in authority  
to administer, 383.  
religious persuasion of person to  
whom child committed, 1203.  
taking deposition of child or  
young person, 1205.  
time limit, 1206.  
Vexatious Indictments Act ap-  
plies, 28, 1207.  
warrant to search and remove,  
145, 1203.  
"wilfully," meaning of, 1198  
n. 4.

CHILDREN—*continued.*

- dangerous performances, 397, 1200–1202, 1203, 1205, 1206, 1243.
- defilement of girls, 898.
- definition of, 398 *n.* 3, 1209, 1239.
- desertion of, 403, 531.
- discharge of, without punishment, 978–979, 1083.
- driving of vehicles by, forbidden, 527, 634, 985.
- dying declaration of, when admissible, 270.
- education—
  - when employed in factories and workshops, 1120.
  - wilful neglect to attend school, 1219, 1264.
  - See also “EDUCATION.”
- employment of—
  - by chimney sweeper, 406.
  - bye-laws, 398, 401.
  - defence of due diligence, 399.
  - entry by officer into place of employment, 401.
  - evidence, 402.
  - exemption in favour of industrial schools, 400.
  - false representation or certificate, 399.
  - in circus, 401.
  - in factories and workshops, 1109, 1118, 1122.
  - in street or public place, 400.
  - liability of master and servant, 399.
  - procedure, 400, 402.
  - prohibited where children required to attend school, 429.
  - relaxation of restrictions, 401.
- entertainments—
  - in licensed premises, 400, 542.
  - safety of children at, 1236.
- evidence of age, 431, 1237.
  - of child, 259, 262, 402, 1205–1206.
  - of defendant, husband or wife of defendant, 261, 406, 1242.
  - of prior acts contributing to offence, 268, 1207.
  - of wages, 1238.
  - unsworn, 259.
- exclusion from court, 56, 349, 1234.
  - from bars of licensed premises, 541–542, 1235, 1242, *Add. et Corr.* cviii.
- exposing child or young person, 880, 1198.
- forfeiture of wages of, by absence from work, 1065.
- forms—
  - generally, 1245.
  - prescribed by rules, 1249–1258.
  - recitals in, 1258–1261.
- general dealer not to transact business with, 511.
- giving intoxicating liquor to, 540, 1235.
  - in D.M.P. district, 312, 945.
- “guardian,” 1239.

CHILDREN—*continued.*

- gunpowder not to be sold to child apparently under 13, 434.
- hearing of charges, 56, 349, 1234, 1249.
- inciting to bet or borrow, 404.
- indictable offences as to, 850.
  - trial of, 1082–1084, 1240.
- industrial school—
  - power to send under employment of Children Act, 1903, 399.
  - See “reformatory and industrial school,” *infra*.
- infant life protection—
  - application of fines, 1197.
  - appointment and powers of inspectors, 1195.
  - dangerous or insanitary premises, 1196.
  - death of infant, notice to coroner, 1196.
  - exemptions, 1197.
  - expenses of Act, 1197.
  - failure to give notice as required, 1197.
  - insurance of infant kept for reward, 1196.
  - keeping number of infants in excess of number fixed by local authority, 1196.
  - local authority, 1197.
  - method of giving notices, 1197.
  - notice of death or removal of infants, 1194.
  - notices by persons receiving infants for reward, 1194.
  - order for removal of infant improperly kept, 1196.
  - penalty on failure to give notice, 1194, 1195.
  - persons prohibited from receiving infants for reward, 1195.
  - prosecution of offences, 1197.
  - refusal to permit inspection of infants or premises, 1195.
  - warrant to search and inspect premises, 145, 1195.
- inspection of homes, 1204, 1246.
- insurance of, restrictions as to, 814, 1196.
- intoxicating liquors not to be given to, 540, 1235.
- intoxicating liquors, other offences, 540.
- juvenile offenders—
  - abolition of death sentence, 867, 1230.
  - association with adults prohibited, 1228.
  - attendance at court of parent, 1228.
  - bail of children and young persons, 1227, 1228.
  - binding over, 867, 1230.
  - binding over parent or guardian, 868, 1229, 1231.
  - committal to care of specified person, 868, 1214, 1215.
  - to day industrial school 1224.

CHILDREN—*continued.*

- juvenile offenders—
  - committal to industrial school, 867, 1213, 1216, 1217.
  - to place of detention, 868, 1228, 1230, 1231 *n.* 9, 1233.
  - to probation officer, 1214.
  - to reformatory, 867, 1211, 1215, 1226.
  - costs, limitation of, 1229.
  - custody on remand, &c., 1228.
  - detention, places of, 1231, 1231 *n.* 9.
  - discharge of, on recognisances, 867, 979, 1172, 1230.
  - disqualification not to attach to felony, 691 *n.* 3, 1229.
  - fine, imposition of, 868, 1229.
  - order for payment by parent, 868, 1231.
  - imprisonment abolished for child, 866, 1230, 1231 *n.* 9, 1233.
  - juvenile courts, 1233.
  - list of possible punishments of, 866, 868.
  - maintenance of child, 1233.
  - method of dealing with, 1230.
  - payment of compensation, 1172, 1231.
  - punishment of "young person," 866, 1230, 1231.
  - refractory child, committal of, 1214.
  - restitution of stolen property, 60, 1173.
  - supervision of, 1215, 1217.
- juvenile smoking—
  - automatic machines for sale of cigarettes, 1208.
  - "cigarette," meaning of, 1208.
  - exemption to person employed in trade, 1208.
  - sale of cigarettes or cigarette papers, 1208.
  - seizure and forfeiture, 1208.
  - smoking mixtures, provisions as to, 1208.
- larceny by, 591, 978, *Add. et Corr.* cviii
- "legal guardian," 1239.
- licensing out of, 1216, 1242, 1263.
- "local authority," 1241.
- "local education authority," 1239.
- maintenance—
  - liability of father, 401, 403, 531.
  - of mother, 531.
  - of person cohabiting with parent, 403.
  - of child committed to care of any person under court order, 1202, 1246.
  - of parent, liability of child, 180 *n.* 3, 404.
  - service of order, 1248.
- marine store dealers not to purchase from, 605.
- motor vehicles not to be driven by, 634.
- pauper children, offences as to, 652, 677.

CHILDREN—*continued.*

- pawn not to be taken from, 661, 1240.
- performance on licensed premises, 400, 542.
- pension, attachment of, 1203, 1246.
- "petty sessional division," meaning of, 1242.
- "place of safety," 1239.
- "police authority," 1239, 1242.
- "police fund," 1239, 1242.
- presence in court prohibited, 56, 349, 1234.
- probation officers for children, 1173.
- procedure in charges against, 74, 406, 1082, 1083, 1227-1234.
- prostitution of, causing, &c., 899, 1200.
- "public place," 1239.
- punishment of child (see "juvenile offenders," *ante*), 74, 406, 867, 1082, 1083, 1172, 1213-1217, 1229-1237.
- punishment of "young person," 866, 1230, 1231.
- reception and maintenance in work-house, 1238.
- recognisance to exercise proper care of young girl, 1200, 1245.
- reformatory and industrial schools—
  - "attendance order," 1209, 1241.
  - auxiliary homes, 1210.
  - boarding out of children, 1211.
  - breach of school rules, 688, 1218, 1219, 1264.
  - buildings, alteration in, 1211.
  - "certified school," 1209, 1210, 1220-1224, 1226, 1261.
  - "child," 1209.
  - choice of school, 1215, 1262.
  - committal to industrial school, 1212, 1213, 1214.
  - contribution by parent or person liable to maintain, 1222, 1223, 1225, 1238, 1242, 1254, 1265-1266.
  - conveyance to school, 1215.
  - deferring operation of order for, 1215.
  - day industrial schools, 1224, 1225.
  - discharge and transfer, 1218, 1263.
  - duties of managers, 1210, 1261.
  - police authorities to take proceedings, 1274.
  - enforcing education attendance order, 1214.
  - escape from school, 1219.
  - evidence of documents, 1226.
  - expenses of certified schools, 1220-1224.
  - expenses of conveyance and clothing, 1224.
  - form of order for detention, 1252, 1253, 1255.
  - "industrial school," 1209.
  - inspection of, 1209.



**CHILDREN—continued.**

reformatory and industrial schools—  
liabilities of managers, 1210, 1261.  
licensing out, 1216, 1242, 1263.  
list of, 1212 *n.* 4.  
local Acts, application of, 1227.  
maintenance, &c., of inmates of certified schools, 1220-1222.  
offences by child in, 1218, 1219, 1264.  
offences by offender or child placed out on licence, 1217.  
orders and notices, 1226.  
period of detention, 1215, 1216, 1262.  
powers of local education authority, 1225, 1241.  
powers of school officers, 1226, 1241.  
reception of child, 1224, 1239, 1264.  
"reformatory school," 1209.  
religious persuasion to be considered, 1216.  
resignation of certificate of manager, 1210.  
rules, power to make, 1211, 1240.  
sending offenders conditionally pardoned to reformatory school, 1226.  
superannuation of officers, 1211.  
supervision provisions as to, 1215, 1217.  
temporary detention until sent to certified school, 1215.  
withdrawal of certificate, 1210.  
refractory child, committal of, 1214.  
religion to be considered, 1203, 1204, 1216, 1241, 1246.  
rules, power to make, 1211, 1239.  
search warrant, 145, 1203, 1246.  
seduction of, causing, &c., 899, 1200, 1245.  
seduction of, recognisance to exercise proper care against, 1200.  
service of documents, 1248.  
"street," 1239.  
street trading, 398, 399.  
suffocation of, 880, 1199.  
Summary Jurisdiction Acts, application of, 1238, 1239.  
summary jurisdiction as to, 397-406, 1082-1084.  
Summary Jurisdiction Rules, 1909, 1245-1266.  
summary trial of, for indictable offence, 1082.  
summons under Children Act, 1908—  
amendment of, 1249.  
form of, 1249.  
method of service of, 1248.  
time for service, 1245-1248.  
supervision, 1215.  
after period of detention, 1217.  
support of, 401, 403, 531, 1233.  
time limit for proceedings, 268, 1207.  
trial of indictable offences, 880, 1082-1084, 1240.

**CHILDREN—continued.**

trusts for, variation of, 1238.  
vagrant preventing child receiving education, 831, 1235.  
verminous children, cleansing of, 1236, 1241.  
Vexatious Indictments Act applies to Children Act, 1908, 28, 1050 *n.* 1, 1238.  
wilful neglect to attend school, 1219, 1264.  
"young person"—  
definition of, 1084, 1239.  
punishment of, 866, 1230, 1231.  
"youthful offender," what is, 688 *n.* 2.

**CHIMNEY.**

height of, 745.  
smoke from, 709.

**CHIMNEY SWEEPER,**

causing disturbance, 407.  
certificates required for, 407.  
employment of infants, 406.

**CHRISTMAS DAY,**

computation of, in time, 795.  
employment in factory and workshop on, 1110.

**CHURCH,**

disturbance in, 418.  
offences as to, 881.  
right to remove or prevent entry, 419.

**CHURCHYARD,**

disturbance in, 418.  
private grave in, 731.

**"CIDER,"**

includes perry, 568 *n.* 3.

**CINEMATOGRAPH, 407.**

application of Cinematograph Act, 1909, to Ireland, 1274.  
application of Act to special premises, 1274.  
application to county boroughs, 1274.  
licence for, 129, 1273.  
penalties, 1273.  
power of entry, 1273.  
restrictions on use of, 1273.

**CIRCUMSTANTIAL EVIDENCE, 262.****CIRCUS,**

employment of children in, 401.

**CITY,**

being county of itself, jurisdiction of justices, 42, 997.

**CITY MARSHAL,**

duties, &c., as to pawnbrokers, 655.

**CIVIL BILL OFFICER,**

disqualified for holding liquor licence, 111.

**CIVIL CASE,**

what is, 65.

**CIVIL JURISDICTION.**

- appeal to quarter sessions, 132, 132 *n.* 1, 156, 160, 163.
- charitable loan societies, recovery of loans (see "CHARITABLE LOAN SOCIETIES"), 961.
- compensation for loss of time in recovering wages, &c., 160, 988.
- damage caused by ship or float of timber, 523.
- disputes in fairs and markets, 160, 989.
- D.M.P. district. See "D.M.P. DISTRICT."
- fences, order to repair, 993.
- hackney cars, 314-317, 528, 529, 807, 810, 989.
- hire of boat, 160, 988.
  - horses, carts, &c., 160, 988.
- husband and wife. See "HUSBAND AND WIFE."
- landlord and tenant. See "LANDLORD AND TENANT."
- local limits of jurisdiction under Petty Sessions Act, 41-43, 997.
- master and servant. See "MASTER AND SERVANT."
- payment of expenses to witnesses, 1003.
- property in possession of police, 1094.
- recovery of wages, 156, 160, 988.
- small debts—
  - appeal from order, 156, 1047.
  - costs may be awarded, 156, 1047.
  - defendant only to be sued at P.S. district in which he resides, 156, 1040.
  - exemption from distress, 418.
  - forms and fees, 156, 1048-1050.
  - jurisdiction, 153, 1047.
  - process to be served by authorised process server, 156, 1048.
  - stamps in lieu of fees, 1048.
- trespass of animals. See "TRESPASS OF ANIMALS."
- tuition, 160, 988.
- waiver of statutory condition by defendant, 109.

**CLAIM OF RIGHT.**

- ousting jurisdiction, 206-210.
- See "TITLE OUSTING JURISDICTION."

**"CLEAR DAYS,"**

- meaning of, 24 *n.* 4.

**CLEARING COURT.**

- generally, 56, 349.
- of children, 56, 349, 1234.
- of persons during evidence of children, 56, 349, 1234.

**CLERK OF CROWN.**

- See "CLERK OF CROWN AND PEACE."

**CLERK OF CROWN AND PEACE,**

- appointment of, 8.

**CLERK OF CROWN AND PEACE—**

- continued.*
- disqualified from acting as justice, 6.
- duties of, 11.
- entry of licensed premises with, 546.
- union of offices, 1080.

**CLERK OF PEACE.**

- See "CLERK OF CROWN AND PEACE."

**CLERK OF PETTY SESSIONS.**

- accounts and allowances, 1043, 1045, 1079.
- action against, 333.
- adjournment of court by, if no justice in attendance, 795, 1042.
- appeal to quarter sessions, duties as to, 135, 332, 1012, 1043.
- application of fines and penalties, 68, 333, 974-975, 1046.
- appointment of, 329-330, 333, 1042.
- assistants, 332, 1175.
- death or dismissal of, 997.
  - resignation, &c., of, custody of papers, 1018.
- deputies, 332, 1042.
- dies for denoting fees, 1044.
- disabilities of, 111, 330, 1018, 1042.
- districts and salaries, 331-332, 1041, 1079.
- duties of—
  - attendances at assizes and quarter sessions, 332, 997.
  - custody of books, 332, 996.
  - entry of cases, 332, 997.
    - moneys, warrants, &c., 332, 997.
  - generally, 332, 1042, 1043.
  - government circulars, &c., to be retained or copied, 332, 996.
  - preparation of forms, 332, 996.
  - returns to Chief or Under Secretary, 332, 997.
  - to keep minutes, 332, 996.
- fees, powers and duties as to, 1045, 1047, 1080.
- forms to be filled up by, 332, 996, 1045.
- gratuity or pension to, 331-332, 1047.
- gratuity or pension to assistants, 1175.
- offences by, 407, 1018.
- one clerk for several districts, 1041.
- payment of, 1042.
- pensions, 331-332, 1044.
- petty sessions clerks fund, 333, 1046, 1081.
- provisions of Stamp Acts applied, 1045.
- public prosecutions, allowance in case of, 1045.
- registrar, account of, 1046.
  - salary of, 1046.
- rules as to, 330, 1046, 1079.
- salary of, 331, 1041, 1043, 1044, 1079, 1081.
- security to be given by, 330, 1043, 1082.

CLERK OF PETTY SESSIONS—*continued*.  
 stamps in lieu of fees, 1044, 1080.  
     to constabulary, disposal of, 1045.  
 superannuation of (see "pensions," *supra*), 1082.  
 suspension of, 1079.  
 tenure of office, 330, 1042.

CLITHEROE'S CASE, 114, 115.

CLOSE SEASONS.  
 See "FISHERY LAWS," "GAME LAWS."

CLOSING LABOURERS' DWELLINGS, 179.  
     closing houses generally, 709.

CLOSING LICENSED PREMISES,  
     on actual or apprehended riot, 151.

CLOTHING,  
     infected clothing not to be sent to laundry, 753.

CLOVER,  
     larceny of, 588.

CLUB,  
     duty on purchases of liquor in club, 128, 129, 543.  
     registration of club (see also "REGISTRATION OF CLUB"), 126, 1160.  
     return of purchases of liquor by club, 128, 129, 543.  
     sale of liquor in, 128, 543.  
     search warrant, 145, 1163.  
     when betting-house, 500.  
     gaming-house, 496.

COAL,  
     sale of—  
         by weight only, 843.  
         bye-laws as to, 846.  
         deficiency in weight on small sales, 844.  
         false weight, 845.  
         fraud by driver of coal cart, 844.  
         neglect of carter to deliver ticket, 843.  
         obstructing inspector, 846.  
         tare weight of vehicle, where coal sold in bulk, 844.  
         vehicle, weighing of, 845.  
         weighing coal in vehicle, 845.  
         weighing instrument to be kept, 844.  
         weight to be marked on ticket, 843.

COAL MINE,  
     servant in, 613.

COAL MINES REGULATION ACT, 1887,  
     defendant competent witness under, 261.  
     master, &c., disqualified from acting as justice, 221.

COCK-FIGHTING,  
     D.M.P. district, 312, 946.  
     elsewhere, 360.

COCKLES, 455.  
     See "FISHERY LAWS."

COERCION, DEFENCE OF, 300.

COHABITATION WITH MOTHER OF CHILD,  
     liability for support of child, 403.

COINAGE,  
     indictable offences as to, 881, 882.  
     making coins, 408.  
     penalty not to be in Irish currency, 482.  
     possession of counterfeit foreign coin, 408.  
     procedure, 55, 1051.  
     search warrant, 145.  
     uttering defaced coin, 408.

COLLECTING SOCIETIES,  
     summary settlement of disputes, 163-164.

COLORADO BEETLE,  
     orders by Department with regard to, 416.

COMMENCEMENT OF PROSECUTION,  
     what is, 51 n. 1.

COMMENCEMENT OF STATUTES, 334.

COMMISSION OF THE PEACE,  
     application for, 7.  
     form of, 3.  
     jurisdiction to bind over derived from, 33.  
     not issued to *ex-officio* justices, 3.

COMMISSIONER OF VALUATION,  
     powers and duties of, 195, 196.

COMMISSIONERS,  
     description of property of, 1019.

COMMISSIONERS OF NATIONAL EDUCATION,  
     powers to apply Education Act, 1892. 427.

COMMISSIONERS OF OATHS ACT, 1889,  
     offences under, committed out of, triable in Ireland, 14 n. 2.

COMMITTAL OF DANGEROUS LUNATICS. 151.  
     See "LUNATIC."

COMMON,  
     destroying surface of, 408.

COMMON ASSAULT, 379.  
     See "ASSAULT."



**"COMMON GAMING-HOUSE," 495.**

See "GAMING."

**COMMON INFORMER,**

award of penalty or part of penalty to, 68, 311, 1011.

Board of Guardians, when prosecuting for neglecting to maintain wife, do not prosecute as, 45.

constable generally prosecutes as, 45, 78 n. 3.

who may prosecute as, 17, 43-45, 439, 483.

**COMMON LODGING-HOUSE,**

Public Health Acts Amendment Act, 1907, notice of commencement of Part V., 757.

bye-laws as to, 717.

deputy lodging-house keeper, 757.

disqualification on conviction of keeper of, 718.

failure to give notice of infectious disease, 738, 717 n. 4.

house let in lodgings, 718.

inspection of, 717.

lime-washing, 717.

miscellaneous offences as to, 717.

notice over door, 717.

obligation of keeper of, 757.

provision of, by local authority, 721.

registration of, 756.

cancelling on conviction, 757.

sanitary conveniences in, 757.

unregistered lodging-house, 757.

water supply to, 717.

**COMMON NUISANCE, 882.****COMPANY,**

acting as chemists, 395.

dentists, 416.

assurance companies, special duties of, 410.

criminal liability of, 20, 83, *Add. et Corr.* cvii.

evidence of documents relating to, 277.

indictable offences relating to, 883, *Add. et Corr.* cix.

larceny by directors, 909.

licence to sell intoxicating liquor, 571.

offences—

alteration of share capital without notice, 409.

annual summary, 408.

appointment of receiver to be notified, 409.

by company and officers and others, 408.

certificates of stock allotted, 409.

charges and debentures, particulars as to, 409.

director, unqualified person acting as, 409.

dissolution, duties in relation to, 410.

general meeting to be held, 409.

inspection, &amp;c., by Board of Trade, 410.

"limited," using unlawfully, 410.

**COMPANY—continued.**

offences—

liquidator, duties of, 410.

memorandum and articles to be sent to member, 408.

name over place of business, 409.

non-disclosure of unlimited liability of director, &amp;c., 409.

prospectus issued without being filed, 409.

receiver or manager to file account, 409.

register of members, 408, 409.

registered office necessary, 409.

resolutions to be sent to registrar, 409.

return of allotments to be filed, 409.

seal, 409.

special requirement as to company incorporated outside U.K., 410.

wrongfully using name of person not consenting to be director, 409.

procedure as to, 410.

recognisance by, 238.

service on, 48, 49 n. 1.

**COMPELLING APPEARANCE.**

D.M.P. district, 307, 308, 320, 953.

indictable cases, 17, 1000.

service of summons, 49, 50, 1001.

summary cases, 45-50, 1000.

**COMPENSATION.**

award of, must be definite, 91.

cottier tenant entitled to, for crops, 188, 1037.

excessive award of, 90.

for damage by entry for labourers' dwellings, 179 n. 1.

for damage by entry for road material, 168, 169.

for damage by loss of time in recovering wages, 160, 988.

for damage by offences under Summary Jurisdiction (Ir.) Act, 1851, 185, 986.

for removal by railway company of trees or undergrowth dangerous to line, 185.

joint offenders, 47, 68, 1011.

malicious damage to property, 604.

payable to Crown if injured person unknown, 68, 1011.

payment of, under Petty Sessions Act, 1011.

**COMPLAINANT,**

binding over, to prosecute in indictable case, 17, 1000.

binding over, on non-appearance of defendant in summary case, 46, 1000

binding to peace, 35, 63.

cannot be ordered out of court, 60.

case stated is proper remedy for dismissal on ground that wrong complainant appears, 227.

**COMPLAINANT**—*continued*.

conviction on charge other than that preferred by, is void, 64.  
 corporation can be, *quære*, 44, 45.  
 death of, proceedings do not lapse on, 51, 59.  
 evidence as to character of, 269.  
 fresh charge cannot be substituted against will of, 99, 100.  
 in cases not within Petty Sessions Act, 77.  
 meaning of term, 72, 1020.  
 non-appearance of, proper order on, 57, 58, 1008.  
 one-third of fine may be ordered to, 68, 1011.  
 who may be (see "PUBLIC")—  
     generally, 17, 43-45.  
     in Customs cases, 944.  
     diseases of animals cases, 370.  
     fishery cases, 439.  
     game cases, 485.

**COMPLAINT,**

distinction between, and information, 43, 1020.  
 how made, 46.  
 includes information, 1020.  
 in writing, when necessary, 46, 1000.  
 on oath, when necessary, 46, 1000.  
 substitution of fresh charge, 95, 100.  
 should be made to justice who issues summons, 17, 46.  
 what is, 42, 1020  
 withdrawal of, does not prevent justice from proceeding, 50, 59.

**COMPOUNDER OF SPIRITS,**

disqualified for holding liquor licence, 111.

**COMPOUNDING OFFENCES,**

compounding felony, 12, 51.  
     penalty for, 883.  
     misdemeanour, 12, 51.  
 penalty for, in D.M.P. district, 955.

**COMPULSORY ACQUISITION OF LANDS,** 175.

**COMPULSORY EDUCATION,** 427.

See "EDUCATION."

**COMPUTATION OF TIME,**

Christmas Day, 795.  
 "clear days," 24 n. 4.  
 Dublin mean time, 53.  
 first day, 52.  
 generally, 51, 52, 53.  
 last day, 52.  
 "month," 52, 53.  
 Sunday, 52, 794.

**CONCEALMENT OF BIRTH,**

bail discretionary with justice, 29.  
 punishment of, 877.  
 what constitutes, 877.

**CONCEALMENT OF DESERTER,** 376.

See "ARMY."

**CONDITION PRECEDENT,**

consent of official, &c., to prosecution, 45, 90.  
 publication of orders, when a, 281.  
 statutory rules to be laid before Parliament, 337.  
 waiver of, 109.

**CONFESSION,**

admissibility of—  
     examples, 272-275.  
     portion of, 274.  
 inducement, effect of, 272, 273.  
 King's evidence, 274.  
 sufficient proof, *per se*, 275.  
 See "EVIDENCE," "POLICE,"  
     "PRISONER," "STATEMENT."

**CONSECUTIVE IMPRISONMENT.**

See "IMPRISONMENT."

**CONSENT TO PROSECUTION,**

when necessary, must be given before summons issued, 45, 90,  
*Add. et Corr. cvi.*

**CONSERVATOR OF THE PEACE,** 1.

**CONSPIRACY,**

computation of time, 52.  
 evidence—  
     acts prior to accused joining conspiracy, 266.  
     acts or declarations of one conspirator admissible evidence against another, 266.  
 punishment of, 884.  
 special summary jurisdiction as to, 1086.  
 to murder, 919.  
 trade disputes, 610.  
 Vexatious Indictments Act applies to, 28, 1050.

**CONSPIRACY AND PROTECTION OF PROPERTY ACT,** 1875, 610, 884.

husband or wife of accused competent witness for accused, 261.

**CONSTABLE,**

assaulting, 313, 381, 873, 1086.  
 bribery of, by publican, 539.  
 costs to or against, 78, 347.  
 disqualified for holding liquor licence, 111.  
 generally prosecutes as a common informer, 45, 78 n. 3.  
 harbouring, by publican, 548.  
     in town, 809.  
 offences by and relating to, 676, 884.  
 power of arrest, 146-149.  
     taking property from prisoner, 20, 149.  
     searching prisoner, 20, 149.  
 responsibility for custody of prisoner, 149.  
 See "POLICE," "PUBLIC OFFICIAL,"  
     "REFUSAL TO ASSIST POLICE."

CONSTABULARY PROSECUTION,  
service of summons in, 48, 1001.  
what is, 48.

CONSTRUCTION,  
of convictions, 108.

CONTAGIOUS DISEASE,  
animals. See "ANIMALS, DISEASES  
OF."  
persons. See "PUBLIC HEALTH."

CONTEMPT OF COURT,  
binding over, for insulting language  
to court, 36.  
by corporation, 32.  
D.M.P. district, 312, 1054.  
jurisdiction as to, generally, 72, 73,  
999.  
jurisdiction of High Court to inter-  
fere, 73.  
newspaper comment, 32.  
penalty for, 411.  
quarter sessions, power of, 9.  
refusal of witness to answer at  
assizes or quarter sessions, 291.  
witness refusing to answer may be  
committed, 22, 1002, 1027.  
witness refusing to be bound over,  
1003.  
witness refusing to sign deposition  
may be committed, 24.

CONTINUING OFFENCE,  
computation of time, 52.  
evidence of, 268.

CONTRACTOR,  
obstructing road contractor, 526,  
981.  
payment by county contractor other-  
wise than in coin, 824.

CONVEYANCE OF LAND,  
particulars to be furnished to Inland  
Revenue, 436.

CONVICT.  
See "PREVENTION OF CRIME."

CONVICTIONS,  
adjudication, 90.  
after quashing conviction, can de-  
fendant be again charged, 105.  
amendment, powers of—  
after entry in order book, 99.  
charge cannot be amended  
against will of complainant,  
99.  
defect in substance or form, 94.  
none possible where defendant  
does not appear, 99.  
offence different from that  
charged, 95-99.  
statutes, 93.  
substitution of another de-  
fendant, 99.  
suggested rules, 99.  
variance in date, 94.

CONVICTIONS—*continued*.  
amendment, powers of—  
variance in place, 94.  
autrefois acquit (see "AUTREFOIS  
ACQUIT"), 102-104.  
autrefois convict (see "AUTREFOIS  
CONVICT"), 102-104.  
certainty necessary in, 87, 91.  
children, special provisions as to,  
406, 1206, 1251-1252.  
conditions precedent to be performed,  
90, *Add. & Corr. civi.*  
construction of, 108.  
contents of, 82.  
corporation, liability of, 83.  
defective convictions, examples of,  
85.  
defective orders, examples of, 86.  
description of property in, 90.  
dismiss of trivial charge, 58, 59, 60,  
64, 74, 101, 384.  
dismiss on the merits (see "DISMISS  
ON THE MERITS"), 57, 100.  
dismiss without prejudice (see "DIS-  
MISS WITHOUT PREJUDICE"), 57,  
100.  
distress, when to be ordered (see  
"DISTRESS"), 67, 91.  
estoppel of defendant by acquies-  
cence, 93.  
hard labour, 68.  
"in jeopardy," meaning of, 105.  
joint offences, 47, 89.  
jurisdiction to appear in, 83.  
mitigation of penalty, 79, 90.  
name of party, 83.  
negating exemptions, 89.  
obtained under misapprehension may  
be set aside, 109.  
offence, how to be stated, 84.  
one transaction, several offences,  
107.  
order book, 63, 108.  
orders distinguished from, 107.  
penalty, appropriation of, 68, 91,  
439, 974, 1011.  
place of offence must be stated in, 83.  
postponing decision pending second  
charge, 107.  
punishment, 64-69, 90-92.  
requisites of, 82.  
*res judicata*, 102-106.  
return of, to quarter sessions,  
generally unnecessary, 109.  
several acts, one offence, 106.  
offences charged, one con-  
viction, 87-89, 91.  
signature to orders, 100.  
spoken judgment, withdrawal of, 109.  
summary cases not within P.S. Act,  
76-78.  
technical terms, use of, 90.  
time of offence to be stated, 84.  
"unless said sum be sooner paid,"  
67, 91.  
waiver of condition precedent, 109.

CO-PARTNERS,  
description of property of, 90, 1019.  
embezzlement by, 889.



COPYRIGHT,

books, 411.  
music—

possession of pirated, 412.  
procedure, 412, 413.  
right of entry by police, 413.  
seizure of hawked copies, 412.  
pirated copies, 411.

works of art, 413.

CORN,

adulteration of, 352.  
assault to obstruct sale of, 381.  
poisoned grain, 670, 1279, 1282.

CORONER,

appointment and duties of, 153.  
justices now seldom required to act as, 153.

See "INQUEST."

CORPORATION.

See "COMPANY."

CORPSE,

burial of, 729-731, 775.  
disinterment of, 886.  
offences as to dead body, 886.  
property in grave, 731.  
See "BURIAL," "DEAD BODY,"  
"PUBLIC HEALTH."

CORROBORATION.

See "EVIDENCE."

CORRUPT PRACTICES.

indictable offence, 888.  
summary jurisdiction as to, 431.

CORRUPTION,

indictable offence of, 878.  
summary jurisdiction as to, 389.

COSTS,

appeal to quarter sessions, costs of, 136.  
case stated, costs of, 243.  
cases within P.S. Act, 68-69, 347, 586, 1011.  
not within P.S. Act, 77.  
certiorari, costs of, 234.  
children, special provisions as to, 1229, 1230.  
criminal information, costs of, 328.  
Crown, costs against, 78.  
mandamus, costs of, 249.  
master and servant, disputes between, 159.  
order for entry on land for road material, 172.

COUNTERFEIT COIN,

indictable offences, 881.  
summary jurisdiction as to, 408.

COUNTY.

See "LIMITS OF JURISDICTION."

COUPON COMPETITIONS.

See "GAMING."

COURSING.

See "HARES."

COURT,

contempt of. See "CONTEMPT OF COURT."  
excluding public from, 55-56, 349, 1234.  
place of hearing summary cases under P.S. Act an open court, 55, 999.

CRABS,

sale of undersized, 414.

CREAM.

See "FOOD AND DRUGS."

CREDIT,

obtaining, by fraud, 876.  
impeaching credit of witness, 283, 284.

CREMATION.

See "DEAD BODY."

CRIME,

accusing of, 891.  
definition of, 885.  
prevention of. See "PREVENTION OF CRIME."

CRIMINAL CAPACITY,

children, 255.  
drunken person, 257.  
lunatic (see "INSANITY"), 250.

CRIMINAL INFORMATION, 328.

CRIMINAL MATTER,

what is, 65, 66.

CROSS-EXAMINATION, 283-284.

CROWN,

costs against, 78.  
demise of, as to office of justice, 7.  
as to recognisance, 39.

CRUELTY TO ANIMALS,

"animal," meaning of, 356.  
cattle, transit of, 363.  
carrying in vehicles, 361.  
cock-fighting, 360.  
"cruelty," meaning of, 356-359.  
cruelty, generally, 356.  
dishorning cattle, 356-357.  
dogs not to be used for draught, 363.  
knowledge, what is, 359.  
obstruction of police, 361.  
pounds, cruelty in connection with, 360.  
procedure, 361, *Add. et Corr.* cvii.  
separate offences, 359.  
slaughter-houses, 360.  
slaughter of injured animals, 363.  
vivisection, 362.  
Wild Animals in Captivity Act, 1900-363.  
*But see now "PROTECTION OF ANIMALS ACT, 1911," printed verbatim pp. 1277-1283.*

CURSING, 795.

CUSTOMS,  
offences as to, 80.

DAIRIES,  
dairyman, who is, 372.  
infectious diseases, provisions as to,  
753.  
prohibition of milk supply from in-  
fectured dairy, 729.  
See "INFECTIOUS DISEASES."

DAIRIES, COWSHEDS, AND MILK-  
SHOPS, 371, 372.

DAIRYMAN,  
who is, 372.

DAMAGE,  
by railways to roads, 183-184.  
negligence, 185, 986.  
compensation for, to whom payable,  
68, 1011.  
compensation for, in D.M.P. district,  
312, 316, 955.  
discharge of child on payment of,  
59 n. 1, 74, 1083.  
discharge of defendant under Sum-  
mary Jurisdiction (Ir.) Act, 1851,  
on payment of, 59 n. 1, 101, 994.

DANCING LICENCE,  
power of quarter sessions to grant,  
117, 740.

"DANGEROUS,"  
meaning of, in relation to dogs, 421.

DANGEROUS ASSOCIATIONS,  
special powers as to, 1087, 1088.

DANGEROUS BUILDINGS, 747, 803.

DANGEROUS DOGS, 420-422.  
See "DOGS."

DANGEROUS LUNATIC.  
See "LUNATIC."

DANGEROUS PERFORMANCES ACT,  
397.  
See "CHILDREN."

DANGEROUS TREE,  
near railway, may be ordered to be  
removed, 184, 185.

DATE,  
of offence in conviction, 83.  
variance as to, 93, 94, 1019.

DEAD BODY,  
cremation of, 886 n. 1.  
disinterment of, 886 n. 4.  
licensed person bound to receive,  
543.  
offences in relation to, 886.  
See "BURIAL," "CORONER,"  
"PUBLIC HEALTH."

DEAF AND DUMB WITNESS, 260.

DEALER,  
See "DEALER IN OLD METALS,"  
"GENERAL DEALER," "MARINE  
STORE DEALER."

DEALER IN OLD METALS,  
buying metals less than certain  
weight, 606.  
definition, 508, 606.  
possession of public stores, 606.  
registration of, under Public Health  
Act, 1907, 607, 742, 761.

DEALING IN GAME, 491-492.  
See "GAME LAWS."

DEATH,  
of complainant, summons does not  
lapse on, 50, 51, 59.  
of justice, effect of, on warrant to  
arrest, 18.  
of respondent, in appeal to quarter  
sessions, 137.  
of Sovereign. See "DEMISE OF  
CROWN."  
registration of. See "REGISTRA-  
TION OF DEATHS."

DEBT,  
civil debt distinguished from pen-  
alty, 65 n. 2.  
meaning of term, 155.  
recovery of. See "SMALL DEBTS."

DEBTORS (IR.) ACT, 1872,  
offences under, 28, 875-876.

DECENCY, OFFENCES AGAINST.  
See "INDECENCY."

DECISION,  
chairman has no casting vote, 62,  
137.  
must be by majority, 26, 62, 121.  
of justices, as announced by chair-  
man, conclusive in absence of  
dissent, 62.  
on hearing of indictable offence need  
not be recorded, 26.

DECLARATION,  
dying declaration. See "DYING  
DECLARATION."  
form of solemn, 1022.  
making false statutory, 921.

DEDICATION OF HIGHWAY, 213,  
525.  
See "HIGHWAY."

DEER,  
close seasons for, 489.  
game certificate not required to hunt  
with bounds, 489.  
to kill required, 489.  
are game, 482.  
See also "GAME LAWS," "LAR-  
CENY," "VENISON."

**DEFECT IN SUBSTANCE OR FORM,**  
amendment of, 93-94, 1020.

**DEFENCE ACT, 1859,**  
summary jurisdiction in ejectment  
under, 187.

**DEFENDANT,**  
acquitted defendant may be bound  
over, 34.  
appearance after decision of case,  
47, 346.  
appearance by "agent," 46, 1008.  
counsel or solicitor, 47.  
binding to peace, 34, 63, 136.  
cannot be ordered out of court, 60.  
confession by, 272-275.  
conviction of, when name unknown,  
requisites of, 83.  
under trade or firm  
name void, 83.  
evidence as to character of, 269.  
evidence of, when admissible. See  
"EVIDENCE."  
incompetent witness generally, 53,  
260, 346.  
jointly charged with others, not  
competent witness for or  
against them, 53, 261 n. 2.  
charged with others, has no  
right of separate trial, 47.  
new defendant cannot be substituted,  
99.  
non-appearance of, in summary  
cases, 46, 57, 77, 1000, 1001, 1008.  
residing in adjoining county, 43, 45,  
1001.  
foreign county, 45, 80.  
securing attendance of, 17-21, 45-50,  
77, 79, 80, 1000, 1001.  
securing attendance of, in D.M.P.  
district, 308, 320, 953  
statement by, 272-275.  
during preliminary in-  
vestigation, 23, 275,  
1004.  
to be informed of right to be tried on  
indictment, if it exists, 56, 586.  
warrant for, on non-appearance, 46,  
77, 80, 953, 1000.

**DEFILEMENT OF WOMEN,**  
See "FEMALES, OFFENCES AGAINST  
AND RELATING TO."

**DEFRAUD,**  
evidence of intent to, 267-268, 621.

**DELIRIUM TREMENS,**  
when a defence, 257.

**DELIVERY OF GOODS,**  
order for, by divisional justice of  
D.M.P. district, 313, 955, 956.  
See "PROPERTY," "RESTITU-  
TION OF PROPERTY."

**DEMISE OF CROWN,**  
effect on commission of peace, 7.  
recognition, 39.

**DENTIST,**  
indictable offences, 416.  
liability of company, 416.  
register of dentists, 415.  
"specially qualified," meaning of,  
416.  
unqualified person using title, 415.  
unregistered person can recover cost  
of material, 416.  
who may prosecute, 416.

**DEPARTMENT OF AGRICULTURE  
AND TECHNICAL INSTRUCTION  
FOR IRELAND,**  
crabs, power to prohibit taking of,  
414.  
evidence of documents issued by,  
277, 442.  
lobsters, power to prohibit taking of,  
414.  
order of, as to diseases of animals,  
364, 365.  
order of, as to water for animals at  
railway stations, 366.  
orders of, as to cruelty to animals  
in transit, 366.  
orders of, as to muzzling dogs, &c.,  
365.  
power of, as to dogs, 423.  
to prosecute under Merchan-  
dise Marks Act, 622 n. 1.  
powers of, under Diseases of Ani-  
mals Acts, 364.  
rules by, 337.  
standard for milk, &c., may be de-  
clared by, 458, 478.  
trawling, bye-laws as to, 452, 453.

**DEPOSITION,**  
accused entitled to copy of, 24, 1004.  
must be present at taking,  
22, 1004.  
admissible on trial—  
50 Geo. 3, c. 102, s. 5, 287.  
Children Act, 1908, 287, 1206.  
common law rule, 288.  
contradicting, *quare*, 24, 289.  
death of witness, 22, 287, 1004.  
deposition on one charge, trial  
on another, 288.  
Foreign Jurisdiction Act, 1890,  
290.  
insanity of witness, 288.  
Merchant Shipping Act, 1894,  
290.  
permanent inability of witness  
to travel, 288.  
statutory provisions must be  
complied with, 288, 289.  
caption of, 289.  
coroner's deposition, 290.  
death of witness before trial, 22, 24,  
287, 1004.  
distinguished from information, 21  
n. 3.  
evidence on trial to supplement de-  
position of dead witness, 24, 289.  
fees on, 1044, 1047.  
form of, 1021.  
justice must be present, 22, 289.



DEPOSITION—*continued.*

- justice should attend at witness's house when necessary, 32.
- marksman, deposition of, 24.
- meaning of, 21 n. 3.
- method of taking, 21, 21 n. 3, 22, 288, 289, 1004.
- refusal of witness to sign, 24.
- signature of witness to, 22, 24, 289, 1004.
- justice to, 22, 289, 1004.
- stranger to proceedings not entitled to copy of, 24 n. 3.
- words of witness to be followed, 21 n. 3.

## DEPUTY CORONER, 153.

DEPUTY INSPECTOR - GENERAL,  
R.I.C.,  
*ex-officio* justice, 3.

## DEPUTY-LIEUTENANT, 8.

## DESCRIPTION,

- of offence in conviction, 83.
- offender, in warrant, 18, 70.
- party in conviction, 83.
- property in conviction, 90.

## DESERTED PREMISES,

- recovery of possession of, 190.

## DESERTER.

- See "ARMY," "NAVY," "SHIP."

## DESERTION,

- children, 403.
- wife or child, 531, 532.
- See "ARMY," "NAVY," "SHIP."

## DESTRUCTION,

- order for destruction of property.
- See "PROPERTY."

## DESTRUCTIVE INSECTS AND PESTS

- ACT, 1907, 417.
- bee pest, 417.
- power of Department to make regulations, 416.
- rules under, 337.
- See also "BEE PEST."

## DETERMINATION,

- amendment of, 63, 93-100, 108, 109, 348.
- of office of J.P., 7.

## DICE.

- games of, unlawful, 496.

## DIRECTORS.

- description of property of, 1019.
- offences by, 408-410, 883.
- unqualified persons acting as, 409.

## DISAGREEMENT OF JURY.

- newspaper comment on case upon, 32.

## DISCHARGE.

- false discharge of servant, 989.

DISCHARGE—*continued.*

- of accused, effect of, in indictable cases, 26, 27, 28.
- of child under Summary Jurisdiction over Children (Ir.) Act, 1884, 59 n. 1, 74, 1083.
- of first offender under Summary Jurisdiction (Ir.) Act, 1851, 59 n. 2, 101, 994.
- under Probation of Offenders Act, 1907, 59, 348, 1172.
- See "MASTER AND SERVANT."

## DISCLOSURE,

- of official secret, 919.
- telegram, 796.

## DISCRETION.

- bail, as to amount of, how to be exercised, 30.
- exercise of, generally, 350.
- extraneous matters not to be considered in exercising, 46.
- issue of summons, 46.
- of justices, King's Bench Division will interfere, when, 37.

## DISEASES.

- See "DAIRIES," "DISEASES OF ANIMALS," "PUBLIC HEALTH."

## DISEASES OF ANIMALS,

- appeal, 371.
- burial of carcase washed ashore, 367.
- carriage, using prohibited vehicle or vessel for, 369.
- certificate of veterinary inspector, 370.
- complainant, who may be, 44, 370.
- contravening orders of Department or regulations of local authority, 367.
- corporation, liability of, 371.
- Dairies, Cowsheds, and Milkshops Order, 371.
- digging up carcase, 369.
- evidence, effect of inspector's certificate, 370, 371.
- false declaration, &c., 368.
- pretences, 368, 369.
- foot and mouth disease, 364, 366, 369.
- foreign animals, importation and slaughter of, 367.
- fraudulently obtaining or attempting to obtain compensation, 369.
- licences, offences in respect of, 368, 369.
- local authorities, who are, 369.
- notices under Act, service of, 371.
- notification of disease, 366, 368.
- obstructing inspectors, officers, &c., 368.
- offences, 367, 368, 369.
- orders of local authority, 369.
- penalties, 367.
- pleuro-pneumonia, 364, 366, 369.
- police, powers and duties of, 370.
- presumption of guilty knowledge, 371.

**DISEASES OF ANIMALS**—*continued*.  
 procedure, 370-371.  
 separation of diseased animals, 366.  
 throwing carcase into sea, river, &c., 368.  
 venue of offence, 370.  
 veterinary inspector, powers and duties of, 370.

**DISGUISE**,  
 pretending to be a constable, 676.

**DISHONEST LIVELIHOOD**.  
 See "PREVENTION OF CRIME."

**DISHORNING CATTLE**.  
 See "CRUELTY TO ANIMALS."

**DISINFECTING**.  
 See "PUBLIC HEALTH."

**DISINTERMENT**.  
 See "DEAD BODY."

**DISMISS**,  
 appeal from, does not usually lie, 133, 585.  
     under County Officers and Courts (1r.) Act, 1877, 130 n. 3.  
     under Excise Acts, 140.  
     under Fishery Acts, 130, 438.  
     where order dismissing some charges sustains others, 136.  
 bars second charge, when, 62, 101, 102, 105, 382, 589-590, 1034.  
 case stated, from, 227, 237, 246.  
 certificate of, 58, 102, 104, 382, 1034.  
 certiorari usually inapplicable to, 231.  
 certiorari, when applicable to, 231.  
 different effect of, from withdrawal, 101.  
 "dismiss" simply, 57-59, 62, 77, 100, 102, 1008.  
 "dismiss on the merits," 62, 77, 100, 102 n. 2, 105, 347, 382, 1009.  
 "dismiss without prejudice," 58, 95, 62, 77, 100, 101, 102 n. 2, 347, 1009.  
 even division of justices, 62.  
 form of, in cases not within Petty Sessions Act, 77.  
 non-appearance of complainant, 57-59, 77 n. 5.  
 on ground that wrong complainant appears, remedy for, 246.  
 Probation of Offenders Act, 1907, 59, 60, 101, 1172.  
 trivial charge, 58, 59, 60, 64, 74, 101, 382.

**"DISMISS ON THE MERITS,"**  
 bars subsequent proceedings, 58, 64, 105, 382.  
 not applicable to cases not within Petty Sessions Act, 77.  
 proper order where complainant does not appear, *quære*, 57.

**"DISMISS ON THE MERITS"**—*continued*.  
 under Petty Sessions Act, 100.  
 when complainant does not appear on charge of assault, is a bad order, 58.  
 See also "DISMISS."

**"DISMISS WITHOUT PREJUDICE,"**  
 appeal lies under Excise Acts from, 140.  
 bars second charge, when, 62, 63, 100.  
 inapplicable, when, 62, 77, 100, 101, 347.  
 proper order where complainant does not appear, *quære*, 57, 58.  
 under Petty Sessions Act, 100.  
 where neither party appears, and both apply for adjournment, 59.

**"DISMISSED,"**  
 proper order, where complainant does not appear, *quære*, 57, 58.

**DISORDERLY HOUSE**,  
 Vexatious Indictments Act applies to offence, 28, 887, 1050.  
 what is, 887.

**DISPENSARY**,  
 witness refusing to attend L.G.B. inquiry as to, 968.

**DISPOSAL OF INFORMATIONS**, 29, 1007.

**"DISPUTE,"**  
 meaning of term, for purposes of Employers and Workmen Act, 1875, 158.

**DISPUTES AS TO WAGES**.  
 See "WAGES."

**DISQUALIFICATION**,  
 for holding liquor licence, on conviction, 111, 112.  
 for holding liquor licence, by occupation, 111.  
 See also "DISQUALIFICATION OF JUSTICES."

**DISQUALIFICATION OF JUSTICES**,  
 appeal cannot be heard by justice who originally adjudicated, 137, 349.  
 by interest or bias—  
     case cannot be stated to determine, 236.  
     interest as mere ratepayer, &c., does not disqualify, 22, 1053.  
     member of charitable loan society may act, 963.  
     principles stated, 215.  
 statutory disqualification for appointment, 6.  
     arrangement, 6.  
     bankruptcy, 6.  
     Clerk of Crown and Peace, 6.  
     corrupt practices' 6, *Add. et Corr.* cv.

## DISQUALIFICATION OF JUSTICES

—*continued.*

statutory disqualification for appointment—  
 sheriff or under-sheriff, 6, 780.  
 See "INTEREST OR BIAS DISQUALIFYING JUSTICES."

## DISSECTION,

sale by undertaker of dead body, 886.

## DISTILLATION, 543, 1010 n. 1.

See "ILLICIT DISTILLATION."

## DISTILLER,

disqualified for retailer's licence, 111.

## DISTRESS,

accounting for, levied on constabulary warrant, 70, 972.  
 D.M.P. district, 312, 318, 319, 957.  
 excessive charges for, 417.  
 levy of, 70.  
 must be ordered, when, 65, 67, 1010, 1060.  
 pounds, lodging in, 71, 991.  
 property exempt from, for rent or small debts, 71, 418.  
 property exempt from, under warrant for poor rate, 203.  
 property exempt from, under warrant for rates under Towns Improvement Act, 204, 205.  
 sale of, 70, 383, 1016.  
 warrant of distress—  
   backing, 70, 1014, 1015.  
   breaking outer doors on, 70.  
   may order proceeds to be paid to justices, 70.  
   of justices, what may be taken under, 70, 71, 418.  
   of justices, addressing, 69, 75, 1013, *Add. et Corr.* cv.

## DISTRICT,

petty sessions district, 995.

## DISTRICT INSPECTOR,

to return to justices particulars of police cases disposed of out of petty sessions, 63, 1009.  
 warrants which are to be addressed to, 69, 75, 1013.

## DISTURBING PUBLIC MEETING, 767.

## DISTURBING PUBLIC WORSHIP, 418, 873.

## DITCH,

neglect to scour, 181, 526, 980.

## DIVINE SERVICE,

disturbing, 418, 873, 926.

## DIVISIONAL JUSTICE OF D.M.P.

## DISTRICT,

appointment, 307.  
 deputy, 305.

## DIVISIONAL JUSTICE OF D.M.P.

DISTRICT—*continued.*

disabilities, 307.  
 jurisdiction, 3, 307.  
 qualification, 307.  
 salary, 307.

See also "DUBLIN METROPOLITAN POLICE DISTRICT."

## DOCTOR,

falsely pretending to be, 615, 616.  
 remuneration of, for examining dangerous lunatic, 151 n. 3.

## DOCUMENTS,

evidence—

Acts of Parliament, 277–278.  
 bankers' books, 21, 276.  
 bye-laws, 278, 279, 280, *Add. et Corr.* cvii.  
 certificate of population, 280.  
 certificates which are evidence, 280, 281, 1010.  
 convictions, 281, 1010.  
 Documentary Evidence Acts, 1868 and 1882, 277.  
 Dublin Gazette, 282.  
 Evidence Act, 1845, 276.  
   1851, 277.  
 general principles as to, 276.  
 newspapers, how far evidence, 280, 499.  
 orders of Government departments, 277, 278.  
 orders of L.G.B., 278.  
 orders, when publication is a condition precedent, 281.  
 proclamations of Sovereign or Lord-Lieutenant, 277.  
 public documents, 277.  
 Public Health Acts, 279.  
 refreshing memory, 276.  
 regulations under Medical Acts, 280.  
 secondary evidence of, 281.  
 unstamped, 282.  
 witness producing, need not be sworn, 259.  
 witness producing, not liable to cross-examination, 283.  
 larceny of, 908.  
 securing attendance of witness with, 21, 53, 1002.  
 seizure of, on arrest, 20, 282.

## DOG,

burying carcase to which dogs can get access, 423.  
 collar may be prescribed for, 423.  
 damage done by, may be recovered, 167, 168, 421.  
 dangerous dog—  
   destruction of, 420–421, 527, 983.  
   on highway, 420–421, 527, 983.  
   under Towns Improvement Act, 422.  
 D.M.P. district—  
   dangerous dog at large, 314, 947.  
   destruction of mad dog, 318.  
   "goods" includes dogs, 312 n. 3.  
   setting dog on, 314, 947.



**DOG**—*continued.*

- hounds, exemption of, 423.
- injuring cattle or chasing sheep, 167, 168, 421.
- keeping dog on highway without log or muzzle, 420-421, 983.
- keeping without licence is criminal offence, 66.
- larceny of, 586.
- licence, by whom to be taken out, 419.
  - duty on, 420.
  - liability of occupier, 419.
  - neglect not wilful, 420.
  - penalty for not taking out, 420.
  - police may require production of, 420.
  - procedure, 420.
  - where dog transferred, 420.
- mad dog, orders by local authority, &c., 421.
- muzzling, powers of Department, 365, 423, 527.
- public place, what is, 759.
- setting on, 382, 422, 423, 526, 982.
- stray dog—
  - duty of person finding, 423.
  - power of Department, 423.
  - register of dogs seized, 422.
  - seized, destruction of, 422.
  - vivisection forbidden, 422.
  - seizure of, 422.
- taking reward under pretence of aiding person to recover stolen dog, 883.
- using dog for draught, 363.

**DOOR.**

- breaking open, by constable in pursuit of person who has taken part in affray, 149.
- breaking open outer, allowed on warrant to levy forfeiture, payable to Crown, 71.
- breaking open outer, not allowed on distress warrants generally, 71.
- breaking open, on search warrant, 145.
- breaking open, on warrant to arrest, 18.
- not to open outward within town, 803.

**DOOR KNOCKING,**

- in D.M.P. district, 948.
- towns, 808.

**DRAINAGE,**

- assaulting commissioners or servant, 425.
- authority or warrant from justices to maintain banks or scour channels, 181.
- bye-laws, 424.
- compulsory powers of entry on lands, 182, 425, *Add. et Corr.* cvii.
- injury to, 425, 913.
- obstructing the making of, 425.
  - rivers, &c., 424.

**DRAINAGE**—*continued.*

- offences as to, under Public Health Acts, 696.
- opening drains contrary to Drainage Act, 1842, 424.
- order to cleanse, &c., aqueduct, culvert, or tunnel under canal, 181.
- order, if drainage scheme obstructs free discharge of water in district, 181-182.
- orders between adjoining owners as to cleansing drains or making new drains, 182, 183.
- under roads, 526.
- See "PUBLIC HEALTH."

**DRILLING, ILLEGAL, 888.**

**DRIVING,**

- furiously and negligently and causing bodily harm, 873, 919.
- offences as to, 527.
- See "D.M.P. DISTRICT," "HIGHWAY."

**DROGHEDA,**

- county justices have jurisdiction, 6.
- separate commission of peace for, 6.
- separate court of quarter sessions in, 6.

**DRUG,**

- administering, with intent to commit indictable offence, 919.
- administering, with intent to injure, 919.
- administering, with intent to procure abortion, 871.
- administering, with intent to procure carnal connection, 898.
- See "FOOD AND DRUGS."

**DRUGGIST,**

- assuming title of, 396, 673.
- See "CHEMIST."

**DRUNK AND INCAPABLE, 425.**

- See "DRUNKENNESS."

**DRUNKARD.**

- See "DRUNKENNESS," "HABITUAL DRUNKARD."

**DRUNKENNESS,**

- aiding and abetting drunken person to obtain liquor, 555, 1181.
- arrest without warrant of drunken person, 148, 425-426, 1181.
- constable may be required to remove drunken person from premises, 426, 565, 1181.
- delirium tremens, when a defence, 257.
- drunk and disorderly, 425.
- D.M.P. district, special provisions in, 313, 948.
- habitual drunkard. See "HABITUAL DRUNKARD."
- highway or street, in, 425.

DRUNKENNESS—*continued*.

- husband or wife competent witness, 260-261, 1181.
- in charge of child, 426, 1181.
- in charge of horse, vehicle, or steam-engine, 425.
- in charge of person, animal, or vehicle, 1181.
- in possession of dangerous tool, 426, 1181.
- loaded firearm, 426, 1181.
- jurisdiction as to, out of sessions, 45, 426.
- licensed premises, on, 425, 426, 553-555.
- number of justices under Licensing Acts, 578.
- permitting, on licensed premises, 553-555.
- police can prosecute for, under Towns Improvement Act, 44, 802.
- procuring drink for drunken person, 555.
- public place in, 425, 426.
- recognisance to abstain from liquor under Probation of Offenders Act, 1173.
- selling intoxicating liquor to drunken person, 553.
- simple drunkenness, cognisable out of sessions, 44, 426.
- within towns, under Towns Improvement Act, 44, 425-426, 802.

## DUBLIN,

- burning bricks within two miles of, 389.
- city and county, trial of indictable offences in, 321.
- county borough, 369.
- theatres in, 117, 798.
- See "DUBLIN METROPOLITAN POLICE DISTRICT."

## DUBLIN GAZETTE,

- admissibility in evidence, 277-278.
- under Criminal Law and Procedure (Ir.) Act, 1887, 282.

## DUBLIN METROPOLITAN POLICE,

- powers and duties of—
  - arrest, 314, 318, 950, 951, 952.
  - destruction of mad dog, 318.
  - detention, 318, 952.
  - powers of, generally, 318.
  - recognisances, taking, 318, 952.
  - removing furniture by night, 318, 951-952.
  - search, 318, 951.
  - stolen property, 318, 951.
  - vessels, 318, 950.
- See "POLICE."

## DUBLIN METROPOLITAN POLICE COURT,

- minutes, how far evidence, 282.

## DUBLIN METROPOLITAN POLICE DISTRICT,

- abusive language, 948.
- amendment of conviction in, 99, 310.

DUBLIN METROPOLITAN POLICE DISTRICT—*continued*.

- appeal in, 311, 664.
- application of Children Act, 1242.
- application of Dublin Police Act to cases triable summarily, 41, 1061.
- arrest without warrant, 149, 318, 950, 951, 952.
- bail, 318, 320, 952.
- bailliffs, offences by, 314, 319, 418.
- betting in street (see "GAMING"), 1078.
- bill-posting, offences as to, 314, 947.
- boundaries, 306.
- for purposes of licensing Acts, 557.
- breaking packages, 950.
- causing hurt or damage, penalty, 951.
- civil jurisdiction—
  - compensation for hurt or damage, 312, 951.
  - damage by tenants, 312, 956.
  - detinue of goods, 312, 957.
  - disputes between watermen and others, 312, 956.
  - oppressive distress by landlord, 312, 957.
- clerks of court to give security, 975.
- cock-fighting in, 312, 946.
- complainant may be bound over, 318, 952.
- compounding offences, penalty, 955.
- constables to deliver up accoutrements, 316, 945.
- contempt of court, 312, 314, 1054.
- conviction. form of, 99, 310, 959.
- costs, power to award, 310, 955.
- criminal trials in city and county of Dublin, 321.
- cutting ropes, cables, &c., 313, 949.
- depositions, taking of, 320.
- detention of horses, carriages, &c., of offenders, 318, 952.
- distress in, 312, 318, 957.
- divisional justice—
  - appointment of, 307, 953.
  - death or absence of, 959.
  - ex-officio* J.P. for Cos. Dublin, Wicklow, Kildare, Meath, 3.
  - jurisdiction, 307-309.
  - may appoint deputy, 305-306, 1055.
  - one, sufficient, 55, 307, 1035, 1051, *Add. et Corr.* cv.
  - power to preserve the peace, 1054.
  - quarter sessions, not to act at, 953.
  - vacancies among, 953.
- divisions of, 305-307.
- drunkenness, special provision as to, 313, 948.
- enforcing attendance of witness. See "WITNESS."
- exemption orders, 126.
- false bill of parcels, 313, 945.
- fees, 957, 959.

**DUBLIN METROPOLITAN POLICE DISTRICT**—*continued*.  
 fines, entry and account of, 969.  
 forms—  
   generally, 309. *Add. et Corr.* cvii.  
   information, 960.  
   summons, 960.  
 frivolous complaint, power to award  
 amends for, 312, 955.  
 gaming-houses, special provisions  
 in D.M.P. district, 313, 497, 946.  
 general dealer licensed within, may  
 trade without, 509.  
 hackney carriages. See "HACKNEY  
 CARRIAGES."  
 harbours of Dublin and Kingstown,  
 power of Dublin police, 950.  
 hearing of charges, 308, 953, 958,  
 1054.  
 highway offences—  
   blowing horns, &c., 314, 948.  
   carriage of advertisements, 317,  
   1076.  
   timber and large articles,  
   317, 1077.  
   cleansing and watering of  
   streets, 317, 1076.  
   definition of terms, 1074.  
   deposit of goods, 1075.  
   discharging firearms, fireworks,  
   &c., 314, 948.  
   driving cattle through streets.  
   314, 317, 947, 1075.  
   driving offences, 314, 317, 947,  
   1076, 1077.  
   emptying privy in daytime, 314,  
   949.  
   exposing things for sale in  
   park or public garden, 314,  
   949.  
   exposing things for sale so as  
   to hang over carriage-way or  
   footway or on the outside of  
   house or shop, 314, 949.  
   extension of Dublin Traffic Act,  
   1875, 1078.  
   extinguishing lamp, 314, 948.  
   flying kite, 314, 948.  
   keeping pig-stye or swine in  
   street, 314, 949.  
   knocking at doors, 948.  
   leaving open vault, cellar, &c.,  
   314, 949.  
   making slide, 314, 948.  
   neglect to cleanse footway and  
   watercourses, 314, 949.  
   nuisances on highway, 314, 946,  
   948.  
 obstruction, 314, 947.  
   by betting, 317, 1078.  
   by shoeblack or messenger,  
   317, 1078.  
   or annoyance by blind, pole,  
   &c., 314, 949.  
 omission to fence area, pit, or  
 sewer, 949.  
   light area, pit, or  
   sewer, 949.  
 pace of traffic, 317, 1076.  
 playing games, 314, 948.

**DUBLIN METROPOLITAN POLICE DISTRICT**—*continued*.  
 highway offences—  
   procedure under Dublin Traffic  
   Act, 1875, 317–318, 1078.  
   publication of regulations, 317,  
   1078.  
   regulations by Chief Com-  
   missioner, 1075.  
   removal of filth, 308, 317, 949,  
   1076.  
   special limits, traffic within,  
   317, 1076.  
   street musicians and street  
   singers, 317, 1077.  
   unloading goods, 314, 317, 947,  
   1075, 1077.  
   washing footways, 317, 1076.  
 houses of public resort, offences in, 945.  
 imprisonment in default of payment,  
 310, 953, 958.  
 indecency, summary jurisdiction as  
 to, 313, 536, 948, 1054.  
 indecent books, &c., sale of, 314, 947.  
 information, form of, 959, 960.  
   in writing may be re-  
   quired, 309, 958.  
 Kingstown harbour, bathing in, 385.  
 landlord and tenant, recovery of  
 possession, 312, 1055.  
 larceny—  
   detention of cart, boat, &c., 318,  
   951.  
   divisional justice may act alone,  
   1035.  
   examination of receiver of stolen  
   goods, 954.  
 letting fall stolen articles into river  
 or harbour, 313, 950.  
 Liffey, powers of Dublin police as  
 to, 950.  
 local Acts not abrogated, 952.  
 Lord-Lieutenant appoints justices  
 in, 3, 307.  
 memorandum of charge to be kept,  
 958.  
 messengers, licensing of, 107–108,  
 317.  
 minutes of court, how far evidence,  
 282.  
 non-appearance of defendant, 308,  
 1054.  
 obstruction outside G.P.O., 681.  
 pawnbrokers (see "PAWNBROKER"),  
 652–664.  
 penalty—  
   application of, 953.  
   informer's share in, may be  
   lessened, 311, 956, *Add. et*  
   *Corr.* cvii.  
   may be mitigated, 65, 311, 956.  
   mitigation not to apply to  
   Revenue Acts, 956.  
   where no specific penalty ap-  
   pointed, 310, 952.  
 Petty Sessions Act only applies to  
 backing and execution of warrants  
 in, 41, 76, 1020.  
 piercing casks, opening packages,  
 &c., 313, 950.



DUBLIN METROPOLITAN POLICE DISTRICT—*continued*.

police accoutrements, 318, 945.  
     offences by (see "POLICE"), 676.  
 possessing instruments for unlawfully procuring wine, 313, 950.  
 preliminary investigation of indictable offences. See "PRELIMINARY INVESTIGATION OF INDICTABLE OFFENCES."  
 prostitution or solicitation, 314, 947.  
 public place. See "HIGHWAY."  
 publican supplying liquor to person under 16, 312, 945.  
 quarter sessions, divisional justices not to act at, 953.  
 recognisance to prosecute, 318, 952.  
 regulations by Chief Commissioner, 317, 1075  
 remanding prisoner on recognisances, 956.  
 removal of furniture to evade rent, 318, 951.  
 renewal of publican's licence in, 126.  
 Revenue Acts, non-application of Dublin Police Act, 1842, to, 959.  
 separate court of quarter sessions in Dublin, 6.  
 shoeblacks, licensing of, 317, 1078.  
 Small Penalties Act, application of, 310 *n.* 1, 1061.  
 Stamp Acts, non-application of Dublin Police Act, 1842, to, 959.  
 statutes to be read together, 944.  
 "Stipendiary Magistrate" sometimes includes divisional justice, 8, 532.  
 stolen property, special provisions as to, 313, 954, 955.  
     unlawful possession of, 313, 954.  
 street. See "highway offences," *supra*.  
 suicide, attempted, summary jurisdiction, 314, 1055.  
 summons—  
     issue of, in first instance, 307–308, 953.  
     service of, 308, 953. .  
     See "SUMMONS."  
 theatre, offensive conduct in, 314, 1055.  
 time limit for complaint, 52, 309, 958.  
 traffic (see "HACKNEY CAR," "highway offences," *supra*), 1076.  
 unclaimed stolen property, 313, 955.  
 using carriage without owner's consent, 948  
 warrant for levy of fine, 970.  
     may be served out of district by any constable, 308, 953.  
     may issue in first instance, 307–308, 953.  
 warrant. See "WARRANT."  
 witness, enforcing appearance of, 308, 953.

## DUBLIN TRAFFIC ACT, 1875, 1074–1078.

offences. &c., under, 317.  
 See "D.M.P. DISTRICT, highway offences."

## DUMB WITNESS, 260.

## DWELLING-HOUSE,

offences relating to, 888.  
 See "BUILDING," "PUBLIC HEALTH."

## DYING DECLARATIONS,

admissible though on oath, 270.  
     only as proof of relevant matter, 271.  
     only on charge as to death of declarant, 270.  
 need not be on oath, 270.  
 of child of ten, 270.  
 rebutting, 271.  
 requisites of, 270.

## EDUCATION,

application of Act of 1892, 427.  
 attendance order and enforcement thereof, 428.  
 attendance order under Children's Act, 1908, 1209, 1214, 1241.  
 child suffering from infectious disease not to be sent to school, 754.  
 costs cannot be given on proceedings for obtaining attendance order, 69.  
 disobedience to bye-laws of school in England is offence, 66.  
 duty of parent to send child to school, 427.  
 employment of child required to attend school prohibited, 429, 430.  
 evidence of application of Act, 427.  
 false entries, 430.  
     information, 430.  
 forgery, 430.  
 one-third of fine only can be paid to complainant, 68, 431.  
 "parent," meaning of, 430.  
 penalties, application of, 431.  
 procedure, 431.  
     appearance on behalf of parties, 431.  
     certificate of attendance or non-attendance to be conclusive evidence, 431.  
     certificate of illness to be conclusive evidence, 431.  
     production of child may be required, 431.  
     proof of age of child, 431.  
     two justices required, 431.  
 reasonable excuses for non-attendance of child, 428.  
 registers to be kept, 430.  
 "revenue from penalties," 68.  
 statutes, 427.  
 truancy, how far a reasonable excuse, 428.

**EDUCATION**—*continued*.

vagrant preventing education of child, 1235.  
who may prosecute, 430.

**EGGS,**

destroying eggs of game birds, 494.  
wild birds, 853, 854, 855.

**EJECTMENT.**

See "LANDLORD AND TENANT."

**ELECTIONS,**

corrupt and illegal practices at, 431, 432, 888.  
name and address of printer on placards, 690.  
registration court, recovery of costs and fines imposed by barrister, 967, 968.

**ELECTRIC TELEGRAPH,**

malicious damage to, 603, 912.

**ELECTRICITY,**

adaptation of Gas Acts, 432.  
larceny of, 909.  
malicious injury to works, 913.  
offences as to, 432.  
recovery of amount due for, 165.

**EMBEZZLEMENT,**

offence of, 889.  
person charged with, may be convicted of larceny, and *vice versa*, 906.  
restitution of property embezzled, 790.  
summary jurisdiction in case of, 432, 586.  
See "LARCENY."

**EMBLEMS,**

on licensed premises, 545, 546.

**EMBRACERY, 889.**

**EMPLOYER AND WORKMAN.**

See "MASTER AND SERVANT."

**EMPLOYERS AND WORKMEN'S ACT, 1875,**

jurisdiction of justices as to disputes between employer and workman, 156-160.

**EMPLOYMENT OF CHILDREN, 398.**

See "CHILDREN."

**ENFORCEMENT OF ORDER OF JUSTICES, 69.**

See "WARRANT OF EXECUTION."

**ENLISTMENT.**

See "ARMY," "MILITIA," "NAVY."

**ENTRY ON LAND,**

compensation for damage caused by, 168-169, 179 n. 1, 185.

**ENTRY ON LAND**—*continued*.

drains, for purpose of making, 182.  
to obtain material for labourers' dwellings, 178-179.  
to obtain road materials, 168-171.  
to remove trees and undergrowth dangerous to railway, 184-185.  
to survey new line of road, 168.  
wrongful, penalty for, 185.

**EQUAL DIVISION.**

See "EVEN DIVISION OF JUSTICES."

**ERROR,**

apparent, on face of order, certiorari lies, 224.

**ERROR ON RECORD,**

appeal on, 234.  
meaning of, 234 n. 1.

**ESCAPE,**

aiding prisoner to, 890.  
allowing or aiding convicts to, 890.  
by prisoner, 834.  
See "PRISON."

**ESTOPPEL,**

of defendant, who has acquiesced in order, 93, 96.

**ESTREATING RECOGNISANCE,**

demise of Crown, 39.  
generally, 38, 72, 1017-1018.  
imprisonment in default of paying forfeited recognisance, 39, *Add. et Corr. cv.*  
See "RECOGNISANCE."

**EVEN DIVISION OF JUSTICES,**

county court judge has no casting vote, 116, 137.  
effect of, 27, 62, 137.  
on appeal at quarter sessions, 137.  
on application for grant or renewal of licence, 116, 121.

**EVIDENCE,**

accomplice must be corroborated, 286.  
accused, statement by, upon preliminary investigation, 23, 275, 1004.  
admissibility of deposition of witness dying, &c., before trial, 22, 24, 287-289.  
affirmation, when sufficient, 259, 1002.  
application of Education Act, 1892, 427.  
Army Act, provisions of, 377.  
bye-laws as to fishery, 442.  
case stated does not lie to test admissibility of, 236.  
certificate is evidence of order at Petty Sessions, 64, 281, 1010, 1034.  
certificates, how far evidence, 280.  
character of complainant, 269.  
defendant, 269.

EVIDENCE—*continued.*

child or young person—  
 admissibility of deposition of,  
   where deponent unable to  
   attend, 1206.  
 court to be cleared during evi-  
 dence of, in certain cases, 349,  
 1234.  
 defendant a competent witness  
 in certain offences relating  
 to, 261, 1242, 1243.  
 evidence, when not on oath, 259,  
 1206.  
 presence of, not to be allowed  
 in court, 349, 1234.  
 taking deposition of, 1205.  
 compelling witness to answer, 54,  
 291, 1002.  
 complainant can call evidence in  
 reply, when, 57, 270, 1008.  
 comment on non-production of de-  
 fendant, where competent witness,  
 261.  
 confession by accused, admissibility  
 of, 272-275.  
 conspiracy, 266.  
 continuing offence, evidence admis-  
 sible on charge of, 268.  
 conviction, evidence of, 64, 281,  
 1010.  
 corroboration, nature of, and neces-  
 sity for, 272, 286, 898, 921.  
 Criminal Law and Procedure (Ir.)  
 Act, 1887, special provisions of,  
 1084, 1085.  
 cross-examination—  
   bias, as to, 283.  
   credit, as to, 283.  
   discrediting one's own witness,  
   284.  
   generally, 283.  
   of one's own witness, 284.  
   previous conviction, as to, 283.  
   previous inconsistent statement,  
   as to, 284.  
   right to, 56, 999.  
 deaf and dumb witness, 260.  
 defendant competent witness, 53,  
   261, 533.  
   and husband or wife,  
   when competent wit-  
   ness, 53, 260, 261, 376,  
   402, 405, 436, 469, 579,  
   592, 621, 693, 891 *n.* 1,  
   1095, 1242, 1243.  
 Department of Agriculture, docu-  
 ments issued by, 277, 442.  
 deposition. See "DEPOSITION."  
 discovered since order of justices on  
 which case has been stated may  
 be sent by High Court to justices  
 for consideration, 241.  
 Diseases of Animals Acts, 241, 369,  
 371.  
 documents. See "DOCUMENTS."  
 Dublin Metropolitan Police district,  
 special provisions as to incrimina-  
 tory evidence, 313.  
 dying declaration. See "DYING  
 DECLARATIONS."

EVIDENCE—*continued.*

enforcing attendance of witness,  
 21, 53, 291, 1002.  
 evidence given at previous trial,  
 when admissible, 290.  
 excise officer, authority to prosecute,  
 how proved, 79.  
 experts, evidence of, 276.  
 failure to attend to give evidence,  
 indictable misdemeanour, 291.  
 foreign witness, 260.  
 handwriting, 276.  
 husband and wife, proceedings for  
 desertion, 533.  
 husband or wife, but not defendant,  
 when competent witness, 53, 261,  
 530, 1189, *Add. et Corr.* cvii.  
 husband or wife of defendant, *quare*,  
 competent where statute merely  
 makes defendant competent, 261  
*n.* 2.  
 identification of accused, 290.  
 identity of things or persons, opinion  
 admissible as to, 276.  
 incompetent witness, 260-262.  
 incriminating evidence, witness not  
   bound to give, 54,  
   284, 285, 313.  
   witness bound to give,  
   285, 497, 1085.  
 informer, 286.  
 interpreter, oath of, 260.  
 joint defendants cannot as of right  
 claim to be tried separately in  
 order to give evidence for one  
 another, 47, 349.  
 justice can convict only on evidence  
 taken before himself, 56.  
 King's, 274.  
 larceny, evidence of conviction or  
 dismissal, 1034.  
 leading questions, when allowed, 276.  
 libel, defendant and wife or husband  
 competent witness, 592.  
 must be taken in writing, if required  
 under Petty Sessions Act, 60,  
 1009.  
 necessary formal, may be given by  
 complainant after his case closed,  
 56, 346.  
 no evidence at close of Crown case,  
 291.  
 oath, when required, 21, 56, 259, 276,  
   1002, 1004, 1206.  
   how taken, 258.  
 opinion, when admissible, 276.  
 ordering witnesses out of court, 60,  
 291.  
 orders of local authority, 369.  
 poaching, possession of game, 487.  
   "sunrise" and "sunset,"  
   484.  
 population, 393.  
 privilege, 54, 285.  
 public official, presumption in case  
 of, 291.  
 public policy, 286, 287.  
 publication of orders when condition  
 precedent, 281.  
 re-examination, 285.



EVIDENCE—*continued*.

- refreshing memory from memoranda, 276.
- refusal of witness to answer, 22, 54, 285, 1002.
- register of medical practitioners, 616.
  - Pharmaceutical Society, 396.
  - Royal College of Veterinary Surgeons, 833.
- relevant evidence only admissible, 262.
- res gestæ*, 263.
- res inter alios actæ*. See "RES INTER ALIOS ACTÆ."
- secondary evidence of documents, when admissible, 281.
- seizure of documents, 20, 282.
- several offences forming one transaction, 271.
- solicitor, privilege of, 285.
- statement by accused—
  - duty of police as to, 275 *n.* 1.
  - when admissible, 272.
- statement of defendant during preliminary investigation, 275.
- statements in presence of accused, when and how far admissible, 271.
- sureties of peace and good behaviour, evidence for defendant not permissible, 37.
- tampering with witness, 935.
- unsworn testimony of witness producing document admissible, 259, 276.
- unsworn testimony, when allowed, other instances, 259, 1206, 1243.
- want of, to support order, not generally ground for certiorari, 224, 225.
- witness may be called though not *subpœned*, 24, 54, 57, 286, 345, 1002.

## EXCEPTION,

- burthen of proof on defendant, 57, 1008.
- negating, 89, 90.

## EXCISE ACTS,

- appeal to quarter sessions. See "APPEAL TO QUARTER SESSIONS."
- bail, 79.
- costs against Crown, 80.
- Commissioners' consent necessary to prosecution, 76, 79.
- disqualification of Excise officers from adjudicating, 222.
- disqualification of traders from adjudicating in cases affecting their trade, 222.
- entry of licensed premises, 546.
- evidence of authority to prosecute, 79.
- Excise officer may conduct proceedings, 79.
  - represents Crown, 78 *n.* 3.
- form of order, 79.
- master's liability for acts of servant, 293, 294.
- number of justices required, 79.

EXCISE ACTS—*continued*.

- penalties, application of, 79.
  - mitigation of, 79, 80.
- Petty Sessions (Ir.) Act, 1851, not applicable, 76, 1020.
- procedure, 79.
- remands, 79.
- search warrant, 145.
- summons for defendant, 79.
  - witness, 79.
- service of, 79.
- time limit for prosecution, 79.
- warrant for witness, 79.

## EXCISE OFFENCES.

See "EXCISE ACTS."

## EXCISE OFFICER.

See "EXCISE ACTS," "INTOXICATING LIQUORS."

## EXECUTION.

See "EXECUTION OF WARRANT," "STAY OF EXECUTION."

## EXECUTION OF WARRANT.

See "WARRANT OF ARREST," "WARRANT OF DISTRESS," "WARRANT OF EXECUTION."

## EXEMPTION.

- burthen of proof on defendant, 57.
- negating, 89, 90.

EXEMPTION ORDER, 125, 126, *Add. et Corr. cvi.*

## EXPLOSION,

- causing dangerous explosion, 890, 891.

## EXPLOSIVES,

- administration of law as to, 434.
- causing explosions, &c., 890, 891.
- definition, 433.
- evidence of defendant or spouse of defendant, 261.
- general provisions, 433, 434.
- gunpowder—
  - conveying, 434.
  - manufacturing, 433.
  - retailing, 433.
  - selling, 433, 434.
  - storing, 433.
- "local authority," 435.
- making or possessing explosive substances, 891.
- mines, prohibition of explosives, 626.
- offences as to, committed out of United Kingdom, triable in Ireland, 14 *n.* 2.
- procedure, 435.
- search warrant, 145, 434.
- sending by post, 680.
- using to take fish, 442, 443.

## EXPOSING ANIMALS OR GOODS FOR SALE, 524.

See "DUBLIN METROPOLITAN POLICE DISTRICT," "HIGHWAY," "TOWNS IMPROVEMENT."

**"EXTENUATING CIRCUMSTANCES,"**

instance of, 60.

**EXTORTION, 891, 925.****EXTRADITION,**application of Extradition Acts, 301.  
arrest under Extradition Acts, 301.  
hearing of charge under Extradition Acts, 302.**FACT,**

finding of, by justices, conclusive, 242.

**FACTORY.**

See "FACTORY AND WORKSHOP."

**FACTORY AND WORKSHOP,**accident in—  
inquest, 1105.  
investigation, 1105.  
notice of, 351.  
report by surgeon, 1104.  
administration of Factory and Workshop Act, 1901, 1135-1140.  
certifying surgeons, 1137.  
local authorities, 1138.  
notice of occupation and registry, 1138.  
powers of Secretary of State, 1138.  
appeal to quarter sessions, 1147.  
apprentice, application of statute to, 1146.  
arbitration, provisions as to, 1148, 1149.  
bakehouses, 1128-1130.  
"Births and Deaths Registration Acts," 1148.  
"Board of Education," meaning of, in Ireland, 1147.  
branch or department of work, when separate factory or workshop, 1145.  
buildings, provisions as to, 1130.  
butter factories to be registered, 473.  
"certified efficient school," meaning of, 1147.  
certifying surgeons, fees of, 1154.  
child, cleaning machinery, 1102.  
employment of, certificate of birth, 1139.  
employment of, notice by medical officer of health, 1139.  
employment of, where prohibited, 1122.  
fitness for employment, 1118.  
meaning of, 1146.  
offences by parent, 1141.  
required to attend school, employment of, 429.  
Christmas Day in, 1110.  
cleaning machinery in motion, 1102.  
cleanliness, provisions as to, 1097, 1098, 1125.**FACTORY AND WORKSHOP—continued.**continuous employment, what is, 1146.  
cotton cloth factories, humidity in, 1151, 1152.  
cotton cloth in humid factory, provisions as to, 1126-1128.  
county boroughs, application to, 1146.  
"court of summary jurisdiction," meaning of, 1147.  
Crown factories and workshops, 1145.  
dangerous machine, order of justices as to, 1104.  
dangerous trades, regulations as to, 1122, 1123, 1124, 1125.  
diseases contracted in, to be notified, 1121.  
disqualification of certain persons from adjudicating, 222, 1142.  
district councils, effect of powers conferred on, 1146.  
docks, provisions as to, 1130.  
domestic factories and domestic workshops, 1132-1134.  
door to open from inside, 1104.  
drainage of floors, 1100.  
Dublin Gazette substituted for London Gazette, 1148.  
education, application to Ireland, 1147.  
education of children employed in factory, 429, 1120, 1121.  
"employed," meaning of, 1146.  
employment inside and outside on same day, 1114.  
exemption of occupier where third party guilty, 1141.  
explosives, for manufacture of, 433, 434.  
"factory," meaning of, 1144.  
fencing of machinery, 1100.  
fines, application of, 1147.  
fire, means of escape from, and byelaws, 1102, 1103.  
fitness for employment, 1118, 1119, 1120.  
forgery of documents, 1141.  
grinding in tenement factory, 1150.  
half-timers, 398, 429.  
health, provisions as to, 1097-1100, 1104.  
holidays in, 1110, 1113.  
home work—  
employment in unhealthy premises, 1132.  
infectious diseases in premises, 1132.  
hours of employment—  
bakehouses, 1111.  
creameries, 1113.  
fish and fruit preserving, 1113.  
Jews, special provision as to, 1114.  
lace factories, 1111.  
night work, 1116.  
notice of, 1110.  
overtime, 1114, 1115, 1116, 1150.

FACTORY AND WORKSHOP—*continued.*

hours of employment—  
 powers of Secretary of State, 1111.  
 Saturday, substitution of another day for, 1113.  
 Sunday, 1110, 1113, 1114.  
 textile factories, 1112.  
 Turkey red dyeing, 1113.  
 women, young persons, and children, 1106, 1107, 1108, 1109, 1110.  
 laundry. See "LAUNDRY."  
 liability of person actually committing offence, 1141.  
 lime-washing, 1097, 1098.  
 "Local Government Board," meaning of, 1148.  
 "machinery," meaning of, 1146.  
 manual labour in school, 1145.  
 margarine factory to be registered, 472.  
 meal times in, 1110, 1112.  
 meals not to be taken in certain parts of, 1122.  
 "medical officer of health," meaning of, 1147.  
 men's workshops partially exempted, 1146.  
 "mill gearing," meaning of, 1146.  
 "night," meaning of, 1146.  
 "non-textile factory," meaning of, 1144.  
 non-textile factories and workshops, list of, 1154, 1155.  
 notice and registry of, 1138-1139.  
 notice in, 1125.  
     of special exceptions, &c., 1117.  
 nuisance in, 1097, 1098, 1099.  
 open air premises may be, 1145.  
 overcrowding, 1097, 1098.  
 "owner," meaning of, 1146.  
 owner of machine liable, when, 1142.  
 "parent," meaning of, 1146.  
 part of, when deemed separate factory or workshop, 1145.  
 "poor law medical officer," meaning of, 1147.  
 "prescribed," meaning of, 1146.  
 procedure—  
     appeal to quarter sessions, 1142.  
     employing persons contrary to Act, 1140.  
     fine in case of death or injury, 1140.  
     general provisions, 1142-1143.  
     limit of cumulative fines, 1142.  
         time, 1142-1143.  
     penalty for not keeping factory or workshop in conformity with Act, 1140.  
     prosecution of offence and recovery and application of fines, 1142.  
     service of notices or documents, 1143.  
 "process," meaning of, 1146.

FACTORY AND WORKSHOP—*continued.*

Public Health Acts, application of, 1147, 1148.  
 railway, special provisions as to, 1131.  
 "recognised efficient school," meaning of, 1147.  
 repeal, 1148, 1156.  
 return of persons employed, 1139.  
 Sanitary Acts, application of, 1147.  
 sanitary condition of, 1097, 1098, 1099, 1117.  
 sanitary accommodation in, 705, 736, 1100, 1125.  
 Secretary of State, powers of, 1098, 1111, 1113, 1119, 1125.  
 self-acting machines in, 1101.  
 "special order," meaning of, 1146.  
     provisions as to, 1113, 1138.  
 steam boilers, provisions as to, 1101.  
     whistles, use of, 789.  
 Sunday, provisions as to, 1110, 1113, 1114.  
 temperature in, 1099.  
 "tenement factory"—  
     certificate of fitness, 1126.  
     duties of owner of, 1125.  
     grinding in, 1125, 1126.  
     meaning of, 1144.  
     orders as to, 1125.  
     owner substituted for occupier, 1125.  
     partial exemption of, 1133.  
 "tenement workshop"—  
     meaning of, 1145.  
 "textile factory," meaning of, 1143.  
 textile factory, particulars of work or wages in, 1134.  
 thermometer, recording reading of, 1153.  
 unhealthy, power of justices as to, 1104.  
 ventilation, 1097, 1098, 1099, 1122, 1125, 1133, 1146.  
 washing, 1097, 1098.  
 "week," meaning of, 1146.  
 weights and measures in, 847, 1135.  
 wet spinning, special provisions as to, 1122.  
 woman cleaning machinery, 1102.  
     employment after child-birth, 1118.  
     employment of, notice by medical officer of health, 1139.  
     meaning of, 1146.  
 "workshop," meaning of, 1144, 1145.  
 young person—  
     cleaning machinery, 1102.  
     employment of, 1122.  
     fitness for employment, 1118, 1119.  
     meaning of, 1146.  
     repairing machinery, 1147.

FAIR RENT ORDER,  
 providing for labourers' dwellings,  
 disobedience to, 180.



**FAIRS,**

fairs prohibited on Sundays and certain holidays, 793.

See "FAIRS AND MARKETS."

**FAIRS AND MARKETS.**

appeal from order as to disputes in, 139, 160, 994.

disputes arising at, jurisdiction to determine, 55, 160, 978, 989.

offences in respect of, 989.

regulations by justices as to, 989.

toll boards, offences as to, 435.

weighing cattle, provisions as to, 841.

See "BUTTER," "CATTLE,"  
"WEIGHTS AND MEASURES."

**FALSE ALARMS OF FIRE ACT, 1895, 436.**

husband or wife of accused a competent witness for accused under, 261, 436.

**FALSE NAME AND ADDRESS,**

giving, by ticket-of-leave man or police supervisee, on being charged with offence, 686.

giving, when on licensed premises during prohibited hours, 563.

**FALSE PRETENCES.**

attempt to obtain by false pretences, 895.

cheating at cards, 985.

false statement by money-lender, 896.

obtaining goods by, 892-895.

Vexatious Indictments Act applies only to actual receipt by, 895 *n.* 2, 896, 1050.

See "OBTAINING MONEY OR  
PROPERTY BY FALSE PRE-  
TENCES."

**FALSIFICATION OF ACCOUNTS, 871, 874, 875, 909.****FANCY BREAD,**

exemption as to sale by weight, 388.

**FARE,**

hackney car, 316, 528.

See "HACKNEY CAR," "RAIL-  
WAY," "TRAMWAY."

**FATHER.**

liability of, for support of child, 403, 531, 831.

See "PARENT."

**FEEDING STUFFS.**

See "FERTILISERS AND FEEDING  
STUFFS."

**FEEES,**

on appointment of justice, 6.  
various forms, 1047.

**FELONY,**

arrest without warrant for, 19, 146, 147 *n.* 1.

**FELONY—continued.**

attempt to commit, bail discretion-  
ary with justice, 29.

bail discretionary with justice,  
generally, 29.

breaking doors to effect arrest, 149.  
prevent violent, 149.

challenge of jury, 12.

child exempted from disqualification  
attaching to, 691 *n.* 3, 1229.

compounding, 12, 883.

disqualification by conviction of, for  
licence to retail wine, 111.

distinction between, and misde-  
meanour, 12, 43 *n.* 1.

forfeiture when not worked by con-  
viction of, 691 *n.* 3, 1034.  
on conviction of, 12.

handcuffing prisoner charged with,  
18.

indictment to include only one, 12.

killing felon in capture or pursuit,  
19.

number of justices required in, 13,  
942.

punishment of (see also "PUNISH-  
MENT"), 12.

returnable to assizes, when, 26.

seizure of property on arrest, 20.

summary jurisdiction in, 13 *n.* 1,  
585-586, 788-789, 994.

venue in, boundary of two counties,  
15, 43, 858.

journey, 16, 43, 858.

voyage, 16, 43, 858.

See "VENUE."

what is, 12.

**FEMALES. OFFENCES AGAINST  
AND RELATING TO.**

aggravated assault, 380.

defilement of, by threats, fraud, or  
drugs, 898.

girl under 13, 898.

girl between 13 and  
16, 898.

idiot, 898.

encouraging prostitution or seduc-  
tion of girl under 16, 899.

generally, 896-898.

householder permitting defilement  
of girls, 899.

indecent assault, 897.

lesser offence may be found, 899.

lunatic, carnal knowledge of, 911.

procuration, 897.

rape, 896.

unlawful detention for immoral pur-  
poses, 899.

See "ABDUCTION," "ABOR-  
TION," "BROTHEL."

**FENCE,**

altering or injuring, 526, 980, 981.

larceny of, 587.

malicious damage to, 603.

order on railway company to make,  
183-184.

repair of, may be ordered, 993.

See "ORDER TO CUT HEDGES."

## FERTILISERS AND FEEDING STUFFS,

- analysis of, 1168.
- appeal, 1171.
- application Act, to Ireland, 1172.
- appointment of analyst and samplers, 1167.
- Board of Agriculture, means, in Ireland, the Department, 1172.
- consent of Department, when required, 1170.
- county boroughs and county councils, power of, 1169.
- false invoice, 1170.
- obstructing official sampler, 1171.
- procedure, 1171.
- regulations by Department, 1169.
- sale of deleterious food, &c., 1170.
- seller not giving invoice, 1169, 1170.
- tampering with sample, 1171.
- warranties as to, 1167.

## FINANCE (1909-10) ACT, 1910,

- false statement or representation, 436.
- particulars on transfer or lease, 436.
- theatres, provisions as to closing hours of, 576, 1277.
- valuation of licensed premises, 436.

## "FINAL,"

- effect of statute making justices' decision "final," 227, 235, 237.

## FINDING OF JUSTICES,

- on facts, conclusive on case stated, 242.

## FINE,

- allowing time for payment, 65, 1010, 1010 *n.* 1.
- appeal from imposition of, 78, 132, 138-139, 311, 957, 973, 1012.
- application of, 68, 974, 975, 1011.
- complainant may be awarded part of, 68, 974, 1011, 1046.
- entry and account of, 70, 332, 969, 972, 997.
- fund from, application of, 1046.
- imprisonment ceases on payment of, 68, 1016.
- in default, 65, 66, 970, 1010, 1060.
- jurors' fines, entry of, 969.
- officers not accounting or guilty of neglect, 676, 972.
- payment of, does not take away right to certiorari, 229.
- power of Lord-Lieutenant to remit, 974, 994.
- recovery and collection of, 65-70, 970, 971, 1010-1017.
- regulations by Chief Secretary as to accounts, 972.
- unauthorised person receiving payment of, 971.
- warrant for levy, 69-71, 970, 1011-1017.

See "DISTRESS," "PENALTY."

## FINE OR IMPRISONMENT (SCOT. &amp; IR.) ACT, 1899, 68.

## FINES (IR.) ACT, 1851,

- appeal to quarter sessions under, 78, 138-139, 311, 957.
- See "APPEAL TO QUARTER SESSIONS."

## FIRE,

- false alarm of, 436.
- power to police to enter and break open premises, 761.
- regulation of street traffic at fires, 761.
- See "FIRE BRIGADE."

## FIREARMS,

- discharging in D.M.P. district, 314, 948.
- on or near highway, 526, 527, 808, 982.
- drunkenness while in possession of, 426, 1181.
- See "GUN."

## FIRE BRIGADE, 761-762.

## FIREWORKS,

- discharging in D.M.P. district, 314, 948.
- on or near public road, 526, 982.

## FIRM,

- conviction of individual under firm name void, 83.
- See "COMPANY."

## FIRST OFFENCE,

- discharge of person charged with, 59 *n.* 2, 589, 994.
- penalty, 67.
- See also "PROBATION OF OFFENDERS."

## FISH,

- larceny of, 908.
- malicious damage to, 912.
- See "FISHERY LAWS."

## FISHERY LAWS,

- appeal to assizes, 130 *n.* 3, 438 *n.* 4.
- Add. et Corr.* cvii.
- appeal to quarter sessions, 130.
- arrest without warrant, 148, 438.
- auctioneer's licence not required for sale of fish on sea shore, 383.
- bag net, 444.
- ballast not to be discharged in harbour, 451.
- boats, delivering up fishing boats and gear picked up at sea, 451.
- name on, 450.
- using, during close season, for capture of fish, 450.
- using, without permission, 450.
- boxes, rules as to, 447.
- bye-laws may be made by Department, 442.

FISHERY LAWS—*continued.*

- case stated, appeal to Court of Appeal, 244.
- close seasons—
  - annual close season, 448.
  - evidence, 448.
  - offences, 448, 449, 450.
  - opening in nets and weirs during weekly close season, 449.
  - weekly close season, 448, 449, 450.
- conservators may adjudicate, when, 438.
- costs not limited to 20s., 69, 438.
- crabs, 414.
- cribs, rules as to, 447.
- cross lines, use of, 444.
- disturbing spawning fish, 443.
- dree draw, use of, 443.
- eel weir, taking salmon or trout in, 444.
- eels, netting during close season for, 449.
- emptying mill-race, &c., 443.
- explosives not to be used, 443.
- exporting unclean or unseasonable salmon, 450.
- fish pass to be provided in mill dam, 445, 446.
- fixed engine—
  - certificate necessary for, 442.
  - to be removed during close season, 449.
- fixed nets, 444–447.
  - meaning of, 444 *n.* 1.
- forfeiture of illegal nets and engines, 452.
- fry, taking or having in possession, &c., 448.
- gaff, use of, when forbidden, 443.
- illegal methods of taking fish—
  - cross lines, 444.
  - illegal nets, 444.
  - mill races, 446.
  - otters, spears, gaffs, 443.
  - poisoning river, 442.
  - Queen's gap, 447.
  - taking fish near weirs, 445.
    - salmon, trout, &c., at night in inland river, 443.
    - salmon, trout, &c., in eel weir, 444.
  - using explosives, 443.
  - watercourses, 446.
- illegal nets. See "nets," *infra*.
- King's gap, offences as to, 446, 447.
- larceny of, fish, 908
- licence, angling, &c., without, 441.
  - certificate for fixed engine, 442.
  - cost of rod licence, 441.
  - misusing or counterfeiting, 441–442.
  - production of, when required, 442.
  - using engine, net, &c., without, 441.
- lobsters, 414.
- lyster, use of, 443.

FISHERY LAWS—*continued.*

- malicious damage to fishery, 912.
- master's liability for acts of servant, 298, 441.
- mill, not closing waste gates, sluices, &c., of, 446.
- mill-dam, taking, &c., fish in, 445, 446.
- mussels, periwinkles, and cockles, 455.
- nets, illegal hours for, 450.
- nets, when illegal—
  - bag net, 444, 445.
  - close season, 448, 449, 450.
  - covered with material to take unsizable fish, 444.
  - false bottom, 444.
  - forfeiture of, 452.
  - keeping nets stretched across river, 444, 445.
  - mesh required for taking salmon or trout in sea, &c., 444.
  - night use of, forbidden, 450.
  - placing net behind another, 444.
  - prohibited by bye-law, 445.
  - stake net or stake weir, unlawful user of, 445.
  - weir, stake net, bag net, fixed net, &c., in tidal part of river, &c., 444.
  - within one mile of mouth of river, 444.
  - stretching across river, 445.
  - taking salmon at mouth of river, 445.
- night fishing, 443, 450.
- night-lines, 440 *n.* 2.
- obstructing constabulary or bailiffs searching, 451, 452.
- fishermen, 451.
- otter, meaning of, 443.
  - use of, 443.
- oysters—
  - close season, 451.
  - injuring beds, 455.
  - larceny of, 908.
  - unlawfully dredging for, 908.
- poaching—
  - generally, 439, 440.
  - seizure of tackle, 440.
  - "several" fishery, what is, 439 *n.* 2.
  - taking fish in private fishery, 440.
  - fish in water situate in land belonging to dwelling-house, 440, 908.
- poisoning river, 442.
- pollen, taking, &c., undersized, 448, 448 *n.* 2.
- procedure—
  - appeal, 130, 438.
  - application of penalties, 438–439.
  - costs, 69, 438.
  - generally, 438.
  - limits of jurisdiction, 438.
  - right of conservators to adjudicate, 438.
  - under Larceny Act, 1861, 437 *n.* 1.
  - who may prosecute, 43, 439.
  - Queen's gap, offences as to, 446, 447.



**FISHERY LAWS**—*continued*.

- rating of fisheries, 440.
- salmon, what are, 448.
- search of boats, &c., 452.
  - baskets, &c., 451.
  - warrant, 145.
- several fishery; cross-lining without licence in writing, 444.
- spawn, taking, having in possession, &c., 448.
- spear, use of, forbidden, 443.
- stake nets, 444, 445.
  - weir, 444, 445.
- statutes, enumeration of, 437.
- strokehaul, use of, forbidden, 443.
- title ousting jurisdiction, 211.
- trawling—
  - application of penalties, 453–454.
  - bye-laws, 452, 453.
  - by steam, 453.
  - landing and selling fish taken by illegal trawling, 454.
  - offences, 452, 453.
  - procedure, 453.
  - seizure, 453.
  - who may prosecute, 439.
- turbine, precautions when used, 446.
- unclean fish, 448.
- unseasonable fish—
  - exporting unclean or unseasonable salmon, 450.
  - fry and spawn, 448.
  - unclean fish, 448.
  - undersized pollen, 448.
- watercourse to mill or factory, 446.
- weirs, taking fish near, 445.
- whale fishing (see “**WHALE FISH-ERY**”), 850, 1180–1184.
- who may prosecute, 43, 439.

**FITNESS OF APPLICANT**,  
for publican's licence, 115.**FITNESS OF PREMISES**,  
for publican's licence, 115.**FIXTURES**,  
larceny of, 908.**FLAX**,  
beating or drying on or near road,  
526, 983.**FLOGGING**,  
See “**WHIPPING**.”**FLOODING LANDS**, 424.**FLOUR**,  
adulteration of, 352, 387.  
assault to obstruct sale of, 381.  
fraud in sale of, 387.**FLOWERS**,  
larceny of, from garden, 588.**FLYING KITE**, 526, 808, 982.  
D.M.P. district, 314, 948.**FOOD AND DRUGS**,

- abstraction of part of article of food, 461.
- Acts relating to, 456.
- adding matter to make article fit for commerce, 457.
- adulteration of, generally, 457–460, *Add. et Corr. cvii.*
  - butter, 392, 476.
  - corn, 352, 387.
  - flour, 352, 387.
  - intoxicating liquor, 352, 539.
  - meal, 352, 387.
  - seeds, 352.
  - wine, 352, 539.
- agent. See “**MASTER AND SERVANT**.”
- analysis—
  - at instance of private purchaser, 462.
  - at instance of public officer, 462.
  - by direction of justice, 470.
  - certificate of, 280, 466, 468.
    - form of, 466 n. 4.
  - procedure on, 462–463.
- appeal to quarter sessions, 470.
  - from order as to unwholesome food, 139.
- brandy, what is, 458 n. 1.
- butter—
  - adulterants of, in factory, 478.
  - factories, registration of, 473.
    - inspection of, 477.
  - importation of, 474.
  - milk-blended butter, 476.
  - moisture in, 459, 476.
  - premises which may be used as butter factory, 477.
  - register of dealings in butter factory, 477.
  - taking samples, 473.
  - what is, 471.
- certificate of analyst—
  - form of, 466 n. 4.
  - matters proved by, 280.
  - necessity for, 468.
- cheese, what is, 471.
- compound article not of ingredients demanded, 460, 461.
- compounded as in Act mentioned, excepted, 458.
- condensed milk, labelling of, 474.
- defect not arising from adulteration, 460.
- defence of purchase with warranty, 463.
  - notice of intention to rely on warranty, 465.
  - warranty, what is, 464.
  - warranty as to future deliveries, 464.
- drugs, mixing injurious ingredients with, 457.
  - definition of, 457.
- evidence, 469.
- factory—
  - butter, 477.
  - inspection of, 477.
  - margarine, 472, 477.
  - margarine-cheese, 472, 477.

FOOD AND DRUGS—*continued.*

- false label, 466.
- false warranty, 466, *Add. et Corr.* cvii.
- food, definition of, 457.
- food or drug not of nature, substance, and quality demanded, sale of, 457.
- forging certificate or warranty, 466.
- fraud in sale of provisions, 979.
- fraudulently increasing weight of butter, 392.
- imported articles, when to be marked, 474, 475.
  - milk or cream, when to be marked, 474, 475.
- indictable offences relating to, 900.
- injurious ingredients in, 457.
- inspection of butter and margarine factories, 477.
- knowledge, when material to offence, 457, 459.
- label, denoting mixture, when a defence, 461.
- label, false, 466.
- margarine, what is, 470.
- margarine and margarine-cheese—
  - branding, 472.
  - consigning, 472.
  - factory to be registered, 477.
  - imported, to be sufficiently marked, 474.
  - label on, 471.
  - penalties and procedure, 471, 473, 478.
  - presumption against vendor, 474.
  - registration of dealings in factory, 477.
  - restriction of butter fat in margarine, 473.
  - sale of, 471.
  - sample taken in course of conveyance, part to be sent to consignor, 467, 474.
  - taking samples, 473.
  - wrappers and packages to be marked, 472.
- margarine - cheese, definition of, 471.
- master's liability for acts of servant, 295, 296, 459, 473.
- milk blended butter, sale of, 476.
  - what is, 471, 473.
- milk—
  - condensed, labelling, 474.
  - portion to be sent to consignee if sample taken in delivery, 467.
  - seller of (or of cream) in public place to have name and address on vehicle, 468.
  - separated, labelling, 474.
  - skimmed, labelling, 474.
  - taking samples in course of delivery, 467.
- mixed article, 460, 461.
- mixing injurious ingredients with drugs or food, 457.

FOOD AND DRUGS—*continued.*

- nature, substance, and quality demanded, 457.
  - (1) no standard—
    - brandy, 458.
    - lard, 458.
    - marmalade, 458.
    - "sago," 458.
  - (2) statutory standard—
    - butter, 458.
    - drugs, 459.
    - margarine, 458.
    - milk, 458, *Add. et Corr.* cvii.
    - skimmed milk, 459.
    - spirits, 458.
- obstructing officer in discharge of duty, 468.
- patent medicine, sale of, 458.
- penalties, 469, 471, 478.
  - application of, 470, 473.
  - under Acts of 1899 and 1907, 478.
- "prejudice of purchaser," 459.
- preservatives, regulations as to, 476.
- procedure, *Add. et Corr.* cv.
  - analysis at instance of private purchaser, 462.
  - at instance of public officer, 462.
  - by direction of justice, 470.
- analyst's certificate necessary, 468.
- appeal, 470.
- contents of summons, 469.
- evidence, 469.
- inspector may prosecute without antecedent authority, 45, 462.
- right to demand analyst's attendance, 469.
- samples for analysis, procedure as to, 462, 463, 467, 474.
- time limit for prosecutions, 469.
- under Acts of 1875 and 1879, 468-470.
- 1899 and 1907, 478.
- purchase for analysis, 458, 462, 463, *Add. et Corr.* cvii.
- refusal to sell to officer, 463, 467.
- repeated conviction, 469.
- sample, division of, 462, 467, 474.
- sample of butter, 473.
  - milk, 467, *Add. et Corr.* cvii.
  - other articles, 462, 468.
- separated milk, 474.
- servant, liability of master for acts of, 295, 296, 459, 473.
- skimmed milk, 474.
- spirits, standard for, 458.
- standard for milk, &c., may be fixed by Department, 458, 478.
- time limit for prosecution, 469.
- unavoidably mixing extraneous matter, 460.
- unsound food—
  - appeal to quarter sessions as to, 139.
  - order for destruction of, 51.
  - seizure and destruction of, &c., 719, 720, 724, 725.

FOOD AND DRUGS—*continued.*

- unwholesome or fraudulently prepared food, 979.
- warranty—
  - defence of purchase with, 463–465.
  - forgery of, 466.
  - giving false, 466, *Add. et Corr.* cvii.
  - misapplying, 466.
  - requirements of, 464.
- who may prosecute, 463.
- See “POISONS, SALE OF.”

FOOT AND MOUTH DISEASE,

- powers of Department of Agriculture, 364.
- See “DISEASES OF ANIMALS.”

FOOTPATH,

- breaking surface of, 980.
- riding or driving on, 526, 808, 981.
- See “HIGHWAY.”

FORCIBLE ENTRY, 900.

FOREIGN ENLISTMENT ACT, 1870, 901.

- offences triable in Ireland, 14 n. 2.

FOREIGN PLATE, 513.

- See “PLATE.”

FOREIGN SHIP,

- Admiralty jurisdiction as to, 14 n. 1.
- offences committed on, 16.

FOREIGN WITNESS, 260.

“FOREST,” 486, 486 n. 2.

FORFEITURE,

- conviction for felony works, 12.
- wrongfully ordering, is bad, 90.
- order for forfeiture of property, 51.
- summary conviction of larceny does not work, 691 n. 3, 1034.

FORGERY,

- certificate of army discharge, 376.
- certificate or warranty under Food and Drugs Acts, 466.
- generally, 901.
- search warrant, 145.
- stamps on weighing instruments, 840.
- telegrams, 797.
- trade mark, 618.

FORMS.

- See “SUMMARY CASES WITHIN PETTY SESSIONS ACT.”

“FORTHWITH,”

- meaning of, 382.

FORTUNE TELLING, 830.

FOULING RESERVOIRS OR STREAMS

- by gas company, 506.

“FOUND,”

- “found in his possession,” 928.
- meaning of, 487, 502, *Add. et Corr.* cix.

“FOUND COMMITTING,”

- meaning of, 149.

FRAUD.

- certiorari applies to orders affected with, 224.
- in sale of provisions, 979.
- property of friendly societies, 479.
- See “OBTAINING MONEY OR PROPERTY BY FALSE PRETENCES.”

FRAUDULENT CONCEALMENT ON SALE OF PROPERTY, 902.

FRESH CHARGE,

- substitution of, against will of complainant, 99, 100.
- substitution of, against will of defendant, 95.

“FREQUENTING,” 505.

FRIENDLY SOCIETIES,

- appeal, 163, 481.
- child insurance, restrictions on, 814.
- circulating false rules, 479.
- continuing offences, 480.
- evidence of documents, 163.
- failure to give notice, make return, &c., 480.
- false declaration, 479.
- falsification of accounts, 480.
- fraud as to property of, 479.
- irregularity in proceedings, 162.
- jurisdiction excluded by arbitration clause, 162.
- generally, 161, 162.
- offences by society to be offences by officers, 480.
- penalty for offences, 481.
- procedure, 162, 481.
- service of summons, 50, 481.
- unlawful amalgamation or transfer, 480.
- who may prosecute, 479.
- workman not to be required to join or leave, generally, 1158.
- workmen and railway societies, 1159.

FRUIT,

- larceny of, 588, 908, 1051.
- malicious damage to, 603, 912.

FUGITIVE OFFENDERS ACT, 1881,

- arrest of fugitive offender, 303.
- bail, 303.
- hearing of charges, 303.
- miscellaneous provisions, 303.

FURIOUS DRIVING, 314, 527, 919, 947, 985.

FURLOUGH,

- powers of justices as to, 378.
- See “ARMY.”



**FURNACE,**  
to consume its own smoke, 707.]

**GALWAY,**  
application of penalties, 1061.  
separate commission of peace for,  
abolished, 6.  
separate court of quarter sessions  
in, 6.

**GAME,**  
playing on public road, 526, 982.  
unlawful games, what are, 496.  
See "GAME LAWS," "GAMING,"  
"WILD BIRDS."

**GAME LAWS,**  
appeal, 482, 483, 485, 488.  
burning mountains, 494.  
certificate to kill game—  
master and servant, 489.  
production of, 490.  
required, when, 489.  
close seasons—  
deer, 489.  
game killed abroad, 489.  
ground game, 494.  
hares, 489, 494.  
selling live or dead game birds  
in, 488-489.  
taking winged game in, 488.  
wild birds. See "WILD BIRDS."  
winged game, 488.  
compensation for game unlawfully  
seized, 487-488.  
complainant, any person may be, 44,  
482.  
costs, 482, 483, 485, 488.  
dealing in game—  
close seasons, 488-489.  
Excise licence, 491, 493.  
justices' licence, 119, 492.  
name over door, 492.  
offences as to, 492.  
"dismiss," 77, 482.  
eggs, destroying, 494.  
game, what is, 482, 484, 486 n. 3,  
489.  
ground game—  
cannot be taken on Sunday, 494.  
close seasons, 489, 494.  
rights of occupier, 493.  
what is, 493 n. 2.  
who is an occupier, 493.  
gun licence—  
not required by holder of game  
certificate, 489.  
production of, 144, 491.  
required, when, 490.  
licence to kill game. See "certifi-  
cate to kill game," *supra*.  
nest, destroying, 494.  
number of justices required, 483,  
485, 486.  
penalty not to be in Irish currency,  
482.  
Petty Sessions (Ir.) Act not appli-  
cable, 76, 481, 1020.  
poaching by night, 484-485, 923.

**GAME LAWS—continued.**  
poisoned flesh, 670.  
grain, 670, 1279, 1282.  
procedure, 481-482, 483.  
Sunday shooting, 489.  
title ousting jurisdiction, 210.  
trespass in pursuit of game—  
appeal, 483, 485, 488.  
arrest of night poachers, 486.  
arrest of suspected poachers, 486.  
"common informer," 483.  
costs, 482, 483, 485.  
deer, 486.  
evidence, 487.  
form of conviction, 483, 485,  
*Add. et Corr. cv.*  
highway, 485.  
killing hares or rabbits in  
warren in daytime, 484.  
killing hares or rabbits in  
warren in night-time, 486.  
night poaching, 484.  
by persons armed, 485, 923.  
penalties, 483, 484, 485, 486.  
procedure, 481-482, 483, 485.  
under Night Poaching Act,  
485.  
rabbits, 484, 486.  
repeated convictions under  
Night Poaching Act, 485.  
reservation of game to landlord,  
483, 484.  
tracing game in snow, 486.  
using "engine" illegally to take  
game is "offence," 66.  
what is, 483, 485, *Add. et Corr.*  
*cvii.*  
who may prosecute, 482.

**GAMING,**  
advertising betting or betting-house,  
501, 502.  
appeal from conviction, 498.  
arrest of persons found in common  
gaming-house, 497.  
betting-house—  
abandonment of prosecution by  
complainant, 502.  
advertising, 501, 502.  
appeal under Betting Houses  
Act, 1853, 502.  
club may be, 500.  
declared a nuisance, 498.  
deemed gaming-house, 499.  
evidence of, 498, 499.  
exemption of stakeholder in  
horse-race, 501.  
keeping, 498.  
newspapers, evidence of, 280,  
499.  
offences as to, 498, 499.  
penalty on owner or occupier,  
499.  
"place," 499.  
procedure under Betting House  
Act, 1853, 502.  
receiving deposits for bets, 501.  
search warrant, 502.  
seizure of persons and docu-  
ments, 502.

**GAMING**—*continued.*

- betting-house—
  - “using,” 500, *Add. et Corr.* cviii.
  - what is, 498, 499, 500.
- betting in streets, 505.
  - in D.M.P. district, 317, 1078.
  - See “street betting,” *infra.*
- betting, stakeholder in horse-race, 501.
- cheating at play, 498, 895.
- common gaming-house—
  - appeal, 498.
  - club may be, 496.
  - definition, 495, 496.
  - D.M.P. district, 313, 946.
  - evidence of, 497.
  - keeping, 495, 496, 497, *Add. et Corr.* cviii.
  - married woman, liability of, 299.
  - mere players, liability of, 497, *Add. et Corr.* cviii.
  - search warrant, 145, 497.
  - arrest under, 497.
  - obstructing entry of police on, 497.
  - refusing to give name when arrested on, 497.
- Vexatious Indictments Act applies to offence of keeping, 28, 1050.
- gaming on highway, &c., 831.
- infant, inciting to bet, 404, 505, 877.
- libraries, special provisions as to, 593.
- lottery, automatic machine, 504.
  - “keeping,” 504.
  - newspaper competitions, 503.
  - statutory provisions, 502–503.
  - what is, 503.
- marine insurance, gambling in, 605, 1267.
- newspaper announcing race, how far evidence in betting case, 280, 499.
- search warrant, 145, 497, 502.
- street betting, 504.
  - appeal, 505.
  - “frequenting,” 505.
  - “racecourse for horses,” 505.
  - when indictable, 877.
- suffering gaming on licensed premises, 60, 546.
- swindlers, 505.
- thimblers, 505.
- unlawful gaming—
  - definition of, 496, *Add. et Corr.* cviii.
  - keeping premises for, 496.

**GAOLER,**

- disqualified for holding liquor licence, 111.
- responsibility for custody of prisoner, 149 *n.* 1.

**GARDEN,**

- larceny from, 588.
- malicious damage in, 603.

**GARROTTING,** 919.

**GAS,**

- breaches of contract by servant, 508, 612.
- breaking up streets to lay pipes, &c., 164, 506.
- damage to property of company, recoverable, 164, 507.
- Dublin — special provisions of Alliance and Dublin Consumers Gas Co.'s Acts, 507, 508, *Add. et Corr.* cviii.
- examiner may be appointed, 506.
- larceny of, 907 *n.* 3.
- offences by consumer, 506.
  - obstructing officer, 507.
  - tampering with meter, 506, 507.
  - unlawfully connecting pipe, 506.
- offences by gas company—
  - allowing escape of gas, 506.
  - breaking up streets without authority, 506.
  - failure to give adequate pressure, 506.
  - failure to supply gas to public lamps, 506.
  - failure to supply pure gas of full illuminating power, 506.
  - fouling streams or reservoirs, 506.
  - fouling water, 506, *Add. et Corr.* cviii.
  - refusal to produce books, &c., 506.
- procedure, 507.
- recovery of gas rent, 164, 507.
- security from company to consumer, 164, 165.
- statutes, 506.

**GATE,**

- larceny of, 587.
- malicious damage to, 603.

**GAZETTE,**

- admissibility in evidence, 277–278.

**GENERAL CONVICTION,**

- on several charges, bad, 87–88.

**GENERAL DEALER,**

- altering or defacing articles, 511.
- articles purchased to be retained for seven days, 510.
- articles to be produced to police for inspection, 510.
- books to be kept by, 510.
  - produced to police for inspection, 510.
- brass, &c., purchase of, 508.
- definition, 508.
- licence—
  - description of premises, 510.
  - D.M.P. district, 312, 509.
  - grant of, 509.
  - limitation of area, 509.
  - procedure on application for, 509.
  - required by, 508.
- name over door, 511.
- not to transact business within certain hours, 511.
- not to transact business with person under 14, 511.

**GENERAL DEALER**—*continued*.

- particulars of purchase to be entered, 510.
- purchase of metals in specified quantities, 508
- purchaser's name to be entered, 510.
- stolen goods, duty as to, 511.

**GENERAL POST OFFICE**,  
obstruction outside, 681.**GERMAN SILVER**,  
purchase of, by dealers, 508, 606.**GIRL**.

- See "FEMALES, OFFENCES AGAINST AND RELATING TO."

**GOLD AND SILVER PLATE**, 512.  
pawnbroker's licence for, 656.  
See "PLATE."**GOLF**,  
playing on Sunday, 792.**GOOD BEHAVIOUR, SURETIES FOR**.  
See "SURETIES OF THE PEACE AND GOOD BEHAVIOUR."**"GOOD FAME,"**  
not of good fame, who is, 26.**GOOD FRIDAY**,  
fairs prohibited on, 793.  
ejectment not allowed on, 190.  
in computation of time, 204.  
selling, &c., intoxicating liquors on (see "INTOXICATING LIQUORS"), 556.**GOODS**.  
fraud in sale of, jurisdiction out of petty sessions as to, 55, 998.  
what goods may be taken (see "DISTRESS"), 71, 159, 203.**GRAIN**,  
assault to obstruct sale of, 381.**GRANDCHILD**,  
liability for support, 403.**GRAVE**, 730.  
See "BURIAL," "DEAD BODY," "PUBLIC HEALTH."**GROGGING SPIRIT CASKS**, 547.**GROUND GAME**, 493, 493 n. 2, 494.  
See "GAME LAWS."**GROUSE**,  
are game, 482, 494, 486 n. 3, 488 n. 1, 489.  
close seasons for, 488, 489.  
destroying eggs or nest, 494.  
game certificate to kill, required, 489.  
See "GAME LAWS."**GROWING PLANTS, &c.**,  
larceny of, 590.  
malicious damage to, 603.**GUARDIAN**,  
of child, included in "parent," 430.  
See "CHILDREN," "PARENT."**GUARDIANS**,  
prosecuting for desertion of wife or child, 531.**GUILTY**,  
plea of—  
conviction upon, made by defendant's solicitor without authority, will be quashed, 57  
when defendant not informed of right to trial by jury, will be quashed, 21.**GUN**,  
arrest without warrant for non-production of licence, 148.  
discharging gun on highway, 314, 513, 526, 527, 948, 982.  
licence for, 490.  
what is, 490.  
See "FIREARMS," "GAME LAWS."**GUNPOWDER**, 433  
See "EXPLOSIVES."**GYMNASIUMS**,  
bye-laws as to, 647.**HABEAS CORPUS**,  
absolute order in first instance, 251.  
appeal to Court of Appeal, when, 253.  
available before any judge, 252.  
conviction not quashed, 252.  
custody, questions determined on, 251.  
different kinds of, 251.  
form and effect of, 252.  
Habeas Corpus Act, 21 & 22 Geo. 3, c. 11, 251, 691.  
object of, 251.  
order binding to peace or good behaviour may be questioned on, 36.  
prisoner brought up for trial on, 21, 251.  
procedure, 252.  
telegram ordering discharge, 253.  
warrant may be amended before rule for, 70.  
witness's attendance secured by, 21, 251, 291 n. 1.**HABITUAL CRIMINAL**,  
licence to, 689.  
preventive detention of, 902-904.**HABITUAL DRUNKARD**,  
appeal, 521, 1180.  
binding over to be of good behaviour, 1181.



**HABITUAL DRUNKARD**—*continued.*

- certified reformatories—
  - establishment of, 514.
  - offences as to, 520.
- compulsory detention—
  - (1) habitual drunkard guilty of crime, 515.
  - (2) habitual drunkard four times convicted of drunkenness, 516.
  - (3) habitual drunkard convicted of cruelty to child, 519, 1205.
  - does not apply (save under Children Act) to retreats, 514 *n.* 2.
  - in retreats under Children Act, 519, 1205.
  - procedure under Act of 1898, 516, 517, 518.
  - under Children Act, 1903, 519.
- definition, 514.
- evidence—husband and wife competent witnesses, 261, 1181, 1242.
- expenses of detention, 520.
- illegal seizure and pawning, 521, 661, 1180.
- liability to Board of Guardians not affected, 1180.
- married men habitual drunkards, 520, 1180.
- women habitual drunkards, 521, 1180.
- old age pension may be forfeited, 651.
- pawning goods, restriction on, 521, 661, 1180.
- private retreats—
  - licensing of, 514.
  - offences in connection with, 519.
- protection of property—
  - appeal, 521.
  - defendant a competent witness, 261, 521, 1181.
  - husband habitual drunkard, 520, 1180.
  - seizure or pawning of protected property, 521, 661, 1180.
  - wife habitual drunkard, 521, 1180.
- rescission or variation of orders, 521, 1180.
- State reformatories—
  - establishment of, 514.
  - offences as to, 520.
- statutes, scheme of, 514.
- variation and rescission of orders, 521, 1180.
- voluntary detention, 514 *n.* 2, 515.

**HACKNEY CAR**, 810.

- D.M.P. district—
  - appeal, 317.
  - badges for drivers, 315.
  - disputes, 316.
  - "Dublin Plate," 315.
  - duties payable on, 315.
  - fares, 316.
  - licence for, 314.
  - licence to drive, 315.
  - offences in respect of, 316.
  - regulation of routes, 315.
  - regulations, 316.
  - stands, 316.

**HACKNEY CAR**—*continued.*

- in towns—
  - fare, 527, 528, 529, *Add. et Corr.* cviii.
  - licence for, 528.
  - misconduct of driver, 529.
  - number to be carried, 528.
  - offences, 528–529.
  - "plying for hire," 528 *n.* 2.
  - procedure, 529.
  - regulations by justices as to, 989.
  - stands for, 523, 989.

**HALL-MARKING PLATE**, 512.

**HANDCUFFING PRISONER**, 18.

**HANDWRITING**,  
evidence of, 276.

**HARBOUR**,  
bye-laws and regulations as to, 522, 523.  
discharging ballast or rubbish into, 451, 521, 523.  
miscellaneous offences as to, 522.  
taking material from, 522.

**HARBOURING POLICE**, 548.

**HARBOURING THIEVES**,  
in brothel, 390, 686.  
on licensed premises, 548, 686.

**HARD LABOUR**, 865.  
conviction silent as to, means without hard labour, 91.  
may be imposed, when, 1011.  
statute expressly directing, 90 *n.* 2.

**HARES**.  
are game, when, 482, 484, 486 *n.* 3, 491.  
close seasons for, 489, 494 *n.*  
game certificate—  
required to kill, 489.  
not required to hunt or course, 489.  
killing on Sunday, 489.  
See "GAME LAWS."

**HAVEN**, 522.  
See "HARBOUR."

**HAWKER**, 523.  
definition, 1091.  
hawking petroleum, 666–668.  
is pedlar, 1055.  
licence for, 119, 1092.  
offences, 1092.  
See "PEDLAR," "PETROLEUM."

**HEAD CONSTABLE**,  
warrants, when to be addressed to, 69, 75, 1013.

**HEARING OF CHARGE**,  
case remitted to justices by High Court, 244.  
generally, 21–24, 56–60.

**HEARING OF CHARGE**—*continued*.  
 hearing complaint, *ex parte*, in  
 D.M.P. district, 308.  
 presence of justice during entire  
 hearing required, 22, 56, 345.

**HEATH GAME**,  
 are game, 434, 491.  
 close season for, 488.  
 destroying eggs or nest, 494.  
 game certificate required to kill, 489.  
 See "GAME LAWS."

**HEAVY LOCOMOTIVE**, 598.  
 See "LOCOMOTIVES ON HIGHWAYS."

**HEDGES**,  
 order to cut, 173, 981.  
 See "ORDER TO CUT HEDGES."

**HERDSMAN**,  
 ejectment of, 189, 190.

**HIGH COURT**,  
 amendment, powers of, 93, 97-99.  
 case stated, powers in relation to,  
 241, 242.  
 consideration of question not raised  
 by case stated, 242.  
 See "SURETIES OF THE PEACE  
 AND GOOD BEHAVIOUR."

**HIGH SEAS**,  
 offences on, 14 *n.* 1.

**HIGH SHERIFF**,  
 disqualified from acting as justice,  
 6, 780.  
 warrant for recovery of tenement  
 should not be addressed to, 73.

**HIGH TREASON**, 9 *n.* 6, 917.

**HIGHWAY**,  
 allowing passage of water to be  
 obstructed, 980.  
 altering ditch, drain, or fence, 526,  
 980.  
 assault on engineer, surveyor, or  
 contractor, 526, 981.  
 barbed wire, order for removal of,  
 1093.  
 begging or causing to beg on, 385,  
 527, 830, 1199.  
 breaking surface of road or footpath,  
 980.  
 building house on or near, 528, 980.  
 burning bricks, lime, or weeds on,  
 527, 983.  
 bye-laws of sanitary authority, 702.  
 careless, &c., driving, 527, 985.  
 cars and carts—  
   driver leaving cart, 527, 985.  
   refusing to give owner's  
   name, 527, 985.  
   riding on, 985.  
   name to be painted on, 527, 984.  
   one driver taking charge of more  
   than one, 527, 984.  
   passing with led horse, 527, 985.  
 cattle straying on, 392, 983.

**HIGHWAY**—*continued*.  
 child, employment of, in street, 400.  
   under 13, not to drive, 527, 985.  
 cleansing of streets, 705.  
 closing roads for military man-  
 œuvres, 378.  
 courts, entrances to, 746.  
 county surveyor to be conservator  
 of, 600.  
 cutting turf or sods or taking  
 materials from, 526, 981 *n.* 1,  
 1032 *n.*, *Add. et Corr.* *cix.*  
 dangerous place to be repaired and  
 closed, 747, *Add. et*  
   *Corr.* *cix.*  
   riding and driving, 759.  
 dedication of, 213, 525.  
 definition of, 524.  
 destroying toll gate, &c., 526, 981.  
 ditch to be scoured, after notice,  
 526, 980.  
 dogs on, offences as to, 422, 527, 982.  
 drunkenness on, 425, 426  
 Dublin Metropolitan Police district.  
   See "DUBLIN METROPOLITAN  
   POLICE DISTRICT."  
 excavations in, 526, 747, 980.  
 fairs and markets, regulations as to,  
 989.  
 fencing land adjoining streets, 747.  
 firearms or fireworks, discharging,  
 526, 982.  
 fires, regulation of traffic at, 761.  
 flying kites, 526, 982.  
 footpath, riding on, 526, 981.  
 furious driving, 527, 919, 985.  
 gaming on, 831.  
 gas company, obligations as to, 506.  
 gunpowder not to be hawked or sold  
 on, 433, 527.  
 hackney cars on, 528, 989.  
 hedges, cutting on, 173-175, 981.  
 boardings to be securely erected,  
 748.  
 injury to, 526, 980.  
   by drawing timber, 980.  
 leading or driving animals on, regu-  
 lations as to, 759.  
 leaving vehicle standing in street,  
 526, 982, 989.  
 lights on vehicles. See "LIGHTS  
 ON VEHICLES."  
 locomotives on. See "MOTOR CAR,"  
 "LOCOMOTIVES ON HIGHWAYS."  
 making drain, &c., without consent,  
 980.  
 making slide, 526.  
 name of street may be altered, how,  
 745.  
 negligent driving causing bodily  
 harm, 873, 919.  
 new road, user of may be forbidden,  
 526, 981.  
 nuisances on, 526, 882, 982-983.  
   allowing animals to wander,  
   527, 983.  
   beating flax, 526, 983.  
   bonfires on, 527, 983.  
   burning bricks or weeds, 527,  
   983.

HIGHWAY—*continued.*

- nuisances on, carrying timber so as to project, 527, 983.
- cattle driven so as to cause mischief, 982.
- discharging firearms or fireworks, 526, 982.
- drying flax, 527, 983.
- exemption to surveyor and contractor, 983.
- exposing animals for sale or hire, 527, 983.
- flying kites, 526, 982.
- keeping dangerous dogs unlogged and unmuzzled, 421, 527, 983.
- laying rubbish on road or within 30 feet of centre, 526, 982.
- leaving skins on or near public, 982.
- obstruction by leaving plough, cart, &c., 526, 982.
- offences by surveyor and contractor, 983.
- removal of, 986.
- scalding casks, 526, 983.
- slaughtering or skinning beast on or near road, 526, 982.
- slides on, 526, 982.
- threshing corn, 527, 983.
- turning horses, &c., loose, 526, 982.
- urging dog or animal to attack, 982.
- winnowing corn, 527, 983.
- obstruction of, 524, 525, 985.
- road contractor, &c., 526, 981.
- poaching game on highway, 485.
- private street, paving and surveying of, 699.
- procedure as to offences—
  - award of compensation for damage, 986.
  - constabulary to take cognisance of, 985.
  - detention, &c., of horses, carriages, &c., 986.
  - power of arrest, 986.
  - Public Health Acts, 694–695, 742.
  - service of summons, 986.
- processions on, 525.
- public meeting on, 525.
- stage carriage, 527, 983, 984.
- removal of house refuse, 705.
- materials from, 747.
- rule of the road, 527 *n.* 1, 985.
- motor-cars, 643.
- tramways, 527 *n.* 1, 815.
- sanitary conveniences, provision of, 752.
- scrapping roads, 526, 980.
- street betting (see “GAMING”), 504.
- suffering passage of water to be obstructed, 980.
- taking materials from, 526, 981.
- towns, in. See “TOWNS IMPROVEMENT.”
- traction engine causing damage, 600.

HIGHWAY—*continued.*

- traffic regulations—
  - by local authority, 529.
  - under Public Health Acts, 759.
- trees to be cut on, 173–175, 981.
- turning horses, cattle, &c., loose on, 526, 982.
- See “LOCOMOTIVES ON HIGHWAYS,” “MOTOR CAR,” “PUBLIC HEALTH.”
- HIRE,
  - hire of animals, boats, &c., 160, 988.
- HOARDINGS.
  - precautions with respect to, 804.
  - See “PUBLIC HEALTH.”
- HOLDING INQUESTS, 153.
- HOME WORK,
  - provisions as to, 1131–1134.
- HOMICIDE,
  - in capture or pursuit of—
    - person charged with felony, 19.
    - with misdemeanour, 19.
- HORSES,
  - hire of, civil jurisdiction, 160, 988.
  - larceny of, 907.
  - turning loose in D.M.P. district, 314, 947.
  - on highway, 526, 982.
  - See “HIGHWAY.”
- HORSE-FLESH,
  - sale of, provisions as to, 529.
- HORSE-RACE,
  - racecourse exempt from Street Betting Act, 1906, 504.
  - stakeholder exempt from Betting Houses Act, 1853, 501.
- HOSIERY TRADE,
  - provisions in Truck Acts as to, 824.
  - tickets in, 613.
- HOTEL,
  - licence for, 571.
- HOUNDS, 423.
  - See “DOGS.”
- HOUSE,
  - building within 30 feet of centre of road, 526, 980.
  - includes curtilage, &c., 186.
- HOUSEBREAKING, 904–905.
- HOUSEHOLDER,
  - liquor licence can be granted only to a, 110, 111.
- HOUSING OF THE WORKING CLASSES ACTS, 720–722.



**HUSBAND AND WIFE,**

- adultery of wife, effect of, as to maintenance, 531.
- criminal liability of, in respect of each other's goods, 299-300, 530.
- desertion, meaning of, 533-535.
  - of wife or child, 531, 831.
  - order for protection of property, 535-536.
- doctrine of coercion of wife, 298.
- evidence of, 53, 260, 261 n., 530, 870, *Add. et Corr.* cvii.
- habitual drunkard, protection of property, 520-521.
- husband's responsibility for the acts of his wife, 294, 295, 538.
- larceny of husband's or wife's goods, 299, 530, *Add. et Corr.* cviii.
- liability of wife for crimes committed in husband's presence, 298-299.
  - for maintenance of her child or grand-child, 180 n. 3, 403, 531.
  - for support of husband, 180 n. 3, 531.
- maintenance—
  - in case of desertion, 531.
  - amount of order, 535.
  - procedure, 66, 532.
  - separation by agreement, 534.
  - service of summons issued in D.M.P. district, 308-309.
  - "Stipendiary Magistrate" includes divisional justice, 8.
  - venue, 535.
- liability of child, 180 n. 3.
- liability of husband for, 180 n. 3, 403, 531.
- liability of wife, 180 n. 3, 403, 531.
- of child or wife's child, 180 n. 3, 403, 531.
- proceedings by guardians for, 45.
- receiving stolen goods from each other, 928.

**IDENTITY,**

- evidence of, 276, 290.

**IDENTITY OF LICENSED PREMISES,**

- 114, 120, *Add. et Corr.* cvi.

**IDIOCY,**

- how far a defence, 256.

**IDIOT, 256.**

- defilement of, 898.

**ILLEGAL ASSEMBLIES,**

- on licensed premises, 537, 548.

**ILLEGAL DRILLING, 888.**

- arrest without warrant of person engaged in, 148.

**ILLEGAL PRACTICES,**

- municipal elections, 432.
- parliamentary elections, 431.

**ILLEGITIMATE CHILD,**

- liability for support of, 403, 531, 532.

**ILLICIT DISTILLATION, 543-545.**

- arrest without warrant, 148, 545.
- "dismiss without prejudice" valid order, 63, 100.
- procedure, 545.
- search warrant, 145, 544.
- search without warrant, 544.

**IMMIGRATION,**

- of aliens, 354.

**IMPORTATION OF FOREIGN ANIMALS, 367.****IMPOUNDING ANIMALS, 71, 990, 991, 992.**

- See also "POUND."

**IMPRESSMENT OF CARRIAGES, 375.**

- See "ARMY."

**IMPRESSMENT OF HORSES, 375.**

- See "ARMY."

**IMPRISONMENT,**

- appeal from sentence of, 78 n. 2, 132, 311.
- computation of time, 52, 53.
- cumulative sentences of, 68, 1011.
- default in payment of fine, 64, 65, 66, 67, 81 n. 3, 310, 953, 958, 970, 1010, 1060.
- default in payment of forfeited recognisance, 39, *Add. et Corr.* cv.
- in finding sureties for peace or good behaviour, 37.
- determinable on payment of fine, or portion of fine, 68, 1010.
- distress must be ordered, when, 67, 347, 1060.
- habeas corpus to determine legality of, 251.
- hard labour, with or without, 68, 90 n. 2, 1011.
- receipt for prisoner, 1016.
- solitary confinement, 866.
- term of, 64, 66, 67, 90-92, 348, 865, 1010, 1011, 1060.
- "unless said sum be sooner paid," 67, 347.
- "without hard labour" is implied if those words omitted, 68, 348.
- See also "CONVICTIONS," "PENALTY," "PUNISHMENT," "SURETIES OF THE PEACE AND GOOD BEHAVIOUR."

**INCEST, 905.**

- Vexatious Indictments Act applies to, 20, 1050 n. 1.

**INCOME TAX,**  
recoverable before justices, 178.

**INCOMPETENT WITNESS,**  
accused, 53, 260.  
child, 262.  
husband of accused, 53, 260.  
person mentally incapable, 262.  
wife of accused, 53, 260.

**INCREASED PENALTY FOR SECOND OFFENCE,** 90, 91, 92 *n.* 2, 347.

**INCRIMINATING EVIDENCE,**  
witness not bound to give, 54, 284.

**INDECENCY.**  
advertisements. 352.  
bathing, 384, 887.  
D.M.P. district, summary jurisdiction in, 313, 314, 947, 948, 1054.  
exposing person, 536, 808, 830, 887, 1054.  
bail, 29.  
indecent language, bye-law as to, 536.  
indictable offences, 887.  
keeping disorderly house, 887.  
obscene books, pictures, &c., 650, 760, 830, 887.  
D.M.P. district, 314, 947.  
in street of town, 808.  
offences involving, power to clear court in, 56.  
public place, what is, 759.  
sending indecent matter by post, 680, 887.  
summary jurisdiction in respect of offences, 352, 536, 650, 808, 830.  
Towns Improvement Acts, provisions as to, 536, 808.  
unnatural offences, 887.  
See "BROTHEL," "OFFENCES AGAINST THE PERSON."

**INDECENT ADVERTISEMENTS,** 352.

**INDECENT ASSAULT,**  
aggravated assault, is not, 381.  
criminal capacity of child, 255, 896.  
generally, 897.  
upon female, 897.  
male, 897.  
Vexatious Indictments Act applies to, 28, 1050.  
See "FEMALES, OFFENCES AGAINST AND RELATING TO," "OFFENCES AGAINST THE PERSON."

**INDECENT BOOKS.**  
See "INDECENCY."

**INDICTABLE OFFENCES,**  
arrest without warrant of person found committing, by night, 147.  
case stated not applicable to, 237.  
certiorari not applicable to committal for trial for, 26, 227.  
challenge, right of, 12.  
children and young persons, summary trial of, 1082-1084.

**INDICTABLE OFFENCES—continued.**  
discharge of offender, under Probation of Offenders Act, 1907, 59, 348, 1172.  
entry in order book, *quære*, 26.  
felony—  
distinction between, and misdemeanour, 12.  
joining several in same indictment not allowed, 12.  
limits of jurisdiction, 13-16.  
meaning of, 12, 17.  
misdemeanour—  
distinction between, and felony, 12.  
joining several in same indictment. 12.  
newspaper comment on pending charge, 32.  
not to be tried by justices, 24, 350.  
preliminary investigation of. See "PRELIMINARY INVESTIGATION OF INDICTABLE OFFENCES."  
preliminary investigation in D.M.P. district. See "DUBLIN METROPOLITAN POLICE DISTRICT."  
punishment of, 860-869.  
statute silent as to, 13, 40, 41, 865 *n.* 1.  
refusal of informations, effect of, 27.  
right of trial by jury, defendant to be informed of, 21.  
statutory offences for which no punishment prescribed, punishable only on indictment, 13.  
summary procedure not applicable to, 32, 41, 83.

**INDICTMENT,**  
certificate of indictment found, 32.  
corporation, procedure, 20.  
felonies punishable on, 12, 13.  
misdemeanours, when punishable on, 13.  
more than one charge in, 12.  
offences punishable only on, not triable summarily, 32, 41.  
preferred by direction of judge, &c., in case of perjury, 27.  
preferring, though information refused, 27, 1050.  
without preliminary investigation, 27, 1050.  
substituting new charge for charge at preliminary hearing, 28.  
warrant to arrest, where indictment found, 32.

**INDUCEMENT,**  
to accused to make confession, 272-274.

**INDUCING TO DESERT,** 376.  
See "ARMY."

**INDUSTRIAL ASSURANCE COMPANIES,**  
settlement of disputes by court of summary jurisdiction, 163-164.

**INDUSTRIAL SCHOOLS, 536, 1211-1218.**

- exemption of, under Employment of Children Act, 1903, 400.
- sending child to, under Employment of Children Act, 1903, 399.
- See "CHILDREN."

**INEBRIATE REFORMATORY, 514.**

See "HABITUAL DRUNKARD."

**INFANT,**

- cannot be surety, 30.
- hold liquor licence, 120, 120 *n.* 1.
- criminal capacity of, 255-256, 896.
- recognition by or on behalf of, 134.
- See "CHILDREN."

**INFECTED PERSON,**

See "INFECTIOUS DISEASES."

**INFECTIOUS DISEASES,**

- child suffering from infectious disease not to be sent to school, 754.
- cleansing and disinfection of premises, 726, 756.
- conveyance of infected persons in public conveyances, 755.
- dairy, inspection of, 729.
- dairymen may be required to furnish sources of supply, 753.
- dairymen to notify, 753.
- disinfecting bedding, 729.
- buildings, 729.
- driver of infected person to give notice, 755.
- exposure of infected person and things, 726, 755.
- infected buildings, provisions as to, 729.
- clothes not to be sent to laundry, 753.
- person may be ordered to hospital, 726.
- person not to carry on occupation, 753.
- rubbish not to be thrown into ashpit, 729.
- landlord making false statements, 727.
- letting houses in which infected persons have been lodging, 727.
- library books used by infected persons, 754.
- list of scholars in infected school to be furnished, 754.
- notification of, 728, 729.
- prohibition of sale of milk from infected dairy, 729.
- public conveyances, provisions as to, 727, 729, 755.
- purification of filthy and dangerous articles, 753.
- regulations of L.G.B., 727.
- removal and burial of dead body, 729.
- of infected person to hospital, 755.
- of person from infected premises, 754.

**INFECTIOUS DISEASES—continued.**  
wake over infectious body prohibited, 756.

**INFORMATION,**

- binding over informant to prosecute, 17, 1000.
- defendant entitled to copy of written information, 46, 1000.
- disposal of, 29, 1007.
- distinction between, and complaint, 43.
- distinction between, and deposition, 21 *n.* 3.
- fees on, 1047.
- form of, 1021.
- in writing and on oath required before issue of warrant, 17.
- indictable offence, when charged, should be clearly disclosed in, 17.
- justice not responsible for falsehood of, 17.
- laying of, is commencement of prosecution, 77.
- meaning of, 21 *n.* 3, 43, 64.
- meaning of, in s. 21 of Petty Sessions Act, 64.
- refusal of informations, meaning and effect of, 27.
- search warrant, to ground, 144.
- summary cases—
  - either in writing or verbal, 46, 1000.
  - either with or without oath, 46, 1000.
  - not within P.S. Act, 77, 79, 80, 81.
- swearing witness to information previously taken, 22-23.
- taken out of sessions, 29, 46, 1007.
- verbal information, when sufficient, 46, 1000.
- writing, when required to be in, 17, 1000.

**INFORMER,**

- constabulary generally prosecute as common informers, 45, 68 *n.* 3, 347.
- evidence of, 286.
- mere witness is not, 68.
- who may be, 17, 43.
- See "COMPLAINANT," "GAME LAWS," "DUBLIN METROPOLITAN POLICE DISTRICT."

**"IN JEOPARDY,"**

- effect of having been in, 104.
- meaning of, 104, 105.

**INJURED ANIMALS,**

- slaughter of, 363, 1280.

**INJURIES TO PROPERTY,**

- title ousting jurisdiction, 208-210, 214.
- See "MALICIOUS INJURY."

**INLAND REVENUE,**

- commissioners of, must authorise proceedings under Stamp Acts, 80.



INLAND REVENUE—*continued*.

Petty Sessions Act not applicable, 76, 1020.

Small Penalties (Ir.) Act, 1873, not applicable, 77, 1061.

See "SUMMARY CASES NOT WITHIN PETTY SESSIONS ACT."

## INN,

urinal to be attached to, 751.

See "INTOXICATING LIQUORS."

## INQUESTS,

disposing of dead body to prevent inquest being held, 886.

generally, 153.

prisoner entitled to copy deposition taken at, 24, 1004.

when required to be held, 886 *n.* 2.

## INSANITY,

defence of insanity, 256, 257.

evidence of person mentally incapable, 262.

justices, generally, not concerned with, 257.

loss of self-control, 256 *n.* 1.

medical opinion as to insanity, 257.

trial of question of, 257.

See "CRIMINAL CAPACITY."

## INSECTS.

See "DESTRUCTIVE INSECTS AND PESTS."

## INSPECTOR-GENERAL, R.I.C.,

*ex-officio* justice, 3.

## INSTITUTION OF PROSECUTION,

what is, 51 *n.*, 77.

## INSURANCE,

company to furnish annual statement of accounts, &c., 410.

marine insurance gambling, 605.

offences in relation to insurance companies, 410, 874.

See "INDUSTRIAL ASSURANCE COMPANIES."

## INTENT,

evidence admissible to show, 266-268.

## INTEREST OR BIAS DISQUALIFYING JUSTICES,

acts of biased tribunal voidable, not void, 222.

appeal, justice in original hearing cannot adjudicate, 137, 222, 349.

case cannot be stated on question whether justice is disqualified or not, 236.

certiorari applies to order of court affected with, 224.

costs against disqualified justices, 222, 350.

disqualified justices should not remain on bench, 221.

INTEREST OR BIAS DISQUALIFYING JUSTICES—*continued*.

evidence to support charge of bias, 215-216.

examples: (1) justices held disqualified, 216-218.

(2) justices held not disqualified, 218-220.

immaterial whether result affected, 221.

nature of, 215, 216.

pecuniary interest disqualifies, 215.

principles stated, 215.

private malice may amount to bias, 216, 218.

statutes empowering justice to adjudicate although member of public body interested, 216, 222.

statutory disqualifications, 221, 222.

waiver of objection to justice adjudicating, 220.

witness, how far disqualified, 218, 219.

## INTERPRETATION ACT, 1889.

meaning of term "person," 83.

## INTERPRETER,

form of oath taken by, 260.

when to be employed, 260.

## INTIMIDATION, 537, 610, 1086.

definition, 1091.

meaning of, 611.

special powers as to, 1086.

summary jurisdiction in respect of, 537, 610.

## INTOXICATING LIQUORS,

admittance of Excise officer, 539.

justice or police, 537,

538, *Add. et Corr.*

*cviii.*

adulteration (see also "FOOD AND DRUGS"), 539.

adulteration of wine, 352.

aiding drunken person to get drink, 555, 1181.

appeals from convictions, 577-578, 584.

as to licences. See "LICENSING JURISDICTION."

"bar," meaning of, 542.

beer -

adulteration of, 539.

includes porter, 566 *n.* 1.

retailer, evasion of licence by, 553.

bribing constable, 539.

bringing drink on board H.M. ship, 648.

brothel, permitting licensed premises to be, 540.

canteen, 379, 557, 560, 563.

certiorari applies to grant or refusal of publican's licence, 225, 228.

charitable loan societies, business not to be transacted at a public-house, 962.

child—

"corked" vessels, sale of liquor in, 540.

INTOXICATING LIQUORS—*continued.*

child—

- drunkenness in charge of, 542, 1181.
- employment of, in licensed premises, 400.
- evidence of defendant, 542.
- excluding child from bar, 541, 542, 1235, 1242, *Add. et Corr.* cviii.
- giving intoxicating liquor to child under five, 1235.
- "knowingly," 540.
- master's liability for acts of servant, 295, 541.
- offences not recordable, 543.
- performance by, in licensed premises, 400, 542.
- sale to child under 14, 540.
- selling spirits for consumption to person under 16, 312, 540, 945.
- sending child for liquor, 540, 541.

cider, 568 *n.* 3.

club—

- duty on purchases in, 128, 543.
- registration of. See "REGISTRATION OF CLUBS."
- sale for consumption off club premises, 543, 1163.
- sale in unregistered club, 1163.
- sale in, 543.

See "CLUB."

- contravening terms of licence, 543.
- conveying liquor into prison, 690.
- dead body, refusing to receive, 543.
- dealer's licence, 538 *n.* 3.
- defacing record, 582.

definitions—

- bar, 542.
- licence, 538 *n.* 3, 543, 584.
- licensed persons, 584.
- premises, 584.

disqualification—

- for licence, 110–112, 120, 540, 548, 582, 656.
- licence to disqualified person void, 572.
- of justices interested in liquor trade from adjudicating, 221, 550.
- of premises, 548, 582, 583.

distillation, illicit, 543 *et seq.*

drunkenness. See "DRUNKENNESS."

Dublin, "added area," 557.

Dublin Metropolitan Police district.

See "DUBLIN METROPOLITAN POLICE DISTRICT."

early closing licence, 557.

emblems on licensed premises, 101, 545.

entry of premises with Excise, 546.

Clerk of Peace, 546.

evidence—

- defendant a competent witness, when, 53, 260, 578, 579.
- defendant not a competent witness, when, 542, 566, 574, 578.

INTOXICATING LIQUORS—*continued.*

evidence—

- statement by servant sometimes admissible against master, 265, 266.

exemption order, offences as to, 546.

exposing for sale without licence, 556. See also "sale or exposing for sale without licence," *infra*.extent of area covered by licence, 538, 538 *n.* 3, 558, 569."feints," what are, 543 *n.* 2.

forfeiture of licence, 540, 548.

on repeated convictions, 548, 582.

gaming, suffering, 546.

grogging spirit casks, 547.

harbouring constable, 548.

thieves, 548, 686.

hawking liquor, 552.

hotel licence, 113, 571, 1157.

illegal assemblies, 548.

dealing, 574.

infant disqualified for holding liquor licence, 120.

innkeeper, bound to supply travellers with reasonable refreshment, 565.

to receive traveller, 565.

internal communication, 549.

licence—

definition of, 538 *n.* 3, 543, 584.

grant of. See "LICENSING ACT, 1902," "LICENSING JURISDICTION."

infant cannot hold, 120, 120 *n.* 1.in name of limited company, *quære*, 571.

in name of more than one person, 571.

only authorises sale by licensed person, 570.

production of, 556.

renewal of. See "LICENSING JURISDICTION."

licensed person, definition of, 584.

premises, definition of, 584.

lodger, gaming, 547.

"low wines," 543 *n.* 1.

manufacturing intoxicating liquor without licence, 550.

master's liability for acts of servant, 293–295, 541, 555.

measure, sale by, 551.

name over door, 551.

new licence, when grantable. See "LICENSING ACT, 1902."

occasional licences, offences as to, 552.

off-licence, evasion of, 552.

opening hours, table of, 556.

passenger vessel licence, 553, 557.

pawnbroker, disqualified for licence, 111, 656.

permit for spirits, 576.

permitting drunkenness on licensed premises, 294, 553, 555.

perry, 568 *n.* 3.porter included in beer, 566 *n.* 1.

INTOXICATING LIQUORS—*continued.*

- procedure—
  - Excise offences, 577.
  - Illicit Distillation of Spirits (Ir.) Act, 1831, 577.
  - offences to which Petty Sessions Act applies, 578.
  - Refreshment Houses (Ir.) Act, 1860, 577.
- procedure under Licensing Acts proper, 578-85, *Add. et Corr.* cviii.
- appeals, 584.
- certiorari taken away, 580.
- charges of drunkenness in towns, 579.
- evidence of recorded conviction, 582.
- generally, 578.
- local limits of jurisdiction, 579.
- recording offences, 580-582
- register of licences, 582.
- stale conviction, 584.
- procuring drink for drunken person, 555, 1181.
- prohibited hours—
  - application to spirit grocer, 553, 564.
  - bona-fide* travellers, 267 n. 1, 559, 560.
  - canteens not subject to, 557, 560.
  - delivery after closing hours, 559.
  - early closing licence, 557.
  - "for the sale of intoxicating liquors," 559.
  - form of summons and conviction, 563
  - history of legislation, 557.
  - licences not requiring justices' certificate, 557.
  - lodgers, 562.
  - master's liability for acts of servant, 559, 571.
  - mixed business, 563.
  - opening, what is, 558.
  - passenger vessel not subject to, 557, 560.
  - persons "found" on premises, 563, *Add. et Corr.* cix.
  - private friends, 562.
  - railway station, 563.
  - sale, what is, 558.
  - six day licence, 557.
  - statutory exemptions, 559-563.
  - table of opening hours, 556.
  - theatre, 118, 557.
  - time, means Dublin time, 557.
  - wholesale licence, 557.
- railway-car licence, 565.
- recognisance to abstain from, under Probation of Offenders Act, 1173.
- recordable offence, conviction should state if to be recorded, 90.
- recording offences, 580-582.
- adulteration of drink recordable, 539.
- offences as to children not recordable, 543.
- refusal to leave licensed premises, 565.

INTOXICATING LIQUORS—*continued.*

- refusal to supply customer, 565.
- renewal of licence. See "LICENSING JURISDICTION OF JUSTICES."
- reputed pint, what is, 540.
- "Resident Magistrate" cannot act alone, 8.
- retailer's licence, 568.
- riot, closing licensed premises during, 151, 565.
- sale by auction of, 384.
- of drink to drunken person, 553.
- of methylated spirits, 557.
- sale or exposing for sale without licence, 566-569.
- defendant, when not competent witness, 566.
- delivery at place other than licensed premises, 570.
- disqualified person cannot sell, 572.
- husband or wife of defendant, when not competent witness, 566.
- illegal dealing in intoxicating liquor, 573-574.
- illegal dealing, what is, 574.
- petty sessions transfer, effect of, 571.
- power of sale restricted to licensee, 570.
- presumption of illegality where liquor found, 573.
- sale by servant, 571.
- what is, 568-569.
- search warrant, 572.
- second offence, 567 n. 1, 572.
- seizure and forfeiture of liquor, &c., 573, 574.
- statutory provisions, 566-568.
- trivial offence, is not, 60.
- sale without licence in clubs, 543.
- search warrant, 145, 146, 573.
- six day licence, 557.
- soliciting orders for spirits, wines, &c., 574.
- spirit dealer not obliged to admit police, 538.
- spirit grocer—
  - entry by police of premises belonging to, 537.
  - evading licence, 552.
  - provisions as to closing hours, 553, 564.
  - sales in what quantity, 575.
  - to sell in closed vessels only, 575.
- spirits—
  - Excise offences as to, 575-576.
  - illegal sale of, by retailer, 575.
  - by spirit dealer, 575.
  - in transit, 576.
  - "stipendiary magistrate," 8.
  - storing of, 576.
  - Sunday. See "prohibited hours," *supra*.
  - "sweets," what are, 551 n.
  - taking pledge or pawn for money owing for spirits, 614.



**INTOXICATING LIQUORS**—*continued*.  
 theatre licence, 117, 118, 557, 576, 1277.  
 transfer at petty sessions, effect of, 571.  
 transfer of licence in D.M.P. district, 312.  
 trivial offence, what is, 60.  
 urinal to be attached to licensed premises, 751.  
 valuation, licensee to render particulars to Inland Revenue, 576.  
 valuation of licensed premises, 200.  
 valuation of licensed premises under Finance Act, 1910, 436.  
 wholesale licence—  
   not within provisions as to closing hours, 557.  
   what sale authorised by, 568.  
 workhouse, drunkenness in or introducing liquor into, 677.  
 workman not to be paid in public-house, 614.  
 workman not to be paid in spirits, 613.  
   See also "LIQUOR LICENCE."

**IRISH**,  
 name on cart in, 527 *n.* 3.

**IRISH CURRENCY**, 341.  
 order imposing penalty in, is bad, 65, 78, 91, 341, 482.

**IRISH TRADE MARK**, 624.

**IRREGULARITY**,  
 waiver of, in summons, 50, 109.

**JEW**,  
 employment of, on Sunday. See "FACTORY AND WORKSHOP."  
 oath by, 259.

**JOINDER OF CHARGES**,  
 in indictment—  
   felony, 12.  
   misdemeanour, 12.  
 in summons, 46, 87-88, 91, 346.

**JOINT OFFENCE**,  
 conviction to be separate, 47.  
 evidence of defendant jointly charged with others, 53.  
 partners, by, 47.  
 payment of amends in case of, 47, 1011.  
 procedure, 47.  
 prosecution of persons jointly liable, 47.  
 separate trial of defendants jointly charged, 47.

**JOINT TENANTS**,  
 property of, how described, 90, 1019.

**JOURNEY**,  
 offences committed on, 16.

**JUDGES' WARRANT**,  
 backing for execution, 1015.

**JUDGMENT**,  
 spoken, effect of, 108-109.

**JUDICIAL ACTS**,  
 limits of jurisdiction, 13-17.

**JUDICIAL OATH**, 5, 7.

**JURISDICTION AT PETTY SESSIONS**,  
 classification of, 1.

**JURISDICTION OF JUSTICES**,  
 acts without. See "ACT WITHOUT JURISDICTION."  
 adjoining county, 14, 42, 43, 997, 998.  
 area of jurisdiction (see "LIMITS OF JURISDICTION"), 13, 43.  
 certiorari applies to orders made without or in excess of, 224, 225.  
 classification of, 1.  
 conviction must show, 82, 83.  
 county justices are justices for boroughs, 6.  
 justice under Local Government Act, 1898, 13 *n.* 6, 74.  
 out of sessions, classification of, 12.  
 requisites of, 13, 41, 42.  
 warrant must show, 70.  
   See "LIMITS OF JURISDICTION."

**JURISDICTION OUT OF SESSIONS**, 12, 45.  
   See also "SUMMARY JURISDICTION."

**JURISDICTION OUSTED BY QUESTION OF TITLE**.  
   See "TITLE OUSTING JURISDICTION."

**JUROR**,  
 fine on, appeal from, 974.  
   enforcement of, 1080.  
 fines on, entry and account of, 969.  
   notice of, 969.  
 justices not to act as, at quarter sessions, 7.

**JUSTICES**,  
 action against. See "LIABILITY OF JUSTICES."  
 admittance of, into licensed premises, 537.  
 appointment of, 1.  
 clerk of petty sessions—  
   election of, 329.  
   eligible for appointment as, 331.  
 costs cannot be given against, on case stated, 243.  
   sometimes given against, on certiorari, 222, 234.  
 disqualification by interest or bias, 170, 203, 215-222.  
 disqualification under Licensing Acts, 221, 550.  
 equal division of, 62, 109, 137.  
 holding inquest, 153.  
 jurisdiction of, 1.  
 liability of, 203, 322-328.  
 licensing jurisdiction at quarter sessions, 110.

JUSTICES—*continued.*

meaning of, under Petty Sessions Act, 1020.

number necessary, 45, 54, 55, 100, 146, 345.

search warrant by, 145, 146.

See "APPOINTMENT OF JUSTICES," "DISQUALIFICATION OF JUSTICES," "JURISDICTION OF JUSTICES," "LIMITS OF JURISDICTION."

JUSTICES PROTECTION ACT, 1849, 322.

See "LIABILITY OF JUSTICES."

JUSTICES (IRELAND), ACT, 1842, limits of jurisdiction under, 15.

"KEEPING" A LOTTERY, 504.

KIDNAPPING.

See "ABDUCTION."

KILDARE,

Dublin Divisional Justices *ex-officio* J.P. for, 3.

KILKENNY, CITY OF,

county justices have jurisdiction in, 6.  
separate court of quarter sessions in, 6.

"KING'S EVIDENCE," 274.

KITE FLYING, 314, 526, 808, 948, 982.

KNOCKING AT DOORS, 808, 948.

"KNOWINGLY," 266, 540, 550.

KNOWLEDGE.

evidence of guilty, 266, 268, 511.

LABOUR EXCHANGE,

offences as to, 614.

LABOURERS' DWELLINGS,

closing when unfit for human habitation, 179.

compensation for entry on land, to get materials for, 179 *n.* 1.

correcting scheme for, 178.

demolition of, when unfit for human habitation, 179.

ejectment from, 189.

obtaining materials for, 178-179.

penalty for non-compliance with Fair Rent Order as to, 180.

providing for, in Fair Rent Order, 179-180.

recovery of possession of, 179.

wrongful entry on land compulsorily taken for, 185.

See also "LANDLORD AND TENANT."

LAND,

compulsory acquisition of, 175-176, 185.

meaning of, 335.

LANDLORD,

ejectment by. See "LANDLORD AND TENANT."

right of, to prosecute for poaching, 483.

LANDLORD AND TENANT,

case stated lies on summary proceedings by landlord against tenant, 235.

Cottier Tenant (Ir.) Act, 1856—

agent not to act as justice, 1038.

appeals, 188, 193, 1038.

application of summary remedy, 188, 1037.

applies solely to tenements provided by landlord, 188, 1038.

form of agreement under, 188, 1038.

jurisdiction in fair and market towns not affected, 1038.

landlord's obligations, 188, 1036, 1037.

notice to quit not necessary if default made by tenant, 188, 1037.

other legal remedies not abrogated, 1038.

outgoing tenant to have compensation for crops, 188, 1037.

overholding tenant liable to full rent, 188, 1037.

summary jurisdiction given, 188, 1037.

tenant's obligations under, 188, 1037.

tenements within, 188, 1036.

damage by tenant to buildings, 911.

in D.M.P. district, 312, 956.

distress, exemption from, 418.

D.M.P. district—

damage by tenants in, 312, 956.

distress in, 312, 318, 319, 957.

ejectment in, 312, 1055.

excessive charges for distress, 318, 319, 417.

Land Law (Ir.) Act, 1887—

demand for possession, 190, 192.

ejectment jurisdiction of justices, condition precedent to, 191-192.

notice to relieving officer, 192.

service of summons, 192.

warrant for possession, 192.

time limit for execution of, 192.

Landlord and Tenant (Ir.) Act, 1860—

appeal does not lie from order generally, 191, 193, *Add. et Corr.* cvi.

caretaker, ejectment of, 189-190.

case stated lies from order under, 191, 193.

certiorari, appeal on, to Court of Appeal, 193.

definition of cottier tenancy, 188-189.

LANDLORD AND TENANT—*continued*.

- Landlord and Tenant (Ir.) Act, 1860—  
demand for possession, 190, *Add. et Corr.* cvi.
- ejectment for non-payment of rent, 189.
- ejectment for waste, 189.
- herdsmen, ejectment of, 189–190.
- labourers' dwellings are within the Act, 189.
- landlord alone can proceed under s. 85, 191.
- landlord or agent can proceed under s. 86, 191.
- number of justices required in ejectment cases, 55, 190.
- requisites of jurisdiction, 188.
- servant, ejectment of, 189–190.
- service of summons, 190.
- stay of execution of warrant of ejectment, 191.
- trespasser, ejectment of, 190.
- warrant of ejectment must be sealed, 190, 191.
- warrant of ejectment need not be signed at time of adjudication, 191.
- warrant of ejectment, stay on, 191.
- warrant of ejectment under s. 86, time limit for execution of, 190.
- waste, restraining, 192, 833.
- larceny by tenant, 909.
- oppressive distress in D.M.P. district, 312, 318, 319, 957.
- Summary Jurisdiction (Ir.) Act, 1851—  
issue of summons, 986.
- justice's warrant, 187, 987.
- recovery of small tenements under, 186–187, 986–987.
- service of summons, 187, 987.
- tenant wasting lands, 189, 192, 833.
- See "DISTRESS," "WASTE."

## LANDRAIL,

- close seasons for, 488.
- destroying eggs or nest, 494.
- game certificate to kill, required, 489.
- when game, 482, 484.
- See "GAME LAWS."

## LANDSCAPE,

- disfiguring by advertisements, 353.

## LARCENY,

- accused entitled to have counsel or solicitor, 1034.
- advertising reward for lost or stolen property, "no questions asked," 883.
- aiding and abetting, 589.
- after previous conviction, 907.
- appeal under Summary Jurisdiction (Ir.) Act, 1851, as to, 139, 994.
- arrest without warrant for, 146, 147, 148, 589, 951.
- assault with intent to rob, 589, 908.
- by Bank of Ireland officials, 909.

LARCENY—*continued*.

- by directors of company, 909.
- factors, 909.
- persons in H.M. service, 909.
- servants, 909.
- tenants, 909.
- trustees, 909.
- common law as to, 907.
- compound larceny, 907.
- conviction or dismissal a bar, 101, 586, 589–590, 1034.
- dead body cannot be stolen, 886.
- "dismiss without prejudice," effect of, 101.
- D.M.P. district—  
powers of owners of stolen property, 951.
- special powers of police in, 318, 951.
- embezzlement. See "EMBEZZLEMENT."
- evidence of conviction or dismissal, 281, 1034, 1051.
- forfeited recognisance transmissible to Clerk of Peace, 1034.
- from ships, 909.
- from the person, 908.
- husband and wife, criminal liability of, in respect of each other's goods, 299, 530, *Add. et Corr.* cviii.
- juvenile offenders, provision as to, 978–979.
- limits of jurisdiction, 17.
- loitering for unlawful purposes, 831.
- married woman, larceny of husband's goods, 299, 530.
- misappropriation of profits, 909.
- of animals, 586–587, 907.
- documents, 908.
- electricity, 909.
- fish, 908.
- fixtures, 908, 909.
- fruit, 588, 908, 1051.
- ore, 908.
- poultry, 587, 1052.
- textiles, 909.
- trees and shrubs, 587, 588, 908, 1051.
- order for restitution of property, 63, 146, 313, 663, 789–790, 955, 1034.
- pawnbroker's duty as to suspected goods, 589, 662.
- pawnbrokers and stolen goods, 63, 312, 655, 955.
- pawning property of another, 661.
- person charged with, may be convicted of embezzlement, 906.
- persons charged, entitled to counsel or solicitor, 1034.
- petty sessions to be an open court, 586, 1034.
- powers of attorney, by holders of, 909.
- property entrusted to workman, 591, 1052.
- property in possession of police, 146, 790.
- receiving stolen goods, 313, 588, 927, 954.
- remanding person charged summarily with, 62, 1034.



LARCENY—*continued*.

robbery by person armed, 908.  
 search for stolen property, 318, 687, 951.  
 search warrant, 144, 589, 663, 954.  
 simple larceny, 907.  
 summary jurisdiction—  
   appeal, 139, 586, 590.  
   application of penalties on, 589.  
   as to aiding and abetting, 589.  
     animals, 586, 587.  
     attempted larceny, 585, 1033.  
     attempted larceny from the person, 585.  
     attempted simple larceny, 855.  
     dogs, 586.  
     fence, 587.  
     first offences, 589.  
     fruit, 588.  
     garden produce, 588.  
     larceny as clerk or servant, 586.  
     larceny by persons not over 14, 978-979.  
     larceny from the person, 586.  
     offences by children, 591, *Add. et Corr.* cviii.  
     pigeons, 587.  
     plants and vegetable products, 588.  
     poultry, 591, 1052.  
     receiving stolen property, 588.  
     sheep, 590, 1051.  
     shipwrecked goods, 588, 857.  
     shrubs, 587, 590, 1051.  
     simple larceny over 5s., 586.  
     stile or gate, 587.  
     trees, 587, 590, 1051.  
     turf, 590, 1051.  
     value not exceeding 5s., 585, 1033, *Add. et Corr.* cviii.  
     vegetable produce, 590, 1051.  
     workman making away with goods, 591.  
 compensation to prosecutor or witness, 1035.  
 enforcing appearance of defendant, 1051.  
 exercise of, not to work forfeiture, 691 *n.* 3, 1034.  
 forms of conviction and dismissal, and of certificate, 1036.  
 generally, 585-591.  
 number of justices required for, 55, 586, 590, 1035, 1051.  
 on plea of guilty, 586, 1033.  
 procedure on, 586, 590, 591, 1034-1035, 1051.  
 remanding for purposes of, 1034.  
 return of convictions to quarter sessions, 586, 590, 1034.

LARCENY—*continued*.

summary jurisdiction.—  
   under Criminal Justice Act, 1855, 585-586, 691 *n.* 3, 1033-1035.  
   Larceny Act, 1861, 586-590.  
   Summary Jurisdiction (*Ir.*) Act, 1851, 139, 978-979, 994.  
   Summary Jurisdiction (*Ir.*) Act, 1862, 590-591, 1051-1052.  
   upon arrest without warrant, 589.  
   when further proceedings barred by, 101, 589, 1034.  
 suspicion of, justifies issue of search warrant, 144.  
 trees, shrubs, vegetables, plants, 587, 588, 1051.  
 turf, 590, 1051.  
 unlawful possession of carcass or skin of sheep, 590, 1051.  
 what constitutes, 906.

## LAST PLACE OF ABODE.

what is, 48, 1001 *n.* 2, *Add. et Corr.* cv.

## LAUNDRY—

application of Factory and Workshop Act, 1901, to, 1097 *n.* 1, 1175.  
 application of provisions as to domestic workshops to, 1176.  
 charitable institutions, 1176.  
 infected clothes not to be sent to, 753.  
 inspection of certain premises, 1177.  
 hours of employment of women, 1175, 1176.  
 reformatory institutions, 1176.  
 special regulations in, 1176.

## LAVATORY.

See "SANITARY CONVENIENCES."

## LAW OF DISTRESS AND SMALL DEBTS ACT, 1888, 318-319.

See "SMALL DEBTS."

## LAW OF EVIDENCE ACT, 1877,

defendant or wife or husband sometimes competent and compellable witnesses, 261.

## LEADING QUESTIONS, 276.

## LEASE OF LAND,

particulars of, to be given to Inland Revenue, 436.

## LETTER-BOX,

bill-sticking on, 680.  
 false notice as to, 680.  
 injury, &c., to, 679, 924.

## LEVEL-CROSSING ON RAILWAY.

omitting to shut gates, 770.  
 power of justices to authorise making of, 183.  
 railway company to work gates on, 771.

## LEVYING DISTRESS, 70, 1016.

See "DISTRESS."

**LIABILITY OF JUSTICES, 322-328,**  
 action against justices may be set aside, when, 326, 967.  
 acts by justices in excess of jurisdiction, 322, 966.  
 acts by justices within jurisdiction, 322, 966.  
 acts done under order of K.B.D., 250, 322, 967.  
 arrest under defective warrant, 327.  
 burden of proof, 326.  
 conviction by one justice, warrant by another, 322, 966.  
 conviction of defendant not duly summoned, 49, 325.  
 conviction or order confirmed on appeal, 322, 967.  
 criminal information, 328.  
 damages limited to twopenny if defendant in fact guilty, 323, 326, 967.  
 defamation, action for, 327.  
 distress warrant for poor rate, 322, 966.  
 examples of liability, 323-326.  
 Justices Protection Act, 1849, 966-967.  
 malice, proof of, when required, 323, 966.  
 order bad on its face, 326.  
 time for action, 328.  
 want of reasonable and probable cause, proof of, when required, 966.

**LIBEL,**  
 binding to peace for, 36.  
 blasphemous, 910.  
 defendant or husband and wife competent witness, 261, 592.  
 evidence for defence must be admitted on preliminary investigation under Newspaper Libel and Registration Act, 1881, 23, 591.  
 newspaper proprietor's liability for act of servant, 294.  
 on individual, 909-910.  
 seditious, 910.  
 summary jurisdiction to dismiss, 591.  
 summary punishment as to trivial libel, 592.  
 truth, when a defence, 592.  
 Vexatious Indictment Act applies to, 28, 1050 *n.* 1.

**LIBRARY,**  
 books in, infected person using, 754.  
 offences as to, 592.

**LICENCE,**  
 asylum, 117.  
 cinematograph, 1273.  
 convict, to. See "PREVENTION OF CRIME."  
 dancing, 117, 740.  
 dogs, 419.  
 fishing, 441.  
 general dealer, 508.  
 gun, 490.  
 hackney cars, 314, 528.  
 hawkers, 666, 1092.

**LICENCE—continued.**  
 intoxicating liquor licences. See "INTOXICATING LIQUORS," "LICENSING ACT, 1902," "LICENSING JURISDICTION OF JUSTICES."  
 music-hall, 117, 740.  
 pawnbrokers, 655, 656.  
 pedlars, 1056.  
 pleasure boats, 763.  
 slaughter-houses, 360, 719.  
 theatre, 117, 576, 1277.  
 to deal in plate, 512.  
 deal in game (see "GAME LAWS"), 491.  
 kill game, 489.

**LICENSED PREMISES,**  
 closing on actual, or apprehended riot, 151, 565.  
 drunkenness on, 425, 426.  
 valuation of, under Finance Act, 1910, 436.  
 See "INTOXICATING LIQUORS."

**LICENSING ACT, 1902,**  
 decisions under, 112, 113.  
 effect of, 112, 114.  
 exemptions, 112, 1157, 1158.  
 new licences not now grantable unless in excepted cases, 112, 1157-1158.  
 reduction in area, effect of, 114, 1157 *n.* *Add. et Corr.* cvi.  
 transfers not affected, 1158.

**LICENSING ACTS,**  
 defendant or husband or wife competent witness, 260.  
 imprisonment in default of payment of penalty under, 66, 67.  
 responsibility of master for acts of servants, 292, 559.  
 two justices necessary in cases under, 55, 578-579.  
 See "INTOXICATING LIQUORS."

**LICENSING JURISDICTION AT PETTY SESSIONS, 119-129.**  
 See "BEER DEALER'S LICENCE," "BEER RETAILER'S LICENCE," "CINEMATOGRAPH," "EXEMPTION ORDER," "GAME LAWS," "HAWKER," "OCCASIONAL LICENCE," "PUBLICAN'S LICENCE," "RENEWAL OF PUBLICAN'S LICENCE," "SPIRIT GROCER," "TEMPORARY TRANSFER," "WINE LICENCE."

**LICENSING JURISDICTION AT QUARTER SESSIONS, 110-118.**  
 See "BEER DEALER'S LICENCE," "BEER RETAILER'S LICENCE," "DANCING LICENCE," "LICENCE," "MUSIC-HALL LICENCE," "PUBLICAN'S LICENCE," "RENEWAL OF PUBLICAN'S LICENCE," "SPIRIT GROCER," "THEATRE."

**LICENSING JURISDICTION OF JUSTICES,**  
 case stated not applicable to, 235.  
 certiorari applicable to, 228.

**LICENSING JURISDICTION OF JUSTICES**—*continued.*

disqualification of justice interested in liquor trade, 221.  
privilege of justice, 327.

See "LICENCE," "LICENSING JURISDICTION AT PETTY SESSIONS," "LICENSING JURISDICTION AT QUARTER SESSIONS."

**LICENSING LAWS.**

See "INTOXICATING LIQUORS."

**LIEUTENANT OF COUNTY, 7.**

**LIFE ASSURANCE COMPANY, 410.**

**LIGHT LOCOMOTIVES.**

See "MOTOR CAR."

**LIGHTS ON VEHICLES, 593, 1178.**

bye-law as to, 340.  
heavy locomotives, 599.  
Lights on Vehicles Act, 1907—  
application to Ireland, 1179.  
exemption order by borough council, 1178.  
exemption order by county council, 1179.  
penalty, 1178.  
power of county borough council as to bicycles, 1178 *n.* 1.  
vehicles to carry lights at night, 1178.  
motor-cars, 633, 642.  
responsibility of master for act of servant, 297, 340.

**LIMERICK,**

county borough, 369.  
separate court of quarter sessions in, 6.

**LIMIT OF TIME, 51.**

See "TIME LIMIT."

**LIMITATION OF TIME, 51.**

See "TIME LIMIT."

**LIMITED COMPANY,**

acting as chemist, 395.  
dentist, 416.  
See "COMPANY."

**LIMITED PARTNERSHIP,**

false declaration as to, 920.

**LIMITS OF JURISDICTION,**

acting for annexed townland of another county, 15, 998.  
acting for adjoining county, 14, 997.  
adjoining county, as regards, 14, 15, 42, 43, 997, 998, 1001.  
borough justices, 15.  
boundaries of counties, 15, 43.  
bringing offender before justice of adjoining county, 15, 998.  
chairman of council, 2, 42 *n.* 1, 74.  
city being county of itself, 14, 997.  
Coinage Offences Act, 1861, provisions of, 17.

**LIMITS OF JURISDICTION**—*continued.*

Criminal Law Consolidation Acts, provisions of, 16.  
D.M.P. divisional justice, 3.  
extension of, by statute, 14-17.  
journey or voyage, offences on, 16, 42.  
jurisdiction in another county, 14, 15, 997-998.  
jurisdiction in borough, &c., 14, 997.  
justice has jurisdiction throughout entire county, 13.  
Justices (Ir.) Act, 1842, 15.  
Larceny Act, 1861, provisions of, 17.  
Malicious Damage Act, 1861, provisions of, 17.  
Merchant Shipping Act, provisions of, 16.  
offence committed within jurisdiction, 14, 42, 999.  
offence committed outside jurisdiction but offender within, 14, 42, 999.  
Offences against the Person Act, 1861, provisions of, 17.  
preliminary hearing of indictable offence, special provisions as to, 1005.  
townland of other county, 15, 42, 998.  
Unlawful Oaths (Ir.) Act, 1810, 15.  
when justice may act for foreign county, 15, 16, 42, 43, 370, 997, 998, 999, 1001.  
where accused brought from foreign county, 25, 1005.  
Whiteboy offences, 15.  
See also "JURISDICTION OF JUSTICES," "VENUE."

**LINEN,**

Irish woven linen, provisions as to, 623.  
offences as to, 593, 911.  
pawning linen, restrictions on, 660, 911.

**LIQUOR LICENCE,**

date of expiration, 122 *n.* 2.  
infant cannot hold, 120.  
See "BEER DEALER'S LICENCE," "BEER RETAILER'S LICENCE," "LICENSING JURISDICTION OF JUSTICES," "OCCASIONAL LICENCE," "PUBLICAN'S LICENCE," "RENEWAL OF PUBLICAN'S LICENCE," "SPIRIT GROCER," "THEATRE."

**LOAN SOCIETIES, 161.**

See "CHARITABLE LOAN SOCIETIES."

**LOBSTERS,**

order prohibiting taking of, within prescribed area, 414.  
sale of, under certain size, forbidden, 414.  
seizure of undersized, 414.

**LOCAL EDUCATION AUTHORITY,**

what is, 1241.



**LOCAL GOVERNMENT BOARD,**  
disobedience to sealed order of, under  
Poor Relief Act, 677.  
orders, &c., evidence of, 278.  
regulations under Motor Car Acts,  
635, 641-645.

**LOCAL GOVERNMENT OFFENCES,**  
acting while disqualified, is criminal  
matter, 66, 598.  
declaration before acting, failing to  
make, 594.  
disqualification—  
absence, 594.  
aliens, of, 595.  
bankruptcy or arrangement, by,  
595.  
bankruptcy or arrangement,  
cesser of disqualification, 595.  
bargain or contract, by, 595.  
duration of, 598.  
exemptions, 595.  
"bargain or contract," 596.  
"composition or arrangement,"  
596.  
"concerned in," 597.  
conviction, by, 595.  
holding office of profit, by, 595.  
infancy, by, 595.  
penalty for acting when dis-  
qualified, 596.  
poor law relief, by receipt of,  
595.  
"public work," 597.  
election. See "ELECTIONS."  
non-acceptance of office, 594.  
payment by contractors otherwise  
than in cash, 824.  
who may prosecute, 44, 598.  
witness refusing to obey *subpœna*,  
968.

**LOCAL LIMIT OF JURISDICTION.**  
See "LIMITS OF JURISDICTION,"  
"JURISDICTION OF JUSTICES."

**LOCOMOTIVE,**  
heavy locomotives (see "LOCOMO-  
TIVES ON HIGHWAYS"), 598 *et*  
*seq.*  
light locomotives, 598 *et seq.*  
See "MOTOR CAR," "RAILWAY,"  
"TRAMWAY."

**LOCOMOTIVES ON HIGHWAYS,**  
county surveyor to be conservator  
of roads, 600, 601.  
damage to roads by, 600.  
heavy locomotives—  
bye-laws as to, 600.  
penalties, 600.  
regulations as to speed, 599.  
as to use, 599.  
miscellaneous, 599.  
to consume smoke, 598.  
weight, name, &c., to be painted  
on, 600.  
light locomotives. See "MOTOR  
CAR."  
See also "TRAMWAY."

**LODGINGS,**  
common lodging-houses, 717-718.  
houses let in, 718.

**LODGING-HOUSE.**  
keeper of, harbouring thieves, 686.  
See "COMMON LODGING-HOUSE."

**LOITERING,**  
at night, arrest without warrant,  
148.  
by person twice convicted of crime,  
for purpose of committing offence,  
686.

**LONDONDERRY,**  
county borough, 369.  
separate court of quarter sessions  
in, 6.

**LOPPING TREES OR HEDGES,** 173-  
175, 981.

**LORD CHANCELLOR,**  
appointment of justices by, 1, 7.  
selection of justice by, under Towns  
Improvement Act, abolished, 2.

**LORD-LIEUTENANT,**  
appointment of City of Dublin  
justice by, 2.

**LORD'S DAY.**  
See "SUNDAY."

**LOTTERIES,** 502.  
See "GAMING."

**LUNATIC,**  
carnal knowledge by person in  
charge, 837, 911.  
committal of dangerous, 151, 152,  
794, *Add. et Corr. cvi.*  
ill-treatment of, 601, 911.  
lunacy, how far a defence (see also  
"INSANITY"), 256.  
order for support of, 180-181.  
right of relatives to custody of dan-  
gerous, 152.

**MACHINERY,**  
fencing of, 1100.  
injuring, 912.

**MAD DOG,** 421, 422.  
See "DOGS."

**MAIL BAGS,**  
offences as to, 924.

**MAIMING CATTLE,** 912.

**MAINPERNOR,** 33 *n.* 3.

**MAINPRISE,** 33 *n.* 3.

**MAINTENANCE.**  
See "CHILDREN," "HUSBAND AND  
WIFE."

**MAJORITY,**

decision means decision of majority of justices present, 26.

**MAKING SLIDE,** 314, 526, 808, 948, 982.

**MALE PERSON,**

indecency with, 887.

**MALICE,**

considered in reference to ouster of jurisdiction, 206, 208, 209.  
defined, 208, 602.  
may amount to disqualifying bias, 216.

**MALICIOUS INJURY,**

arrest without warrant, 148.  
bridges, 912.  
buildings or goods therein, 911.  
crops, 912, 1051.  
damage by tenants, 911.  
drainage works, 424, 913.  
electric works, 913.  
enforcing appearance of defendant, 1051.  
fish, 912.  
fruit, 912.  
generally, 913.  
goods in process of manufacture or machinery, 912.  
injuring work of sanitary authority, 731.  
joint offence by several defendants, 47, 68, 1011.  
letter threatening injury, 912.  
Malicious Damage Act, 1861, 911.  
mines, 912.  
museums, 912.  
notice-boards under P.H. Act, 740.  
number of justices, 55, 1051.  
ouster of jurisdiction, 601.  
sea wall, 912.  
summary jurisdiction under Malicious Damage Act, 1861—  
    abettors, 605.  
    animals, 604.  
    damage not specially provided for, 601.  
    electric telegraphs, 603.  
    fences, &c., 603.  
    plants, &c., 603.  
    power of arrest, 605.  
    procedure, 605.  
    trees, 602, 605.  
telegraphs, 796, 912.  
title ousting jurisdiction, 207-210, 213-214.  
trees, 912, 1051.  
triable summarily out of sessions, when, 1051.

**MALICIOUSLY.**

See "MALICE."

**MANAGER.**

See "MASTER AND SERVANT."

**MANDAMUS, 246-250.**

adjournment, 247.

**MANDAMUS—continued.**

alternative remedy, 248.  
appeal to Court of Appeal, 249.  
    House of Lords, 249.  
applicable, when, 227, 246, 247, 248.  
counsel must move for, 248.  
costs of, 249.  
definition of, 246.  
demand before application, 246.  
discretionary, 247.  
effect of, 248.  
election of P.S. clerk, 330.  
manner of performance not directed generally, 247.  
no action for obeying, 250.  
obedience to, enforceable by attachment, 250.  
peremptory writ of, 249.  
pleading to return, 249.  
procedure, 248.  
return to, by justice, 248-249.  
rule to justices, as an alternative to, 249.  
second application for, 249.  
specific legal right in applicant necessary, 247.  
time limit for, 248.  
to compel justices to comply with Vexatious Indictments Act, 27.

**MANOR COURTS ABOLITION (IR.) ACT, 1859.**

See "SMALL DEBTS."

**MANSLAUGHTER, 917.**

committed out of U.K., 14 n. 2.  
doctrine of coercion of wife by husband does not apply to, 298.  
finding of guilty of cruelty to child, 1199.  
generally, 917.

**MAN-TRAP, 919.**

**MANUAL LABOUR,**

what is, 158.

**MARGARINE, 470.**

See "FOOD AND DRUGS."

**MARGARINE CHEESE, 471.**

See "FOOD AND DRUGS."

**MARGINAL NOTE,**

is not part of statute, 336.

**MARINE INSURANCE,**

gambling policies, 605, 1267.

**MARINE STORE DEALER,**

anchors to be marked, 606.  
books to be kept, 605.  
buying metals less than certain weight, 606.  
cables not to be cut, 606.  
dealer in old metals distinct from, 508, 606.  
definition, 508, 605.  
name over door, 605.

**MARINE STORE DEALER**—*continued*.  
 procedure, 606.  
 purchase from person under 16, 605.  
 registration, &c., under P.H. Act,  
 1907, 607.  
 regulations in connection with, 761.  
 unlawful possession of public stores,  
 606.

See "DEALER IN OLD METALS,"  
 "GENERAL DEALER."

## MARKETS.

appeal from order as to disputes in,  
 139, 994.  
 jurisdiction of justices as to disputes  
 in, 160, 986.

See "FAIRS AND MARKETS."

## MARKSMAN.

deposition of, 24.

## MARRIAGE.

offences relating to—  
 bigamy, 913.  
 offences as to solemnisation,  
 registration, &c., 776-777, 914.  
 registration. See "REGISTRA-  
 TION OF MARRIAGES."

## MARRIED WOMAN.

can be a surety, 30.  
 evidence of, against husband, 260.  
 larceny from husband, 530.  
 liability of, for support of husband,  
 children, and grandchildren, 180  
*n.* 3, 403.  
 recognisance by, 134.

See "CHILDREN," "HUSBAND  
 AND WIFE," "PARENT."

## MASCULINE.

includes feminine, 335.

## MASTER.

See "MASTER AND SERVANT."

## MASTER AND SERVANT.

accidents to workmen, notice of, 351.  
 agency. See "AGENT."  
 apprentice—

application of Employers and  
 Workmen Act, 1875, 1065.  
 chastisement of, 383.  
 ill-treatment of, 612, 614, 919.  
 maintenance of, 612, 614.  
 order against surety of, 1063.  
 power of justices as to, 1062.

apprentices, 1071, 1072, 1073.

besetting, evidence of previous acts,  
 267.

breach of contract by servant as to  
 gas, 508, 612.

breach of contract by servant of  
 water company, 612.

breach of contract, when indictable,  
 884.

bribery of servant, 389, 878.

chastisement of servant or appren-  
 tice, 383.

children, employment of (see also  
 "FACTORY AND WORKSHOP"), 397,  
 403, 429-430.

## MASTER AND SERVANT—*continued*.

civil disputes, jurisdiction as to,  
 1065.

colliery servants, 613.

complaint by servant against master,  
 608.

conspiracy in trade disputes, 610.

discharge, master obliged to give, 609.

power of justice to give, 609.

servant not to be hired with-  
 out, 609.

taking servant without, 610.

wages not recoverable without,  
 610.

drunken servant may be removed,  
 426.

D.M.P. district, recovery of wages  
 in, 312, 956.

ejection of servant, 189, 190.

Employers and Workmen Act, 1875,  
 157, 1061.

appeal, 160.

apprentices, 158, 1062, 1065.

costs, 159, 1062, 1064.

"dispute," 158.

disputes as to wages, 157-160,  
 1061-1074.

enforcement of order, 159, 1063,  
 1065.

jurisdiction, 157, 1064.

number of justices, 159.

time limit, 159.

"workman," 158.

employment of child required to  
 attend school, 429, 430.

evidence of statement by servant,  
 264-266.

factory. See "FACTORY AND WORK-  
 SHOP."

forfeiture in case of absence of child  
 or woman, 157-160, 1061-1074.

fraud by servant, 838.

hiring under false discharge, 989.

hosiery trade, tickets in, 613.

husband's responsibility for acts of  
 his wife, 538.

intimidation, 610.

labour exchanges, offences as to, 614.

larceny by servant, 591, 909, 1052.

leaving service improperly, 608.

liability of master for act of servant—

Betting House Acts, 500.

Excise Acts, 293.

Food and Drugs Act, 295.

generally, 292, 297.

libel, 294.

Licensing Acts, 294, 295, 538.

Merchandise Marks Act, 296.

mines and collieries, 297.

miscellaneous, 297.

Public Health Acts, 296.

Revenue Acts, 296.

weights and measures, 297, 838.

liability of servant under Employ-  
 ment of Children Act, 1903, 399.

maintenance of servant or apprentice,  
 612, 614.

mines, employment in, 626.

minimum rate of wages under Trade  
 Boards Act, 1909, 1268-1272.



**MASTER AND SERVANT**—*continued*.

- misbehaviour of servant, 608.
- offering to be hired while in service, 609.
- pauper children, prohibition of employment of, 678.
- payment of workmen in public-houses, 614.
- payment of workmen in spirits, 613.
- peaceful picketing, 612.
- procedure under Conspiracy and Protection of Property Act, 1875, 612, 1063.
- quarries, employment in, 626.
- recovery of wages, teacher's fees, &c., 160, 312, 988.
- registry for servants, regulations for, 760.
- requiring workman to join or leave friendly society or shop club, 1158.
- seamen, 613.
- seamen's wages, 160.
- silk weaving, tickets in, 613.
- Summary Jurisdiction (Ir.) Act, 1851, as to, 156-157, 988.
- trade boards (see "TRADE BOARDS"), 614.
- trade union. See "TRADE UNION."
- Truck Acts. See "TRUCK ACTS."
- workshop. See "FACTORY AND WORKSHOP."

**MATCHES,**

- patent for manufacture of, 1190.
- white phosphorus not to be used in, 1190.

**MAYOR,**

- precedence of, 3, 6.
- when a justice, 2.

**MEAL,**

- adulteration of, 352.
- assault to obstruct sale of, 381.
- fraud in sale of, 387.

**MEASURE,**

- intoxicating liquor, 551. .
- See "INTOXICATING LIQUORS,"
- "WEIGHTS AND MEASURES."

**MEAT,**

- unsound. See "PUBLIC HEALTH,"
- "UN SOUND FOOD."

**MEATH,**

- Dublin divisional justice *ex-officio* J.P. for, 3.

**MEDAL,**

- resembling current coin, 882.

**MEDICAL ACTS, 615.****MEDICAL CHARITIES,**

- penalty on witnesses refusing to attend, &c., 968.

**MEDICAL EXAMINATION OF PRISONER, 20, 149.****MEDICAL PRACTITIONER,**

- falsely pretending to be, 615.
- Medical Acts, what are, 615.
- medical register, 616.
- obtaining registration by fraud, 915.
- regulations under Medical Acts, evidence of, 280.
- sale of spirits by, 557.
- unregistered person cannot recover for medicine or attendance, 616.
- who may prosecute, 44, 616.

**MEDICINE,**

- adulteration of drug, 457.
- standard for drugs, 459.

**MEETING.**

- See "PUBLIC MEETING."

**MENACES, 915.****MENS REA.**

- See "MALICE."

**MERCHANDISE MARKS,**

- appeal from conviction, 623.
- Board of Trade, prosecutions by, 622, 622 n. 2.
- corporation, liability of, 622.
- Department of Agriculture, prosecutions by, 622.
- evidence of defendant, 261, 621.
- false entry in register of trade marks, 932.
- false representation as to Royal Warrant, 621.
- false representation of "patented" or "registered," 623, 651.
- false trade description, 620-621, 838.
- forfeitures, 623.
- indictment, right to be tried upon, 621, 915.
- Irish Trade Mark, 624.
- linen, special provisions as to, 623.
- linen woven in Ireland to bear country of origin, 623.
- master and servant—
  - liability of master, 296, 621.
  - servant, 621.
- offences—
  - "acting innocently," 617-619.
  - definitions, 618.
  - false trade mark or description, 616, 618.
  - forging trade mark, 616, 618.
  - intent, 618.
  - instrument for forging trade mark, 616.
  - misrepresentation as to place of origin, 619, 620.
  - verbal misdescription, 618, 620.
- patents, 651. See "PATENT."
- penalties, 622. •
- procedure, 621.
- search warrant, 145, 623.
- time limit, 621.
- trade mark, description of, 622.
- venue, 858.
- Vexatious Indictments Act applies to, 28, 622, 1050 n. 1, *Add. et Corr.* cix.
- watches and watch cases, 621.

- MERCHANT SHIPPING ACT, 1894,**  
 evidence of defendant, 261.  
 limits of jurisdiction, 16.  
 master's liability for acts of servant, 298.  
 misconduct of seamen, 916.  
 offences as to registration, 915.  
   seamen, 915.  
   wreck, 916.  
 salvage jurisdiction of justices, 176-178.  
 seamen's wages, 160.  
 unseaworthy ships, 916.  
   See "SHIP."
- MERGER,**  
 of petty sessions order in quarter sessions order, 229.
- METAL,**  
 dealer in. See "DEALER IN OLD METALS."
- METER.**  
 See "GAS."
- MILESTONE,**  
 injuring, 526, 981.
- MILITARY CANTEEN, 379, 557, 560, 563.**
- MILITARY MANŒUVRES,**  
 closing roads, 378.  
 offences as to, 378.
- MILITARY PROPERTY,**  
 pawning of, 376, 660.  
 search warrant, 145, 377.
- MILITIA,**  
 application of Army Act, 1881, 624.  
 offences under Militia Act, 1882, 624.  
 pawning of military property, 660.  
 procedure, 625.
- MILK.**  
 See "FOOD AND DRUGS."
- MILK BLENDED BUTTER, 471.**  
 See "FOOD AND DRUGS."
- MILKSHOPS, 371.**
- MILL DAM.**  
 See "FISHERY LAWS."
- MILLER,**  
 offences by, 387.
- MILLRACE,**  
 See "FISHERY LAWS."
- MINE,**  
 accidents in, 351.  
 application of Weights and Measures Act, 847.  
 employment in, 626.  
 explosives in, 626.  
 malicious damage to, 912.  
 sanitary accommodation in, 705.
- MINISTERIAL ACTS,**  
 certiorari does not lie in respect of, 228.  
 limits of jurisdiction for, 13 n. 5.
- MINOR OFFENCES,**  
 arrest without warrant, 147-149.
- MISCARRIAGE,**  
 procuring, 871.
- MISCELLANEOUS DUTIES OF JUSTICES OUT OF SESSIONS, 144.**
- MISDEMEANOUR,**  
 arrest without warrant, 147-149.  
 bail in, as of right from High Court, 31.  
   generally, 29.  
   discretion of justices, 29, 1005.  
 challenge, 12.  
 committed on boundary of two counties, 43.  
   journey, 43.  
   voyage, 43  
 compounding, 12, 51.  
 costs of prosecution, when payable out of county funds, 29.  
 distinction between felony and misdemeanour, 12.  
 doctrine of coercion of wife by husband of doubtful application to, 299.  
 killing party charged in capture or pursuit, 19.  
 minor offences included in term, 43.  
 number of charges in same indictment, 12.  
 political, should be returned for trial to assizes, 26.  
 punishment. See "PUNISHMENT."  
 statute prescribing no punishment, 13.
- MISUNDERSTANDING,**  
 causing non-appearance of defendant, 47.  
 conviction obtained by means of, may be set aside, 109.
- MITIGATION,**  
 D.M.P. district, 78, 311, 956.  
 Excise Acts, 79, 943.  
 petty sessions district, 65, 78, 956.  
 Stamp Acts, 80 n. 1.
- MONEY-LENDER,**  
 definition, 627.  
 false statement by, 896.  
 offences by, 626.
- MONEY ORDERS.**  
 See "POST OFFICE."
- MONTH,**  
 meaning of, 52, 335.
- MONTHLY TENANCY,**  
 notice required to determine, 186.  
 summary ejectment jurisdiction, 186.

## MONUMENTS, 355.

See "ANCIENT MONUMENTS."

## MOOR GAME,

close seasons for, 488.  
destroying eggs or nest, 494.  
when game, 484.  
See "GAME LAWS."

## MORTUARIES, 729.

See "BURIAL."

## MOTHER,

liability of child for support of, 180  
n. 3, 404.  
liability of, for support of child, 180  
n. 3, 403, 531.

## MOTOR-CAR,

appeal from conviction, 638.  
conviction, form of, 630.  
disqualification from driving, 637.  
endorsement of conviction, 630, 637,  
638.

## evidence—

by watches, 632.  
defendant competent witness,  
261, 638.  
L.G.B. regulations, 640.  
of identity, 281.

Excise duty on, 640, *Add. et Corr.*  
cviii.

heavy motor cars, regulations as  
to, 644, 645.

licensing of driver, 634.

light locomotives of two classes—  
heavy motor-cars, 629.  
light, 629.

L.G.B. may make regulations, 635.

locomotives of two classes—  
heavy locomotives, 628.  
light, 628.

maximum weight, 636.

notice of prosecution, when required,  
632.

## offences—

aiding and abetting, 631, 633.  
brakes, 642.  
condition of car, 642.  
control of car, 643.  
driving prohibited on special  
roads by L.G.B., 636.  
driving recklessly, &c., 630.  
forgery of identification mark 635.  
horn, 633, 643.  
identification mark, 633, 644.  
interrupting free passage of  
highway, 643.  
leaving unattended on highway,  
643.  
licensing, 634, 644.  
lights, 633, 642, 644.  
obligation of owner to give  
driver's name and address,  
630, 631.  
obligation to stop in case of  
accident, 635.  
to produce licence, 634.  
to stop engine, 643.  
to stop on request, 643.

MOTOR-CAR—*continued.*

## offences—

obstruction, 643.  
"offence in connection with  
driving a motor car," 638.  
"offences under the Act of  
1903," 638.  
rate of speed (generally), 631.  
rate of speed (special), 631,  
638.  
reckless driving, 630.  
registration of, 643.  
reversing, 642.  
rule of the road, 643.  
penalties, 637.  
petroleum, regulations as to use of,  
640, 645.  
previous convictions, how proved,  
290, 640.  
private roads, 637.  
prohibition of use on special roads,  
636.  
register of, 635, 644.  
regulations made by L.G.B.—  
Heavy Motor Car Order, 1905,  
644.  
Registration and Licensing Or-  
der, 1903, 643.  
Use and Construction Order,  
1904, 641.  
removal of former restrictions, 629.  
suspension of licence, 637.  
tires, regulations as to, 642.  
use for traction, 642.  
width of, 642.

## MUNICIPAL CORPORATIONS (IR.)

ACT, 1840,

boroughs under, 6.  
jurisdiction of county justices under,  
15.

## MUNICIPAL ELECTION,

corrupt practices at, disqualify for  
commission of peace, 7.  
See "ELECTIONS."

## MURDER, 918.

attempt to murder, 919.  
bail in case of, 31.  
committed out of United Kingdom is  
triable in Ireland, 14 n. 2, 918 n. 1.  
conspiracy to murder, 918.  
doctrine of coercion of wife by  
husband does not apply to, 298.  
should be returned to assizes, 26.

## MUSEUM,

bye-laws as to, 647.  
malicious damage to, 912.

## MUSHROOMS,

stealing, 588.

## MUSIC,

copyright of, 411.  
street music, power to stop, 317, 1077.

## MUSIC AND DANCING,

licence for, 740.



**MUSIC HALL LICENCE**,  
application for, at quarter sessions,  
117.

**MUSICAL COPYRIGHT ACT**, 1902, 411.  
proceedings under, are criminal, 66.  
search warrant, 146, 413.

**MUSSELS**, 455.  
See "FISHERY LAWS."

**MUTINY**,  
inciting to, 917.  
power of master of ship in case of,  
383.

**MUZZLING DOGS**, 314, 365, 947, 983.

**NAME**,  
conviction must show, 83.  
description where name unknown, 83.  
refusal by person twice convicted to  
give, 686.

**NAME ON CART**, 527, 984.

**NAVAL DESERTER**, 648.

**NAVIGABLE WATERS**,  
offences committed on, 16.

**NAVY**,  
bringing drink on board H.M. ships,  
648.  
deserters, 648.  
failure to account for seamen's  
property, 648.  
false statements on enlistment, 376.  
forging certificates, 376.  
pretended deserters, 648.  
purchasing seamen's clothing, 648.

**NEGATIVING EXEMPTION**, 89, 90.

**NEGLECT**,  
See "CHILDREN," "HUSBAND AND  
WIFE," "MASTER AND SERVANT."

**NEGLIGENCE**,  
compensation for, in driving, 312, 529,  
956.  
damage by, summary recovery of,  
185, 986.  
Railway Clauses Consolidation Act,  
1845, 183, 184.  
Railway Fires Act, 1905, 185.  
Regulation of Railways Act, 1868,  
184, 185.

**NEGLIGENT DRIVING**, 529, 919.  
See "D.M.P. DISTRICT."

**NEST**.  
destroying nest of game birds, 494.

**NET**.  
See "FISHERY LAWS."

**NET ANNUAL VALUE**,  
definition of, 200.  
how arrived at, 200-201.

**NEW BUILDING**.  
See "PUBLIC HEALTH."

**NEW LICENCE**, 115 *n.* 1, 1157.  
See "PUBLICAN'S LICENCE."

**NEW ROAD**,  
entry on land to survey new line of,  
168.  
order forbidding user of, 526, 981.

**NEWSPAPER**,  
comment by, on pending charge, 32.  
competition, when a lottery, 503.  
crying of, on Sunday, 792.  
evidence against proprietors and  
others, how far, 280.  
evidence of matters stated therein,  
497.  
liability of owner for act of servant,  
294 *n.*  
register to be kept, 649.  
return, how far evidence, 280.  
return to registrar, 649.

**NIGHT POACHING**, 484, 485.  
See "GAME LAWS."

**"NO RULE,"**  
case stated from order of, 236.  
effect of order of, 87.  
wrongful order, is a, 87.

**NON-APPEARANCE**,  
of complainant, 57, 58.  
of defendant—  
amendment not allowed in case  
of, 99.  
hearing may proceed, 46, 57.  
insufficiency of service of sum-  
mons, 49, 50.  
mistake or misunderstanding,  
47, 109.  
warrant may be issued on, 46,  
47.  
of either party, 59.  
waiver of, 57, 109.

**NON-ATTENDANCE OF JUSTICES**,  
61.

**NON-SUIT**,  
dismiss in nature of, does not bar  
second charge, 102.

**NOTICE**,  
of appeal under Excise Acts, 140-141.  
under P.S. Act, 133, 135.  
of intention to apply for liquor  
licence, 114, 115.

**NOTICE OF ACCIDENTS**, 351, 1104-  
1106.

**NOTICE TO PRODUCE**,  
necessity of, in criminal cases, 276.

**NOTIFICATION**,  
of birth. See "REGISTRATION OF  
BIRTHS."

NOTIFICATION—*continued.*

of infectious disease. See "PUBLIC HEALTH."

NUISANCE,

disobedience to order, is criminal offence, 66.  
generally, under P.H. Acts, 706, 712, 882.  
highway. See "HIGHWAY."  
master's liability for acts of servant, 294, 296.  
on public thoroughfare in D.M.P. district, 314.  
order of justice for abatement of, 63, 64, 100.  
particular, under P.H. Acts, 712.

NUMBER OF JUSTICES, 54.

Drainage Acts, 181-183.  
D.M.P. district, 55, *Add. et Corr.* cv. ejectment proceedings, 187, 190.  
Electric Lighting Act, 1882, 165.  
Employers and Workmen's Act, 1875, 159.  
Excise Acts, 79.  
felony, 942.  
for signing certain orders, 100.  
Gas Works Clauses Act, 1871, 164.  
generally, 45, 46, 54, 55.  
Lands Clauses Consolidation Act, 1847, 175-176.  
Licensing Acts, 578.  
order for entry on land to survey new line of road, 168.  
for material for labourers' dwellings, 179.  
for road material, 169.  
preliminary investigation of indictable offence, 13, 942.  
Public Health (Ir.) Act, 1878, 166-167.  
Railway Clauses Consolidation Act, 1845, 183-184.  
Railway Fires Act, 1905, 185.  
Regulation of Railways Act, 1868, 184-185.  
salvage cases, 176.

OATH.

affirmation in lieu of, 259.  
allegiance, oath of, 5.  
children, unsworn testimony by, 259, 1206.  
form of Scotch oath, 259.  
under Oaths Act, 1909, 258.  
before Oaths Act, 1909, 259.  
Jewish, 259.  
witness objecting to usual oath, 259.  
includes affirmation and declaration, 335.  
judicial oath, 5.  
justice to take oath, but not on demise of Crown, 7.  
justice to take oaths, 2, 5.  
unlawful, 916.  
Whiteboy offences as to, 933.  
witness producing document need not be sworn, 259.

OBSCENE ADVERTISEMENT, 352.

OBSCENE ARTICLES.

sending by post, 680, 887.

OBSCENE BOOKS AND PICTURES,

314, 649, 830, 887, 947.  
search warrant, 146, 650.  
selling, &c., in public place, 314, 760, 808, 830, 947.

OBSCENE LANGUAGE.

bye-law as to, 536.  
in D.M.P. district, 314, 947-948.  
in towns, 808.

OBSTRUCTING HIGHWAY,

D.M.P. district, 314, 947.  
title ousting jurisdiction, 213.  
See "HIGHWAY."

OBSTRUCTING PEACE OFFICER, 20, 313, 873.

OBTAINING LIVELIHOOD BY DISHONEST MEANS. 685.

OBTAINING MONEY OR PROPERTY BY FALSE PRETENCES.

bail discretionary with justice, 29.  
evidence of previous acts, 267, 268, *Add. et Corr.* cix.  
generally, 892.  
Vexatious Indictments Act applies to, 28.  
Vexatious Indictments Act does not apply to attempted, 28.  
See "FALSE PRETENCES."

OCCASIONAL LICENCE.

definition, 125.  
grant of, 125.  
in Co. Dublin for charitable entertainments, 118 n. 1.  
See "INTOXICATING LIQUORS."

"OFF LICENCE."

See "BEER DEALER'S LICENCE,"  
"BEER RETAILER'S LICENCE,"  
"SPIRIT GROCER."

OFFENCE.

amendment, 95, 100.  
continuing, 51.  
created by statute, when indictable, 13.  
when triable summarily, 13, 40, 41.  
which prescribes no punishment, 13.  
description of, 82-86.  
indictable, no summary jurisdiction as to, 32, 41, 83.  
in D.M.P. district. See "DUBLIN METROPOLITAN POLICE DISTRICT."  
joint offence, 47, 1011.  
place to be shown in conviction, 83.  
second offence (see "SECOND OFFENCE"), 67, *Add. et Corr.* cvii.

**OFFENCE**—*continued.*

- several acts constituting one offence, 106.
- several offences arising out of one act or omission, 106.
- several offences charged in one summons, 46, 87, 91, 346.
- statement of, in conviction, 82-86.
- time of, to be stated in conviction, 83-84.
- trivial, what is, 59, 60, 101.
- warrant of execution, 69, 1011, 1026.
- what is an, 65, 66.
- See "INDICTABLE OFFENCES," "JOINT OFFENCE," "SUMMARY JURISDICTION," "PETTY SESSIONS."

**OFFENCES AGAINST THE GOVERNMENT,**

- assault on Sovereign, 917.
- high treason, 917.
- mutiny, inciting to, 917.
- sedition conspiracy, 917.
- treason felony, 917.

**OFFENCES AGAINST THE PERSON,**

- abduction, 870.
- abortion, procuring, 871.
- arrest without warrant for, 148, 1200.
- assault, 379-381, 873.
- indecent, 897.
- attempt to murder, 919, 931.
- birth, concealment of, 877.
- conspiracy to murder, 918.
- Criminal Law Amendment Act, 1885, offences under, 897-900.
- evidence of defendant in, 261.
- explosions, by, 891.
- incest, 905.
- lunatics, offences against, 593, 911.
- manslaughter, 917.
- miscellaneous offences, 919.
- murder, 918.
- rape, 896.
- summary offences triable before one justice, 55, 1051.
- triable summarily out of sessions, when, 1051.
- Vexatious Indictments Act, application of, 1050, 1050 *n.* 1.

**OFFENCES AGAINST WOMEN, 269, 896.**

- See "FEMALES, OFFENCES AGAINST AND RELATING TO."

**OFFENDERS,**

- probation of. See "PROBATION OF OFFENDERS ACT, 1907."

**OFFENSIVE TRADES, 722, 805.**

- See "PUBLIC HEALTH."

**OFFICIAL SECRETS ACT, 1889, 14 n. 2, 919, 920.****OLD AGE PENSION,**

- depriving habitual drunkard of, 651.
- false statements, 651.

**OLD METALS.**

- See "DEALER IN OLD METALS," "GENERAL DEALER," "MARINE STORE DEALER."

**OMISSION,**

- in summons, &c., amendment of, 93

**"ON LICENCES."**

- See "PUBLICAN'S BEER LICENCE," "PUBLICAN'S LICENCE."

**OPINION,**

- evidence of, when admissible, 276.

**OPPRESSION, 925.****ORDER,**

- cases within Petty Sessions Act, 63, 76, 1009.
- cases not within Petty Sessions Act, 76, 77.
- certificate of, 64, 1010.
- Customs Acts, 80.
- defective orders, examples, 86, 87.
- definite, must be, 912.
- distinguished from conviction, 107, 108.
- enforcement of, 69, 1011.
- entry in order book, effect of, 63, 64, 100, 169.
- Excise Acts, 79.
- fees on, 1047.
- includes conviction, 107, 1020.
- made at petty sessions, 62.
- made out of petty sessions, 63.
- in police case, 63.
- may be segregated into good and bad parts, 107.
- meaning of, 72, 1019, 1020.
- negating exemptions, 89, 90.
- record of, will not be questioned by High Court, 138.
- return to quarter sessions unnecessary, 63, 1009.
- signature to, 63, 100.
- to cut hedges, 173, 981.
- to enter lands for road materials, 100, 169, 170, 172.
- to restore property or documents, 20.
- in D.M.P. district, 313, 955.

**ORDER BOOK,**

- amendment after entry of order, 99.
- separation of justices, 63, 99.
- entry in, is conviction or order under P.S. Act, 63.
- when not the order, 63, 64, 100, 169.
- form of, in use, 1024, 1025.
- indictable cases to be entered in, 26 *n.* 3.
- justices will not be compelled to sign erroneous entry in, 63.
- order made out of sessions, 63.
- particulars of order to be entered in, 63.
- signature of order, 63.

**ORDER OF LORD-LIEUTENANT,**

- publication, condition precedent, 281.



- ORDER TO CUT HEDGES, &c.,**  
analysis of statutory provisions as to, 173.  
costs, 175.  
form of orders, 174, 175.  
jurisdiction, 173.  
statute, 981.
- ORDERING WITNESSES OUT OF COURT,** 60.
- OUSTER OF JURISDICTION,**  
by question of title, 206.  
See "TITLE OUSTING JURISDICTION."
- OVERCROWDING,**  
animals, 360.  
houses, 707.  
lodging-houses, 718.
- OYSTERS.**  
See "FISHERY LAWS."
- PALMISTRY,** 830.
- PARCENERS,**  
description of property of, 90, 1019.
- PARENT,**  
chastisement by, 383.  
cohabitation brings liability for support of child, 403, 1238.  
duty to send child to school, 427.  
liability for maintenance of children, 180 n. 3, 401 n. 1, 403.  
liability of child for support of, 180 n. 3, 404.  
meaning of, 401 n. 1, 430.  
step-parent's liability for support of step-child, 403.  
See "EDUCATION," "CHILDREN."
- PARKS,** 740, 758.
- PARLIAMENTARY ELECTION,**  
corrupt practices at, 7, 431.  
See "ELECTIONS."
- PARTIES,**  
names of, to appear in order, 82, 83.
- PARTNERS.**  
conviction of, 83.  
description of property of, 90, 1019.  
offences by, 47.
- PARTNERSHIP, LIMITED,**  
false declaration as to, 920.
- PARTRIDGES,**  
are game, 482, 484, 486 n. 3, 489.  
close season for, 488.  
destroying eggs or nest, 494.  
game certificate to kill, required, 489.  
See "GAME LAWS."
- PARTY AGGRIEVED,**  
Board of Guardians are, in case of neglect to maintain wife, 45, 531.
- PARTY AGGRIEVED—continued.**  
includes Corporation, 335.  
Towns Improvement Act, 801.  
under Public Health Acts, 694.
- PASSENGER.**  
See "RAILWAY."
- PASSENGER VESSEL,**  
licence to sell intoxicating liquor on, 553, 557.
- PATENT,**  
false representation as to, 651.  
for theatre, 117.
- PATENT MEDICINE,**  
exempt by s. 6 of Food and Drugs Act, 1875, 458.
- PAUPER CHILDREN,**  
offences as to, 652, 677.
- PAWNBROKER,**  
appeals, 664.  
arrest and seizure, pawnbroker's power of, 662.  
books to be kept, 656.  
city marshal, auctioneer for Rotunda division of Dublin, 658 n. 1.  
commission of peace cannot be held by, 111.  
damage to pledge, 660.  
definition, 653.  
delivery of pledge, 657.  
disputes, 312, 313, 657, 661, 662, 957, *Add. et Corr.* cviii.  
disqualification of, in D.M.P. district, 655.  
duplicate, larceny of, 657.  
lost, 657.  
to be given, 656.  
exorbitant profit, device to obtain, 656.  
general dealer is not, 508.  
hours for taking pledges, 661.  
interest on loans, 654 n. 1.  
licences—  
inland revenue licence, 655.  
plate licence, 656.  
police licence, 655.  
loans, law as to, 653, 654.  
name over door, 656.  
prohibition of receiving in pawn—  
another's property, 661.  
from child, 661, 1240.  
from habitual drunkard, 521, 661, 1180.  
linen (washerwoman), 660.  
military pensioner's certificate, 377.  
military property, 376, 660.  
public stores, 660, *Add. et Corr.* cviii.  
seamen's property, 648, 660.  
qualifications—  
generally, 655.  
outside D.M.P. district, 654.  
within D.M.P. district, 654.  
restitution of property, 313, 314, 663, 790, 955.

**PAWNBROKER—continued.**

- sale of pledge—
  - outside D.M.P. district, 657.
  - within D.M.P. district, 659.
- search warrant, 146.
- securities of, 654.
- selling excisable liquor, 656.
- splitting loans, 656.
- statutes relating to, 652.
- stolen goods, 314, 662, 663, 955.
- suspected goods, 662, 663.

**PEACE OFFICER,**

- arrest without warrant by. See "ARREST WITHOUT WARRANT."
- definition of, 146.
- disqualified for holding liquor licence, 111.
- neglect or breach of duty by, bail-able in discretion of justice, 29.
- See "POLICE."

**PEACEFUL PICKETING, 611, 612.****PEDLAR,**

- acting without certificate, 1056.
- arrest of pedlar without, or refusing to produce certificate, 1058.
- certificate—
  - depriving of, 1057, 1058.
  - effect of, 1056.
  - forging, 1057.
  - grant of, 1057.
  - necessity for, 1056.
  - unless in excepted cases, 1059.
  - not assignable, 1057.
  - not to be borrowed, 1057.
  - to be produced by, 1058.
- "chief officer of police," 1056, 1059.
- convictions to be endorsed on certificate, 1057.
- definition of, 1055.
- exemptions: commercial travellers, fish-sellers, sellers in fairs, 1059.
- pack may be examined by police, 1058.
- procedure, 1058.
- statutes, 664.
- vagrant law applies to, 1057.

**PEER,**

- may be surety, 30.

**PENAL SERVITUDE ACTS,**

- arrest on suspicion of ticket-of-leave man, 148, 683.
- term of penal servitude, 860, 865.
- See "PREVENTION OF CRIME."

**PENAL SUM,**

- appeal from imposition of, 138–139, 973.
- entry and account of, 969.
- payable by instalments, or at future time, 65, 65 *n.* 1, 1010.
- what is, 39, 65.
- See "PENALTY."

**PENALTY.**

- application of, 68, 1011.
- appropriation of, 91.
- civil debt distinguished from, 65 *n.* 2.
- consecutive term of imprisonment, 68, 1011.
- costs to be added to, to ascertain amount of, 67.
- distress must be ordered, when, 65, 67, 1060.
- D.M.P. district—
  - imprisonment in default of payment, 310, 310 *n.* 1, 953, 958.
  - mitigation, 311, 954.
  - offences, for which no penalty is appointed, 310, 953.
  - payment to informer of part of, 311, 956, 1046.
- enforcement of, 64, 1010, 1060.
- excessive, bad, 90.
- cannot be segregated, 52.
- fund from, application of, 1046.
- generally, 90.
- High Court cannot amend, 99.
- imprisonment in default of, 64, 65, 1010, 1060.
- Customs Acts, 81 *n.* 3.
- increased penalty for second offence, 67, 90, 91, 92, 347.
- on appeal, 136.
- Irish currency, 65, 78, 402.
- joint offence, 47.
- mitigation of, 65, 78, 80, 80 *n.* 1.
- none prescribed by statute, 13, 64 *n.* 2.
- payable at future time or by instalments, 65, 65 *n.* 1, 1010.
- payable to one person exclusively, when, 44.
- reduction or remission of, on appeal, 138, 139.
- second offence, 67, 90, 91, 92, 347.
- term of imprisonment in default, 64, 65, 66, 1010, 1060.
- too little, bad, 90.
- "unless said sum be sooner paid," 67, 347.
- See "CONVICTIONS."

**PENDING CHARGE,**

- newspaper comment on, 32.

**PENSIONER,**

- detaining army pensioner's certificate, 377.

**PEREMPTORY WRIT OF MANDAMUS.**

- See "MANDAMUS."

**PERIWINKLES, 455.**

- See "FISHERY LAWS."

**PERJURY,**

- bail, discretionary with justice, 29.
- definition, 920.
- direction or consent to prosecute for, 27 *n.* 1, 921.

PERJURY—*continued.*

- in non-judicial proceedings, 921.
- statutory declarations, 921.
- provisions, 920-921.
- subornation of, 920.
- Vexatious Indictments Act applies to, 28, 920 *n.* 1, 1050.

PERMISSIVE OCCUPANT,  
ejection of, 189, 191.

"PERSON,"  
meaning of, 83, 416.

PERSONATION,  
generally, 922.  
obtaining military pay by, 376.

PESTS,  
See "DESTRUCTIVE INSECTS AND  
PESTS."

PETROLEUM,  
carbide of calcium, 668.  
definition, 664.  
hawking—  
application of Act of 1871 to, 667.  
licences required for, 666.  
municipal boroughs, 668.  
offences by hawkers and servants, 667.  
petroleum in carriage, 667.  
regulations, 666.  
seizure by police constable, 667.  
label required for vessels containing, 665.  
licence—  
for storing, 665, 666.  
violation of terms of, 665, 666.  
mixture of, 669.  
motor-cars, 640, 645-647.  
obstructing officer of local authority, 666.  
procedure, 669.  
refusing information to local authority, 666.  
search warrant, 146, 666.  
ship carrying—  
bye-laws as to, 664.  
notice by master or owner, 665.  
statutes, 664.  
storage of, 665.  
testing of, 666.

PETTY SESSIONS,  
alteration in districts, places, and times for, 73, 995.  
appointed days for, 73, 995, 996.  
cases triable out of, 45, 45 *n.* 1, 160, 379 *n.* 1, 590, 978, 989, 998, 1051.  
districts, 73, 995, 996.  
estreating recognisance at, 38, 39, 1017, 1018.  
licensing jurisdiction at, 119-129.  
merger in quarter sessions order of order at, 229.  
place for, 73, 995, 996.  
preliminary investigation of indictable offences generally held at, 13.

PETTY SESSIONS (IR.) ACT, 1851,  
appeal to quarter sessions under, 132, 1012-1013.  
application of, 41.  
cases not within, generally triable out of petty sessions, 76.  
within, generally triable only in petty sessions, 76.  
convictions in summary cases not under, 83.  
convictions under, 62, 63, 83, 309, 1009, 1019.  
Customs cases are not within, 76, 1020.  
D.M.P. district, application to, 72, 76, 309, 1020.  
Excise cases are not within, 76, 1020.  
forms prescribed by, 72, 1019, 1021-1032.  
game cases are not within, 76, 481, 1020.  
imprisonment, scale of, 64, 1010, 1060.  
post-office cases are not within, 76, 1020.  
preliminary investigation of indictable offences, 13.  
prosecutor, who may be, 43-45, 76.  
Stamp Act cases are not within, 76, 1020.  
taxes, cases as to, are not within, 76, 1020.  
See "SUMMARY CASES WITHIN P.S. ACT."

PETTY SESSIONS CLERK, 328.  
See "CLERK OF PETTY SESSIONS."

PETTY SESSIONS DISTRICT,  
establishment and alteration of, 73, 995.  
justice can commit for trial in any district of his county, 14.  
townland of adjacent county included, 15, 42, 998.

PEWTER,  
purchase of, by dealer, 508, 606.

PHARMACEUTICAL CHEMIST, 395.  
See "CHEMIST."

PHEASANTS,  
are game, 482, 484, 484 *n.* 1, 486, 486 *n.* 3, 489.  
close season for, 488.  
destroying eggs or nest, 494.  
game certificate to kill, required, 489.  
See "GAME LAWS."

PHYSICIAN,  
falsely pretending to be, 615.

PICKETING,  
evidence of previous acts to show intent, 267.  
peaceful picketing, 611, 612.

PIGEONS,  
killing or taking, 587.



- PIRACY, 14 *n.* 1, 922.
- PIRATED MUSIC, 146, 412.
- PLACE,  
     meaning of, for purposes of Betting Houses Act, 1853, 499.  
     variance as to, 93, 94, 1019.
- PLACE OF ABODE,  
     for service of summons, 48 *n.* 1,  
     1001 *n.* 2, *Add. et Corr. cv.*
- PLACE OF HEARING,  
     venue, 15-17, 370, 681, 858.  
     whether in or out of petty sessions,  
     13, 55, 73, 76, 998.
- PLACE OF OFFENCE,  
     amendment as to, 93, 94.  
     order must show, 83.
- PLACE OF PUBLIC RESORT,  
     means of egress and ingress, 739.  
     safety of platforms for use on public occasions, 739.  
     what is included in, 759.
- PLANTS,  
     larceny of, 588, 1051.  
     malicious damage to, 603.
- PLATE,  
     altering name, &c., on, 923.  
     assay, 512.  
     false statements as to, 513.  
     foreign plate, 513.  
     hall-marking, 512.  
     licence, 512.  
     pawnbroker's licence for, 656.  
     selling or buying plate not assayed,  
     512.  
     standards, 512.
- PLEA OF GUILTY,  
     effect of, 21.  
     where unauthorised, 57.
- PLEASURE BOAT,  
     licence for, 763.
- PLEASURE GARDENS,  
     establishment and regulation of, 740,  
     758.
- PLEDGE.  
     See "PAWNBROKER."
- PLEURO-PNEUMONIA, 364, 369.
- POLOVER,  
     close seasons for, 850-855.  
     destroying eggs or nest, 494.
- PLURAL,  
     includes singular, 335.
- PLYING FOR HIRE,  
     meaning of, 528 *n.* 2.
- POACHING,  
     arrest without warrant, 148, 485,  
     486, 487, 490.  
     fish, 439-440.  
     game, 483-488.  
     See "FISHERY LAWS," "GAME LAWS."
- POISON,  
     administering so as to endanger life,  
     919.  
     with intent to injure,  
     919.  
     poisoned flesh, placing on land, 670,  
     1279, 1282.  
     poisoned grain, selling, &c., or sow-  
     ing, &c., 670, 1279, 1282.  
     sale of, 671-675.  
     See "POISONS, SALE OF."
- POISONED FLESH,  
     placing, &c., on land, 670, 1279, 1282.
- POISONED GRAIN,  
     selling, sowing, &c., 670, 1279, 1282.
- POISONING,  
     evidence to rebut defence of acci-  
     dent, 266.
- POISONING LAND, 670, 1279, 1282.
- POISONING RIVER.  
     See "FISHERY LAWS."
- POISONS, SALE OF,  
     arsenic, 671.  
     assuming title of druggist or chemist,  
     &c., 673.  
     company, liability of, 671 *n.* 1, 673,  
     674.  
     label on wrapper, 672, 675.  
     master's liability, 675.  
     method of sale, 671, 672.  
     patent medicines, 673.  
     poisons enumerated, 671.  
     under Act of 1908, 675.  
     procedure, 675.  
     prosecutor, who may be, 44.  
     regulations under Act of 1908, 675  
     *n.* 1.  
     shop to be managed personally or by  
     qualified assistant, 674.  
     who may be convicted, 675.  
     sell, 673.  
     wholesale dealing, 673.
- POLICE,  
     action against, 18, 20, 146.  
     admittance of, into licensed premises,  
     537.  
     assault on, 313, 381, 810, 873, 1052,  
     1086.  
     billeting, offences as to, 374.  
     bribery of, by licensed person, 539.  
     costs may be given against, 68 *n.* 3,  
     78 *n.* 3, 243, 347.  
     custody of prisoner, 149, 890.  
     diseases of animals, powers and  
     duties in regard to, 370.  
     distrain, sale of, 70, 383, 1016.

**POLICE—continued.**

disqualified for holding liquor licence, 111.

evidence by, 287.

handcuffing prisoner, 18–19.

harbouring on licensed premises, 548, 809.

illicit distillation, powers as to, 545.

neglect or breach of duty by, bailable, 29.

obstructing generally, 381, 810, 873.

obstructing, under Cruelty to Animals Act, 361.

obstructing, under Gaming Acts, 497.

offences by—

failure to account for amount levied on warrant, 676,

972, *Add. et Corr. cix.*

to deliver accoutrements, 676.

to execute warrant, 676, 1018.

neglect of duty, 676, 926 *n.* 1.

pretending to be a constable, 676, 810.

resigning without leave, 676.

unlawful possession of uniform, 676, 810.

property detained by, 20, 63, 146, 149, 790, 1094.

prosecute generally as common informers, 45, 347.

prosecutions, allowance of stamps, 1045.

by, 56, 999 *n.*

refusing to aid, 20 *n.* 1, 923.

resisting or obstructing, 20, 381.

searching prisoner, 20, 149.

seizure of property by, on arrest, 20, 149.

statement of accused to, 274, 275.

suspected poachers, powers as to, 486.

warrant, execution of, 18–28, 69–71.

See “D.M.P. DISTRICT,” “PEACE OFFICER,” “PREVENTION OF CRIME,” “WARRANT.”

**POLICE PROPERTY ACT, 1897, 63, 146, 149, 790, 1094.**

**POLICE SUPERVISION.**

See “PREVENTION OF CRIME.”

**POLLUTION OF RIVERS,**

by gas company, 506.

not a criminal offence, 66.

**POOR LAW,**

disobedience to L.G.B. sealed order, 677, 678.

embezzlement by union official, 678.

inspection of rate, 678.

liability of husband to support wife, 403, 531, 831.

liability of parent to support child, 403, 531, 831.

liability of wife to support husband, 403, 535.

**POOR LAW—continued.**

offences by or regarding workhouse inmates, 677.

union officials, 677.

pauper children—

offences as to, 652, 678.

relief of, out of workhouse, 677.

procedure, 677, 678.

property of guardians, how described, 1019.

**POOR RATE,**

certiorari lies to making of, 228.

copies of, or extracts from rate may be taken, 677.

disqualification of justices from acting, 203.

distress warrant for poor rate, 75, 203, 966, *Add. et Corr. cv.* See

“WARRANT OF DISTRESS.”

D.M.P. district, 312.

jurisdiction of justices as to, 194, 203, 312.

liability for rate, 202.

See “RATING,” “VALUATION.”

**POPULATION,**

proof of, 112 *n.* 3, 280.

**PORT.**

See “HARBOUR.”

**PORTER,**

licence to luggage porter, 760.

**PORTER,**

beer includes, 553 *n.* 2, 566 *n.* 1.

**POSSE COMITATUS, 150, 150 *n.* 1.**

**POST OFFICE,**

aiding and abetting offences, 681.

carelessness, &c., as to mails, 679.

clothing, &c., of postal officers to be delivered up, 678.

dangerous things not to be sent by post, 680.

dealing, &c., in fictitious stamps, 680.

detaining letters, 924.

false notice as to letter-box, 680.

ferryman failing to carry mails, 681.

frauds in relation to adhesive stamps, 681, 789.

imitating post-office stamps, 680.

indecent matter sent by post, 680, 887, 924.

indictable offences as to mail-bags, postal packets, money-order, 924–925.

injuring, &c., letter-box, 679, 924.

money-orders, offences as to, 924.

obstruction of officials, 681.

outside G.P.O., 681.

Petty Sessions Act not applicable, 76, 1020.

placards on post-office property, 680.

postal packet, what is, 682, 924 *n.* 1.

procedure, 681.

receiving stolen mails, 924.

regulations, evidence of, 277.

ships' letters, 679.

POST OFFICE—*continued.*

soldiers' and sailors' letters, 679.  
stealing mails, 924.  
unauthorised conveyance of letter,  
679.  
venue, 681.

## POSTPONING DECISION, 61, 107.

## POTATOES,

assault to obstruct sale of, 381.

## POULTRY,

larceny of, 591, 1052.

## POUND,

animal not to be impounded save in  
licensed pound, 991, 992.  
establishment of, 990.  
failure to supply food and water to  
impounded animal, 360.  
generally, 71.  
impounding, lawful, where owner  
unknown, 993, *Add. et Corr.* civil.  
prohibited, where owner known,  
992.  
straying or trespassing cattle,  
392, 393, 991.  
injuring, 992.  
manor pounds exempted, 992.  
notice to owner of impounding, 991,  
992.  
offences as to, 393, 682, 992, 994.  
pound breach, 682.  
fees, 990, 991.  
poundkeeper to be licensed, 990.  
to deliver animal on order of  
justice or payment, 993.  
to enter into recognisance, 990.  
rates of sustenance, 991.  
rescuing impounded animal, 682, 992.  
sale of impounded animal, 991.

## POUND BREACH, 682.

## POYNINGS ACT,

application of 34 Edw. 3, c. 1, to  
Ireland by, 33, 334.

PRELIMINARY INVESTIGATION OF  
INDICTABLE OFFENCES,

adjournment, accused not entitled  
as of right to, 23.  
amendment, 24.  
bail—  
arrest or new bail where party  
about to abscond, 31, 1006.  
generally, 25, 29–31, 1005–1006.  
Bank books, order to inspect, 21.  
case stated not applicable to, 237.  
certificate of indictment found, 1007.  
certiorari not applicable to, 26, 227.  
children. See "CHILDREN."  
clearing court, 13, 60, 349, 999, 1234.  
committing accused for trial, 25,  
26, 1005, 1006.  
contempt of court, 72, 73, 411, 999.  
corporation—  
enforcing appearance of, 21.  
indictment of, 20.

PRELIMINARY INVESTIGATION OF  
INDICTABLE OFFENCES — *con-*  
*tinued.*

cross-examination by or on behalf of  
accused, 21, 23, 1004.  
decision of justices not reviewable,  
26, 227.  
must be majority decision, 26.  
need not be recorded, 26.  
deposition—  
accused entitled to copy of, 24,  
1004.  
accused to be present during  
taking of whole of, except  
under Children Act, 1908,  
22, 287, 288, 1206.  
admissible on trial where wit-  
ness murdered or secreted,  
287.  
death of witness before trial,  
22, 287, 1004.  
how taken, 21, 22, 287, 288,  
1004, 1206.  
on one charge, trial on another,  
28, 288.  
signature by justice, 22, 1004.  
stranger not entitled to copy of,  
24 n. 3.  
verifying information already  
taken, 22, 23.  
witnesses for defence, 23.  
discharge of accused, how far a bar  
to subsequent charge, 27.  
discretion of justice to refuse sum-  
mons or warrant, 17.  
disposal of accused, 24–26, 29, 1004.  
information, 29, 1007.  
D.M.P. district. See "DUBLIN  
METROPOLITAN POLICE DIS-  
TRICT."  
enforcing appearance of accused,  
17–21, 251, 1000.  
enforcing attendance of witness, 21,  
22, 251, 1002, 1003.  
even division of justices, 27.  
evidence for defence, 21, 23, 24, 350.  
to supplement deposition, 24,  
289.  
fees on informations and depositions,  
1047.  
foreign county, jurisdiction as to,  
1005. See "limits of jurisdic-  
tion," *infra*.  
forms—  
depositions, 1021.  
information, 1021.  
recognisance, general, 1023.  
solemn declaration, 1022.  
statement of accused, 1021.  
summons to enforce appearance,  
1022.  
warrant to arrest, 1022.  
to commit for trial, 1027.  
to convey before justice of  
another county, 1028.  
to discharge from gaol, 1028.  
*Habeas Corpus* to bring up accused  
already in custody, 21, 251.  
hearing case in foreign county, 1016.  
of, 21–24.



PRELIMINARY INVESTIGATION OF  
INDICTABLE OFFENCES — *con-*  
*tinued.*

High Seas, jurisdiction as to, 14.  
illness of witness, attendance of  
justice at house, 32.  
indictable offence cannot be dis-  
posed of summarily, 32, 83, 350.  
indictment may proceed with con-  
sent of Attorney-General, 28.  
informant may be bound over, 17,  
1000.  
information, 17, 1000.  
informing defendant of right to be  
tried on indictment, 21.  
larceny, summary jurisdiction as  
to, and procedure, 585-591, 1033,  
1034, 1051, 1052.  
limits of jurisdiction, 13, 14, 300-304,  
997, 998, 999, 1005, 1016.  
need not take place at petty sessions,  
13.  
number of justices required, 13,  
13 *n.* 4, 942, *Add. et Corr. cv.*  
order to inspect Bank books may be  
made at, 21.  
Petty Sessions Act now regulates, 13.  
place of hearing not a court, 13, 999.  
presence of accused necessary to  
give jurisdiction, 20.  
presence of accused sufficient to  
found jurisdiction, 18.  
presence of justice during entire  
inquiry necessary, 22, 345.  
private meeting of justices, 13.  
prosecutor, who may be, 17, 43.  
remand (see also "REMANDING"),  
25, 1004.  
returning accused for trial, 25, 26,  
1004, 1005.  
seizing property or documents of  
accused, 20, 149.  
service of summonses. See "SERVICE  
OF SUMMONSES."  
statement of accused, 23, 275, 1004.  
substituting new charge in indict-  
ment for charge at preliminary  
hearing, 28, 288.  
summons should be issued, when,  
17, 18.  
Sunday, hearing on, 793.  
issue of warrant on, 18, 793,  
1000.  
transmission of information, &c.—  
to Clerk of Crown and Peace,  
29, 1007.  
to petty sessions, 29, 1007.  
Vexatious Indictments Act, 27, 28,  
1050.  
warrant—  
backing for execution, 19, 1014,  
1015, 1053.  
can be issued or executed on  
Sunday, 18, 793, 1000.  
contents of, 18, 26.  
for safe custody, how construed,  
26.  
on failure to keep undertaking  
to give security, 26.  
sealing not necessary, 18, 1019.

PRELIMINARY INVESTIGATION OF  
INDICTABLE OFFENCES — *con-*  
*tinued.*

warrant—  
should be issued, when, 17, 18.  
signature, 18, 1001.  
witness—  
cannot be compelled to find  
sureties, 22.  
for defence, 21, 23, 24, 350.  
in court, though not *subpœned*,  
24, 1002.  
marksman, 21.  
refusing to give evidence, 22,  
1002.  
sign deposition, 24.  
young persons. See "CHILDREN."

PREROGATIVE WRIT,  
what is, 246 *n.* 1.

PRESERVATIVES, 476.  
See "FOOD AND DRUGS."

PREVENTION OF CORRUPTION  
ACT, 1906, 28, 389, 1050 *n.* 1.

PREVENTION OF CRIME,  
arrest on suspicion, 148, 683, *Add.*  
*et Corr. cvi.*  
convict on licence, offences by, 683-  
686.  
"crime," meaning of, 683 *n.* 7.  
failure to notify residence or report,  
685.  
habitual criminals, licence to, 689,  
690.  
harbouring thieves in brothel, 686.  
on licensed premises, 686.  
loitering for purpose of committing  
offence, 686.  
obtaining livelihood by dishonest  
means, 683, 685.  
"offence," meaning of, 683 *n.* 7.  
person twice convicted of crime,  
offences by, 685.  
police supervision of person twice  
convicted of crime, 683.  
preventive detention of habitual  
criminals, 902-904.  
procedure, 688.  
reformatory, offences as to, 688.  
refusal to give correct name and  
address, 686.  
statutes, 682.  
stolen property, search for, 687.  
youthful offender, licence to, 689.

PREVENTION OF CRUELTY TO  
CHILDREN ACT, 1904, 400-402.  
See "CHILDREN."

PREVENTIVE DETENTION,  
breach of licence, 689, 690.  
habitual criminal, licence to, 689.  
criminals, of, 902-904.

PREVIOUS CONVICTION,  
evidence of, 281.  
what is, *Add. et Corr. cviii.*

PRIMA FACIE CASE, 24, 1005.

PRINCIPAL AND ACCESSORY, 885.

PRINTER,  
name and address on election pla-  
cards, 690.  
See "NEWSPAPER."

PRINTER'S COPY,  
admissibility in evidence, 277-278.

PRISON,  
allowing escape from, 890.  
breach, 925.  
breach of rules, 691.  
conveying intoxicating liquor into,  
690, *Add. et Corr.* cix.  
power of individual justice to visit,  
151.  
rescue from, 929.  
visiting committees, appointment and  
duties of, 153, 691, *Add. et Corr.* cix.  
warrant of commitment to be pro-  
duced, 691, *Add. et Corr.* cix.

PRISONER,  
detention by police of property  
found on, 20, 149.  
handcuffing, 18, 19.  
medical examination of, 20, 149.  
order for restoration of property to,  
20, 149.  
police responsibility for custody of,  
149.  
searching, 20, 149.  
statement by, 23, 272-275, 1004.

PRIVATE ASYLUM,  
licence for, 117.

PRIVATE GRAVE, 730.  
See "BURIAL."

PRIVATE RETREAT,  
for habitual drunkard, 514.  
See "HABITUAL DRUNKARD."

PRIVATE STREET,  
paving and sewerage of, 699.

PRIVILEGE,  
of counsel, 327.  
justice, 327.  
solicitor, 327.  
witness, 327.

PRIVILEGED COMMUNICATIONS,  
legal advisers, 285.  
public policy, 286.

PRIVY COUNCIL,  
evidence as to orders, &c., 277.

PRIZE FIGHT, 872.  
running train to facilitate, 771.

PROBATION OF OFFENDERS' ACT,  
1907, 59-60, 1172-1175.  
altering conditions of release, 1174.  
award of compensation, 1172.

PROBATION OF OFFENDERS' ACT,  
1907—*continued.*  
children, special provisions in cases  
of, 1230, 1231.  
conditional discharge of offender,  
59, 1172.  
dismissal of trivial charge, 59, 60,  
101, 1172.  
dismissal of charge under certain  
circumstances, 59, 1172.  
failure to observe conditions of  
release, 1174.  
intoxicating liquor, recognisance to  
abstain from, 426, 1173.  
order for restitution of stolen pro-  
perty, 1173.  
probation—  
officers, appointment and duties,  
1173, 1174.  
orders, 1173.  
recognisance under, 59, 60, 1173.  
rule-making power, 1174.

PROCEDENDO, WRIT OF, 7.

PROCESSIONS,  
regulation of traffic in towns during,  
805.  
when unlawful, 525.

PROCLAIMED DISTRICT,  
proclamation of, 1087, 1089, 1090.  
special jury in, 1086, 1088.  
provisions as to, 1084.

PROCLAMATION,  
evidence of, 277.

PROCURATION, 897.

PRODUCTION OF WARRANT, 19.

PROFANE LANGUAGE,  
bye-law as to, 536.  
See "SWEARING."

PROFESSIONAL PRIVILEGE, 285,  
327.

PROHIBITION, 254.  
See "WRIT OF PROHIBITION."

PROMENADE,  
bye-laws as to, 760.

PROPERTY,  
description of, in conviction, 90.  
injury to private, who can prosecute  
for, 44.  
order as to, in possession of police,  
20, 63, 146, 790, 1094, 1173.  
for forfeiture or destruction of,  
51, 412, 413, 414, 433, 434,  
441, 445, 448, 449, 450, 452,  
453, 454 *n. l.*, 486, 543, 544,  
551, 574, 575, 650, 665, 680,  
781, 782, 786, 787, 788, 791,  
797, 799, 836, 839, 840.  
for restitution of, 20, 60, 63, 146,  
790, 1094, 1173.

**PROPERTY—continued.**

- of joint tenants, how described, 90, 1019.
- of partners, how described, 90, 1019.
- seizure of, on arrest, 20, 149.
- unlawful possession of, one justice sufficient, 55 n. 1, 1051.

**PROPERTY QUALIFICATION,**  
not necessary for J.P., 7.**PROSECUTOR,**

who may be.

See "COMPLAINANT."

**PROSTITUTES,**

- harbouring, in towns, 809.
- loitering, &c., 808.
- offences by, in D.M.P. district, 314, 947.
- permitting on licensed premises, 312, 555, 945.
- prosecutor, who may be, 44.
- public place, what is, 759.
- See "BROTHEL," "FEMALES, OFFENCES AGAINST AND RELATING TO."

**PROSTITUTION,**

- causing seduction or prostitution of young girl, 899, 1200.

**PROTECTION ORDER,**

- from drunken spouse, 520, 521.

**PROTEST,**

- by defendant to jurisdiction, 96 n. 2.

**PROVISO,**

- burthen of proof of, 57, 1008.

**PUBLIC,**

- right of any member to prosecute, 17, 43, 44, 345, 370, 439, 482, 694, 711.

**PUBLIC ACTS,**

- meaning of, 278, 335.

**PUBLIC BOARD,**

- acting as member of, without qualification, 66, 596.

See "LOCAL GOVERNMENT OFFENCES."

**PUBLIC DOCUMENTS,**

- evidence of, 277.

**PUBLIC ENTERTAINMENTS,**

- children, employment of, 400.
- safety of, 1236.

**PUBLIC HEALTH,**

- Act of 1878, procedure—
  - appeal, 695.
  - application of penalty, 695.
  - of Summary Jurisdiction Acts, 694.
  - certiorari taken away, 695.
  - disqualification of justices, 694.

**PUBLIC HEALTH—continued.**

- Act of 1878, procedure—
  - entry in order books is sometimes not the order, 695.
  - signature to orders, 694, 695.
  - summary, 693.
  - time limit, 695.
  - who may be complainant, 694.
- Act of 1890,
  - application of, 733.
  - construction of, 733.
  - summary, 733.
- Act of 1907,
  - appeal under, 742, 750.
  - application of, 742.
  - construction of, 742.
  - procedure under, 742.
  - summary, 742.
- bathing, bye-laws as to, 763.
- building beyond frontage of street, 702.
  - over sewer, 701.
  - vault under street, 701.
  - See "streets and buildings," *infra*.
- burials, provisions as to, 729-731.
- bye-laws by sanitary authority, 702, 703, 706, 707, 714, 717, 718, 723, 729, 735, 736, 737, 739, 740, 745, 752, 760, 763.
- bye-laws by sanitary authority, evidence of, 279, 703.
- cabmen's shelters, 740.
- case stated does not lie from order authorising entry, 235-236.
- cellar dwellings not to be occupied, 716.
- chimneys, height of, 745.
- common courts and passages, cleansing of, 737.
  - lodging-houses, 717, 738, 756.
- compensation—
  - damage done by sanitary authority, 732.
  - food destroyed as unsound, 732.
- continuing offence, 704.
- dancing licence, 117, 740.
- drains and sewers—
  - altering, 698.
  - building house without drain, 699.
  - "drain," 696, 697.
  - enforcement by sanitary authority of drainage, 698.
  - examination of, 713, 735, 748.
  - injurious matter not to pass into, 699, 734.
  - local authority may require opening of, 749.
  - making communications with or altering, 734.
  - "sewer," 696.
  - sinks and drains for buildings, 752.
  - testing of, 751.
  - use of sewer by owner or occupier within district, 697.
  - use of sewer by owner or occupier without district, 697.



PUBLIC HEALTH—*continued.*

- dwelling-house. See "house," *infra*.
- entry on premises, 731, 750.
  - form of order, 767.
- expenses of rural authority, 740.
- factory and workshop. See "FACTORY AND WORKSHOP."
- fire-brigade, 761.
- forms—
  - house-closing order, 722.
  - notice requiring abatement of nuisance, 764.
  - order for admission of sanitary authority, 767.
    - to abate nuisance, 765, 766.
    - to permit execution of work by owner, 766.
  - summons to abate, 765.
    - for house-closing order, 722.
  - hoardings, 738, 748.
- fouling streams, 740.
- house—
  - closing order, 709, 720.
    - form of, 722.
  - demolition order, 720.
  - hoards to be erected during building, 738.
  - let in lodgings, 718.
  - not described as dwelling-house, not to be so used, 738.
  - obstructing operations of Housing of Working Classes Act, 1890, 721.
  - prohibition of erection on ground filled up with offensive matter, 737.
  - purification of, 706.
- Housing of Working Classes Act, 720-722, *Add. et Corr.* cix.
- infectious diseases, 726-729, 753-756.
- injuring notice board, &c., 740.
  - works of sanitary authority, 732.
- life-saving apparatus, 763.
- marine store dealers, 607, 761.
- master's liability for acts of servant, 296.
- matters cognisable by justices, 693.
- music licence, 117, 740.
- nuisances generally—
  - abatement of, 708-710.
  - bye-laws as to dwelling-houses, 707.
  - bye-laws as to house nuisances, 723.
  - closing order, 709.
  - complainant, who can be, 711.
  - definition, 706, 748.
  - entry by constable, 711.
  - sanitary authority, 710.
  - examination of drains, 713.
    - on complaint, 735, 748.
  - form of notice requiring abatement, 764.

PUBLIC HEALTH—*continued.*

- nuisances generally—
  - order to abate, 709.
    - forms of, 765, 766.
    - is not the order in order book, 63-64, 695.
    - must be signed by at least two justices, 694.
  - proceedings by police, 711.
  - summons to abate, 708.
    - form of, 765.
- nuisances, particular—
  - cesspools, filling up of, 751.
  - collection of matter, 713.
  - keeping swine, 712.
  - offensive ditches, 712.
  - overcrowding houses, 714.
  - overflowing water-closet, 712.
  - power to declare business to be offensive, 752.
  - removal of manure, 713.
  - sanitary conveniences, 748.
  - ships, 714.
  - stagnant water, 712.
  - tents, 714.
  - trade nuisances, 722, 723.
  - vans, 714.
- obstructing execution of P.H. Acts, 721, 732.
- offensive trades, 722.
- orders of L.G.B., evidence of, 278.
- overcrowding houses, 707, 714.
- "owner," definition of, 701.
- owner, form of order to permit execution of works by, 766.
- payment for works of common benefit, 750.
- places of public resort, 739.
- pleasure boats, licence for, 763.
  - grounds, 740, 758.
- porters, licences to, 760.
- private improvement expenses, recovery of, 750.
- private streets, paving, sewerage, &c., 699-701.
- promenades, bye-laws, &c., 760.
- public conveniences and lavatories, 735, 752.
- public parks, 740, 758.
- public place, what is, 753.
- purchase of lands, 764.
- purification of houses, 706.
- recreation grounds, 758.
- registries for servants, 760.
- removal by local authority of trade refuse, 752.
- repair of cellars under street, 738.
- rural sanitary authority, 693.
- sanitary accommodation, provisions as to, 704, 748-751.
- sanitary authorities, who are, 693.
- sanitary conveniences—
  - bye-laws as to, 736.
  - factories, 736.
  - for public accommodation, 735, 752.
  - generally, 748-751.

**PUBLIC HEALTH—continued.**

- sanitary conveniences—
  - rooms over privies not to be used for living purposes, 736.
  - used in common, 735.
- sea-shore, bye-laws as to, 760.
- sewers (see *supra*, "drains and sewers").
- sky signs, licence for, &c., 762.
- slaughter-houses, 718, 737.
- "street," what is, 700.
- streets and buildings—
  - altering name of streets, 745.
  - buildings at corner of street, 745.
  - buildings on, 701.
  - bye-laws, 702, 706, 707, 737, 745.
  - cleansing, 705.
  - crossing for cattle over footway, 744.
  - damage to footway by excavations, 745.
  - dangerous places to be closed, 747.
  - deposit of plan, 743.
  - entrances to courts, 746.
  - excavations in streets, 747.
  - exemption of railway, harbour, or canal building, 702, 748.
  - fencing lands adjoining street, 747.
  - frontage of, 702.
  - height of chimneys, 745.
  - hoarding to be erected when building, 740.
  - new buildings, what are, 745.
  - and streets, 743.
  - paving of yard, 745.
  - private street, 699.
  - removal of house refuse, 705, 737.
  - of materials from, 747.
  - temporary buildings, 702, 746.
  - urgent repairs to private streets, 744.
- unsound food, 718, 719, 724, 725, 737, 1277, *Add. et Corr.* cix.
- urban sanitary authority, 693.
- water and water supply, 714-716.

**PUBLIC MEETING,**

- binding over, in respect of anticipated breach of peace, 35.
- disturbance of, 767.
- when unlawful, 525.

**PUBLIC OFFICE,**

- forfeiture of, on conviction for felony, 12, 691 n. 3.

**PUBLIC OFFICIAL,**

- offences by and in relation to, 878, 925, 926.
- presumption in case of, 291.

**PUBLIC PLACE,**

- definition, 759.
- drunkenness in, 425, 426.
- See "HIGHWAY," "INDECENCY."

**PUBLIC POLICY,**

- exclusion of evidence on ground of, 286.

**PUBLIC RESORT.**

See "PLACE OF PUBLIC RESORT."

**PUBLIC STAGE CARRIAGE, 527, 983.**

**PUBLIC STORES,**

- offences as to, 926.
- pawning of, prohibited, 660.
- unlawful possession of, 606.

**PUBLIC WORSHIP,**

- disturbing, 418, 926.

**PUBLICAN.**

See "INTOXICATING LIQUORS."

**"PUBLICAN'S BEER LICENCE," 110.**

**PUBLICAN'S LICENCE,**

- application for licensing certificate, 110, 114-116, *Add. et Corr.* cvi.
- chairman has no casting vote, 116.
- Clitheroe's case, 115.
- disqualification of premises for, 582, 583.
- disqualifications for, 111, 112, 540, 582.
- equal division of justices, 116.
- fitness of applicant, 115.
- premises, 115.
- grant of certificate should be unconditional, 117.
- householder, can be granted only to a, 110.
- identity of premises, 114, 120, 1157 n. 2, *Add. et Corr.* cvi.
- infant cannot hold, 120.
- meaning of "publican's licence," 110.
- must be granted if no objection and within jurisdiction, 115.
- "new licence," 112, 115 n. 1, 120, 1157.
- objection to grant of, 114, 115.
- "publican's beer licence," meaning of, 110.
- quantities in which liquor may be sold under, 110.
- reduction of area, 114, 1157 n. 2.
- refusal of application, 114, 115, 116.
- renewal. See "RENEWAL OF PUBLICAN'S LICENCE."
- reopening case, application for, 116.
- temporary transfer of, at petty sessions, 119, 120.
- transfer as distinguished from new licence, 115, 115 n. 1.
- undertaking not to use to full extent, 117 n. 1.

**PUNISHMENT,**

- Borstal system, 868.
- children, 73, 74, 867, 868, 1082-1084, 1211-1219, 1224, 1229-1231.
- consecutive sentences, 68, 1011.
- fine, 866.
- forfeiture of ticket of leave, 861.
- generally, 90.
- hard labour, 865, 1011 n. 1.
- imprisonment, 865.

**PUNISHMENT**—*continued.*

of indictable offences, 861-866.  
 penal servitude, 861, 865.  
 Probation of Offenders' Act, 1907,  
 866.  
 solitary confinement, 866.  
 whipping, 866.  
 youthful offender, 866-868. See  
 "children," *supra*.  
 See "FINE," "IMPRISONMENT,"  
 "PENALTY."

**PURLIEU**, 486, 486 n. 2.

**PUTATIVE FATHER,**

liability of, to support child, 403,  
 1238.

**QUAIL,**

are game, 482, 484, 489.  
 close seasons for, 488.  
 destroying eggs or nest, 494.  
 game certificate to kill, required, 489.  
 See "GAME LAWS."

**QUARRY,**

accidents in, 351.  
 employment in, 626.  
 order to enter for road material,  
 168-172.

**QUARTER SESSIONS,**

acquittal by, how reviewable, 226-  
 227, 231.  
 adjournment, power of, 9.  
 alteration of petty sessions district,  
 73, 996.  
 amendment of order on appeal, 93.  
 appeal to (see **APPEAL TO QUARTER  
 SESSIONS**)—  
   costs, 78, 136, 1013.  
   generally, 9, 130, 143, 973, 994,  
   1012, 1013, 1047.  
   licensing matters, 117, 141-142.  
   merger of petty sessions order,  
   229.  
   order on, 136, 1013.  
   rate under Towns Improvement  
   Act, 205.  
   rating, 194, 201.  
   valuation, 194, 196.  
 binding over accused to come up  
 for judgment, 10.  
 case cannot be stated by, 237.  
 cases reserved by, 11, 964.  
 certiorari, when applicable, 224.  
 contempt of court, 9.  
 convictions not returnable to, 63,  
 109.  
 county court judge, powers of, 10,  
 349.  
 court of record, is a, 10.  
 criminal jurisdiction of, 9, 10.  
 dates of, 11.  
 divisional justices not to act at, 953.  
 D.M.P. district, 10, 321.  
 enforcing appearance and answer of  
 witness, 291.  
 estreating recognisance at, 9, 38,  
 39, 974, 1061.

**QUARTER SESSIONS**—*continued.*

finer, entry and account of, 969.  
 general sessions included in, 1020.  
 jurisdiction at, 9.  
 licensing jurisdiction at, 9, 110.  
 mandamus to, 247.  
 merger of petty sessions order in  
 order of, 229.  
 privilege of justice at, 327.  
 recognisance to be forwarded to, 38,  
 1007, 1012.  
 recorder sole judge at, 10.  
 sending forward for trial to, 10, 26.  
 separate courts of quarter sessions, 6.  
 treason, jurisdiction as to, 9, 9 n. 4.  
 valuation and rating jurisdiction, 9,  
 194-205.

**QUASHING CONVICTION,**

can defendant be again charged, 105.  
 generally, 233.

**QUEEN'S GAP**, 446.

See "FISHERY LAWS."

**QUESTION OF TITLE,**

See "TITLE OUSTING JURISDICTION."

**RABBITS,**

are not vermin, 491.  
 coursing rabbits, 360.  
 game certificate not required to kill,  
 489.  
 killing in warren by day, 484.  
   in warren by night, 486.  
   on Sunday, 489.  
 night-poaching, 484, 485.  
 poaching, 486.  
 reservation to landlord, effect of,  
 484.  
 trespass, 484.

**RACE,**

stakeholder exempted from Betting  
 Houses Act, 1853, 501.  
 See "GAMING."

**RACECOURSE,**

betting on, 499.  
 for horse racing, not within Street  
 Betting Act, 1906, 504.  
 what is, 505.

**RAILWAY,**

buildings exempt from certain pro-  
 visions of Public Health Acts, 748.  
 bye-laws, 279, 337-338, 771.  
 compensation, for entry under Rail-  
 way Fires Act, 1905, 185.  
 cruelty to animals in transit, 366.  
 damage by non-repair of fences, &c.,  
 by company, 184.  
 damage to road by company, 183-  
 184.  
 dangerous tree near railway, 184.  
 endangering passengers, 769, 919.  
 Factory and Workshop Act, how far  
 applicable to, 1131.  
 false declaration as to goods, 769.



RAILWAY—*continued*.

- intoxicating liquor—
  - railway car licence, 565.
  - sale at railway station, 563.
- offences by company—
  - gates at level crossings, 771.
  - locomotives to consume smoke, 771.
  - passenger ticket to have fare printed thereon, 771.
  - running trains for prize fight, 771.
- offences by passengers—
  - breaking journey illegally, 769.
  - detention of passengers guilty of certain offences, 768.
  - fraudulent travelling, 768.
  - production of ticket, 768.
  - refusal to leave carriage, 768.
- offences by railway servant, 769, 927.
- offences, miscellaneous—
  - damaging train, &c., 912.
  - injuring notice-boards, 770.
  - obstructing railway servant, 770.
  - omitting to shut gates, 770.
  - sending or depositing dangerous goods, 771.
  - trespassing on railway, 770.
  - using communication cord without reason, 771.
- procedure, 772.
- provision of water, &c., for animals at railway station, 366.
- railway car licence, 565.
- workman may be required to join friendly society, &c., 1159.

## RAILWAY STATION,

- sale of intoxicating liquors at, 563.

## RAPE,

- criminal capacity of child, 255.
- generally, 896.
- having carnal knowledge of lunatic, 896, 911.
- See "FEMALES, OFFENCES AGAINST AND RELATING TO," "OFFENCES AGAINST THE PERSON."

## RATE,

- case stated does not lie from application for distress warrant for, 236.
- copies of, or extracts, may be taken, 677.
- poor rate, liability for, 204.
- recovery of, 205.
- seed rate, 167.
- Towns Improvement Act, 204.
- water rate, 165-167.
- See "RATING" and "VALUATION."

## RATING,

- appeal to quarter sessions against, 194, 201.
- amendment by quarter sessions on, 201.
- costs of, 201.
- notice required on, 201.
- power of quarter sessions on, 201, 202.
- recognisances required on, 202.

RATING—*continued*.

- appeal to quarter sessions against, town having special Act, 205 n. 1.
- Towns Improvement Act, 205.
- where to be heard, 201, 202.
- fisheries, rating of, 440.
- licensed premises, licensee to furnish particulars, 576.

## "REASONABLE TIME BEFORE HEARING," 49.

## RECEIVING DEPOSITS FOR BETS, 501.

## RECEIVING PROPERTY STOLEN OR OBTAINED BY FALSE PRETENCES,

- bail discretionary with justice, 26.
- evidence, 268.
- generally, 927, 928, *Add. et Corr.* cix.
- husband and wife, 530, 928.
- summary jurisdiction as to, 588.

## RECKLESS DRIVING,

- cars and carts, 314, 527, 873, 947, 985.
- motor-cars, 630.

## RECOGNISANCE,

- accused bound over, 29, 30, 1005-1007.
- case stated, 238.
- forfeiture, 238, 243, 1040.
- clerk of petty sessions, when to be retained by, 38, 71, 1034.
- corporation, 134, 135.
- default in paying amount forfeited on, 39.
- demise of Crown, effect of, on, 39.
- D.M.P. district, power of police to take, 318.
- estreating, 38, 39, 71, 72, 238, 243, 974, 977, 1017, 1040, 1061.
- fees on, 1047.
- for one petty sessions enures to adjournment thereof, 61, 1043.
- forfeiture of, in case of surety, 1061.
- form of, 71, 1017, 1021, 1023.
- forwarding to Clerk of Crown, 38, 71, 1037, 1017, 1034.
- infant cannot be surety, 30.
- infant, recognisance by, 134.
- informant may be bound over, 17, 1000.
- manner of taking, 38, 71, 134-135, 1017, 1021, 1023.
- married women can enter into, 30.
- neglect to insert names and additions &c., in, 942.
- neglect to return recognisances, 942.
- oath as to means, 941.
- on appeal to quarter sessions—
  - from grant or refusal of beer dealer's licence, 142.
  - from grant or refusal of beer retailer's licence, 142.
  - from grant or refusal of spirit grocer's licence, 143.
  - in rating appeal, 202.

**RECOGNISANCE**—*continued.*

- on appeal to quarter sessions—  
in valuation appeal, 196.  
under Fines Act, 973, 1052.
- on appeal under Petty Sessions Act,  
134, 1013, 1052.  
Small Debts Act, 143, 1047,  
1052.
- peace and good behaviour, 33-39,  
341-342.
- Probation of Offenders Act, 1907,  
59, 60.  
to abstain from drink, 426.
- requisites of, 941.
- retention by clerk of petty sessions  
of, 38, 1017.
- transmission of, to clerk of Crown  
and Peace, 38, 71, 1007, 1017,  
1034.
- Vexatious Indictments Act, under,  
27, 28, 1050.
- witness may be bound over, 22, 1003.

**RECORDER,**

- of city or borough, appeal (under  
Fines Act) to, 139.
- of Dublin, extensive criminal juris-  
diction, 321.
- sole judge at quarter sessions, 10.

**RECREATION GROUND,**

- establishment and regulation of, 758.
- is "public place," 759.

**RECRUITING,**

- offences as to, 374.
- See "ARMY."

**RECTIFIER OF SPIRITS,**

- disqualified for liquor licence, 111.

**RE-ENACTMENT OF STATUTES,**

- effect of, 334.

**RE-EXAMINATION, 285.****REFORMATORY,**

- offences as to, 688.
- See also "CHILDREN."

**REFORMATORY FOR INEBRIATES,**  
514.

- See "HABITUAL DRUNKARD."

**REFRESHING MEMORY,**

- of witness, 276.

**REFRESHMENT HOUSE,**

- licence required for, 772.
- urinal to be attached to, 751.

**REFUSAL OF INFORMATION,**

- effect of, 27.
- meaning of, 27.

**REFUSAL TO ADJUDICATE,**

- remedy for, 246.

**REFUSAL TO ASSIST POLICE, 923.****REGISTERED DRUGGIST, 395.**

- See "CHEMIST," "POISONS, SALE OF."

**REGISTRATION,**

- recovery of costs and fines im-  
posed by barrister at registration  
courts, 967-968.

**REGISTRATION OF BIRTHS,**

- births at sea, 776.
- certificate, evidence, 775
- default not wilful, no penalty for,  
776.
- deserted infant, 773.
- false statement, 775.
- notification under Act of 1907, 774.
- officials and districts, 773.
- particulars may be called for by  
registrar, 773.
- particulars to be given to registrar,  
773.
- procedure, 776.
- registration in district other than  
district of birth, 774.
- registration three months after birth,  
774.

**REGISTRATION OF CLUB, 126-128,**  
1160.

- appeal from decision of court, 128,  
1164.
- application for, 126, 1160.  
certificate to accompany, 126,  
1160, 1165.
- cancelling, 128, 1164.
- certificate of registration, form of,  
1165.
- definition of terms, 1165.
- effect of, 128.
- false application, &c., 128, 1165.
- grant of certificate, 127, 1161.
- objection to, grounds of, 127, 128,  
1162.
- who may make, 127, 1161.
- offences as to clubs, 128, 129, 1163-  
1165.
- register to be kept, 126, 1160.  
right to inspect, 1160.
- renewal of, 127, 1161.
- return of liquor purchased for sale  
in club, 128, 129.
- rules to qualify for registration, 1161.
- sale of liquor for consumption off  
club premises, 128, 1163.
- sale of liquor in unregistered club,  
129, 1163.
- search warrant to enter, 128, 145,  
1163.

**REGISTRATION OF DEATHS,**

- burial. See "BURIAL."
- certificates evidence, 775.
- death at sea, 776.
- death occurring in a house, 774.  
not in a house, 774.
- default, not wilful, no penalty for,  
776.
- false statements, 775.
- non-delivery of medical certificate  
of death, 775.
- officials and districts, 773.

REGISTRATION OF DEATHS—*continued.*

- particulars may be required by registrar, 774.
- procedure, 776.
- registrar to ascertain and register death, 774.
- registration twelve months after death, 774.
- where medical certificate is given, 774.

## REGISTRATION OF MARRIAGES.

- marriage solemnised by R.C. priest—
  - certificate of marriage, 777.
  - correction of error in register, 778.
  - husband, duty of, 777.
  - injury to register, 778.
  - procedure, 778.
  - registration by registrar, 778.
  - returns by registrar, 778.
- marriage not solemnised by R.C. priest—
  - Acts as to registration of, 776.
  - duty of registrar of, 777.
  - injury to register, 777.
  - procedure, 777.
  - registration by husband, 777.
  - registration by person before whom solemnised, 776.
- offences, indictable, as to, 914.

## REGISTRAR OF PETTY SESSIONS CLERKS, 1041, 1081, 1062.

See "CLERK OF PETTY SESSIONS."

REGISTRY FOR SERVANTS,  
regulation of, 760.RE-HEARING,  
appeal to quarter sessions is a, 136.RELEVANT EVIDENCE,  
what is, 262.RELIEVING OFFICER,  
notice to be given to, of eviction under Land Law (Ireland) Act, 1887, 192.RELIGIOUS WORSHIP,  
disturbing, 418, 926.REMANDING,  
accused, 24, 1004.  
accused may be again brought up notwithstanding remand, 24, 1004.  
Customs cases, in, 81.  
"eight clear days," how computed, 24 *n.* 4.  
Excise cases, in, 79.  
if accused admitted to bail, may be for more than eight days, 24 *n.* 4.  
if bail refused, K.B.D. may interfere, 25.  
term of remand, 24.

## REMITTING CASE STATED, 241, 242, 1040.

## REMOVAL OF DANGEROUS LUNATIC, 151, 794.

RENEWAL OF PUBLICAN'S LICENCE,  
appeal to quarter sessions from order refusing, 117, 141-142.  
applicant must have carried on business during year, 121.  
application for, 120-121.  
can only be granted to premises substantially the same, 114, 120, 1157 *n.* 2, *Add. et Corr.* cvi.  
case stated does not lie from refusal, 121.  
certificate required for, 120.  
equal division of justice on application for, 121.  
latest date of applying for, 120.  
minority of justices cannot grant, 121.  
necessity for, 120.  
objections, grounds of—  
character of applicant, 120.  
conduct of business, 120.  
structural alterations, 120.  
objections, justice making, 115.  
who may make, 120.  
order of refusal must assign grounds, 121.  
petty sessions at which granted, 120.  
procedure, 114, 120.  
prohibition lies to justice wrongfully proposing to issue certificate for, 254.  
reduction in area of premises, effect as to, 114.  
to transferee, *quære*, 121.RE-OPENING CASE,  
application for licence, 116.  
jurisdiction where defendant subsequently appears, 47, 346.  
on arrival of justice after case part heard, 56, 345.  
to admit formal proof, 57, 346.REPEAL,  
by Statute Law Revision Acts, 340.  
of statutes, effect of, 334.  
when general statute does not repeal earlier particular statute, 69.REPLY,  
evidence in, when prosecutor may give, 57, 346, 1008.  
no right of, in summary trials, 57, 346, 1008."REPUTED PINT,"  
what is, 540.RES GESTÆ,  
admissible in evidence, 263.RES INTER ALIOS ACTÆ,  
definition of, 263.  
inadmissible generally, 263.  
when admissible—  
by statute, 268.  
character, in order to prove, 269.  
conspiracy, in order to prove, 266.  
declaration in case of rape, &c., 269.



**RES INTER ALIOS ACT.E—continued.**

when admissible—  
 dying declaration, 270.  
 intent, in order to prove, 266.  
*res gestæ*, when constituting, 263.  
 statements by servants of accused, 264.

**RES JUDICATA,**

plea of, to be made at hearing of case, 106.  
 principles, examples, &c., 102–105.  
 See “AUTREFOIS ACQUIT,”  
 “AUTREFOIS CONVICT.”

**RESCUE, 928–930.**

out of pound, 682, 992.

**RESERVOIR,**

fouling of, by gas company, 506.  
 generally, 716.

**RESIDENT MAGISTRATE,**

appointment, 3.  
 salary, 3.  
 special powers of, in proclaimed district, 1084.  
 “Stipendiary Magistrate,” 8, 176 n. 3.

**RESISTING PEACE OFFICER, 20.**

See “POLICE.”

**RESTITUTION OF PROPERTY,**

larceny by juvenile offenders, 979.  
 pawned property, 661, 957.  
 stolen property, 586, 789, 1034.  
 to accused, 20.  
 See “PROPERTY.”

**RETREAT,**

for habitual drunkard, 514.  
 See “HABITUAL DRUNKARD.”

**RETURNING ACCUSED FOR TRIAL,**

person arrested upon search warrant, 145.

See “PRELIMINARY INVESTIGATION OF INDICTABLE OFFENCES.”

**RETURNING CASE STATED TO JUSTICES, 224.****REVENUE ACTS.**

Dublin Police Act not applicable, 309, 956.  
 master's liability for acts of servant, 293, 296.  
 Petty Sessions Act not applicable, 1020.  
 See “SUMMARY CASES NOT WITHIN PETTY SESSIONS ACT.”

**REVISION OF VALUATION.**

See “VALUATION.”

**RIDING,**

furiously, 314, 947, 985.  
 miscellaneous offences, 314, 947, 985.  
 on footpath, 314, 526, 947, 981.  
 rule of the road, 527, 985.

**RIGHT TO TRIAL ON INDICTMENT,**  
 accused to be informed of, 21.**RINGING DOOR BELL,**

by chimney-sweeper, 407.  
 D.M.P. district, 314, 948.

**RIOT,**

arrest for, 150.  
 bailable by justices, 29.  
 calling assistance to quell, 151.  
 closing licensed premises, 151, 565.  
 definition of, 149, 150, 930.  
 justice failing to read Riot Act, 926.  
 powers of justices and peace officers as to, 150, 151.  
 powers of private persons as to, 151.  
 punishment of, 930.  
 trial of, special jurisdiction, 778, 1086.

**RIVER.**

fouling of, by gas company, 506.  
 obstructing, 424.  
 poisoning, 442.  
 throwing carcase into, 368.  
 See also “FISHERY LAWS.”

**ROAD,**

closing for military manœuvres, 378.  
 entry on land to survey new line of, 168.  
 meaning of, 524.  
 obtaining materials for, 168–172.  
 order on railway company to repair, &c., road, 183–184.  
 railway level crossings, 771.  
 See “HIGHWAY,” “ORDER TO CUT HEDGES,” “ROAD CONTRACT,” “ROAD MATERIALS.”

**ROAD CONTRACT,**

enforcement of, 172.

**ROAD CONTRACTOR,**

obstruction of, 526, 981.

**ROAD MATERIALS,**

entry in order book is not order to enter for, 64, 100, 169.  
 entry on land to obtain, 168–172.  
 costs of order, 172.  
 jurisdiction, 168.  
 order, essentials of, 170.  
   not subject to case stated, 170, 236.  
   specimen of, 171.  
   what is, 64, 100, 169.  
 procedure, 169.  
 order to enter for, may be made by one justice, except in Dublin County, 55, 169.  
 order to enter for, requires two justices in Dublin County, 169.  
 quashing order on certiorari, 170, 225.

**ROBBERY, 908.**

assault with intent to rob, 873.  
 what is, 907.  
 wife's responsibility for robbery committed in presence of husband, 299.  
 See “LARCENY.”

ROGUE AND VAGABOND,  
enumeration of classes of, 830, 831.  
person keeping lottery, 503.  
punishment of, 831.

ROOT,  
larceny of, 588.

ROUT, 150.

ROYAL ARMS, 652, 778.

ROYAL IRISH CONSTABULARY,  
offences by, 676.  
See "POLICE."

ROYAL WARRANT,  
false representation as to, 621.

RULE OF ROAD,  
keeping on wrong side, 527.  
statute law as to, 985.  
subordinate to consideration of  
safety, 527 *n.* 5.  
tramways, 527 *n.* 5, 815.

RULE TO JUSTICES,  
alternative to mandamus, 249.  
to compel them to state case, 241,  
249, 1031.

RULES PUBLICATION ACT, 1893,  
evidence of rules, 336.  
rules of Department of Agriculture  
and Technical Instruction for Ire-  
land, 337.  
"statutory rules," 336.

RURAL SANITARY AUTHORITY,  
what is, 693.

RURAL SANITARY DISTRICT,  
what is, 693.

SABBATH.  
See "SUNDAY."

SACRILEGE, 904.

SALE OF BREAD, 386.  
See "BREAD."

SALE OF DISTRESS, 70, 383, 1016.  
See "DISTRESS."

SALE OF GOODS,  
fraud in, summary jurisdiction, 45,  
979, 998.  
See "FOOD AND DRUGS."

SALE OF OFFICES, 926.

SALMON.  
See "FISHERY LAWS."

SALVAGE JURISDICTION, 176-178.

SAMPLES, TAKING.  
See "FOOD AND DRUGS."

SAND GROUSE,  
protection of, 856.

SANITARY AUTHORITIES, 693.

SANITARY CONVENIENCES, 735, 736  
common lodging-house, 757.  
generally, 704.  
indecent advertisement in, 352.  
provision and conversion of closet  
accommodation, 749.  
public conveniences and lavatories,  
provision of, 752.  
rain-water pipes not to be used as  
soil pipes, 748.  
urinal, removal or alteration of, 751.  
urinal to be attached to refreshment  
houses, &c., 751.  
water-pipe not to be used as ven-  
tilating shaft, 748.  
See "PUBLIC HEALTH."

SCAVENGING STREETS, 314, 705, 737,  
949.

SCHOOL,  
attendance order, 427-429.  
breaking and entering, 905.  
certification and inspection of, 1209,  
1210.  
children required to attend, employ-  
ment forbidden, 429.  
contribution by parent, &c., 1222.  
day industrial, 1224-1226.  
duties and powers of managers, 1210,  
1211.  
expenses of certified, 1220, 1224.  
infectious diseases in, 727.  
list of certified schools, 1212 *n.* 1.  
offences in relation to certified  
schools, 1218-1219.  
recovery of school fees, 160, 988.  
right of master to punish pupils,  
383.  
sending child to reformatory or in-  
dustrial, 1211-1218.  
See "CHILDREN," "EDUCATION."

SCHOOLMASTER,  
punishment by, 383.

SCOTCH OATH,  
form of, 259.

SCOTLAND,  
backing warrant from and in, 19,  
309, 1015.

SEA,  
high seas, jurisdiction as to, 14.  
throwing carcase into, 368.  
what portion of, is part of county,  
42 *n.* 2.

SEA WALL,  
malicious damage to, 912.

SEAL,  
convictions outside Petty Sessions  
Act require, 77 *n.* 2.  
convictions under Petty Sessions  
Act do not require, 63, 1009, 1019,  
1024.

SEAL—*continued.*

- D.M.P. district, on summons in, 77 *n.* 8.
- necessary on warrant of ejectment, 190.
- not necessary on summons under Petty Sessions Act, 46, 1019.
- not necessary on warrant under Petty Sessions Act, 1019.

## "SEALED" VESSELS, 540.

## SEAMAN,

- assault on, 382.
- claim by, for wages, 160.
- exclusion of, from Conspiracy and Protection of Property Act, 1875, 613.
- offences as to, 915.
- pawning property, restrictions on, 660.
- See "SHIP."

## SEARCH,

- poachers, 486.
- prisoner, 20, 149.
- stolen property, 144-146, 687.
- See "SEARCH WARRANT."

## SEARCH WARRANT,

- adulterated flour or meal, 387.
- army equipment or stores, 377.
- at common law, 144.
- betting houses, 502.
- cannot be backed, 145.
- child ill-treated, 1203.
- clubs, 128, 1163.
- concealed wreck, 857.
- Customs Acts, under, 81.
- disposal of property seized on search warrant, 146.
- D.M.P. district, 313, 313 *n.* 2, 954.
- form of, 145, 1029.
- gaming houses, 497.
- obstructing entry of police, 497.
- illicit distillation, 544.
- intoxicating liquor, 572, 573, 574.
- Merchandise Marks Act, 623.
- obscene books or pictures, 649.
- petroleum, 666.
- pirated copies of musical work, 413.
- powers under, 145.
- statutes expressly authorising, 145.
- stolen property, 144-146, 313, 589, 663, 687, 954.
- Sunday, issue and execution of, 144, 145, 313 *n.* 2, 793.
- unsound food, 725.
- who may issue, 144, 146.

## SEASHORE,

- bye-laws as to, 385, 522, 760.
- taking materials from, 213, 522, 981.
- taking seaweed from is not larceny, 907 *n.* 3.
- what portion of is part of county, 42 *n.* 2.

## SEATS,

- in shops, 784.

## SEAWEED,

- taking, is not larceny, 907 *n.* 3.

## SECOND CHARGE,

- hearing, before deciding as to first charge, 107.
- See "SECOND OFFENCE."

## SECOND OFFENCE,

- cannot be treated as first offence, 67, 92.
- consecutive imprisonment for, 68, 1011.
- conviction of, on indictment, 685.
- evidence of first conviction, 92, 281-282.
- form of conviction for, 92.
- hearing second charge before deciding on first, 107.
- increased penalty for, 91, 92.
- penalty for, 67.
- what is, 67, 91, 92, *Add. et Corr.* cviii.

## SECONDARY EVIDENCE OF DOCUMENTS, 281.

## SECRET COMMISSION, 389, 878.

## SECRET DISPOSITION,

- of dead body, 886.
- of child, 877.

## SECRET SOCIETY,

- Criminal Law and Procedure (Ir.) Act, 1887, 779.
- indictable offences, 780, 932.
- penalties, 779.
- permitting unlawful meetings in house, 779.
- societies which are unlawful, 778.

## SECRETARY OF STATE,

- orders, evidence of, 277.

## SECRETS, OFFICIAL,

- disclosure of, 919.

## SECURING ATTENDANCE OF DEFENDANT,

- indictable offences, in, 17, 1000.
- summary offences, in, 45-50, 77, 1000-1001.

## SECURITIES,

- forgery of, 901.
- larceny of, 908.
- obtaining by false pretences, 895.

## SEDITION,

- conspiracy, seditious, 917.
- "seditious intention," 910 *n.* 2.
- seditious language, 930.
- libel, 910.

## SEDUCTION,

- encouraging, &c., 899.
- under promise of marriage, 898 *n.* 2.
- See "FEMALES, OFFENCES AGAINST AND RELATING TO."



SEED,  
adulteration of, 352, *Add. et Corr.* cvii.  
"killing," 352.

SEED OATS,  
recovery of rate for, 167.

SEED POTATOES,  
recovery of rate for, 167.

SEIZURE,  
excessive, 312, 417, 957.  
of property or documents by police,  
20.  
warrant of justice, what may be  
taken under, 71, 418.  
See "DISTRESS."

SENTENCE,  
See "CONVICTIONS," "FINE," "IM-  
PRISONMENT," "PENALTY," "PUN-  
ISHMENT."

SEPARATE COMMISSION OF THE  
PEACE, 6.

SEQUESTRATION, WRIT OF,  
against corporation, 21 n. 1.

SERVANT.  
See "MASTER AND SERVANT."

SERVICE OF SUMMONS,  
by post, 49, 336.  
constabulary, by, 48, 1001.  
D.M.P. district, 308, 953.  
Excise cases, 77, 943.  
express statutory provisions as to, 50.  
if not effected, fresh summons may  
issue on same complaint, 59.  
"last or most usual place of abode,"  
48, 1001 n. 2.  
manner of, 48, 1001.  
on company, 48.  
Petty Sessions Act, in cases within,  
49, 50, 1001.  
Petty Sessions Act, in cases not  
within, 77.  
proof of, 1001.  
questioning, on certiorari, 225.  
"reasonable time before hearing," 49.  
summons server, by, 48, 1001, 1018.  
waiver, 50, 109.

SETTING ON DOG, 314, 422, 423, 947,  
982.

"SEVERAL" FISHERY, 439.  
See "FISHERY LAWS."

SEVERAL OFFENCES,  
forming one transaction, 271.

SEWAGE,  
discharge of, into river, 101.  
injurious matter into  
sewer, 734.  
See "PUBLIC HEALTH."

SEWER, 696.  
See "PUBLIC HEALTH."

SHAREHOLDER,  
disqualification of justice by being,  
217, 221.

SHEEP,  
carcase of, to be buried, 423.  
dog chasing, 421.  
larceny of, 590, 907.  
scab in, 365.  
unlawful possession of carcase or  
skin, 1051.

SHEEP SCAB, 365.

SHERIFF,  
acting as justice, 6, 780.  
auctioneer's licence not required by,  
383.  
disqualified for holding liquor licence,  
111.  
extorting excessive fees, 417, 780.

SHERIFF'S OFFICER,  
disqualified for holding liquor licence,  
111.

SHIP,  
Admiralty jurisdiction as to, 14 n. 1,  
16.  
altering ship without sending notice,  
780.  
damage done by, to harbour, &c.,  
523.  
deserter from, 781.  
discipline, 781.  
false certificate by builder, 780.  
signal to, 931.  
fraud as to documents, 781.  
improperly retaining certificate of  
registry, 780.  
larceny from, 909.  
malicious injury to, 930.  
marking false draught, 780.  
master's right of personal chastise-  
ment, 383.  
miscellaneous indictable offences as  
to, 930.  
nuisances in, 714.  
offences by master, 781.  
committed on, 16.  
passenger may be arrested, 383.  
petroleum conveyed in, 664, 665,  
procedure under Merchant Shipping  
Act, 781.  
provisions as to conduct in harbour,  
522, 523.  
registration of master, 780.  
name, 780.  
sending dangerous goods, 781.  
sending unseaworthy ship to sea, 931.  
stowaway, 781.  
timber and grain, loading, &c., 781.  
unauthorised change of name, 780.  
unlawful possession of shipwrecked  
goods, 588.  
See "MERCHANT SHIPPING ACT,  
1894."

SHIPWRECK,  
causing, 930-931.  
destroying ship in distress, 931.

- SHIPWRECK**—*continued*.  
 restitution of property taken from wreck, 790.  
 taking wreck from British coast to foreign port, 916.  
 unlawful possession of shipwrecked goods, 588.
- SHOP**,  
 breaking into, 905, 905 *n.* 1.  
 closing order by local authority, 784, 785.  
 club. See "SHOP CLUB."  
 hours of employment and notice, 783, 784.  
 regulations by central authority, 785.  
 seats to be provided for female assistants, 784.  
 See "FACTORY AND WORKSHOP."
- SHOP CLUB**, 782.  
 certified shop club, 1158.  
 compensation to workman ceasing membership, 1159.  
 definition, 1159.  
 penalties, 1159.  
 railways exempted, 1159.  
 regulations as to shop club or thrift fund, 1159.  
 rules of, 1159.  
 "thrift fund" defined, 1159.  
 workman not to be required to join, 1158.
- SHORE**,  
 taking materials from, 213, 522, 981.
- SHORT TITLES ACT**, 1896, 336.
- SHRUBS**,  
 larceny of, 587, 588, 590, 1051.  
 malicious damage to, 601, 602, 912.
- SIGN**. See "SKY SIGN."
- SIGNAL**,  
 false signal to ship, 931.  
 to smuggling vessel, 128, 931.
- SIGNATURE**,  
 to orders or convictions, 63, 77, 100, 1009.
- SILK WEAVING**,  
 tickets in, 613.
- SILVER PLATE**, 512.  
 See "PLATE."
- SIMPLE LARCENY**, 585-586, 906.  
 See "LARCENY."
- SINGING**,  
 in Dublin street, 317, 1077.
- SINGULAR**,  
 includes plural, 335.
- SKY SIGN**,  
 licence for and regulation of, 762.
- SLAUGHTER**,<sup>1</sup>  
 of injured animal, 363.
- SLAUGHTER-HOUSE**,  
 bye-laws as to, 339, 718.  
 licence—  
 duration of, 737.  
 necessity for, 360 *n.* 4.  
 revocation of, on conviction, 738.  
 suspension of, 719.  
 master's liability for acts of servant, 297.  
 notice of change of occupier, 737.  
 on premises, 719.  
 offences under Cruelty to Animals Act, 1849, 360.  
 provision of, by urban authority, 718.  
 provisions of Public Health Act of 1890, 720.  
 Towns Improvement Act, 1854, provisions as to, 805.  
 unsound meat, inspection and seizure of, 719 *n.*, 719-720.
- SLEEPING OUT**, 830.
- SLIDE**,  
 making, 526, 808, 982.  
 making, in D.M.P. district, 314, 948.
- SMALL DEBTS**,  
 appeal to County Court judge, 143, 156.  
 jurisdiction, 155-156.  
 master and servant. See "MASTER AND SERVANT."  
 order is subject to case stated, 235.  
 procedure, 156.  
 what goods may be taken, 71, 418.  
 See "CIVIL JURISDICTION."
- SMALL PENALTIES (IR.) ACT**, 1873, 1060.  
 See "SUMMARY CASES WITHIN PETTY SESSIONS ACT," "WARRANT OF DISTRESS."
- SMALL-POX**.  
 See "VACCINATION."
- SMOKE**,  
 locomotives, 598, 771.  
 motor-cars, 628.  
 nuisance from, 707.  
 railway, 771.
- SMUGGLING**,  
 assaulting or obstructing Customs officer, 787.  
 assembling to run goods, 788.  
 burden of proof, 786.  
 deficiency of dutiable goods on ship, 788.  
 denying possession of smuggled goods, 787.  
 dutiable goods—  
 concealment of, 786.  
 illegal importation, 788.  
 removal, 786.  
 shipment, 786.  
 unshipment, 786.  
 indictable offences, 788, 931.  
 presence on smuggling vessel, 787.

**SMUGGLING—continued.**

- pretending that goods are smuggled, 788.
- procedure, 786.
- rescuing goods, 787.
- persons, 787.
- searching suspected smugglers, 787.
- ships not bringing to, 787.
- signalling smuggling vessel, 148, 931.
- smuggling vessel off coast, 786.

**SNIPE,**

- close season for, 488.
- destroying eggs or nest, 494.
- game certificate to kill required, 489.
- when game, 483, 484.
- See "GAME LAWS."

**SOCIETIES,**

- unlawful, 778, 932.
- See "SECRET SOCIETY."

**SODOMY, 887.****SOLDIER,**

- delivery to civil power, 378.
- taking out of service for offences, 378.
- See "ARMY."

**SOLEMN DECLARATION,**

- fees on, 1047.
- See "STATUTORY DECLARATION."

**SOLICITING ORDERS,**

- for excisable articles, 574.

**SOLICITOR,**

- acting as, without being qualified, 789.
- appearance of defendant by, 47.
- defendant not entitled to adjournment in order to instruct, 23.
- falsely pretending to be, 788.
- for accused may, but ought not to be, surety, 30, 30 n. 2.
- fraudulent concealment of mortgage, &c., by, 902.
- petty session clerk forbidden to act as, 930, 1018, 1042.
- practising without certificate, 788.
- professional privilege, 285, 327.

**SOLITARY CONFINEMENT, 860.****SOVEREIGN,**

- evidence of orders of, 277.
- offences against. See "ASSAULT," "SEDITION," "TREASON."

**SOWING,**

- poisoned grain, 670, 1279, 1282.

**"SPEAKING ORDER,"**

- may be made by quarter sessions on appeal, 139, 237.

**SPIRIT GROCER,**

- appeal from grant or refusal of licence, 117, 123, 143.
- application for certificate, 110, 121, 122, 123.

**SPIRIT GROCER—continued.**

- certificates required by, 122.
- effect of Licensing Act, 1902, 112, 1157, *Add. et Corr.* cvi.
- objection to, grounds of, 123.
- objection to, who may make, 123.
- petty sessions at which certificate granted, 122, 123, *Add. et Corr.* cvi.
- procedure, 122.
- sale authorised by licence, 122.
- temporary transfer of licence cannot be granted, 123.
- See also "INTOXICATING LIQUORS."

**SPIRITS,**

- conviction for selling without licence, disqualifies for licence to retail wine, 111.
- search warrant, 146, 572-574.
- See "INTOXICATING LIQUORS."

**SPOKEN JUDGMENT,**

- effect of, 108.
- withdrawal of, 108-109.

**SPORTS,**

- on Sunday, prohibited, 792.

**SPRING GUNS, 919.****STAGE CARRIAGE, 314, 315, 527, 983.****STAKEHOLDER,**

- in horse race or lawful sport, &c., exempt from Betting Houses Act, 1853, 501.

**STAMPS.**

- D.M.P. district, procedure, 309, 959.
- fraud in relation to adhesive, 681, 789.
- mitigation of penalties not allowed, 78.
- on notices of appeal, 135-136.
- summons, 46, 1044, 1047.
- various documents, 1044, 1047.
- Petty Sessions Act not applicable to Stamp Acts, 76, 1020.
- procedure under Stamp Acts, 80.
- search warrant for forged or stolen, 146.

**STATEMENT,**

- by accused, 23, 272-275, 1004.
- in presence of accused, 271.
- of offence, 82, 84.
- See "CONVICTIONS," "EVIDENCE."

**STATUTES,**

- "affidavit," 335.
- application of English pre-Union Statutes, 334.
- commencement of, 334.
- "county," 335.
- "Court of Quarter Sessions," 336.
- "Court of Summary Jurisdiction," 335.
- distance, measurement of, 336.
- "land," 335.



STATUTES—*continued.*

marginal notes do not form part of Act, 336.  
 masculine gender, includes the feminine, 335.  
 "month," 335.  
 "oath," 335.  
 party aggrieved, 335.  
 "person" includes Corporation, 335.  
 plural includes singular, 336.  
 Public Acts, 335, 336.  
 repeal by Statute Law Revision Acts, 340.  
 repeal, re-enactment, &c., 334.  
 service by post, 336.  
 service, 336.  
 Short Titles Act, 1896, 336.  
 singular includes plural, 335.  
 Summary Jurisdiction (Ir.) Acts, 335.  
 Summary Jurisdiction Acts, 335.  
 "swear," 335.  
 time, 336.  
 title forms part of Act, 336.  
 when general statute does not repeal earlier particular statute, 67.

STATUTORY DECLARATION,  
 false declaration under Friendly Society Acts, 479.  
 making false, 921.  
 Stamp Duty on, 1044, 1047.

STATUTORY RULES, 336.

STAY OF EXECUTION,  
 pending appeal, 69, 137, 1012.  
 pending case stated, 241, 1039.

STEALING. See "LARCENY."

STEAM-BOILERS,  
 in factory and workshop, 1101.

STEAM-ENGINE,  
 See "LOCOMOTIVE," "RAILWAY,"  
 "SMOKE," "TRAMWAY."

STEAM TRAWLING, 452.  
 See "FISHERY LAWS."

STEAM-WHISTLE,  
 use of, in factory, &c., 789.

STEP-CHILD,  
 liability of step-parent for support,  
 401 n. 1, 403.

STEP-PARENT,  
 liability for support of step-child,  
 401 n. 1, 403.

STILE,  
 larceny of, 587.  
 malicious damage to, 603.

STILL, 543.

"STIPENDIARY MAGISTRATE,"  
 meaning of, 8.

"STIPENDIARY MAGISTRATE" —  
*continued.*

meaning of, in Merchant Shipping Act, 1894, 176, 176 n. 3.  
 power of, to act alone under Criminal Justice Act, 1855, 586, 1035.]

STOLEN GOODS,  
 disposal of, when seized on search warrant, 146.  
 D.M.P. district, 313, 945.  
 general dealers, duty as to, 511.  
 in hands of police, disposal of, 146.  
 order for return of, 63.  
 receiving, summary jurisdiction as to, 588.  
 restitution of, 790.  
 search warrant for, 144-146, 589, 663, 687, 954.  
 search warrant for, in D.M.P. district, 313, 954.

STONE THROWING,  
 in street, 527, 808.  
 in D.M.P. district, 313, 928.  
 on railway, 919.

STORING LIQUOR, 576.

STOWAWAY, 781.

STRAY CATTLE, 392, 682.

STRAY DOGS, 422.  
 See "DOGS."

STREAM,  
 fouling of by gas company, 506.  
 obstructing, 424.  
 throwing rubbish into, 740.

STREET,  
 betting in, 504.  
 definitions of, 504, 524, 702, 805, 806.  
 gas company, obligations of, 506.  
 names and numbers, 802.  
 obstruction of, during public procession, 805.  
 offences, 805-809.  
 trading of children in, 398, 399, 400.  
 See "HIGHWAY," "DUBLIN METROPOLITAN POLICE DISTRICT,"  
 "TOWNS IMPROVEMENT."

STREET MUSICIAN,  
 householder in D.M.P. district may require street musician to desist,  
 317, 1077.

STREET TRADING,  
 employment of child in, 398-400.  
 See "CHILDREN."

STREET TRAFFIC, 529.  
 See "HIGHWAY," "DUBLIN METROPOLITAN POLICE DISTRICT,"  
 "TOWNS IMPROVEMENT."

STRIKE,  
 offences, 610-612.

SUB-INSPECTOR,  
 now district inspector, 1018.

SUBORNATION OF PERJURY, 28,  
29, 920, 1050.

SUBPCENA,  
for witness, 21, 53, 78, 79, 80, 1002.  
for witness before Dublin divisional  
justice, 308, 953.  
issued *mala fide*, may be set aside,  
53, 228-229.

SUB-SHERIFF,  
disqualified for acting as justice, 6,  
780.  
disqualified for holding liquor licence,  
111.  
extortion by, 780.  
penalty for acting as justice, 780.

SUBSTITUTION OF FRESH CHARGE,  
against will of complainant, 99, 100.  
defendant, 95.  
by High Court upon case stated,  
97-98, 242.

SUICIDE, ATTEMPTED,  
D.M.P. district, summary jurisdic-  
tion, 312, 1055.  
indictable offence, 932.

SUMMARY CASES NOT WITHIN  
PETTY SESSIONS ACT,  
costs, 77.

against Crown, 78.  
Customs cases, 76, 80, 782, 786, 1020.  
amendment in, 81.  
penalty, 81.  
procedure, 80.

See "SHIP," "SMUGGLING."  
differences between, and cases within  
Petty Sessions Act, 76.

Excise cases—  
appeal, 139, 141, 944.  
mitigation of penalty, 79, 943.  
notice of information and sum-  
mons, 942.  
procedure, 79.  
procedure on death or absence  
of Excise Officer, 943.

who may prosecute, 79, 943, 944.  
fines, entry and account of, 969.  
generally, 76.

non-appearance of defendant, 77.  
Small Penalties Act does not apply  
to Revenue cases, 1061.

Stamp Acts cases, 80.  
See also "CASES NOT WITHIN  
PETTY SESSIONS ACT," "SUM-  
MARY CASES WITHIN PETTY  
SESSIONS ACT," "SUMMARY  
JURISDICTION."

SUMMARY CASES WITHIN PETTY  
SESSIONS ACT,

adjournment—  
application of complainant for,  
59.  
application of defendant for, 59,  
99, 345.  
application of defendant for to  
instruct solicitor, 23.

SUMMARY CASES WITHIN PETTY  
SESSIONS ACT—*continued.*

adjournment—  
improper, mandamus lies upon,  
59.  
inherent power of, 61.  
of cases remaining unheard, 61,  
1009.  
of court, 1009.  
of particular cases, 61, 1009.  
pending second charge, 107.  
through absence of justices, 61,  
62, 1042.

adjudication—  
conviction (see "CONVICTIONS")  
62, 1009.  
dismiss, 57, 59, 60, 62, 1008, 1009.  
dismiss of charge against first  
offender, 994.  
dismiss of trivial charge, 59, 101,  
104, 348, 382, 1172.  
dismiss without prejudice, 57,  
59, 62, 347, 1009.  
dismiss on the merits, 57, 59,  
62, 1009.  
entry of, 63, 1009.  
made out of sessions, 45, 63,  
160, 590, 978, 989, 998, 1051.  
not returnable to quarter ses-  
sions, 63, 1009.  
order, 62-64, 1009.  
Order Book, 63, 64, 1009.

amendment. See "CONVICTIONS."  
appeal. See "APPEAL TO QUAR-  
TER SESSIONS," "CASE STATED,"  
"CERTIORARI."

appearance of defendant—  
by agent, 46, 1008.  
by counsel or solicitor, 47, 999.  
enforcing, 45-50, 1000, 1001.  
larceny, special provisions, 1051.  
malicious damage, special pro-  
visions, 1051.

application of P.S. Act, 41, 1051.  
assault and wounding, when not  
triable summarily, 41.

autrefois acquit (see "AUTREFOIS  
ACQUIT"), 64.  
autrefois convict (see "AUTREFOIS  
CONVICT"), 64.

bail, defendant unable to find, 45,  
978, 998, 1051.

binding over complainant, 63.  
defendant, 63.

bringing defendant again before  
court, where case stated remitted,  
50, 244.

case stated. See "CASE STATED."  
certificate of order, 64, 1009.

children. See "CHILDREN."  
children not to be present, 349, 1234.  
civil cases. See "CIVIL JURISDIC-  
TION."

clearing court, powers as to, 56, 60,  
349, 1234.

compensation, payment of, 101, 160,  
604, 988, 994, 1011.

complaint or information—  
defendant entitled to copy, 46,  
1000.

SUMMARY CASES WITHIN PETTY SESSIONS ACT—*continued.*

- complaint or information—
  - either with or without oath, 46, 1000.
  - to be received by justice, 999.
  - written or verbal, 46, 1000.
- condition precedent, 45, 90, 109.
- contempt of court, 72–73, 411, 999.
- costs (see also “Costs”), 68, 68 n. 3, 69, 347, 586, 1011.
- Crown, costs against, 78.
- death of complainant, 51, 59.
- defect in substance or form, no objection allowable in respect of, 93–99, 1019, 1020.
- defect, waiver of, 50, 109.
- discharge of offender under Summary Jurisdiction Act, 1851, 101, 994.
- discharge of offender under Probation of Offenders Act, 59, 60, 101, 348, 1172.
- distress, 65, 67, 1010, 1010 n. 2, 1060.
- distress must be ordered, when, 67.
  - sale of, 383, 1016.
  - substitution of committal for, and *vice versa*, 67, 1010, 1060.
- D.M.P. district excluded from Act, 1020.
- enforcement of orders—
  - civil cases (see also “CIVIL JURISDICTION”), 1012.
  - offence cases, 69–71, 1011.
  - stay of execution, pending appeal, 69, 137, 1012.
  - warrant, by, 69, 71, 1011.
  - See also “WARRANT OF EXECUTION.”
- evidence—
  - cross examination, 56, 999.
  - in reply, 57, 346, 1008.
  - justice may call witness, 57, 345, 1002.
  - may be required to be taken in writing, 60, 1008.
  - to be heard on both sides, 57, 1008.
  - to be on oath, 56, 1002.
  - See “EVIDENCE.”
- exemption, burden of proof, 57, 1008.
- fees on forms, 1044, 1047.
  - enforcing, 1045.
  - remission of, 1045.
- fines and penalties—
  - allowing time for, 65, 1010.
  - application of, 68, 91, 1011.
  - entry and account of, 332, 969, 997, 1079.
- forms, 1021–1032.
  - appeal, 1030.
  - certificate of order, 1031.
  - consent to bail, 1032.
  - deposition, 1021.
  - information, 1021.
  - in schedule to P.S. Act, to be valid, 1019.
  - order book, 1024, 1025.
  - recognisance, 1023.

SUMMARY CASES WITHIN PETTY SESSIONS ACT—*continued.*

- forms—
  - solemn declaration, 1022.
  - summons to enforce appearance, 1022.
- warrant—
  - of execution, 1026.
  - to arrest, 1022.
  - to commit, 1027.
  - to convey before justice of another county, 1028.
  - to discharge from gaol, 1028.
  - to search, 1029.
- future acts governed by P.S. Act, 41, 1061.
- general terms, use of, 72, 1019.
- hearing—
  - case remitted by High Court, 50, 244.
  - generally, 56–61, 1008.
  - justice must hear entire case, 56, 345.
  - out of sessions, 45, 160, 190, 978, 989, 998, 1051.
- imprisonment—
  - consecutive terms of, 68, 1011.
  - in default, 64, 970, 1010, 1010 n. 2, n. 3, 1060.
  - to what person, 1017.
  - with hard labour, when, 68, 1011.
- indictable offences are not, 32, 41.
- indictment, informing defendant of right to be tried by, 56.
- irregularity, waiver of, 50, 109.
- joint defendants, trial of, 47.
- justice may hear case, where summons issued by another, 46, 1000.
- larceny, special provisions as to, 585–591, 1033, 1051.
- mitigation, generally no power of, 65.
- non-appearance—
  - due to misunderstanding, 47.
  - of complainant, 57–59, 1008.
  - of defendant, generally, 46, 47, 1001, 1002, 1008.
  - of either party, 59.
- non-attendance of justices, 61, 332, 1042.
- number of justices necessary, 54, 55, 978, 998, 999, 1051.
- number of justices necessary, out of sessions, 45, 55, 978, 998, 1051.
- “offence,” what is, 65.
- officials, offences by, 1018.
- order book, entry in, 63, 64, 99, 100, 348, 1009, 1024–1025.
- order made out of sessions, 63, 1009.
- penalty—
  - award of one-third to prosecutor, 68, 974, 1011.
  - discharge on payment, 68, 1010, 1016.
  - enforcement of, 64–71, 1010–1012, 1060.
  - imprisonment in default of payment of, 64, 65, 1010, 1060.
  - imprisonment, with or without hard labour, 68.



SUMMARY CASES WITHIN PETTY SESSIONS ACT—*continued.*

- penalty—
  - increased, for second offence, 67, 91, 92.
  - payment at future time, 65, 1010.
  - scale of imprisonment in default, 64, 66, 1010, 1060.
  - substitution of committal for distress, and *vice versa*, 67, 1010, 1060.
- place of hearing (see also "VENUE"), 73, 998.
- post-office cases excluded from Act, 1020.
- probation of offenders. See "PROBATION OF OFFENDERS ACT, 1907."
- property of co-owners, how described, 90, 1019.
- public prosecution, allowances in, 1045.
- publicity of proceedings, 55, 56, 349, 998.
- receipts exempt from stamp duty, 1020.
- recognisances (see "RECOGNISANCES"), 1017, 1018.
- remanding (see "REMANDING"), 1009.
- remanding, special provisions as to larceny, 1034.
- re-opening case to admit formal proofs, 57, 346.
- re-opening case where defendant subsequently appears, 47, 346.
- reply, no right of, generally, 57.
- return of constabulary cases decided out of sessions, 63, 1009.
- revenue cases excluded, 76, 1020.
- service of summons. See "SERVICE OF SUMMONS."
- special court under Criminal Law and Procedure (Ir.) Act, 1887, 1084-1091.
- stamps to constabulary, disposal of, 1045.
- statutory origin of summary jurisdiction, 40.
- summons—
  - extends only to adjoining county, 45.
  - irregularity in, 60, 93, 345, 1019.
  - issue and signature of, 46, 69, 999-1001, *Add. et Corr. cv.*
  - only to be issued in first instance, 45, 100.
  - to witness does not run outside county of justice issuing, 53.
  - See also "SUMMONS."
- time limit (see also "TIME LIMIT"), 51, 52, 1000.
- "unless said sum be sooner paid," 67.
- variance, no objection to be allowed for, 60, 93, 1019.
- waiver of absence of complainant, 57 *n.* 1, 109.
- waiver of irregularity, 50.
- warrant of execution, 69, 1011, 1013, 1014.

SUMMARY CASES WITHIN PETTY SESSIONS ACT—*continued.*

- warrant of execution, backing, 70, 1014, 1015.
- See also "WARRANT OF EXECUTION."
- withdrawal of charge, 50, 59, 63, 103.
- witness—
  - compelling to answer, 54, 285, 291, 1002.
  - enforcing attendance of, 53, 251, 291, 1002.
  - examination of, 54, 56, 999, 1002.
  - expenses of, 54, 1003.
  - in foreign county, Crown office subpoena for, 53.
  - justice may call, though not summoned, 54, 57, 286, 345, 1002.
  - ordering out of court, 60.
  - summons to, 53, 1002.
  - does not run into foreign county, 53.
  - merely producing document, 259, 283.
- young person. See "CHILDREN."
- See "CONVICTIONS," "ORDER," "ORDER BOOK," "SUMMARY JURISDICTION," "WITNESS."

## SUMMARY JURISDICTION.

- clearing court, 56, 60, 349.
- computation of time, 51-53.
- costs of prosecution, when payable out of county funds, 30 *n.*, 586.
- death of complainant, 50, 59, 943.
- defendant must be informed of right to be tried on indictment, 56.
- definition, 1020.
- discharge of offender under Summary Jurisdiction Act, 1851, 101, 994.
- dismiss of trivial charge, 59-60, 101, 348, 382, 1172.
- entirely creation of statute, 40.
- imprisonment in default, 64, 65, 66, 970, 1010, 1010 *n.* 3, 1060.
- indictable offences cannot be tried summarily, 32, 41.
- irregularity in summons, 60, 93, 99, 345, 1019.
- justice must be present at entire case, 56, 345.
- non-appearance of complainant, 57-59, 1008.
- non-appearance of either party, 59.
- number of justices, 54, 55.
- "offence," "case of civil nature," 65.
- offence created by statute providing no punishment not triable summarily, 13.
- out of petty sessions, 45, 160, 190, 978, 989, 998, 1051.
- postponing charge, pending second charge, 107.
- re-opening case to admit formal proofs, 57, 346.
- re-opening case when defendant subsequently appears, 47, 346.

SUMMARY JURISDICTION — *continued.*

- time limit (see also "TIME LIMIT"), 51-52, 100.
- venue, 858.
- waiver of absence of complainant, 57 *n.* 1, 109.
- waiver of irregularity, 50.
- withdrawal of charge, 50, 59, 63, 103.
- witness may be compelled to produce document to court, 53.
- See "EVIDENCE," "SUMMARY CASES NOT WITHIN PETTY SESSIONS ACT," "SUMMARY CASES WITHIN PETTY SESSIONS ACT," "VENUE."

## "SUMMARY JURISDICTION ACTS," 335.

## SUMMARY JURISDICTION (IR.) ACT, 1851,

- appeal to quarter sessions under, 139, 156, 160, 994.
- costs under, 157, 160, 994.
- discharge of first offender, 59 *n.* 2, 101, 994.
- Ejectment Jurisdiction under, 186-187, 986.
- "cannot be found," 187.
- Dublin metropolitan police district, in, division of house into two tenancies, 186.
- land held under War Office, as to, 187.
- notice to quit, 186.
- number of justices required, 187.
- requisites of jurisdiction, 186.
- summons, averments required in, 187.
- service of, 187.
- tenancies to which applicable, 186.
- trespasser, against, 187.
- warrant of ejectment, 187.
- endorsement of, 187.
- time for execution of, 187.
- Jurisdiction of justices as to disputes regarding—
  - hire, 160, 998.
  - tuition, 160, 998.
  - wages, 156-157, 998.

## SUMMARY JURISDICTION (IR.) ACT, 1862, 1051.

- larceny offences triable under, 590, 1051.
- one justice sufficient under, 55, 1051.
- restitution of stolen property cannot be ordered under, 63.

## "SUMMARY JURISDICTION (IR.) ACTS," 41, 335.

## "SUMMARY PROCEEDINGS," 1020.

## SUMMONS,

- adjournment, enures to, 61, 1043.
- amendment of, 93, 94.
- cases not within Petty Sessions Act, 77.

SUMMONS—*continued.*

- complaint should be made to justice issuing, 17, 46, 999, 1000.
- contents of, 46, 83, 84, 1001.
- conviction based on good summons is good, 84.
- corporation, addressed to, 20, 48.
- Customs Acts, cases under, 80.
- death of prosecutor, does not lapse on, 51, 59, 943.
- discretion as to issuing, 17, 46, *Add. et Corr. cv.*
- dismiss on bad summons bars second charge, 105.
- Excise Acts, cases under, 79.
- fees payable on, 1047.
- to summons server, 1080.
- form of, 1022.
- form to follow words of statute, 84, 309.
- if not served, fresh summons can be issued on same complaint, 59.
- indictable offences, in case of, 17, 18, 1000.
- information to ground, defendant entitled to copy of, 46, 1000.
- irregularity in, 60, 93, 345, 1019.
- waiver of, 50.
- issuable out of petty sessions generally, 46, 999, 1000.
- justice hearing need not be justice who issued, 46, 1000.
- justice issuing must have heard complaint, 46, 999.
- may contain any number of charges, 46.
- sealing not necessary, 46, 77 *n.* 8, 1019; see "SEAL."
- separate adjudication on each charge required, 68.
- service. See "SERVICE OF SUMMONS."
- several orders or convictions on one summons, 87, 91.
- signature of, 46, 69, 999, 1001, *Add. et Corr. cv.*
- stamping, 46, 1044, 1047.
- statement of offence in, 46, 84.
- summons only issuable in *summa y* cases in first instance, 45, 100.
- witness summons, stamp on, 46, 1044, 1047.

See "WITNESS."

SUMMONS SERVER,  
appointment of, 1001.  
fees to, 1080.

## SUNDAY,

- arrest without warrant on, 793.
- bread, making and selling, 388.
- carriers, &c., not to ply on, 792.
- committal of dangerous lunatic on, 151 *n.* 2, 794.
- computation of—
  - appeal, 133 *n.* 3.
  - application for and transmission of case stated, 52, 238, 239, 794.

SUNDAY—*continued.*

computation of—  
 execution of warrant of ejectment, 187.  
 generally, 52, 133 *n.* 3, 794.  
 employment of woman or child in factory or workshop, 1110.  
 exemptions, 792.  
 execution of legal process on, 793.  
 fairs on, 793.  
 game cannot be taken on, 489, 494.  
 games prohibited on, 792.  
 issue of search warrant in D.M.P. district, 144 *n.* 1, 313 *n.* 2.  
 judicial acts on, 793.  
 ministerial acts on, 145.  
 preliminary investigation of indictable offences on, 793.  
 prohibition of exercise of certain callings on, 791, 792.  
 rabbits cannot be taken on, 489, 494.  
 search warrant on, 144, 145, 313 *n.* 2, 793.  
 selling, &c., intoxicating liquor on. See "INTOXICATING LIQUORS."  
 shooting, &c., game on prohibited, 489.  
 sureties of peace and good behaviour cannot be taken on, 33 *n.* 1, 794.  
 time limit for prosecution under Sunday Observance Act, 1695, 793.  
 warrant to arrest, 18, 71, 793, 1000.

"SUNRISE," 450, 484.

"SUNSET," 450, 484.

SUPERSEDEAS, WRIT OF, 7.

SURCHARGE BY AUDITOR,  
 recovery of, 175.

SURETY,

contract to indemnify is a criminal offence, 31.  
 inability of, to attend, 31, 1006.  
 married woman may be, 30.  
 may apply for arrest if principal about to abscond, 31, 1006.  
 peer may be, 30.  
 should be householder, 30.  
 solicitor may, but should not, be, 30, 30 *n.* 2.  
 witness cannot be compelled to find, 22, 1003 *n.* 1.

See also "SURETIES OF THE PEACE AND GOOD BEHAVIOUR."

SURETIES FOR GOOD BEHAVIOUR.

See "SURETIES OF THE PEACE AND GOOD BEHAVIOUR."

SURETIES OF THE PEACE.

See "SURETIES OF THE PEACE AND GOOD BEHAVIOUR."

SURETIES OF THE PEACE AND GOOD BEHAVIOUR,

appeal court can require, 37, 136.  
 appeal does not lie from order for, 36, 133.  
 binding over—  
 both to peace and good behaviour, 34.  
 by court of its motion, 35, 51, 63.  
 complainant, 35, 51, 63.  
 defendant, 34, 51, 63, 380, 862.  
 in addition to statutory punishment, 34.  
 where statute creates offence, but prescribes no punishment, 13.  
 breach of, what is, 38, 341.  
 cannot be taken on Sunday, 33 *n.* 1, 794.  
 case stated lies to test order for, 36, 235.  
 certiorari applicable to order for, 37, 226.  
 circumstances warranting order for, 35, 36, 341, 342.  
 contempt of court, for, 36.  
 costs cannot be awarded on application for, 38.  
 demise of Crown, effect of, 39.  
 difference between sureties of peace and good behaviour, 33, 34.  
 estreating of recognisances, 38, 39, 974, 1017, 1061.  
 evidence of general conduct admissible on application for, 37, 268.  
 evidence for defendant not allowable on application for, 37.  
 evidence to support order for, when King's Bench Division will examine, 37.  
 fear of defendant need not be alleged, 34.  
 form of order for, 37, 38.  
 habeas corpus, writ of, on, 37.  
 High Court, power of, to require, 34, 36.  
 imprisonment in default of finding, 37, 39.  
 imprisonment in default of payment of amount of forfeited recognisance (see "ESTREATING RECOGNISANCE"), 39, *Add. et Corr. cv.*  
 jurisdiction, how derived, 33, 34.  
 exerciseable *ex-parte*, 34.  
 exerciseable out of sessions, 33.  
 larceny by juvenile offender, 979.  
 libel, 36.  
 order binding to peace, no bar to civil action for assault, 382.  
 order to find and of committal in default to be made at the one time, 37.  
 order or warrant, form of, 37.  
 recognisances for (see also "RECOGNISANCE"), 38.  
 warrant of committal in default of finding, 37.



- SURGEON,**  
falsely pretending to be, 615.
- SWEARING,**  
profane swearing, 795.  
See "PERJURY."
- SWEEPSTAKE,**  
is a lottery, 503.
- SWINDLERS,** 505, 810.
- SWINE FEVER,**  
powers of Department of Agriculture, 364.
- TAXES, CASES AS TO,**  
mitigation of penalty not allowed, 78.  
P.S. Act not applicable, 76.
- TEA,**  
weighing with bag, 837.
- TEAL,**  
when game, 484.  
See "GAME LAWS."
- TECHNICAL TERMS,**  
use of, in conviction, 90.
- TELEGRAM,**  
See "TELEGRAPHS."
- TELEGRAPHS,**  
contravening privilege of Postmaster-General, 796.  
forgery of telegram, 797.  
malicious damage to, 603, 796, 912.  
misconduct of servant, 796.  
miscellaneous, 797.  
obstructing telegram, 796.  
Postmaster-General, 796.  
procedure, 798.  
telephone is a telegraph, 796 *n.* 1.  
wireless telegraphy, 797.
- TEMPORARY TRANSFER,**  
of publican's licence, 119, 120, 120 *n.* 1.  
none of "off" licence, 123.
- TENANT.**  
See "LANDLORD AND TENANT."
- TENANTS IN COMMON,**  
property of, how described in conviction, 90, 1019.
- TENEMENT,**  
express provisions as to service of summons, 50, 187, 190.  
warrant for recovery of, 69 *n.* 2, 73, 187, 191.
- TENT,**  
nuisance in, 707, 714.  
overcrowding, 707, 714.
- TEXTILE MANUFACTURE,**  
search warrant, 146.
- THEATRE,**  
hours of closing bar, 118 *n.* 2, 1277.  
licence to keep, 117, 118, 798.  
licence for sale of intoxicating liquor, 117, 118, 576, 1277.  
offensive and riotous conduct in, in D.M.P. district, 314, 1055.
- THEFT.**  
See "LARCENY," "CHILDREN."
- THIEVES,**  
harbouring, 548, 686, 809.
- THIMBLERS,** 505, 810.
- THREAT,**  
ground for sureties of the peace, 33.  
inducing confession by, 272.  
sending threatening notices, 934.  
See "CRIME," "EXTORTION," "MENACES."
- THRESHING CORN,**  
within 30 feet of centre of road, 983.
- THROWING STONES,**  
at train, 919.  
in D.M.P. district, 314, 948.  
in town, 527, 808.
- TICKET.**  
See "PAWNBROKER," "RAILWAY," "TRAMWAY."
- TICKET OF LEAVE.**  
See "PREVENTION OF CRIME."
- TIMBER,**  
carrying, so as to project, 527, 983.  
in D.M.P. district, 1077.  
damage done by floats in harbour, summary jurisdiction, 523.  
drawing, so as to injure road, 526, 980.  
larceny of, 587, 588, 590, 908, 1051.  
laying, in street in D.M.P. district, 314, 948.  
laying, in street in town, 809.  
on highway generally, 526, 982.  
malicious damage to, 602, 605, 912.  
provision as to carriage of timber on carts in town, 808.  
tenant purchaser not to cut, 799.
- TIME,**  
Christmas Day, 795.  
Dublin time usually meant, 53, 336, 557.  
for execution of search warrant, 144, 313 *n.* 2.  
objection not allowable in respect of variance as to, 93, 94, 1019.  
statement of, in conviction, 83, 84, 93, 94, 1019.  
Sunday, when counted, 794.  
See "COMPUTATION OF TIME," "SUNDAY," "TIME LIMIT."

## TIME LIMIT,

appeal for. See "APPEAL TO QUARTER SESSIONS."

case stated—

application for, 52, 238, 794.

recognisance on, 238.

transmission to King's Bench Division, 239, 794.

cases not within Petty Sessions Act, 77.

certiorari, 231.

Charitable Loan Societies Acts, 161.

commencement of prosecution, what is, 51 *n. l.*

computation, 52, 53.

in continuing offences, 51, 52.

when antecedent notice required, 52.

conviction relating in part to acts outside, is bad, 52.

county rate, proceedings for, 51, 1000.

Customs Acts, 80.

Dublin, in (see "DUBLIN METROPOLITAN POLICE DISTRICT"), 52, 309, 958.

Electric Lighting Act, 1882, 165.

Employees and Workmen Act, 1875, 159.

Excise Acts, 79.

first day, when counted, 52.

Food and Drugs Act, 1899, proceedings under, 51, 469.

game laws, proceedings under, 482, 483, 485.

Gas Works Clauses Act, 1871, 165.

generally, as to summary cases, 51, 1000.

"heard and determined," 52.

hire, proceedings for, 51, 1000.

institution of prosecution, what is, 51 *n. l.*

last day, 52, 238.

mandamus, application for, 248.

appeal from order of K.B.D. as to, 249.

poor rate, proceedings for, 51, 1000.

Public Health Acts, 166, 695.

Small Debts Act, 155, 1047.

statutory provisions of P.S. Act, 51.

statutory provisions of other Acts, 51-52.

Sunday, 52, 133 *n. 3*, 187, 238, 239, 794.

taxes, proceedings for, 51, 1000.

trespass, proceedings for, 51, 1000.

tuition, proceedings for, 51, 1000.

valuation appeal to quarter sessions, 196.

wages, proceedings for, 51, 1000.

warrant of ejectment, 187, 192.

to distrain for town rates, 204.

## TIME OF OFFENCE,

amendment as to, 93, 94.

to be stated in conviction, 83, 84.

## TIN,

purchase of by general dealer, 508.

dealer in old metals, 606.

## TINKER.

See "PEDLAR."

## TITLE,

is part of statute, 336.

vendor fraudulently concealing mortgage, &c., 902.

## TITLE DEED,

fraudulent concealment of, 902.

larceny of, 908.

## TITLE OUSTING JURISDICTION,

adjournment to enable defendant to adduce evidence, 214.

certiorari applicable, 244 *n. 1*.

common law rule, 206, 207.

overridden by statute, 206.

determination of title may be imposed on justice by statute, 214.

distinction between ouster of jurisdiction and answer on merits, 206.

examples—

assault, 211.

fishery laws, 211.

injury to property, 214.

obstruction to highway, 213.

trespass to land, 212, 818.

trespass in pursuit of game, 210.

*jus tertii* not allowed to be set up, 207.

Malicious Damage Act, 1861, ss. 1-51, 208-209.

ss. 52, 53, 209-210.

point should be made, when, 214.

statutory provisions, 207.

assault, 207.

injury to property, 207-208.

trespass, 207.

title claimed must be possible in law and reasonable, 207, *Add. et Corr. cvi.*

trespass to land, 812.

## TOBACCO,

cultivation in Ireland, 799.

oil in, 799.

## TOLL,

cattle, sale of, 848, 849.

recovery of, summarily, 185.

toll boards at farms or markets, 435.

injuring, 435.

receiving tolls without, 435.

## TOOLS,

destruction of, 55 *n. 1*.

## TORTURING,

animal, 356.

See "CRUELTY TO ANIMALS."

## TOWNS,

list of towns under Towns Improvement Act, 2 *n.*, 800.

See "TOWNS IMPROVEMENT."

## TOWNS IMPROVEMENT,

- appeal, 802.
- arrest without warrant, 148, 805.
- Add. et Corr. cvi.*
- baiting animals, 360, 810.
- buildings, not to project, 803.
- precautions during repair of, 804.
- ruinous or dangerous, 803.
- cattle straying or trespassing, 392, 805.
- cellar door, provisions as to, 803.
- chairman of Town Commissioners, 2, 801.
- corporate town, what is, 980 *n.* 3.
- doors not to open outwards, 803.
- evidence of adoption of Towns Improvement Act, 802.
- excavations, precautions as to, 804.
- explosives, 434, 805.
- hackney carriages, 528, 810.
- harbouring constables, 809.
- harbouring prostitutes or thieves, 809.
- hoarding, when required, 804.
- incorporation of Towns Improvement Clauses Act, 1847, 802.
- justices in, 2, 801.
- names and numbers of streets, 802.
- obstruction of street during public procession, 805.
- offences in street, operation of s. 72, 805.
- offensive trades, provisions as to, 718, 805.
- possession, &c., of town constable's accoutrements, &c., 810.
- procedure under Towns Improvement (Ir.) Act, 1854, 801.
- "public place," what is, 759.
- slaughter-houses, provisions as to, 805.
- "street," 805.
- street offences—
  - cleansing casks, 809.
  - dangerous window-boxes, 809.
  - discharging firearms, 808.
  - driving, &c., 807, 808.
  - drunkenness, 809.
  - exposing goods for sale, &c., 807.
  - extinguishing lamp, 808.
  - flying kite, 808.
  - indecent, 808, 809.
  - laying stones, &c., 809.
  - laying timber in streets, 809.
  - leaving goods in street, 808.
  - leaving openings unguarded, 809.
  - making slide, 808.
  - obscene literature, 808.
  - obstruction, 807.
  - pig-sties adjoining, 809.
  - placing lines across street, 808.
  - prostitutes, 808.
  - ringing door bell, 808.
  - shaking rugs, 809.
  - slaughtering animals, 807.
  - throwing out rubbish, 809.
  - timber on carts, 808.
  - traffic regulations, 810.

TOWNS IMPROVEMENT—*continued.*

- swindlers, 505, 810.
- thimblers, 505, 810.
- Towns Police Clauses Act, 1847, 810.
- towns under Towns Improvement (Ir.) Act, 1854, 2 *n.*, 800.
- traffic regulations, 810.
- who may prosecute under, 44, 801.

## TRACING GAME IN SNOW, 486.

## TRADE BOARDS, 614.

- complaints as to infraction of minimum rates, 1271.
- establishment and duties of, 1268.
- minimum rates of wages, 1269.
- notices, regulations as to mode of giving, 1272.
- officers, 1271.
- officers to produce certificates when required, 1272.
- penalty for not paying wages at proper rates, 1270.
- piece work, provisions for, 1271.
- prevention of evasion, 1271.
- procedure, 1272.
- trades to which Act applies, 1268, 1272.

## TRADE DESCRIPTION.

See "MERCHANDISE MARKS."

## "TRADE DISPUTE," 612.

## TRADE MARK, 623.

- making false entry in register, &c., 932.
- prosecution for infringing, may be compromised, 51.
- See "MERCHANDISE MARKS."

## TRADE NAME,

conviction under, void, 83.

## TRADE UNION,

- agreements, how far enforceable, 811.
- annual returns, 812.
- appeal, 813.
- definition, 811.
- exemption from Criminal Law and Procedure (Ir.) Act, 1887, 1090.
- justices disqualified, 221, 814.
- legality of, 811, 812.
- offences—
  - by officials, 812.
  - circulating false copies of rules, &c., 813.
  - failure to establish office, 813.
  - failure to furnish returns and rules, 813.
  - failure to give prescribed notices, 813.
- procedure, 813.
- registration, 812.
- rules and offices, 812.
- Trade Union Acts, 811.
- trustees, 812.



TRAFFIC.

See "DUBLIN METROPOLITAN POLICE DISTRICT," "HIGHWAY," "MOTOR-CAR," "TOWNS IMPROVEMENT."

TRAIN.

See "RAILWAY."

TRAMCAR,

is a carriage, 527 *n.* 5.

TRAMPS,

punishment of (see "VAGRANCY"), 830.

TRAMWAY,

application of certain Railway Acts, 816.

bye-laws, 815.

procedure, 817.

rule of the road, 527 *n.* 3, 815.

steam tramways, whistling, regulations as to, 816, 817.

tramcar is a carriage, 527 *n.* 5.

tramways under special Acts, 815.

Tramway Acts, 816.

travelling on, with intent to avoid paying fare, 66.

who may prosecute, 44.

TRANSFER OF LAND,

particulars on, 436.

TRANSFER OF PUBLICAN'S LICENCE.

See "INTOXICATING LIQUORS."

TRANSIT OF ANIMALS, 366.

TRAWLING, 453, 454.

See "FISHERY LAWS."

TREASON,

committed out of U.K., 14 *n.* 2.

doctrine of coercion of wife by husband does not apply to, 298.

evidence in, 260.

generally, 917.

indictment for, may be found at quarter sessions, 9 *n.*

not bailable by justices, 29.

triable at quarter sessions, 9 *n.*

TREASON FELONY,

bail in, 29.

generally, 917.

TREASURE TROVE,

not subject of larceny, 907 *n.* 3, 933.

unlawful concealment of, 933.

TREASURY, COMMISSIONERS OF,

evidence of orders, &c., 277.

TREE,

larceny of, 587, 588, 590, 908, 1051.

malicious damage to, 602, 605, 912.

order to cut or plash, 173, 981.

ordering removal of dangerous tree near railway, 184.

TREE—*continued.*

powers of railway company as to, 185.

tenant purchaser not to cut, 799.

See also "TIMBER."

TRESPASS,

after warning to leave, 817.

animals (see "TRESPASS OF ANIMALS"), 392.

ejectment of trespasser, 187, 190.

jurisdiction ousted by question of title, 207–213, 818.

of persons, 979.

on railway, 770.

sea-shore is not a place within statute, 818.

TRESPASS IN PURSUIT OF GAME, 483–488.

title ousting jurisdiction, 210.

See "GAME LAWS."

TRESPASS OF ANIMALS,

actual damage may be awarded, 993.

appeal to quarter sessions, 139, 994.

arbitrator or valuator may be named by justices, 994.

fences may be ordered to be repaired, 993.

impounding forbidden, where owner known, 992, 994.

impounding lawful, where owner unknown, 993.

notice to owner of impounding, 994.

offences by poundkeeper, 994.

poundkeeper to deliver animal on justice's order or payment, 993.

rates of, 993.

pounds, 990, 991, 992.

See also "POUND."

TRIAL,

admissibility of evidence given at previous trial, 290.

comment on non-production of defendant, where defendant competent witness, 261.

no evidence at close of Crown case, 291.

See "EVIDENCE," "HEARING,"

"SUMMARY CASES WITHIN

PETTY SESSIONS ACT," "SUM-

MARY CASES NOT WITHIN

PETTY SESSIONS ACT," "SUM-

MARY JURISDICTION."

TRIVIAL OFFENCE,

dismissal of charge of, 59, 60, 101, 104, 348, 372, 1172.

what is, 60, 101, *Add. et Corr. cv.*

TROUT.

See "FISHERY LAWS."

TRUANCY,

how far an answer to non-compliance with attendance order, 428.

## TRUCK ACTS, 818-825.

## deductions—

- audit of, 823.
- damaged goods, 822.
- finer, 821.
- materials, 822.
- sharpening tools, 821.

hosiery manufacture, special provisions as to, 824.

## illegal contracts or payments—

- advance of wages, withholding, 820.
- agricultural labourers, 820.
- artificer to be paid in cash, 820.
- no action in respect of goods illegally given as wages, 819.
- penalty, 819.
- recovery of wages illegally deducted, 819.
- what are, 819-820.

indictable offences under, 933.

liability of actual offender, 823.

offences against Acts of 1870 and 1896, 823.

payment by county contractor, 824.

permissible deductions, miscellaneous, 821.

procedure, 824.

production of contract, 823.

## TRUSTEES,

description of property of, 1019.

larceny by, 909.

## TUBERCULOSIS,

hindering destruction of tuberculous cows, 825.

hindering taking sample of milk, 825.

failure of medical practitioner to notify, 825.

procedure, 825.

## TUITION,

civil jurisdiction in respect of, 160, 988.

## TUNNEL UNDER CANAL,

order to cleanse, &c., 181.

## TURF,

cutting turf at side of road, 526, 981 *n. 1, 1032 n., Add. et Corr. cix.*

larceny of, 590, 825, 1051.

## TURNKEY,

disqualified for holding liquor licence, 111.

## UNCERTAINTY,

in order or conviction, 87, 88, 89, 91.

## UNDER SHERIFF,

demanding or receiving excessive fee, 780.

disqualified from acting as justice, 6, 780.

## UNDERGROWTH,

compensation for destruction of by railway company, 185.

UNDERGROWTH—*continued.*

destruction of, if liable to fire from sparks, by railway company, 185.

## UNDESIRABLE ALIENS,

provisions as to, 354, 869.

## UNIFORM,

civilian wearing military or naval uniform, 826.

unlawful pawning, 376, 648, 660.

## unlawful possession—

of R.I.C. constable's uniform, 676.

of D.M.P. constable's uniform, 945.

of naval clothing in Cork or Queenstown, 648.

or assumption of dress, &c., of town constable, 810.

unlawful purchase of military uniform, 376.

unlawful purchase of naval uniform, 648.

## UNION,

application of pre-Union Statutes, 334.

See "POOR LAW."

## UNLAWFUL ASSEMBLY,

definition of, 150.

generally, 874.

power of justices and peace officers, 150, 151, 934, 1086.

Whiteboy offences, 933.

## UNLAWFUL DRILLING, 887.

## UNLAWFUL GAMING, 496.

See "GAMING."

## UNLAWFUL MEETING, 778.

for illegal drilling, 888.

See "RIOT," "UNLAWFUL ASSEMBLY."

## UNLAWFUL OATHS, 15, 916.

## UNLAWFUL POSSESSION.

See "DUBLIN METROPOLITAN POLICE DISTRICT," "LARCENY."

## UNLAWFUL SOCIETIES, 778, 932.

"UNLESS SAID SUM BE SOONER PAID," 67, 347.

## UNMUZZLED DOG, 423.

## UNNATURAL OFFENCES, 887.

## UNREASONABLENESS OF BYE-LAWS, 337, 703.

## UNSEAWORTHY SHIP, SENDING TO SEA, 916.

## UNSOUND FOOD,

compensation for destruction of, 732.

death resulting from use of, 918.

UNSOUND FOOD—*continued.*

extension to all food of Public Health Act, 1878, 737.  
inspection of, 724.  
obstructing officer, 725.  
order for destruction of, 51, 724, 725,  
*Add. et Corr. cix.*  
sale of, is a common nuisance, 882.  
search warrant, 146, 725.  
unsound meat, 719, 720, 724, 1277.

UNSWORN EVIDENCE, 259.

See "CHILDREN."

"UPON THE MERITS,"

meaning of, 382.

See "DISMISS UPON THE MERITS."

URBAN SANITARY AUTHORITY,  
in Urban sanitary district, 693.

URINAL.

See "SANITARY CONVENIENCE."

"USING,"

meaning of, within Betting Act,  
1853, 500.

UTTERING,

forged instrument, 901.  
meaning of, 881 *n. 4.*  
spurious coin, 408, 881.

VACCINATION,

certificate of exemption, 828.  
successful, 828.  
child to be vaccinated within three  
months, 826.  
duties of registrar, 829.  
failure to have child vaccinated or  
inspected, 827.  
failure to have child vaccinated or  
inspected is not a "trivial offence,"  
60.  
false certificate, 829.  
neglect to transmit certificate, 829.  
neglect to vaccinate after regis-  
trar's notice, 829.  
preventing the taking of lymph, 829.  
proceedings by guardians to com-  
pel, 827.  
procedure, 830.  
production of child, 829.  
small-pox, 829.  
reasonable objection, what is, 827.  
testing success of, 828.  
Vaccination (Ir.) Acts, 826.

VAGRANCY,

desertion of children, 403, 404.  
jurisdiction, out of petty sessions, 45.  
pedlar, not exempted from vagrant  
law, 1057.  
public place, what is, 759.  
punishment of, 830, 831.  
vagrant preventing child receiving  
education, 1235.

VALUATION,

annual revision of, 194-197.  
appeal to Court of Appeal, 200, 244.

VALUATION *continued.*

appeal to quarter sessions, 194, 196.  
case stated by quarter sessions  
on, 197, 199.  
costs of, 197.  
decision on, final as to value,  
197.  
notice of, 196, 197.  
recognisance required on, 196,  
197.  
respondents in, 196.  
time limit for bringing, 196.  
who may be heard on, 197.  
borough, general revaluation of,  
198.  
case stated, appeal to Court of  
Appeal, 244.  
fisheries, rating of, 440.  
land, of, 194.  
in county borough, 200.  
licensed premises—  
licensee to render particulars,  
576.  
of, 200.  
under Finance Act, 1910, 436.  
lists, statutory provisions as to,  
194-196.  
net annual value, how arrived at,  
200.  
procedure to have valuation of  
particular premises revised, 197,  
198.  
tenements, subject to annual re-  
vision, 194.

VALUE,

statement of, in conviction, 90.

VANS,

nuisances in, 714.

VARIANCE,

amendment of variance, as to date,  
place, or time, 93, 94, 1019.

VAULT,

leaving opening unguarded in Dub-  
lin, 314, 949.  
leaving opening unguarded in street  
of town generally, 809.  
under street, 701.

VEGETABLES,

larceny of, 588, 590, 1051.  
malicious damage to, 603.

VEHICLES,

cruelty to animals in, 361.  
drunkenness in charge of, 426.  
lights on, 1178.  
See "DUBLIN METROPOLITAN  
POLICE DISTRICT," "HACKNEY  
CAR," "HIGHWAY," "MOTOR-  
CAR."

VENISON,

unlawful possession of, 486.

VENTILATION,

of factory, 1097, 1099.



## VENUE,

- Criminal Law Consolidation Acts, 1861, 16.
- Diseases of Animals Act, under, 370.
- in maintenance proceedings by wife against husband, 535.
- Larceny Act, 1896, 17.
- offences on boundary of county, 15-16.
- offences on journey, 16.
- rule as to, 858.
- under Merchant Shipping Act, 1894, 16.
- where offence takes place, 858.

## VERMIN.

- killing, 490.
- meaning of, for purposes of game laws, 491.

## VERMINOUS CHILDREN,

- cleansing, 1236.

## VESSEL.

- See "SHIP."

## VETERINARY INSPECTOR,

- powers and duties of, as to diseases of animals, 370.

## VETERINARY SURGEON,

- falsely pretending to be, 832.
- obtaining registration by false representation, 833.
- procedure, 833.
- statutes, 832.
- wilful falsification of register, 833.

## VEXATIOUS INDICTMENTS ACT, 1859,

- application under, 27, 28, 1050.
- cases within, 28, 1050.
- effect of, 27.
- indictment preferred by direction of judge, &c., 27, 1050.
- mandamus to compel justices to comply with, 27.
- not applicable unless indictable offence disclosed, 27.
- obtaining or attempting to obtain property by false pretences not within, 28, 895 *n. 1.*
- preferring indictment with consent of Attorney-General, 28, 1050.
- proceedings must be prosecuted at court for which recognisance taken, 28.
- statute, *verbatim*, 1050.
- substituting new charge in indictment for charge at preliminary hearing, *quære*, 28.

## "VICTUALLING HOUSES,"

- for billeting purposes, 374.

## VISITING PRISONS, 153-154.

- See "PRISON."

## VIVISECTION, 362.

- See also "CRUELTY TO ANIMALS."

## VOID,

- acts of biassed tribunal, voidable, not void, 222.

## VOIDABLE,

- acts of biassed tribunal not void, but, 222.

## VOYAGE,

- offences committed on, 16.

## WAGES,

- claims by labourers, &c., 156, 988.
- claims by seamen, 160.
- jurisdiction as to, in D.M.P. district, 312, 956.
- jurisdiction as to, under Employers and Workmen Act, 1875, 157-160, 1061-1074.
- payment of, in public-house, 614.
- payment of, in spirits, 613.
- payment of, otherwise than in money, 818-824.
- See also "CIVIL JURISDICTION," "TRADE BOARDS," "TRUCK ACTS," "TUITION."

## WAIVER,

- appearance of solicitor under protest, is not, 50, 97.
- condition precedent 50, 109, 709.
- estoppel by, 93, 96.
- of absence of complainant, 57 *n. 1*, 109.
- of irregularity, 50, 96.
- of objection to disqualified justice, 220.
- of service of summons, 50, 77, 109.

## WAKE,

- over infectious body prohibited, 756.

## WANDERING ABROAD, 830.

## WAR OFFICE,

- ejectment from lands held under, 187.

## WARRANT,

- accounting for sums levied on, 70, 332, 676, 972, 997.
- addressing, 19, 1013, 1014.
- alteration in, effect of, 18.
- arrest without. See "ARREST WITHOUT WARRANT."
- backing, 19, 309, 1014, 1015, 1020, 1053.
- blank, not to be signed in, 18, 1001.
- committal in default of finding sureties of peace, 37.
- construction of, 26.
- contents of, 18, 26, 70.
- dangerous lunatic, committal of, 151, 794.
- D.M.P. district—
  - backing for execution elsewhere, 309.

WARRANT—*continued.*

D.M.P. district—  
backing for execution within,  
19, 1015.  
defendant, for, 308, 309, 319,  
320, 953.  
execution of for indictable  
offence, 320.  
issue of, on non-appearance of  
party summoned, 303, 953.  
issue of, without previous issue  
of summons, 308, 953.  
witness, for, 308, 320, 954.  
death of justice, effect of, 18.  
defective—  
arrest made, 327.  
substitution of good warrant  
before return to habeas corpus,  
70.  
defective order—  
cannot found good warrant, 70.  
description of party, 18, 70.  
distrain. See "WARRANT OF DIS-  
TRESS."  
ejectment. See "WARRANT OF  
EJECTMENT."  
enforcing appearance by, 17, 18,  
19, 46, 77, 308, 309, 319, 320, 793,  
953, 954, 999, 1000, 1008, 1013.  
See "WARRANT OF ARREST."  
execution. See "WARRANT OF  
EXECUTION."  
fees on, 1044, 1047.  
forms—  
warrant of execution, 1026.  
to commit or detain for  
trial, 1027.  
to convey before justice  
of another county,  
1028.  
to discharge from gaol,  
1028.  
to search, 1029.  
general powers under, 18–20, 71, 793,  
1000.  
good on its face justifies arrest, 18.  
jurisdiction must appear, 18, 26, 70.  
production of, 19.  
quashing, on certiorari, 70, 229.  
sealing, unnecessary under P.S. Act,  
18, 1019.  
sealing, when required, 190, 320.  
search warrant. See "SEARCH  
WARRANT."  
signature necessary, 18, 69, 320, 1001,  
1012.  
Sunday, issue and execution on, 18,  
71, 793, 1000.  
unexecuted, return of, to justices, 20,  
70, 676, 1017, 1018.  
withdrawal of by justice, 71.  
withdrawal of by order of High  
Court, 71, 247.  
witness. See "WARRANT FOR  
WITNESS."

WARRANT FOR WITNESS,

addressing, 1013, 1014.  
backing for execution, 21, 1014,  
1015, 1020, 1053.

WARRANT FOR WITNESS—*continued.*

Customs cases, 81 *n.* 1.  
D.M.P. district, in, 308, 320, 954.  
Excise case, 78.  
summary cases, 53, 1002.  
indictable offences, 21, 320, 1002.

WARRANT OF ARREST,

addressing, 19, 1013.  
alteration in, effect of, 18.  
arrest under void warrant may be  
resisted, 20.  
backing for execution, 19, 309, 1014,  
1015, 1020, 1053.  
contents of, 18, 70.  
D.M.P. district, issued elsewhere,  
but for execution in, 19, 309, 1015,  
1020.  
D.M.P. district, issued in, 308, 309,  
319, 320, 953, 1020.  
duration of, 18.  
enforcing appearance of defendant—  
Customs Act, 80.  
D.M.P. district, 308, 309, 319,  
320, 953, 954, 1020.  
Excise Acts, 77.  
indictable cases, 17, 18, 999,  
1000, 1014–1015.  
summary cases, 46, 77, 1000,  
1008, 1014–1015.  
execution of—  
breaking doors, 18.  
breaking into house of third  
person, 18.  
by day or night, 18.  
by whom, 19, 1014.  
force may be used, 19.  
handcuffing prisoner, 18.  
in case of emergency, 19, 1014.  
in England, &c., 19, 1015, 1053.  
killing person in capture or  
pursuit, 19.  
may take place anywhere that  
warrant is in force, 18.  
on Sunday, 18, 793, 1000.  
out of district or county, 19,  
1014, 1015, 1053.  
prisoner arrested to be informed  
of substance, 19.  
production of warrant, 19.  
resisting or obstructing police,  
20.  
warrant not to be handed over,  
19.  
form of, 1022.  
inability to execute, 20, 1017.  
information to found, 17, 77, 1000.  
invalidity of warrant does not pre-  
vent justice proceeding if offender  
is brought before him, 18.  
issue of, in indictable offences, 17,  
18, 999, 1000.  
issue of, in indictable offences, in  
D.M.P. district, 319, 320.  
issue of, in summary cases, 46, 77,  
1000, 1008.  
issue of, in summary cases in D.M.P.  
district, 308, 309, 953.  
issue of, notwithstanding previous  
summons, 17, 999, 1000.

WARRANT OF ARREST — *continued*.

issue of, where accused fails to keep undertaking to find security, 26.  
jurisdiction must appear on, 18, 26, 70.  
knowledge of issue of, is reasonable ground for suspicion of felony, 19.  
medical examination of prisoner illegal, 20.  
police not liable if warrant good *ex facie*, 18.  
sealing not necessary under P.S. Act, 18, 1019.  
sealing, when required, 190, 320.  
searching prisoner, 20.  
seizure of property and documents on arrest, 20.  
signature to, 18, 69, 320, 1001, 1012.  
where indictment found, 32, 1007.

## WARRANT OF DISTRESS,

addressing, 1013, 1014.  
backing, 70, 309, 953, 1014, 1015, 1020.  
cannot be executed on Sunday, 793.  
does not bind defendant's goods until actual seizure, 71.  
levy, distress, and sale under, 70, 1016.  
ordering proceeds to be paid to justices, 70.  
poor rate, 203.  
rates under Towns Improvement Act, 204, 205, *Add. et Corr.* cvi.  
what goods may be taken under, 71, 159, 203, 205, 418, 1063.  
when necessary before imprisonment, 67, 347.  
when not necessary before imprisonment, 67, 1060.

## WARRANT OF EJECTMENT,

Cottier Tenant Act, 1856, 188.  
Defence Act, 1859, 187.  
Land Law (Ir.) Act, 1887, 191.  
Landlord and Tenant (Ir.) Act, 1860, 191.  
Summary Jurisdiction (Ir.) Act, 1851, 187.

## WARRANT OF EXECUTION,

addressing, 69, 1013, 1014.  
appeal, after decision of, 138, 1013.  
stay of, pending, 69, 1012.  
backing, 70, 1014, 1015, 1053.  
judge's warrant, 1015.  
warrant for D.M.P. district, 19, 309, 1015.  
warrant issued in D.M.P. district, 309, 953, 1020.  
by whom executed, 69, 70, 1013, 1014.  
civil case, 69, 1013.  
contents of, 70.  
emergency, case of, 1014.  
generally, 69.  
issue and form of, 69, 1011, 1026.  
jurisdiction should appear on, 26, 70.  
justices cannot delegate their functions, 69-70.

WARRANT OF EXECUTION — *continued*.

levy, distress, and sale under, 70, 1016.  
need not be signed in petty sessions, 69.  
by justice who adjudicated, 69, 1012.  
offence cases, 69, 1011.  
on abandonment of case stated, 244.  
on determination of case stated, 244, 1040.  
quashing, 70, 71.  
return of unexecuted, 70, 676, 1017, 1018.  
signature to, 69, 1012.  
strictness required in, 26, 70.  
Sunday, execution on, 71, 793.  
to whom addressed, 69, 1013, 1014, 1015.  
when to be executed, 69, 973, 1011, 1012.  
wilful default or neglect to return, 676, 1018.

## WARRANTY.

See "FOOD AND DRUGS."

## WARREN,

taking game in, 484, 486.

## WASTE,

by tenant—  
ejectment for, 189.  
precept to restrain, 192, 833.  
application to annul, 190.  
disobedience to, 193, 833.

## WATCH CASES,

exempted from assay, 513.

## WATCHES,

defacing crests, or numbers on, 923.  
provisions as to, under Merchandise Marks Acts, 621.

## WATER,

abstraction of, 714, 715, 716.  
when larceny, 907 *n.* 3.  
breach of contract by servant of water company, 612.  
breaking up streets for purpose of laying pipes, &c., 167, 715.  
disputes between consumers and undertakers, 167.  
domestic use of, what is, 166-167.  
fouling, 716.  
by gas company, 506, *Add. et Corr.* cviii.  
meter, duty of sanitary authority, as to, 714.  
meter, how far evidence, 714.  
injuring, 714.  
obstructing water-course, 425.  
offences as to, 834.  
offences under Waterworks Clauses Act, 1847, 715.  
1863, 716.  
polluted wells, power to close, 715.  
recovery of water rates and rents, 165-166.



**WATER—continued.**

- recovery of cost of repair, 167.
- requiring owner to take, 715.
- supply of, by sanitary authority, 714-716.
- supply to common lodging-houses, 717.
- wasting, 716.

**WATER-CLOSET.**

See "SANITARY CONVENIENCE."

**WATER-COURSE,**

- fishery offences (see "FISHERY LAWS"), 446.
- obstructing, 425.

**WATERFORD,**

- county borough, 369.
- separate court of quarter sessions in, 6.

**WATERWORKS,**

- bathing in, 384.
- See "WATER."

**WEDDING-RING,**

- assay and marking of, 512.
- See "PLATE."

**WEED KILLER,**

- sale of, 674-675, *Add. et Corr.* cviii.

**WEEDS.**

See "WEEDS AND AGRICULTURAL SEEDS."

**WEEDS AND AGRICULTURAL SEEDS.**

- agricultural seeds, meaning of, 1276.
- definition of noxious weeds by Department, 1275.
- entry on premises, 1275.
- notice requiring occupier to destroy noxious weeds, 1275.
- notices, provisions as to, 1275.
- noxious weeds, meaning of, 1276.
- obstruction of officers, 1276.
- occupier, meaning of, 1276.
- prosecution of offenders, 1276.
- samples of seeds may be taken, 1276.
- testing seeds and publication of results, 1276.
- See "ADULTERATION."

**WEEKLY TENANCY,**

- notice necessary to determine, 186-187.

**WEIGHT,**

- sale of bread by weight, 387.
- See "BREAD," "WEIGHTS AND MEASURES."

**WEIGHTS AND MEASURES,**

- alteration of stamps and weights, &c., 840.
- appeal, 848.
- application of Acts to Government Departments, 838.

**WEIGHTS AND MEASURES—continued.**

- "barrel," meaning of as regards beer, 837.
- bread, sale by weight, 387-388.
- butter, provisions as to, 392.
- coal, sale of (see "COAL"), 843-846.
- evidence as to fraudulent intent, 268.
- examination by inspectors, 841.
- factories and workshops, application to, 847, 1135.
- fairs and markets, weighing cattle in, 848.
- false trade description, 838.
- false weights, measures and balances, sale of, 839.
- forgery of stamps, weights, &c., 840.
- fraud in use of weighing instruments, weights and measures, 839.
- imperial standards to be used, 835, 836.
- inspectors, appointment and duties, 841.
- misconduct of, 842.
- wrongfully acting as, 843.
- intoxicating liquor, sale in imperial measures, 551.
- market brands, counterfeiting, 848.
- master's liability for acts of servant, 297, 838.
- mines, application to, 847.
- offences intentionally fraudulent, 847.
- powder and lead weights, stamping of, 840.
- price list to be in imperial standards, 836.
- procedure, 847.
- prosecution under, by inspector who is a constable, 48.
- reputed pint, what is, 540.
- servant, fraud of, 297, 838.
- stamping and verification, 839, 840, 842.
- statutes, 834.
- tret, no deduction for, 841.
- unauthorised weights, measures, and weighing instruments, 836.
- unjust weights and measures, 836, 837, 838.
- wrapper, weight of, 839.
- wool, fraudulently increasing weight of, 848.

**WEIR.**

See "FISHERY LAWS."

**WELL,**

- polluted well may be closed, 715.

**WEXFORD,**

Mayor of, 2.

**WHALE FISHERY, 850.**

- application of fees and penalties, 1183.
- Fisheries (Ir.) Act, 1842, 1184.

**WHALE FISHERY**—*continued*.

bye-laws by fishery authority, 1183.  
 exemptions from Act, 1183.  
 "fishery authority," meaning of, 1184.  
 inspection of whaling factory, 1183.  
 legal proceedings, 1183.  
 licence, grant of, 1181, 1182.  
 licence required for, 1181.  
 offences, 1182.

**WHIPPING**, 866.

**WHISKEY** (see "INTOXICATING LIQUORS").  
 standard for, 458.

**WHITE PHOSPHORUS MATCHES**,  
 importation of, 1190.  
 manufacture of, 1190.  
 possession of, 1190.  
 sale of, 1190.

**WHITEBOY OFFENCES**,  
 bailable by justice, 29.  
 limits of jurisdiction, 15.  
 offences, as to arms, &c., 933-934.  
 power of justices as to, 934.  
     peace officers as to, 934.  
 unlawful assembly, 933.  
 oaths, 933.

**WHOLESALE BEER DEALER**.

See "BEER DEALER," "INTOXICATING LIQUORS."

**WICKLOW**,

Dublin divisional justice, *ex officio*  
 J.P. for, 3.

**WIDGEON**,

destroying eggs or nest, 494.  
 when game, 483, 484, 494.

**WIDOW**,

liability of, to maintain child, 403,  
 531.

**WIFE**,

liability of, for support of husband  
 or child, 403, 535.  
 liability of husband to support, 403,  
 531.  
 of defendant, may be agent for  
 defendant in summary case, 46.  
 of defendant, when competent wit-  
 ness (see "EVIDENCE"), 53,  
 260-261.  
 See "HUSBAND AND WIFE."

**WILD ANIMALS**, 362.

See "CRUELTY TO ANIMALS."

**WILD BIRDS**,

close seasons, 850, 852, 853.  
 eggs of, 853, 854.  
 exemption orders, 852.  
 forfeiture, 856.  
 name and address of offender may be  
 demanded, 856.

**WILD BIRDS**—*continued*.

orders by Lord-Lieutenant as to  
 close season, 851.  
 procedure, 856.  
 sand grouse, protection of, 856.  
 spring traps, &c., 856.

**WILD DUCK**,

destroying eggs or nest, 494.  
 when game, 483, 484, 494.

**WILFULLY**,

meaning of, 531.

**WILFULLY AND MALICIOUSLY**, 208,  
 209, 601.

**WILFULLY OR MALICIOUSLY**, 208.

**WINE**,

adulteration of, 352.  
 See "INTOXICATING LIQUORS."

**WINE LICENCE**,

appeal to quarter sessions from re-  
 fusai of, 125.  
 objection by justices to grant of, 125,  
 police to grant of, 125.

**WINGED GAME**,

close seasons, 488.

**WINNOWING CORN**,

within 30 feet of centre of road, 526,  
 983.

**WIRELESS TELEGRAPHY**, 797, 925.

**WITHDRAWAL OF COMPLAINT**,

assault, 383.  
 generally, 50, 59, 63, 103, 104.

**WITHDRAWAL OF WARRANT**,

by justice himself, 71.  
 order of High Court, 71.

**WITHDRAWING JUDGMENT**, 108,

109, 348.

**WITHOUT HARD LABOUR**,

conviction silent as to hard labour,  
 91.  
 See "HARD LABOUR."

**WITNESS**,

accused for, no power to enforce  
 appearance in indictable cases, 21.  
 affirmation in lieu of oath by, 54, 259.  
 attachment for refusing to attend,  
 291.  
 award of portion of penalty to, 68.  
 backing warrant for execution, 21,  
 1014-1015, 1020, 1053.  
 binding over to give evidence, 22,  
 1003.  
 cannot be compelled to find sureties,  
 22, 1003 *n. l.*  
 cannot be forced to incriminate  
 himself, 54, 284.

WITNESS—*continued.*

- child, unsworn evidence of, 259.
- deposition of, 1205–1206.
- when competent, 262.
- committal of, for refusal to be examined, 22, 54, 291, 320, 954, 1002.
- enter into recognisance, 1003.
- form of warrant, 1027.
- compelling witness to answer, 22, 54, 291, 320, 954, 1002.
- compelling witness to attend, 21, 53, 291, 308, 320, 954, 1002.
- competent, who is, 53, 260–262, 1002.
- cross examination of, 21, 23, 56, 283, 286, 999, 1004.
- crown office summons for, if outside jurisdiction of justice, 21, 53.
- dangerously ill, justice should attend house to take deposition, 32.
- deaf and dumb witness, 260.
- death of, before trial, admissibility of deposition, 22, 24, 287, 290, 320, 1004.
- defendant, or husband or wife of, not competent generally, 53, 260.
- defendant's right to examine, 21, 23, 23 *n.* 2, 56, 999.
- deposition of, at preliminary hearing of indictable offence, 21–24, 320, 1004, 1205.
- deposition of, when admissible on trial, 22, 287–290, 320, 1004, 1206.
- discrediting or cross examining one's own, 284.
- D.M.P. district, 308, 320, 954.
- enforcing attendance by habeas corpus, 21, 251.
- by summons, 21, 53, 320, 954, 1002.
- by warrant, 21, 53, 320, 954, 1002.
- generally, 78.
- indictable cases, 21, 320, 954, 1002.
- expenses of in civil cases, 54, 1003.
- fact of being witness does not disentitle to compensation, 1035.
- failure to attend on subpoena, indictable misdemeanour, 291.
- fine for failure to attend in excise case, 79.
- customs case, 80.
- foreign witness, 260.
- incompetent, who is, 260–262.
- justice may call a person in court, though not summoned, 24, 57, 286, 1002.
- justice summoned as, how far disqualified, 218, 220.
- not bound to incriminate himself, 54, 284, 285.
- not subpoenaed, when he may be called, 24, 57, 286, 1002.
- oath of, 258.
- ordering out of court, 60, 291.
- privilege of, 54, 284–285, 327.
- production of documents by, 21, 53, 259, 276, 1002.
- refusing to sign deposition, 24.

WITNESS—*continued.*

- subpœna for, 21, 53, 291, 320, 954, 1002.
- subpœna to produce document, 21, 53, 276, 1002.
- subpœna *mala fide* issued may be set aside, 53.
- under Customs Act, 80.
- Excise Act, 79.
- subpœnaed merely to produce documents need not be sworn, 276.
- sureties cannot be required from, 22, 1003 *n.* 1.
- tampering with, 935.
- unsworn testimony, 259.
- warrant for, 21, 53, 79, 81 *n.* 1, 308, 320, 954, 1002.
- See "SUMMONS," "WARRANT FOR WITNESS."

## WOMEN,

- disqualified from acting as justices, 2.
- power to exclude from petty sessions, 56.
- search warrant in case of illegal detention, 146.
- See "FEMALES, OFFENCES AGAINST AND RELATING TO."

## WOOD.

- See "TIMBER."

## WOODCOCK,

- close seasons for, 852–853.
- game certificate to kill required, 489.
- when game, 483, 484, 486, 491 *n.* 1.

## WOOL,

- fraudulently increasing weight of, 848.

## WORKHOUSE,

- offences as to, 677, 678.
- See "POOR LAW."

## "WORKMAN,"

- meaning of, 157, 158.
- See "MASTER AND SERVANT."

## WORKS OF ART,

- copyright in, 413.

## WORKSHOP.

- See "FACTORY AND WORKSHOP."

## WOUNDING.

- See "ASSAULT."

## WRECK,

- causing, 930–931.
- destroying, 931.
- offences as to, 857, 916, 931.
- procedure under Merchant Shipping Act, 1894, 857.
- receiver of wreck, duties of, 856.
- right of passage over lands, 857.
- unlawful possession of goods from wreck, 857.
- warrant to search for, 857.



WRIT OF HABEAS CORPUS, 251.

See "HABEAS CORPUS."

WRIT OF MANDAMUS, 246.

See "MANDAMUS."

WRIT OF PROHIBITION, 254.

costs of, 254.

definition, 254.

procedure, 254.

when granted, 254.

YOUNG CRIMINAL, 688.

See "CHILDREN," "PREVENTION OF  
CRIME."

YOUNG PERSON,

definition of, 1084.

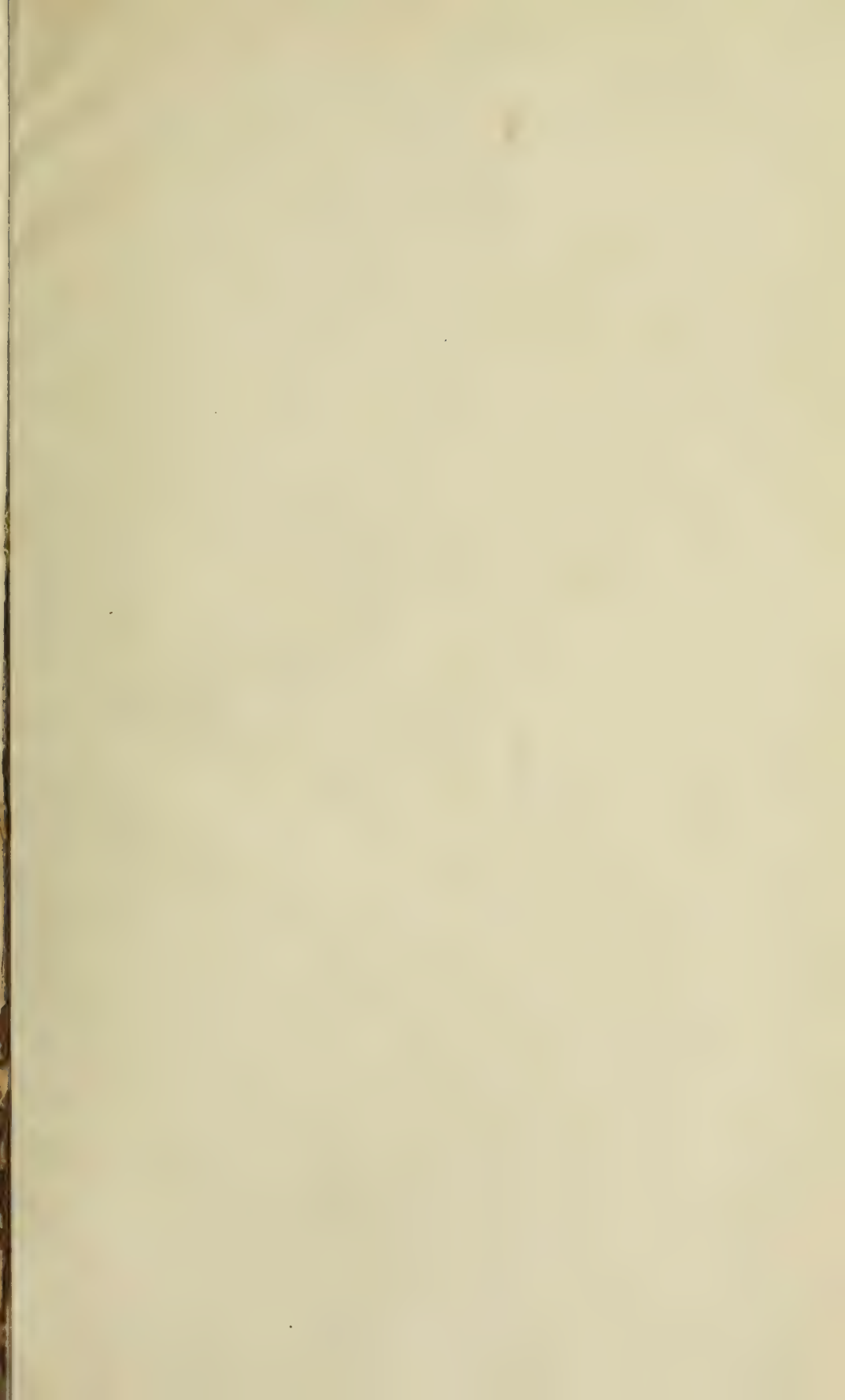
See "CHILDREN."

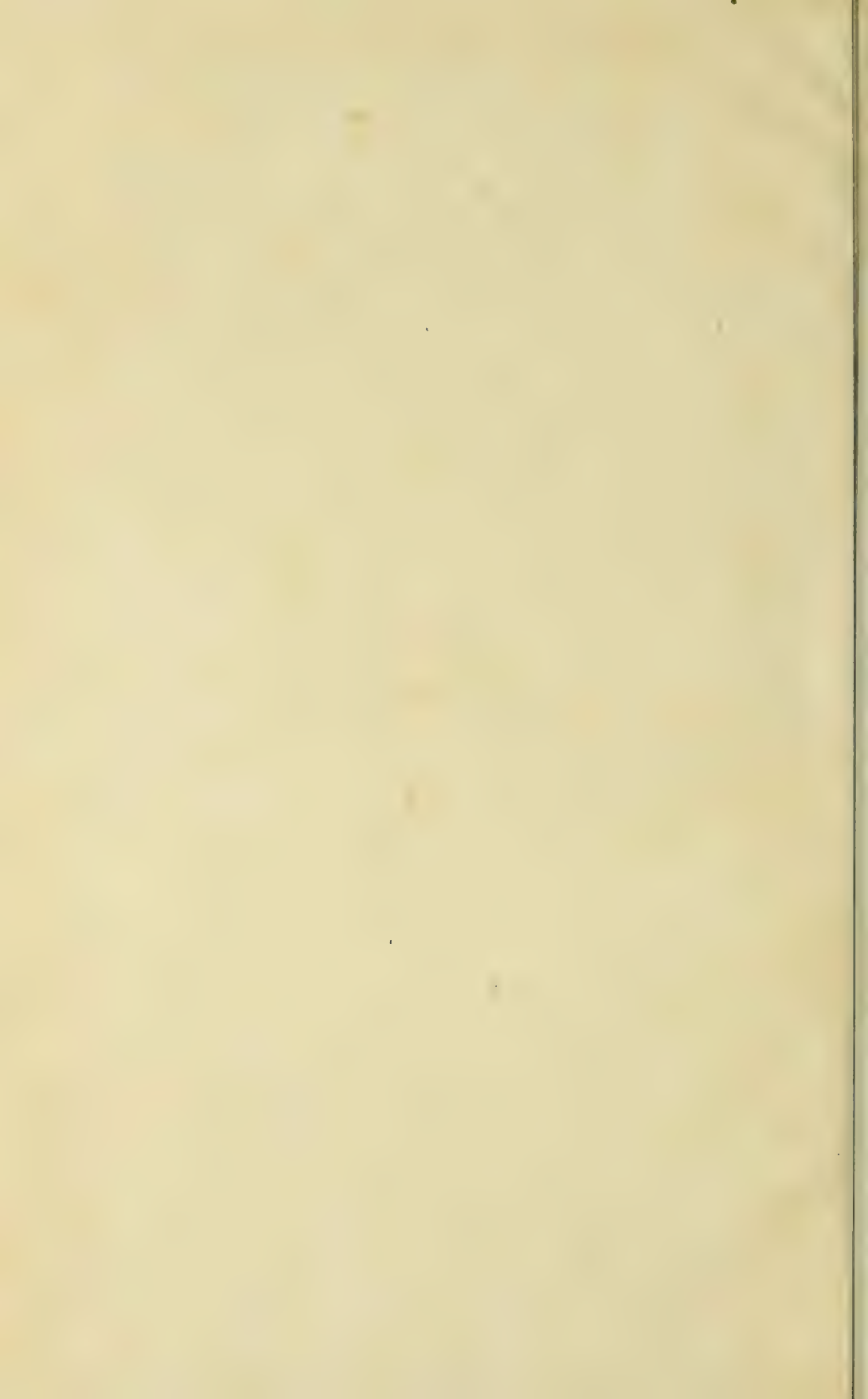
YOUTHFUL OFFENDER,

meaning of, 688 *n.* 2.

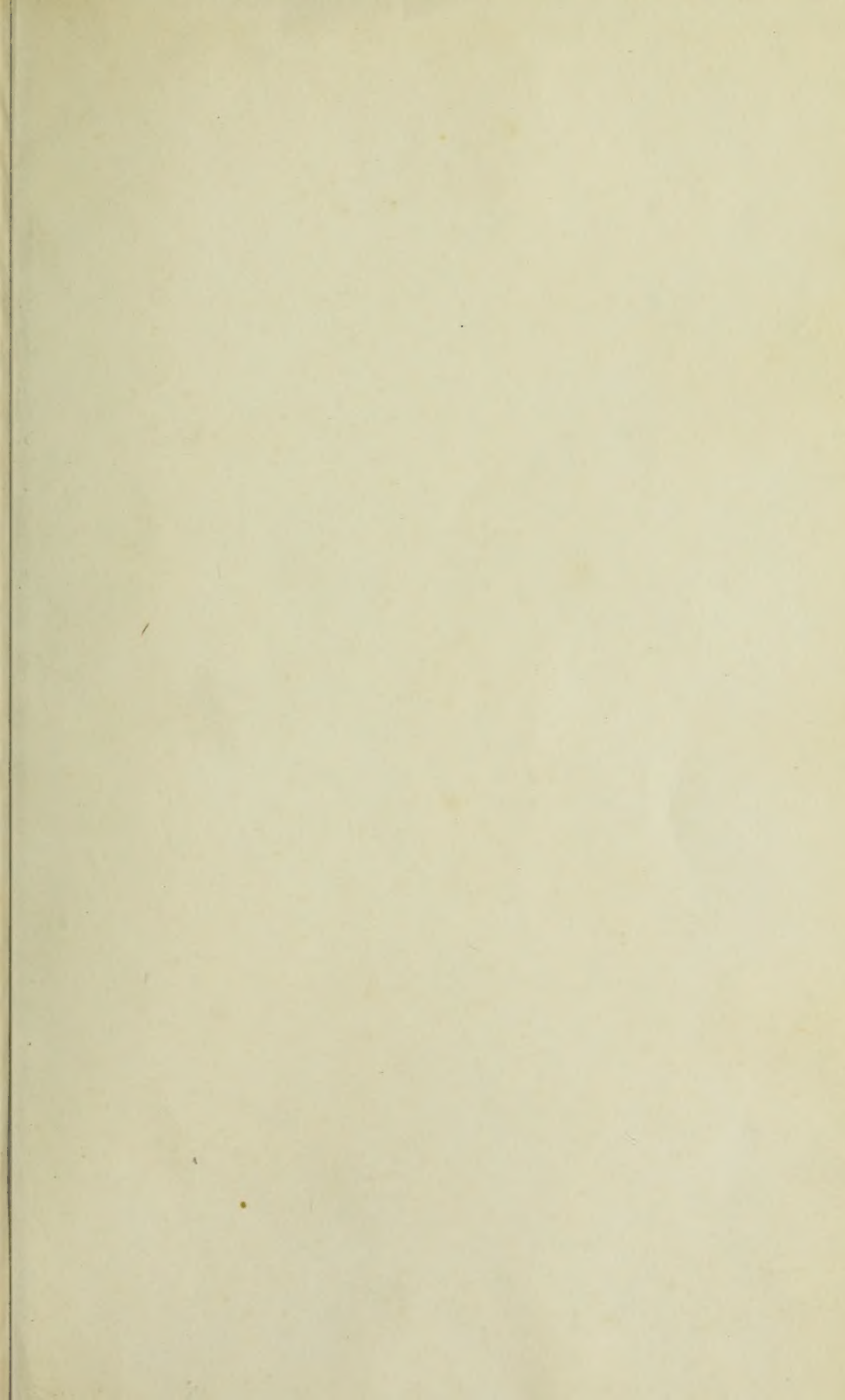
offences by, 688, 689.

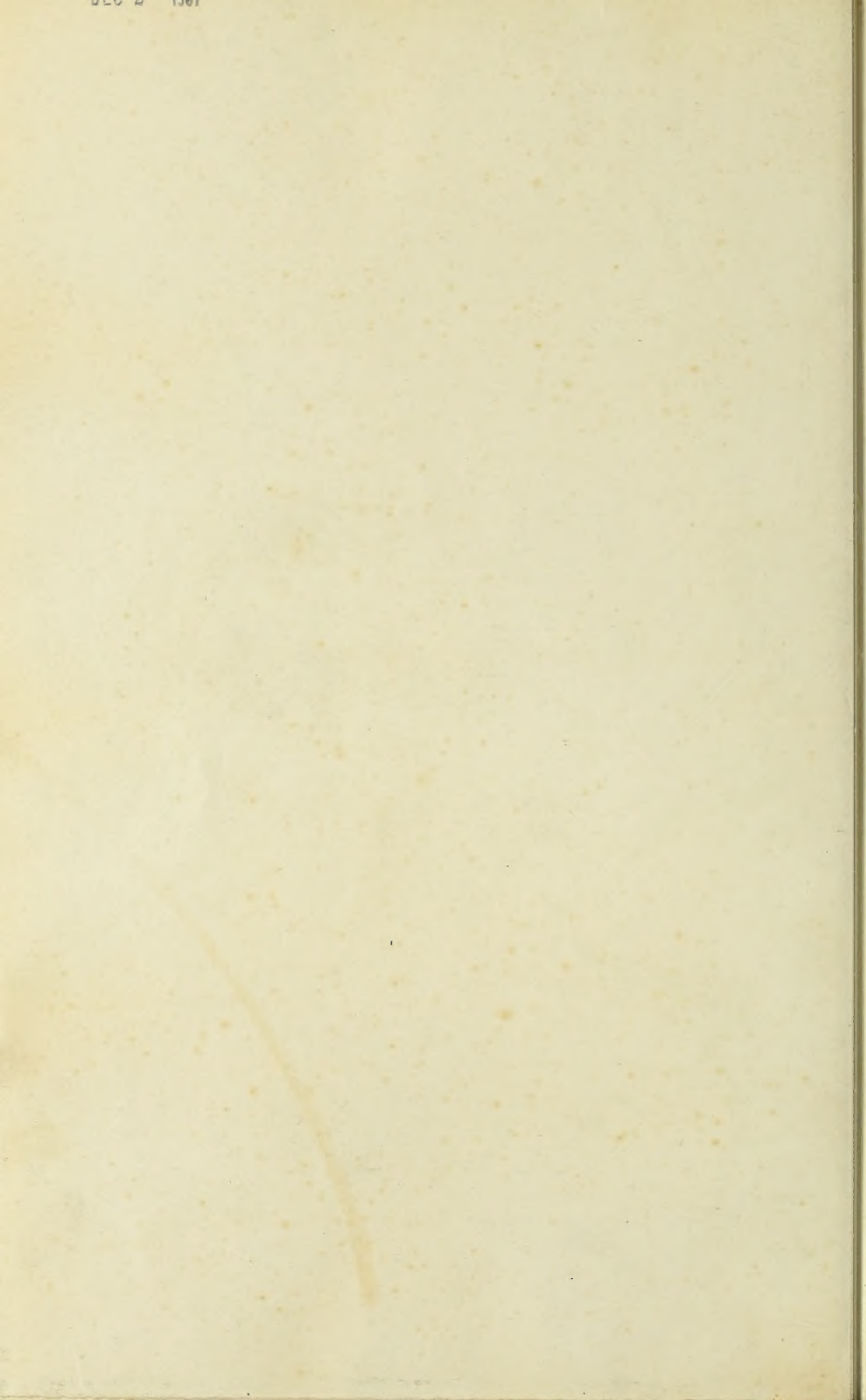
punishment of, 866, 868.











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